



MEMORANDUM

April 13, 2021

To: Subcommittee on Environment and Climate Change Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Legislative Hearing on “The CLEAN Future Act and Environmental Justice: Protecting Frontline Communities”

On Thursday, April 15, 2021, at 10:30 a.m. (EDT) via Cisco Webex online video conferencing, the Subcommittee on Environment and Climate Change will hold a legislative hearing entitled, “The CLEAN Future Act and Environmental Justice: Protecting Frontline Communities.”

I. BACKGROUND

The U.S. Environmental Protection Agency (EPA) defines environmental justice 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.”¹ According to EPA, achieving environmental justice requires equal protection from environmental health hazards and equal access to environmental decisions.

On February 16, 1994, President Clinton issued Executive Order (EO) 12898, which created an interagency working group (IWG) on environmental justice, and directed federal agencies to identify and address disproportionately high and adverse effects of their actions on minority and low-income populations.² The EO also required agencies develop a strategy for implementing environmental justice.³

In September 2019, the Government Accountability Office (GAO) published a report entitled, “Environmental Justice: Federal Efforts Need Better Planning, Coordination, and

¹ United States Environmental Protection Agency, *Learn About Environmental Justice* (updated Sept. 24, 2020) (www.epa.gov/environmentaljustice/learn-about-environmental-justice).

² United States Environmental Protection Agency, *Summary of Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (updated July 23, 2020) (www.epa.gov/laws-regulations/summary-executive-order-12898-federal-actions-address-environmental-justice).

³ *Id.*

Methods to Assess Progress.”⁴ The GAO report found that while most of the 16 IWG agencies reported taking some action to identify and address environmental justice issues, few agencies have methods in place to assess their progress, and the number of agencies issuing annual reports on environmental justice has declined.

II. H.R. 1512, THE “CLEAN FUTURE ACT” – ENVIRONMENTAL JUSTICE PROVISIONS

Chairmen Pallone (D-NJ), Tonko (D-NY), and Rush (D-IL) introduced H.R. 1512, the “Climate Leadership and Environmental Action for our Nation’s Future Act” or the “CLEAN Future Act”. The CLEAN Future Act includes many provisions related to environmental justice. Most of the provisions are included in Title VI of the bill, but some are included in other titles.

A. Environmental Justice Provisions in Title IV – Transportation

i. Subtitle F—Port Electrification and Decarbonization

Environmental justice communities are often located near major ports. These communities face increased exposure to air pollution from port operations and those ships, heavy-duty trucks, and trains that move goods in and out of ports. Subtitle F establishes an EPA grant program to reduce air pollution and greenhouse gas emissions from ports. The program will provide funding to help ports develop and implement climate action plans aimed at reducing emissions from port operations and infrastructure, ensuring that all ports can access the resources and technical assistance needed to reduce emissions. Subtitle F also authorizes \$2 billion annually to help ports purchase and install zero-emission equipment and technology. Grants may be used to support a wide range of investments, including zero-emissions shore power, cargo-handling equipment, and clean energy systems. The legislation further mandates EPA develop model methodologies for ports to improve emissions accounting and inventories to better inform their climate action plans. Subtitle F also directs EPA and the Department of Energy (DOE) to conduct a study on port electrification to assess the benefits, environmental and energy impacts, estimated costs, and opportunities for innovation related to increased electrification of port infrastructure and operations.

B. Environmental Justice Provisions in Title VI – Environmental Justice

i. Subtitle A—Empowering Communities Voices

Subtitle A codifies EO 12898 requirements for integration of environmental justice by federal agencies, as well as the IWG on environmental justice. It also codifies the National

⁴ Government Accountability Office, *Environmental Justice: Federal Efforts Need Better Planning, Coordination, and Methods to Assess Progress* (Sept. 2019) (GAO-19-543).

Environmental Justice Advisory Council established by President Clinton in 1993.⁵ The subtitle requires environmental justice training of employees at EPA, DOE, the Department of the Interior, and the National Oceanic and Atmospheric Administration, and establishes an Office of Energy Equity at DOE. The subtitle also creates an environmental justice clearinghouse and requires biennial meetings between EPA and community groups to better foster collaboration and communication.

