

ENVIRONMENTAL JUSTICE, the term used in in this paper, has two aspects. First, no segment of society, particularly minority or low-income communities, should bear a disproportionate share of the burden of modern industrial life. Second, all members of society should have adequate and meaningful information about, and access to, the decision making process about their health and environment. This paper draws on experience in the United States of America to identify and address questions involved in trying to achieve environmental justice within a society, particularly with respect to children.¹

It is useful to begin by identifying the problem. U.S. environmental statutes are facially neutral, i.e., they do not single out any segment of society for better or worse treatment; and many U.S. laws prohibit racial and other forms of discrimination. Nevertheless, two reports in the 1980s indicated a correlation between racial and socio-economic characteristics of communities and hazardous waste sites: *Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities* (U.S. General Accounting Office 1983) and *Toxic Wastes and Race in the*

United States (sponsored by the United Church of Christ, 1987). At the time of the present conference, several legal challenges relating to environmental justice are pending in the United States. For example, there are suits regarding the placement of a hazardous waste disposal site, the placement of an incinerator, allocation of funds for safe drinking water projects, and the manner of calculating risk- assumptions regarding fish consumption.

There are several implications of this situation for children. Some problems affect children as members of affected communities. Some environmental health problems disproportionately affect children *qua* children because of effects on physical or intellectual development, such as lead poisoning. A 1988 report, *The Nature and Extent of Lead poisoning in children in the United States*, indicated that three to four million children were suffering from lead poisoning then, many of most of whom were African American and Latino children.

This situation has led to several corrective efforts, in the public and the private sector. At the federal governmental level, President Bill Clinton issued an Executive order, E.O. 12898 (February 11, 1994; attached hereto as Appendix A) that establishes the Clinton Administration's policy for identifying and addressing disproportionately high and adverse health or environmental effects in minority communities and low-income communities. The Executive order directs each federal agency to make achieving environmental justice a part of its mission (section 1-101) and specifies a lead role for the Administrator of the Environmental protection Agency (EPA) (section 1-102).

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1. This paper focuses on environmental justice in the domestic context (United States) and does not discuss the related question of equity in the international context.

The Executive order also specifies procedures for developing environmental justice strategies by federal agencies, including to promote enforcement of health and environmental laws, ensure greater public participation and access to information, gather better information regarding health and environmental issues, and identify differential patterns of fish and wildlife consumption, especially subsistence consumption (section 1-103). Executive order 12898 also directs federal agencies to conduct themselves so that they do not have the effect of discriminating based on race, colour, or national origin.

An example of activity in the non-governmental sector is the resolution adopted by the American Bar Association in 1993, attached hereto as Appendix B, and follow-up activities to that resolution.

Both regarding children and more generally, several issues have arisen in attempting to achieve environmental justice in the United States. Three of those are briefly discussed below: the role of risk analysis; the relationship between environmental justice and cost-effectiveness; and ensuring meaningful access.

The question regarding risk analysis is, to what extent will accurate, impartial risk analysis achieve environmental justice. Although risk assessment is an essential foundation for environmental justice, there are several practical difficulties. Some communities differ in behavior or vulnerability: examples include people who engage in subsistence consumption and who thus have heavier than normal intake of fish or wildlife and the contaminants in them or children who ingest high amounts of pesticides on fruit compared with physically larger adults. Similarly, trying to determine cumulative risk i.e., additional risk of a proposed activity, taking into account previous and contamination from other pollution sources or exposure pathways (e.g., airborne toxins, polluted

drinking water, etc.) is difficult; we do not yet have satisfactory methodology.

Cost effectiveness as a goal raises certain questions. Where there are limited resources, societies typically attempt to maximize efficiency by minimizing costs. Suppose this leads to placing a polluting facility in a low-income community because it is cheaper, or that there is a pattern of this: how much of a problem does this create? The question squarely put is how much to emphasize absolute equality of burden where costs differ and resources for environmental protection are tight.

Regarding access to decision making, there are two elements: availability of information necessary to make informed decisions and ability to participate in decisionmaking. Each of these is problematic with respect to whether and, if so, how children can have meaningful access to decisionmaking. Can children understand the relevant information, which is sometimes quite complicated, such as risk analyses? Can children meaningfully participate in policy debates, especially since children typically do not have the right to vote? In Ecuador recently, there reportedly was a non-binding "election" in which children could and did vote: is this a method that should be used more widely? Is it sufficient to rely on parents, or nongovernmental organizations, or the government to represent children in these matters? Would it make sense to utilize an ombuds person such as the United Nations ombudsman for human rights or the ombudsman created by article 10 of the Namibian constitution? These questions deserve further consideration.

