



Written Testimony for U.S. Senate Committee on Environment and Public Works Hearing On "Opportunities to Improve Project Reviews for a Cleaner and Stronger Economy"

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Background: WE ACT for Environmental Justice

WE ACT for Environmental Justice (WE ACT) is a Northern Manhattan-based member organization whose mission is to build healthy communities. We do this by ensuring communities of color and people of low-income lead in creating sound and fair environmental health and protection policies and practices.

We are the first people of color-led environmental justice organization in New York State and are the only environmental justice group with a permanent office in Washington, DC. Our Federal Policy Office also serves as the administrative anchor for the Environmental Justice Leadership Forum (EJ Forum) – a network of approximately 50 environmental justice advocates and groups in 22 states working together to advance policies that ensure the protection and promotion of communities of color and low-income communities throughout the U.S.

My name is Dana Johnson and I serve as Senior Director of Strategy and Federal Policy at WE ACT. I have more than 20 years of strategy, operations and advocacy professional experience in fields ranging from health and science advocacy, climate and environmental justice policies to cultural competence and diversity and inclusion leadership.

Part 1: Impact of Fossil Fuel Industry in Environmental Justice Communities

Environmental Justice communities are communities of color and low-income communities that disproportionately face the brunt of environmental pollution. Fossil fuel industry serves as a significant source of pollution in environmental justice communities and occurs throughout the entire lifecycle of the fossil fuels - extraction, refinement, distribution, usage and storage. The siting of communities of color and low-income communities near the fossil fuel industry is intentional. "Redlining" was the discriminatory process of grading communities that would be eligible for federally supported loans. Communities that were given lower grades tended to be Black communities and immigrant communities. The process of redlining in the 1930s created many of the environmental inequities in communities of color that persist to this day, with historically redlined communities having a higher average present-day emissions of nitrous oxides, sulfur dioxide and particulate matter.^{1,2} Historically redlined communities have also been associated with a higher exposure to oil and gas wells.³

¹ Historical red-lining is associated with fossil fuel power plant siting and present-day inequalities in air pollutant emissions; Link: <https://www.nature.com/articles/s41560-022-01162-y>

² Historical Redlining Is Associated with Present-Day Air Pollution Disparities in U.S. Cities; Link: <https://pubs.acs.org/doi/full/10.1021/acs.estlett.1c01012>

³ Historic redlining and the siting of oil and gas wells in the United States; Link: <https://www.nature.com/articles/s41370-022-00434-9#Fig1>



The health impacts of redlining are vast, with historically redlined communities being associated with higher rates of emergency room visits for asthma, a higher rate of mortality from breast cancer, and later stage diagnosis for both colon and lung cancer.^{4,5,6} The impact of fossil fuel industries intentionally being sited near communities of color and low-income communities are costly to both the health and economic viability of these communities. It has been estimated that fossil fuel industry related air pollution is responsible for 1 in 5 deaths worldwide, more than 10 million deaths per year.⁷

Health impacts associated with pollution from the fossil fuel industry included early death, heart attacks, respiratory disorders, stroke, asthma, and absenteeism at school and work.⁸ This is coupled with the rising cost of healthcare that can worsen the economic hardship and put families in mounting medical debt. The financial impacts of the fossil fuel industry cannot be overstated, with an estimated higher end estimate of \$886.5 billion annually spent on health impacts of the fossil fuel industry.⁹ For example, in African American families the combination of higher poverty rates and lower prevalence of health insurance exacerbates the impacts of fossil fuel industry pollution.¹⁰ These injustices are truly cyclical where the pollution present in your community makes you sick to the point where you can no longer afford to leave your community.

Part 2: Upholding Democratic Processes

The National Environmental Policy Act has been called “the People’s Environmental Law.” Since NEPA’s enactment in 1970, more than 185 other countries have passed similar laws. In addition, 16 U.S. states have written their own “Little NEPAs” for state-level projects. NEPA has been so influential that many call it the “Magna Carta of environmental law.” It applies to every major action by every federal agency. Whenever a project will significantly affect a community, an agency is required to write a detailed report about it. This “environmental impact statement” must consider potential impacts, as well as alternatives to the agency’s initial plan. If an agency fails to properly consider the impacts and alternatives, it can be challenged in court. Creating barriers for public participation and judicial intervention weakens citizens’ opportunities to democratically engage in the permitting process.

