

Arizona Journal of Environmental Law & Policy
April, 2011

Comment
Raina Wagner

Copyright © 2011 Arizona Journal of Environmental Law & Policy; Raina Wagner

ENVIRONMENTAL JUSTICE AND CLIMATE CHANGE: DOES 20TH-CENTURY ACTIVISM HAVE A PLACE IN A 21ST-CENTURY CRISIS?

A. The History of Environmental Justice

During the 1970s and '80s, American scientists, researchers and activists began to make a connection between race and class and exposure to environmental harms. Inhabitants of poor and minority communities and neighborhoods faced far higher probability of exposure to health-damaging environmental toxins than others.¹ People revolted against the poisoning of their environments across the nation, a community uprising that became known as the Environmental Justice Movement.² The movement, now well established, was born in the 1980s, and forced forward by the participation of "community groups engaging in local action within their communities."³ Such groups were urged into action by a string of environmental calamities, from Three Mile Island, to Love Canal, to the Woburn, Mass., case later made famous in the book and film "A Civil Action."

It was 1971 when the Council on Environmental Quality first documented a correlation between income and the risk of toxic exposure.⁴ The report showed that a income adversely affected the ability of the urban poor to improve their environment⁵--in other words, people were too poor to move. By the 1980s, government studies were showing that the correlation between lack of wealth and risk of toxic exposure extended not only to income disparity, but also to minority communities.⁶ For example, the U.S. General Accounting Office ("GAO") conducted a study to determine if race was a factor in the placement of hazardous waste disposal. Examining Southeastern EPA Region IV, the GOA study showed that three-fourths of the landfills in that region were sited near communities with high minority populations.⁷ A private study went even further: a report titled Toxic Wastes and Race in the United States: A National Report on the Racial and Socio-economic Characteristics of Communities with Hazardous Waste Sites--released in 1987 by the United Church of Christ Commission for Racial Justice--supported the argument that race is the most consistent factor correlated with hazardous waste facility siting.⁸

The activists bringing the newborn Environmental Justice Movement to the fore gathered in the First National People of Color Environmental Leadership Summit in October 1991.⁹ There, the delegates adopted seventeen Principles of Environmental Justice as their first official act.¹⁰ These principles showed the delegates' devotion to their communities, to the fight against racism and to the Earth itself.¹¹ The seventeen goals themselves ranged from demands that public policy "be based on mutual respect and justice for all peoples, free from any form of discrimination or bias"; to "universal protection from nuclear testing ... and disposal"; to "the fundamental right to clean air, land, water, and food."¹²

In short time, these values were incorporated into government policy, with the EPA-created Office of Environmental

Justice.¹³ Still an active office today, the Office of Environmental Justice operates in the Department of Compliance and Enforcement, with the goal “to provide an environment where all people enjoy the same degree of protection from environmental and health hazards and equal access to the decision-making process to maintain a healthy environment in which to live, learn, and work.”¹⁴ The EPA site defines Environmental Justice (“EJ”) as

the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. EPA has this goal for all communities and persons across this Nation. It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.¹⁵

Then, in the most sweeping act in the history of the movement, President Clinton issued Executive Order 12898 in 1994, mandating that federal agencies incorporate Environmental Justice in their missions.¹⁶ Since the 1990s, some doubts have been raised as to the relevance of race and class in the distribution of environmental harms in the U.S., with some even counting the EJ Movement as a harmful distraction that highlights racial concerns in lieu of bringing attention to more serious environmental risks.¹⁷ But even if the major concern of the Movement--toxic hotspots--results from factors other than policies ruled by intentional racial or socioeconomic discrimination, all evidences till points to the existence of a disparate impact.¹⁸ The recent report by the Virginia National Resources Leadership Institute, a Virginia-based program dedicated to bringing multiple groups together for environmental decision-making, found that nationally, race and ethnicity continue to be the “strongest predictors of environmental injustice.”¹⁹ And, “whether burdens have a greater effect on minority groups or those living in poverty, the costs are most often endured by the poorest members (socially, economically, politically) of our society.”²⁰

B Environmental Justice in the Climate Change Context

Environmental Justice was born out of an era of the past: one which was marked with Super fund and toxic hot spots, lead paint and sulfur dioxide. These intense issues of the late 20th century had tangible, quantifiable consequences, from cancer clusters to acid rain.