Consistent with its own priorities and as directed by Executive order 12898, described above, EPA participates in many activities directed at achieving environmental justice in the United States. In addition, EPA participates in many technical assistance programs aimed at capacity around the work,

including Latin America, Africa, Asia, Central and Eastern Europe, and the former Soviet Union. These programs vary in focus. Some are designed to address purely domestic issues; others concern a transboundary issue (e.g., transfrontier air or water pollution or international movement of hazardous materials). Some are intended to deal with particular environmental stresses and related health problems, such as the unavailability of safe drinking water or exposure to lead from the atmosphere, paint or on lead exposure in early 1995. Other projects are more cross-cutting in scope, dealing with issues such as risk assessment, priority setting, and environmental compliance and enforcement: e.g., enforcement workshops have been given by EPA in Latin America and Eastern Europe.

By helping to improve a country's legal, technical and administrative capability for environmental protection, these programs simultaneously increase that country's ability to achieve environmental justice and social justice more broadly. At the same time, these efforts contribute to creating the environmental awareness and infrastructure necessary to effectuate worldwide efforts to address environmental threats that affect many or all countries, such as ozone depletion, marine pollution (including from land-based sources), climate change, habitat destruction and biodiversity loss, and persistent organic compounds.

In conclusion, the Environmental

Protection Agency and the United States government as a whole recognize the importance of achieving environmental justice, including with respect to children. Though environmental justice considerations play out differently in different societies, it is essential to address environmental justice and the issues associated with it.

Postscript

The world's leaders stated in paragraph six of the Declaration at the World Summit for Social Development held in Copenhagen in March 1995 that:

"We are deeply convinced that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development, which is the framework for our efforts to a higher quality of life for all people. Equitable social development that recognizes empowering of the poor to utilize environmental resources sustainably is a necessary foundation for sustainable development..."

Environmental justice thus is an essential element of the overarching quest for sustainable development. The United States' and other countries' actions to achieve environmental justice which is at the interface of environmental protection and social justice - are an integral part of that effort.

Appendix A

Executive order 12898 of February 11, 1994*

Federal Actions To Address Environmental Justice in Minority populations and Low-Income populations

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 101. Implementation

1-101. (1) *Agency Responsibilities.* To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

1-102. *Creation of an Interagency Working Group on Environmental Justice.* (a) Within 3 months of the date of this order, the Administrator of the Environmental Protection Agency ("Administrator") or the Administrator's designee shall convene an interagency Federal Working Group on Environmental Justice ("Working Group"). The working Group shall comprise the heads of the following executive agencies and offices, or their designee: (a) Department of Defense; (b) Department of Health and Human Services; (c) Department of Housing and Urban Development; (d) Department of Labour; (e) Department of Agriculture; (f) Department of Transporta-

tion; (g) Department of Justice; (h) Department of Interior; (i) Department of Commerce; (j) Department of Energy; (k) Environmental Protection Agency; (l) Office of Management and Budget; (m) office of Science and Technology Policy; (n) Office of the Deputy Assistant to the President for Environmental policy; (o) office of the Assistant to the President for Domestic policy; (p) National Economic Council; (g) Council of Economic Advisers; and (r) such other Government officials as the President may designate. The Working Group shall report to the Assistant to the President through the Deputy Assistant to the President for Environmental Policy and the president for Domestic policy.

(b) The working Group shall : (1) provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(2) Coordinate with, provide guidance to, and serve as a clearinghouse for, each Federal agency as it develops an environmental justice strategy as required by section 1-103 of this order, in order to ensure that the administration, interpretation and enforcement of programs, activities and politics are undertaken in a consistent manner;

(3) assist in coordinating research by, and stimulating cooperation among, the environmental protection Agency, the Department of Health and Human Services, the Department of Housing and Urban Development, and other agencies conducting research of other activities in accordance with section 3-3 of this order;

(4) assist on coordinating data collection, required by this order;

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(5) examine existing data and studies on environmental justice;

(6) hold public meetings as required in section 5-502 (d) of this order; and

(7) develop interagency model projects on environmental justice that evidence cooperation among Federal agencies.

1-103. *Development of Agency Strategies.* (a) Excepts as provided in section 6-605 of this order, each Federal agency shall develop an agency-wide environmental justice strategy, as set forth in subsection (b)-(e) of this section that identifies and addresses disproportionately high and adverse human health or environmental justice strategy shall list programs, politics, planning and public participation processes, enforcement, and/or rulemakings related to human health or the environment that should be revised to, at a minimum: (1) promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations; (2) ensure greater public participation; (3) improve research and data collection relating to the health of and environment of minority populations and low-income populations; and (4) identify differential patterns of consumption of natural resources among minority populations and low-income populations. In addition, the environmental justice strategy shall include, where appropriate, a timetable for undertaking identified revisions and consideration of economic and social implications of the revisions.