⁴ Associations between historical residential redlining and current age-adjusted rates of emergency department visits due to asthma across eight cities in California: an ecological study; Link: <https://pubmed.ncbi.nlm.nih.gov/31999951/>

⁵ Cancer Stage at Diagnosis, Historical Redlining, and Current Neighborhood Characteristics: Breast, Cervical, Lung, and Colorectal Cancers, Massachusetts, 2001–2015; Link: <https://academic.oup.com/aje/article/189/10/1065/5812653#211341070>

⁶ Neighborhood-level redlining and lending bias are associated with breast cancer mortality in a large and diverse metropolitan area; Link: <https://stacks.cdc.gov/view/cdc/102148>

⁷ Global mortality from outdoor fine particle pollution generated by fossil fuel combustion: Results from GEOS-Chem; Link: <https://www.sciencedirect.com/science/article/abs/pii/S0013935121000487>

⁸ Producing and burning fossil fuels creates air pollution that harms our health and generates toxic emissions that drive climate change. Link: <https://www.hsph.harvard.edu/c-change/subtopics/fossil-fuels-health/#:~:text=But%20burning%20them%20creates%20climate.spectrum%20disorder%20and%20Alzheimer's%20disease.>

⁹ Economic value of U.S. fossil fuel electricity health impacts; Link: <https://pubmed.ncbi.nlm.nih.gov/23246069/>

¹⁰ Fumes Across the Fence-Line: The Health Impacts of Air Pollution from Oil & Gas Facilities on African American Communities; Link: <https://naacp.org/resources/fumes-across-fence-line-health-impacts-air-pollution-oil-gas-facilities-african-american>



Public Participation

By giving people a voice in federal project-planning, NEPA is a key tool to advance environmental justice. Public participation is an opportunity for impacted communities to provide critical input for the just and sustainable implementation of a project that could significantly affect their health and the surrounding environment. Recent changes in NEPA have restricted avenues for public participation and dismissed considerations of cumulative impacts on EJ communities. It is critical that Congress work with communities to expand opportunities for community input on proposed projects.

Communities need time to organize and respond to long technical documents; permitting rules for fossil fuel and clean energy projects that decrease the public comment period on major federal projects are undemocratic. A major cause for delays in the permitting process is actually the lack of community participation. For example, MIT examined 53 large scale clean energy projects that were delayed or canceled and examined why. Two key takeaways were that:

- Early engagement with potential local opponents can avoid extended delays or project cancellations; and
- Disputes between the US government and Tribal nations must be addressed separately from efforts at public participation – highlighting the need for adequate consultation practices, among other measures.¹¹

Cumulative Effects

NEPA requires federal agencies to look not just at the incremental impact of their actions, but also the “cumulative effects.” For example, one more refinery in Cancer Alley might not emit much pollution by itself, but combined with the emissions of all the other factories in the area – the cumulative effects – it might pose an unacceptable health risk. Cumulative impacts are life-or-death for already overburdened and vulnerable communities. We must avoid any permitting changes that will prevent agencies from measuring or considering these impacts.

If it was reasonable to consider cumulative impacts in 1970 when NEPA was signed into law, industry growth and expansion make these considerations all the more pressing. It is a false narrative to suggest that cumulative-impact analysis is too detailed and costly as there are more tools and data available today than ever before.

Cumulative impacts hit environmental justice communities the hardest. As a consequence of decades of discriminatory decisions and policies, poor communities and communities of color are overburdened with environmental hazards. When the government fails to consider existing hazards alongside future ones, it turns a blind eye to their deadly effects.

Climate change and greenhouse gas analysis: Cumulative impacts are also important for climate justice. Historic discrimination has pushed many people to America’s geographic margins: floodplains, unstable slopes, and barrier islands near toxic industrial and waste facilities. For example, think of the flooding in the Lower Ninth Ward after Hurricane Katrina. As a consequence, environmental justice communities are also the most vulnerable to the effects of climate change.

¹¹ Sources of opposition to renewable energy projects in the United States; Link: <https://www.sciencedirect.com/science/article/pii/S0301421522001471>



Part 3: Equitable Build Out of Transmission Lines

There is an urgent need to quickly build out transmission lines to facilitate our clean energy transition. As legislation is considered for expediting transmission lines, there is a critical need to ensure that environmental justice remains central.

Framing Environmental Justice Issues within Transmission Conversations:

- Energy Democracy and a Just Transition - Energy democracy and a just transition framework uplift the need for creating justice through the energy transition. This includes ensuring communities have the opportunity to fully participate in projects that will impact them.
- Indigenous Sovereignty and Land Rights - A primary concern that we have heard from Indigenous communities is how the fast tracking of projects has led to the grabbing of Indigenous lands that would undermine Indigenous sovereignty.
- Strengthening of environmental protection to account for environmental and climate justice concerns - Ensure that “fast tracking” transmission lines doesn’t result in the weakening of environmental laws such as NEPA. We do not want to “fast track” transmission lines in a way that also allows for the fast tracking of fossil fuel infrastructure. With our rapidly changing climate, and the increase in severe weather it is critical that future developments are created to withstand extreme weather. Some key concerns for energy developments include hazardous and/or chemical waste.