Additionally, Subtitle A limits issuance of new permits or renewals of existing permits for major sources in census tracts already overburdened by pollution. It also includes grant programs for communities to hire their own technical experts to participate in the regulation and monitoring of petrochemical and solid waste disposal sites that threaten their health and safety.

ii. Subtitle B—Restoring Regulatory Protections

Subtitle B restores regulatory protections for environmental justice communities. These actions include new regulations on enhanced underground oil recovery processes and the safe disposal of coal ash. This subtitle also eliminates exemptions under the Clean Air Act (CAA) and Safe Drinking Water Act (SDWA) for oil and gas exploration, and lists hydrogen sulfide as a hazardous air pollutant.

iii. Subtitle C—Infrastructure to Protect Communities

Subtitle C focuses on infrastructure updates necessary to protect environmental justice communities. It establishes financial assurance requirements under the Comprehensive Environmental Response, Compensation, and Liability Act for the toxic releases likely to occur at industrial facilities because of climate change-associated extreme weather events. It also identifies and requires certain actions on federal sites and National Priorities List facilities that are vulnerable to climate change.

Subtitle C also increases and extends Brownfields program funding, the authorization for the Drinking Water State Revolving Fund, and the Drinking Water System Resilience Funding Program. In addition, Subtitle C establishes a grant program under SDWA to aid water utilities in paying capital costs associated with treatment for PFAS chemicals. Further, it authorizes \$4.5 billion annually over ten years to replace lead service lines, with priority for replacing them in environmental justice communities.

iv. Subtitle D—Climate Public Health Protection

Subtitle D addresses critical climate public health protection for communities. It contains a Sense of Congress that climate change negatively impacts public health. Subtitle D also directs the Secretary of Health and Human Services (HHS) to develop a national strategic plan to ensure that the nation's public healthcare system is prepared for the impacts of climate change.

⁵ United States Environmental Protection Agency, *National Environmental Justice Advisory Council* (updated Mar. 19, 2021) (www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council).

Furthermore, it establishes a science advisory board to provide scientific and technical advice to HHS on the impacts of climate change on public health, and directs the Secretary to produce periodic reports with the National Academies of Sciences on climate change health impacts.

v. Subtitle E—Public Health Air Quality Infrastructure

Subtitle E requires EPA to implement fence-line monitoring at stationary facilities contributing to health threats through emissions of hazardous air pollutants. EPA must also promulgate regulations requiring the best available form of fence-line monitoring at sources of toxic air pollution and deploy an additional eighty multipollutant monitoring stations in communities needing additional air monitoring. Additionally, EPA must deploy at least 1,000 new air quality sensors in communities affected by air pollution to complement the national ambient air monitoring network and increase communities' air quality information access.

C. Environmental Justice Provisions in Title VIII – Economy-Wide Policies

i. Subtitle E—Ensuring Just and Equitable Climate Action

Section 842 requires that 40 percent of funds made available pursuant to the CLEAN Future Act be used to support activities directly benefitting environmental justice communities.

III. ADDITIONAL LEGISLATION

A. H.R. 501, the “Climate Smart Ports Act”

Rep. Nanette Diaz Barragán (D-CA) introduced H.R. 501, the “Climate Smart Ports Act”. The bill requires EPA to establish a grant program for purchasing or installing equipment and technology to reduce pollution at ports. Specifically, the grants must be used for equipment or technology that produces zero exhaust emissions of certain pollutants and greenhouse gases or captures 100 percent of the exhaust emissions produced by an ocean-going vessel at berth.

B. H.R. 516, the “Environmental Justice Mapping and Data Collection Act of 2021”

Rep. Cori Bush (D-MO) introduced H.R. 516, the “Environmental Justice Mapping and Data Collection Act of 2021”. The bill authorizes funding to identify the demographic factors, environmental burdens, socioeconomic conditions, and public health concerns related to environmental justice, as well as collect data through community engagement and a government-wide interagency process. These data would be used to build layered maps identifying environmental justice communities.

C. H.R. 861, the “Alerting Localities of Environmental Risks and Threats Act of 2021”

Rep. Lisa Blunt Rochester (D-DE) introduced H.R. 861, the “Alerting Localities of Environmental Risks and Threats Act of 2021”. The bill requires the owner or operator of a

facility where hazardous chemicals are produced, used, or stored to hold a public meeting within 72 hours of the release of an extremely hazardous substance. The bill also requires the owner or operator of a facility to hold an annual public meeting, where specified information regarding the extremely hazardous substances at the facility must be disclosed.