(b) Within a months of the date of this order, each Federal agency shall identify an internal administrative process for developing its environmental justice strategy, and shall inform the Working Group of the process.

(c) Within 6 months of the date of this order, each Federal agency shall provide the Working Group with an outline of its proposed environmental justice strategy.

(d) Within 10 months of the date of this order, each Federal agency shall provide the working Group with its proposed environmental justice strategy.

(e) Within 12 months of the date of this order, each Federal agency shall finalize its environmental justice strategy and provide a copy and written description of its strategy to the Working Group. During the 12 month period from the date of this order, each Federal agency, as part of its environmental justice strategy, shall identify several specific projects that can be promptly undertaken to address particular concerns identified during the development of the proposed environmental justice strategy, and a schedule for implementing those projects.

(f) Within 24 months of the date of this order, each Federal agency shall report to the Working Group on its progress in implementing its agency-wide environmental justice strategy.

(g) Federal agencies shall provide additional periodic reports to the Working Group as requested by the Working Group.

1-104. Reports to the President. Within 14 months of the date of this order, the Working Group shall submit the President, through the office of the Deputy Assistant to the President for Environmental Policy and the Office of the Assistant to the President for Domestic Policy, a report that describes the implementation of this order, and includes the final environmental justice strategies described in section 1-103 (e) of this order.

Sec. 2-2. Federal Agency Responsibilities for Federal Programs

Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have effect of excluding persons (including populations) for participation in, denying

persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

Sec. 3-3. Research, Data Collection, and Analysis

3-301. *Human Health and Environmental Research and Analysis.* (a) Environmental human health research, Whenever practicable and appropriate, shall include diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as minority populations, low-income populations and workers who may be exposed to substantial environmental hazards.

(b) Environmental human health analysis whenever practicable and appropriate, shall identify multiple and cumulative exposures.

(c) Federal agencies shall provide minority populations and low-income populations the opportunity to comment on the development and design of research strategies undertaken pursuant to this order.

3-302. *Human Health and Environmental Data Collection and Analysis.* To the extent permitted by existing law, including the Privacy Act, as amended (5 U.S.c. section 552a): (a) each Federal Agency, whenever practicable and appropriate, shall collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, Federal agencies shall use this information to deter-

mine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

Sec. 4-4. Subsistence Consumption of Fish and Wildlife

4-401. *Consumption Patterns.* In order to assist in identifying the need for ensuring protection of populations with differential patterns of subsistence consumption of fish and wildlife, Federal agencies, whenever practicable and appropriate, shall collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. Federal agencies shall communicate to the public the risks of those consumption patterns.

Sec. 6-6. General Provisions

6-608. *General.* Federal agencies shall implement this order consistent with, and to the extent permitted, by, existing law.

6-609. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibilities, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order.

Appendix B
AMERICAN BAR ASSOCIATION
RESOLUTION ON ENVIRONMENTAL JUSTICE*

RESOLVED, That the American Bar Association

(a) supports actions by federal, state, territorial and local governments, private entities and academic institutions to achieve implementation and enforcement of environmental laws, regulations and policies so that a disproportionate share of the burden of environmental harm does not fall on minority and/or low-income individuals, communities or populations;

(b) urges federal, state, territorial and local administrative agencies to give priority attention to this problem by, among other things, improving agency procedures governing access to information and the decision-making process, distributing information about environmental impacts and applicable laws, by adopting regulations and policies to mitigate or eliminate those impacts, and assessing and managing environmental risks so that they better take account of the need to eliminate such inequities; and

(c) urges Congress, state and territorial legislatures and local governments to enact legislation, as appropriate, and to take other

appropriate measures to redress and eliminate situations in which minority and/or low-income people have borne a disproportionate share of harm to the environment.

BE IT FURTHER RESOLVED, That the American Bar Association urges:

(a) further documentation of the causes and consequences of the inequitable distribution of environmental burdens;

(b) the delivery of legal services in the area of environmental law to eligible persons in minority and/or low-income communities;

(c) additional training of environmental lawyers to recognize, address and redress incidences of environmental inequity;

(d.) law schools to consider the expansion of curricula and clinical programs to educate students to deal with these problems; and

(e) state and local bar associations to adopt resolutions similar to this ABA resolution.

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* Approved by the ABA House of Delegates, 8/11/93, New York City.