Climate change has been more, for lack of a better word, complicated. Climatechange--commonly called “global warming,”--is the dramatic impact humans arehaving on the environment through the increased concentration of greenhouse gases in the atmosphere, most importantly, carbon dioxide,²¹ emitted consistently through the combustion of fossil fuels ever since the start of the Industrial Revolution in the mid-19th Century--and ever increasingly.

The effects of climate change go far beyond mere warming. Along with an increase in the average global temperature from somewhere between 2 and 4 degrees centigrade,²² “comes the threat of more extreme whether, including more intense and longer droughts that have already been observed, heavy precipitation including increased intensity of tropical cyclones, and hot extremes and heat waves.”²³ In North America, this is likely to manifest as “more severe storms, hurricanes, floods, droughts, heat waves and sand wild fires.”²⁴ For island nations around the world, the consequence of increased heat will be rising sea levels, lost coastline, and possibly, total inundation.²⁵

Professor Maxine Burkett, Associate Professor of Law at the William S. Richardson School of Law, University of Hawai’i, has explored climate change and the Environmental Justice Movement. She argues that the necessarily global nature of the human response to climate change demands that the EJM “must be a critical and consequential crafter of domestic, and ultimately global, solutions.”²⁶ Within that international framework, Prof. Burkett turns her attention to the U.S. response to climate change with a proposal of carbon credits under a cap-and-trade framework modeled on the Kyoto Protocol, but implemented in the U.S.²⁷ Whereas the greening project beneficiaries under Kyoto are developing nations, in a domestic Clean Development Mechanism (“CDM”), the beneficiaries of greening projects in the U.S. would be communities that will suffer disproportionately from climate change,²⁸ such as poor people living in urban environments that become “heat islands” in the summer;²⁹ urban sufferers of asthma, endangered more as global temperatures rise;³⁰ inhabitants of Arctic Villages in Alaska, whose lands disappear as the ice cover melts;³¹ and residents of coastal communities such as New Orleans, which climate change studies inform are likely to be in the path of more frequent and stronger storms like Hurricane Katrina.³²

C Keeping Environmental Justice at the Forefront

A domestic CDM (“dCDM”) proposal such as Prof. Burkett’s will go a long way in correcting a key shortcoming of greening projects funded by the cap-and-trade market around the world, namely, that very little of this money is coming to the United States. Of the more than \$30 billion pledged to international climate funds to date,³³ about \$1.9 billion of that has been dispersed to CDM projects world wide³⁴--but not one dollar to a U.S.-based project.³⁵ Since the purpose of such funds is to encourage the greening of communities in developing nations, this is unsurprising; but the fact remains that communities in the United States face significant risks from the harms of global climate change.

Experts agree that a carbon cap-and-trade market will surely come to the U.S. in the reasonably near future, despite the failure to get through Congress such bills as the American Clean Energy and Securities Act of 2009 (also known as the Waxman-Markey Bill), which stalled after passing the House.³⁶ Even if a national program never emerges from Congress, it is likely that regional cap-and-trade schemes will arise, perhaps modeled on the Regional Greenhouse Gas Initiative (“RGGI”), a regulatory program comprising ten Northeastern and Mid-Atlantic states that caps carbon emissions, auctions the allowances on their market, and funnels funds into GHG-reduction programs within the states.³⁷ In RGGI, carbon offsets available to the power plants create benefits that stay within the RGGI states.³⁸ Through such offsets, thousands of Americans in EJ communities have received these benefits, such as green job training, vouchers for the reduction of energy bills, and subsidies toward more environmentally efficient home energy upgrades.³⁹

Were a national cap-and-trade program making its way through Congress at this time, ensuring that decision makers met the concerns of the Environmental Justice Movement would be simple, involving nothing more than timely enforcement of Executive Order 12898. The order promotes nondiscrimination in federal programs, and calls for every federal agency to analyze the effects of an action on minority and low income communities when doing environmental impact analyses.⁴⁰ But with the lack of national leadership and the rise of state- or regionally based cap-and-trade programs, ensuring that Environmental Justice is part of the response to climate change cannot be accomplished through Executive Order 12898. Rather, the leaders and activists of the communities themselves will need to work with the administrators to help design beneficial greening programs in EJ communities. In short, the Environmental Justiceactivist’s work is not done. The 20th-Century movement will be just as integral to the 21st-Century response to climate change as it was to the fight for clean air and water in the past.