D. H.R. 862, the “Climate Action Planning for Ports Act of 2021”

Rep. Blunt Rochester introduced H.R. 862, the “Climate Action Planning for Ports Act of 2021”. The bill authorizes EPA to award grants for developing climate action plans to reduce greenhouse gas (GHG) emissions or other air pollutants at ports or port facilities. Climate action plans must demonstrate that the measures proposed to be implemented through the grants will do at least two of the following: improve ports or port facilities energy efficiency; deploy technology or processes that reduce vehicle idling at ports or port facilities; or reduce direct GHG and other air pollutant emissions with a goal achieving zero emissions.

E. H.R. 2021, the “Environmental Justice for All Act”

Rep. Raul M. Grijalva (D-AZ) introduced H.R. 2021, the “Environmental Justice for All Act”. The bill codifies the requirements of EO 12898. It also makes significant changes to permitting under the CAA and Clean Water Act (CWA) and to the National Environmental Policy Act generally. Additionally, the bill introduces new causes of action under the Civil Rights Act.

F. H.R. 2394, the “Climate Justice Act of 2021”

Rep. Yvette D. Clarke (D-NY) introduced H.R. 2394, the “Climate Justice Act of 2021”. The bill directs the President to establish the “Climate Justice Working Group,” a committee to advise on the nation’s just and equitable transition towards a clean, climate-resilient, zero-emission economy. The bill also defines “climate justice” to recognize that climate change has different social, economic, public health, and other adverse impacts on underprivileged communities, and that its impacts are not felt equitably among all communities.⁶

G. H.R. 2396, the “Ensuring Safe Disposal of Coal Ash Act”

Rep. Steve Cohen (D-TN) introduced H.R. 2396, the “Ensuring Safe Disposal of Coal Ash Act”. The bill amends the Solid Waste Disposal Act to require stronger protections for communities, public health, and groundwater from unsafe coal ash disposal. Specifically, H.R. 2396 requires financial assurances for coal ash residuals units sufficient to cover all post-use care and correction actions, prohibits use of unlined impoundments for coal ash, limits fugitive dust emissions from impoundments, and requires permit limits and safety standards. The bill also increases monitoring and protection for nearby groundwater sources.

⁶ Yale Climate Connections, *What is ‘climate justice’?* (July 29, 2020) (yaleclimateconnections.org/2020/07/what-is-climate-justice/).

H. H.R. 2397, the “Protection from Cumulative Emissions and Underenforcement of Environmental Law Act of 2021”

Rep. Diana DeGette (D-CO) introduced H.R. 2397, the “Protection from Cumulative Emissions and Underenforcement of Environmental Law Act of 2021”. The bill instructs EPA to advance environmental justice by implementing enforcement strategies in 100 communities overburdened by serious environmental non-compliance problems. The bill also instructs EPA to research the cumulative risks posed by multiple pollution sources, and to incorporate this information into EPA health assessments.

I. H.R. 2431, the “Voices for Environmental Justice Act”

Rep. Raul Ruiz (D-CA) introduced H.R. 2431, the “Voices for Environmental Justice Act”. The bill authorizes EPA grants to enable communities to participate in decisions impacting their health and safety in connection with the release of certain hazardous air pollutants, as well as the permitting of solid waste and hazardous waste disposal facilities.

J. H.R. 2434, the “Environmental Justice Act of 2021”

Rep. Ruiz introduced H.R. 2434, the “Environmental Justice Act of 2021”. The bill codifies the requirements of Executive Order 12898 on environmental justice, makes significant changes to permitting under the CAA and CWA, and requires consideration of cumulative impacts in certain permitting decisions.

IV. WITNESSES

The following witnesses have been invited to testify:

Mildred McClain, Ph.D.

Executive Director
Harambee House/Citizens for Environmental Justice

Angelo Logan

Campaign Director
Moving Forward Network

Elizabeth Yeampierre, J.D.

Executive Director
UPROSE

Derrick Hollie

Founder
Reaching America

Shay Hawkins

President

Opportunity Funds Association

Adrienne Hollis, Ph.D., J.D.
Senior Climate Justice and Health Scientist
Union of Concerned Scientists