

**The Administrative Procedure Act at 75:
Ensuring the Rulemaking Process is Transparent, Accountable, and Effective**

Judiciary Committee Hearing

Jacqueline Patterson's Remarks

Thank you so much for having me and thank you all, in advance, for listening.

Our communities have seen the impact of the outsized influence of corporate entities on rulemaking as it relates to environmental regulations and beyond. Our children, people with challenged health conditions especially alongside everyone in our communities are paying the costs for this rampant overreach.

EPA records from 1994 to 2009 found that industry groups held a virtual monopoly over informal communications that happened before proposed rules on hazardous air pollutants were publicly available. On average, industry groups engaged in 170 times more informal communications with EPA than public interest players. These were communications that occurred before any proposed rules were even written. By the time the notices were published, comments from the public were buried in an avalanche of well-funded, heavily-credentialed comments from industry insiders and their highly-paid allies. Industry groups submitted 81 percent of the comments during the notice-and-comment period compared to public interest groups who submitted a mere 4 percent. Furthermore, between October 1, 2001 to June 1, 2011, Office of Information and Regulatory Affairs, or OIRA, met with five times as many representatives of industry as with people representing public interest groups. An examination by University of Wisconsin-Madison found a strong correlation between interest groups lobbying OIRA and changes in the final rules that favored those interest groups. Where is the democracy in this?

And, again, who is paying the price for a regulatory system that is being governed, de facto, by polluters, thereby reducing it to a corporatocracy. The people we know who are paying the price are:

- Indigenous women who have been sexually assaulted along the under regulated oil and gas pipelines.
- As we described in our Fumes Across the Fenceline Report, Black, Indigenous, and People of Color (BIPOC) communities are on the frontlines of the health, social, economic, and political impacts of being impacted by the toxic exposure, by the displacement due to under regulated fossil fuel infrastructure.
- BIPOC communities on the frontlines of near roadway air pollution from the under-regulated combustable engine.
- BIPOC and low-income communities and nations disproportionately impacted by climate change due to barely fettered greenhouse gas emissions.
- And as we detail in our Coal Blooded: Putting Profits Before People Report, according to the Department of Labor, 76,000 coal miners who have died of black lung disease while the amount of coal dust to which they were exposed went unregulated.

All while people have died due to having their electricity, oil, and/or gas cut off due to inability to pay a couple of \$60 bills....and therefore died of carbon monoxide poisoning as they tried to heat their homes. Or they perished in fires when they tried to light their homes. Or they were like a grandmother in New Jersey who died from loss of oxygen when the power supply to her respirator was cut even after her son had paid off her bill...the system hadn't caught up to this payment before they cut off her source of life.

Meanwhile the average CEO pay for a coal company is \$9.8 million dollars. And, as we detailed in both volumes of the Fossil Fueled Foolery reports, the profits reaped from hamstringing the regulatory system in such a way that makes it easy for the companies to operate without rules that protect public health and wellbeing are in the billions. And a chunk of those profits go to paying lobbyist "credentialed experts" and others to maintain the status quo.

In the words of Martin Luther King, "I never intend to adjust myself to economic conditions that will take necessities from the many to give luxuries to the few."

Not only do we have to reclaim the regulatory system end corporate overreach, we must also ensure that communities on the frontlines, of the operations that must be regulated, have clear pathways for input. I gave some examples of groups on the frontlines but to give a sense of scale and widespread impact:

- There are 142 large refineries in the United States, the majority of which are sited in low-income areas and communities of color. In 2010, oil refineries reported approximately 22,000 tons of hazardous air pollution to the U.S. Environmental Protection Agency (EPA). However, this number fails to take into account unreported emissions from refinery sources, like flares, tanks, and cooling towers, as well as accidents, which can release 10 or even 100 times more pollution than what is reported. And, again, the under-regulation is what allows for these unreported emissions on top of what is allowable in terms of the everyday emissions.
- More than 1 million African American individuals live within a half mile of an oil and gas facility
- We found in our Coal Blooded Report that the vast majority of the most toxic coal fired power plants were disproportionately polluting BIPOC communities. Toxins coming out of those smoke stacks include mercury, arsenic, lead, sulfur dioxide, nitrogen oxide and, of course, coal plants are the top emitters of carbon dioxide.
- Race is the largest indicator of whether you live next to toxic waste facilities including incinerators which emit cadmium, methane, and benzene, a known carcinogen
- African Americans are exposed to 38 percent more polluted air than Caucasian Americans, and we are 75 percent more likely to live in fence-line communities than the average American.

