

Environmental Laws and Alternative Dispute Resolution: Tools for Environmental Justice

Environmental Authorities to Produce Information that Addresses Environmental Justice

Introduction

Reliable and accurate information about the impact of regulated activities on communities of color and low-income communities is critical for ensuring that EPA and state regulatory decisions will protect their health and environment. Various federal environmental statutes authorize the U.S. Environmental Protection Agency and/or state regulatory authority to undertake a wide array of actions to produce information relevant to government decisions that affect environmental justice communities. Three important tools in that process are research, monitoring, and reporting. It is important for community residents to know about these tools so they can use them in their efforts to address environmental justice concerns.

Research

EPA and Research

The need for research into health and environmental issues of concern to people of color and low-income communities has long been a focus of the national dialogue on environmental justice. A number of environmental statutes authorize EPA to conduct research into improving scientific knowledge and regulatory decision-making. These authorities can help community residents identify opportunities for raising issues of concern to people of color and low-income communities. To illustrate the types of authorities that are available, examples from the Clean Water Act and Clean Air Act are provided below.

Clean Water Act (CWA):

- Requires EPA to “conduct and promote the coordination and acceleration of research relating to the causes, effects, extent, prevention, reduction and elimination of water pollution” [33 U.S.C. §1254(a)(2)].
- Contains a number of provisions that authorize EPA to research health and environmental impacts on farm workers and agricultural communities, in particular the effects of pesticides and agricultural pollution [33 U.S.C. §1254(l) and (p)].

EPA and Research, continued

Clean Air Act (CAA):

- Authorizes EPA to research air pollution issues, such as risks from combinations of air pollutants [42 U.S.C. §7403(d)(2)] and urban air toxics [42 U.S.C. §7412(p)].
- Authorizes EPA to impose research requirements upon regulated entities. For example, Section 211(b)(2) authorizes EPA to require the manufacturer of any fuel or fuel additive to research the potential health effects of the substance [42 U.S.C. §7545(b)(2)].

Community Research

Federal environmental laws also support EPA efforts to establish community participation in agency research activities. A variety of provisions create mechanisms to facilitate this involvement. For example:

- Numerous statutes authorize EPA to provide funding to private organizations and individuals to support their participation in community-based research (e.g. collect information).
- A number of environmental laws establish formal advisory bodies to inform EPA's research activities, and these can include individuals with expertise in environmental justice issues.
- EPA can also promote environmental justice by providing communities with research results and information necessary to facilitate community involvement and participation. Certain statutes explicitly authorize the sharing of research results with the public. For example, CAA Section 103(b) authorizes the Administrator to collect and make available research results [42 U.S.C. §7403(b)], while CAA Section 112(l)(3) requires EPA to maintain a publicly-available air toxics clearinghouse containing research on preventing and controlling health risks [42 U.S.C. §7412(l)(3)].

Monitoring

Monitoring is a central component of EPA's information-gathering activities. Monitoring of facility emissions and discharges is an important tool for ensuring compliance with permits and other pollution control requirements. Monitoring of pollutant levels also provides data needed to guide the development of agency standards and programs. National discussions on environmental justice issues have emphasized the need for more extensive monitoring in communities of color and low-income communities, both to improve understanding of the environmental and health conditions in the communities and to increase agency and citizen capacity to identify facilities that are not in compliance with existing requirements. EPA has considerable statutory authority to tailor its monitoring activities to achieve these goals and to assist communities in conducting monitoring on their own.

By Regulated Entities

EPA has extensive statutory authority to require monitoring and record-keeping by regulated facilities. Certain statutes provide EPA with authority to require monitoring in specific circumstances, authority which EPA could use to address environmental justice concerns. For example:

- Under RCRA Section 3013(a), EPA may require the owner or operator of a facility to conduct further monitoring upon a finding by EPA that the presence or release of waste from the facility presents a substantial hazard [42 U.S.C. §6932].
- The CAA requires EPA to promulgate rules requiring monitoring and reporting by solid waste incineration units [42 U.S.C. §7429].

By EPA

EPA's authority to require monitoring and record-keeping by regulated entities is often coupled with EPA's authority to conduct its own monitoring and sampling as necessary. For example:

- The CWA grants EPA the right of entry to access records, sample effluents, and inspect monitoring equipment [33 U.S.C. §1318(a)].
- RCRA facilities must allow entry, inspection, and sampling by an agency representative [42 U.S.C. §6927(a)].

Community Involvement

Some environmental laws contain provisions that could be invoked to support EPA's authority to enhance the community's capacity to monitor the compliance of the facilities within the community. Because some communities of color and low-income communities frequently lack the resources to engage in effective oversight, EPA can build community monitoring and enforcement capacity by providing the public with as much of the monitoring data and records as possible. Certain statutes designate material as publicly available unless there is a legally recognized interest in not allowing disclosure of the information. For example, under the CAA, monitoring information must be publicly available, except where the material constitutes a trade secret [42 U.S.C. § 7414(c)].

Reporting

Federal environmental statutes typically require reporting of a wide array of information. Reporting is often connected to monitoring, with various environmental statutes requiring facilities to provide reports to EPA on the data monitored. EPA plays a significant role in developing the nature and scope of these reporting requirements, and can use this authority to expand their breadth and coverage to include information relevant to environmental justice. EPA can further environmental justice by making information from the reports widely available and easily understandable to the public. This information can be used by community groups to:

- Assess risks;
- Promote public participation in environmental decision-making; and
- Support enforcement actions where necessary.

Overall, community residents can work with government agencies to ensure that the information needed to make proper decisions is both available and considered.