Ensuring Justice in the Siting of Transmission Lines :

The Environmental Justice for All Act is community-led legislation that will strengthen protection and engagement for communities of color and areas of low income (as opposed to a harmful, closed-door, polluter-led deal). Specifically within the A. Donald McEachin Environmental Justice for All Act there are provisions to:

- Lengthen public comment periods
- Proactively consider alternatives
- Consider cumulative impacts
- Meaningful consult with Tribes

We strongly support the reintroduction and passage of EJ For All.

President Biden released the Permit Action Plan in the wake of the Bipartisan Infrastructure Deal that can be used to fast track clean energy projects. Within the Permit Action plan was mention of the authority of FERC in transmission projects. FERC has undergone rulemaking in the past year to make the permitting process for transmission projects as fast as possible. It is important that our organizations continue to support and help refine FERC’s permitting process for transmission lines. Recent FERC proposed rules:

- [FERC Issues Transmission NOPR Addressing Planning, Cost Allocation](#): improves regional transmission planning and cost allocation.



- Creation of a [Joint Federal-State Task Force on Electric Transmission](#).
- [FERC Proposes Interconnection Reforms to Address Queue Backlogs](#): establishes penalties if transmission providers fail to complete interconnection studies on time and allows for interconnection studies to be done on a larger scale.

Permitting occurs on every level of government, with the permitting process for local and state level permits often differing greatly. There is a need to ensure that state and local permitting processes run in tandem with federal permits instead of progressively, this will help to shorten the overall permitting timeline.

Part 4: Additional Opportunities for Community Engagement on Clean Energy Deployment and Permitting

The Bipartisan Infrastructure Law and Inflation Reduction Act (2022) allocate nearly \$2 trillion in public funding throughout the country. Community engagement and participation are the cornerstones to creating and implementing equitable, sound and transformational policies, projects, programs and practices. Every community has unique needs that require a tailored framework; therefore, this guidance should not be regarded as all-encompassing but rather serves as a starting point for the federal family, companies and project developers to establish a strong foundation that ensures mutually beneficial policy and project outcomes.

Guiding Principles

The foundational principles of environmental justice and democratic organizing established in the [Principles of Environmental Justice](#) (1991) and [Jemez Principles of Democratic Organizing](#) (1996) must be the starting point for approaching community engagement, public participation and community benefit agreements. Full and transparent community engagement is necessary to ensure just and equitable policies and project implementation, especially given the historic and current marginalization of environmental justice communities. Engagement is not merely community involvement: True engagement fully incorporates the community into all facets of the decision-making process.

Environmental Justice Analyses¹²

In the issuance of [Executive Order 12898](#) (“Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”) federal agencies were directed to “analyze the environmental effects, including human health, economic, and social effects, of their proposed actions on minority and low-income communities.”

Environmental justice analyses are vital components of both community engagement and formal environmental reviews (which evaluate distributional impacts). When considering the unprecedented funding for climate mitigation programs in the Bipartisan Infrastructure Law and Inflation Reduction Act, it is vital that environmental justice analyses be conducted to offer a complete picture of possible project and

¹² United States Environmental Protection Agency (EPA) “[Technical Guidance for Assessing Environmental Justice in Regulatory Analysis](#)”; Institute for Policy Integrity, New York University School of Law “[Improving Environmental Justice Analysis](#)” and United States Environmental Protection Agency, Office of Research and Development “[Cumulative Impacts Recommendations for ORD Research](#)”



policy impacts on already overburdened communities. For example, though the White House Environmental Justice Advisory Council has identified [numerous climate mitigation strategies](#) that could harm communities yet , projects with these identified harms have already been funded.

Environmental justice analyses are critical to minimize harms and protect environmental justice communities. Environmental justice analyses must be completed before project/policy implementation and even prior to issuing Requests for Information (RFIs), Requests for Proposals (RFPs), or other introductory enquiries. Additionally, environmental justice analyses should be performed by a vetted environmental justice scientific consultant and financed by the project developer or agency.

Community Benefit Agreements

Community Benefit Agreements (CBAs) are “legal agreements between community groups and developers, stipulating the benefits a developer agrees to fund or furnish in exchange for community support of a project.”¹³ Often, for a CBA to be successful, community organizations must form a united front among different stakeholders and enforce the legal provisions in the document.¹⁴

Thank you for the opportunity to submit written comments for the record. I look forward to continuing to engage with members of Congress and the Committee on Environment and Public Works on how we can embed environmental justice throughout clean energy permitting and deployment.

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¹³ United States Office of Economic Impact and Diversity “[Community Benefit Agreement \(CBA\) Toolkit](#)”

¹⁴ Patricia E. Salkin “[Understanding Community Benefit Agreements: Opportunities and Traps for Developers, Municipalities and Community Organizations](#)”