The health impacts are devastating.

According to the American Lung Association:

- Ozone smog from natural gas industry pollution is associated with 750,000 summertime asthma attacks in children and 500,000 missed school days.
- African American communities are burdened by 138,000 childhood asthma attacks and 101,000 lost school days each year.
- Approximately 13.4 percent of African American children have asthma (over 1.3 million children), compared to 7.3 percent for white children.

- The death rate for African American children with asthma is 10 times the mortality rate of white American children.

In our Fumes Across the Fenceline Report done with the Clean Air Taskforce, we also found that African Americans and Latinx Americans, have a higher cancer risk from toxic air emissions from refineries than the average person.

Our Voice Counts—Our Leadership Matters

When our communities have weighed into the rule making process, it has made a difference.

We've participated in rulemaking hearings including the New Source Performance Standards, Mercury and Air Toxics Standards, the Clean Power Plan. We've had schoolteachers, nurses, parents, firefighters, grandparents, youth, environmentalists, and others providing testimony. We've submitted written testimony and we have organized 5 multi-state delegations to provide in-person interventions.

As a result of our testimony, we had an EPA official in tears as she listened to the testimony of a grandfather from Steubenville Ohio who had his grandson on his lap as he testified about the quality of air he wanted for his community and for his grandson. We had another person who worked the registration desk on behalf of the EPA speak about how she was so inspired by our group of youth delegates that she wrote home to share with her family that this wonderful group of black youth were testifying to protect the environment and the health of our communities. We had a coal company that was supporting one of the NAACP branches declare that they were cutting off their annual support of the branch declaring, "We only support our friends and your organization talked bad about coal to the EPA. You are no longer our friends." Which says a lot about how they used money to wield power to maintain the status quo, as we detailed in Fossil Fueled Foolery. We've noted with dismay that if something had happened to our delegation in some cases, the room would have had scant representation from our constituency of frontline communities. We've seen changes in the language for proposed rules from the Clean Power Plan Rules to the New Source Performance Standards to the Mercury and Air Toxics Rules.

Sustaining Our Voice—Democratizing Our Regulatory System—Power to the People, not the Profiteers

We've seen the promised land. We are seeing government entities that are attempting to put infrastructure in place to ensure that they are truly acting as the taxpayer supported public servants that they are. The Federal Energy Regulatory Commission is establishing the Office of Public Participation. The Government Services Agency is engaging in a listening relationship with the NAACP's Centering Equity in the Sustainable Building Sector Initiative. The Federal Emergency Management Agency has established Memorandums of Agreement with the NAACP and the Institute of the Black World, among others, to declare and uphold lines of accountability.

For our regulatory infrastructure and decision-making, which literally holds lives and wellbeing of people and planet in its portfolio of responsibility, we offer recommendations to correct the egregiously unjust overreach by industry actors :

- Our government must live up to the tenets of democracy: Of the people, by the people and for the people. If the people's input does not lead to decision making, please don't waste the time of already beleaguered communities on performative actions of seeking input. Ensure that the people's voices are counted.

- Entities with relationships with frontline communities must be capacitated to have a shared role in partnership with regulatory bodies and technical support groups like the Regulatory Assistance Program and others, as these groups have the trust and understanding of communities that will be critical in ensuring that essential efforts at centering community will be successful.
- It is the responsibility of government entities to make the information user friendly. It should not take a law degree to interpret draft rules. Again. Of the People, By the People, For the People. We must take these words seriously.
- We must start by finding the community that is furthest off the map, develop a system with a thorough set of mechanisms to engage those communities and then design all else in terms of systems of gaining input. Only the rising tide that builds from the margins up, will lift all boats.
- There should be a parallel to the Office of Public Participation throughout our regulatory system. And the capacity of these OPP mechanisms must be significant, with staff including technical assistance providers, community organizers, communicators, popular educators, and beyond to have a robust and successful effort of meaningful engagement and informed decision making.
- There must be rules governing and preventing monied interest having access to rule developers and decision makers. This includes far stricter rules about when industry officers and executive become the decision makers themselves by going into elected office and then working in allegiance and collusion with industry. And there must be monitoring and enforcement of these rules.
- Finally, we need campaign finance reform to further institutional delinking money and power.

Only with the above can we begin to deliver equal protection under the law. Only then can we begin to dream of the true promised land, one that lives up to the tenet of Liberty and Justice For ALL.