

Answers From Nicky Sheats to Questions from the Committee on Natural Resources Regarding the EJ For All Act

July 17, 2022

Questions from Rep. Betty McCollum, MN

1. As someone working to implement the Justice40 Initiative, how will the Environmental Justice for All Act help ensure equitable access to federal opportunities to restore, conserve, and build resilience to support environmental and public health in all communities?

At the risk of being accused of acting in a way that is excessively single-minded, let me return to the section of the EJ For All Act that incorporates cumulative impacts into the legislation.¹ For decades the EJ grassroots movement has insisted that at some point our society must begin denying applications for pollution permits in communities that already have more than their fair share of polluting facilities and other unwanted land uses. The EJ advocacy community, and EJ residential communities, have become extremely frustrated at what seems to be a refusal to actively prevent an inequitable geographic distribution of unwanted and detrimental land uses in communities. The cumulative impacts section of the EJ for All Act could be the beginning of changing this disturbing situation on a federal level. If it is eventually adopted, the bill would be a significant step towards addressing EJ concerns over the disproportionate siting of polluting facilities in EJ communities and towards supporting “environmental and public health in all communities”.

2. Your testimony notes that cumulative impacts of pollutants has been a difficult problem to resolve due to its association with race and income. What are some of the key findings from the research you’ve done to highlight this issue?

My “research” type of work typically involves helping the EJ advocacy community develop the best possible public policy from an EJ perspective. Much of this policy addresses issues that directly involve race and income. For example, one policy recommendation on which I’ve spent a significant amount of time is what has come to become known as “mandatory emissions reductions”. This recommendation advocates that climate change mitigation policy should not only be used to fight climate change but to also reduce the disproportionate amount of toxic pollution in EJ communities.² The most important elements of the policy would require power plants located in EJ communities, or whose toxic air pollution emissions significantly impacts an EJ community, to reduce their emissions. These mandatory reductions would occur no matter what type of mitigation policy the plants are subject to. The most likely definition of an EJ

¹ *Id.*

² See Nicky Sheats, *Achieving Emissions Reductions For Environmental Justice Communities Through Climate Change Mitigation Policy*, 41(2) William and Mary Environmental Law and Policy Review 377 (winter 2017); *New Jersey Environmental Justice Climate Change and Energy Policy Platform*, NEW JERSEY ENVIRONMENTAL JUSTICE ALLIANCE (2017).

community under this type of policy would be based on race and income. Even if the communities being protected by this policy would be “overburdened” communities instead of EJ communities, race and income would most likely still be an important criterion used to identify the safeguarded communities. Thus, this policy directly “highlights” race and income as crucial issues to be addressed.

3. What can we be doing at the federal level to help combat the disproportionate exposure to multiple types of pollution found in low-income communities and communities of color?

There are two types of policies that would address cumulative impacts and disproportionate pollution loads in EJ communities. One type would use the concept of cumulative impacts directly to address this issue. An example of this is the cumulative impacts policy contained in section seven of the EJ For All Act.³ It explicitly uses the concept of cumulative impacts to tackle the issue itself. The other type of policy that will be needed to address cumulative impacts are strategies that will reduce the different types of pollution that compose the disproportionate pollution loads connected with this issue. An example of this is discussed in the question immediately above: climate change mitigation policy from an EJ perspective. Power plants release air pollution which is often part of the elevated pollution loads that negatively impact EJ communities.⁴ The mandatory emissions reduction policy explained above, which would force plants located in EJ communities to reduce their emissions, would address the air pollution from these facilities that is affecting community residents. Congress should adopt the EJ For All Act that includes the cumulative impacts policy and develop additional legislation that would address the varying types of pollution that impact EJ communities. It could begin the work on additional legislation by adopting the mandatory emissions reductions recommendation. But, of course, Congress shouldn’t stop there, it should also create policy and legislation that specifically addresses water pollution and solid waste hazards in EJ communities. These different policies, when combined with the cumulative impacts policy in the EJ For All Act, would go a long way in creating a coherent EJ cumulative impacts policy on the federal level and reducing disproportionate pollution loads in communities Of Color and communities with low-income across the United States.

³ Environmental Justice For All Act, *supra* note 15, at Section 7.

⁴ See Sheats, *supra* note 18.