

**Written Testimony Regarding H.R. 2021  
Environmental Justice For All Act  
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My name is Dr. Nicky Sheats, Esq., and I am the Director of the Center for the Urban Environment of the John. S. Watson Institute for Urban Policy and Research at Kean University.<sup>1</sup> I also work closely with and am a member and Chair of the Board of Trustees of the New Jersey Environmental Justice Alliance.<sup>2</sup> In these comments I focus on the portion of the Environmental Justice Act For All Act that incorporates a cumulative impacts policy into the legislation.

Section 7 of the Environmental Justice For All Act<sup>3</sup> addresses what is arguably the most important issue in the field of environmental justice (EJ): cumulative impacts. Informally, cumulative impacts can be thought of as the total amount of pollution in a community or how to address multiple sources of pollution in a community. More formally, in New Jersey the EJ community has frequently used the following definition for cumulative impacts:

*“The risks and impacts caused by multiple pollutants, both individually and when they interact with each other and any social vulnerabilities that exist in a community. The pollutants are usually emitted by multiple sources that are sited within a community.”<sup>4</sup>*

Cumulative impacts has been a difficult problem to resolve for at least two reasons. One reason is that our country attempts to regulate pollution by setting standards for individual pollutants.<sup>5</sup> The problem with this pollutant-by-pollutant approach is that it does not take into account the total amount of pollution in a community and therefore detrimental health impacts can occur in a community’s population even if no individual standard is violated.

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<sup>1</sup> The mission of the Center for the Urban Environment is to support the environmental justice community on both a local and national level on substantive issues and on building organizational capacity.

<sup>2</sup> The NJEJA mission statement reads as follows: “The New Jersey Environmental Justice Alliance is an alliance of New Jersey-based organizations and individuals working together to identify, prevent, and reduce and/or eliminate environmental injustices that exist in communities of color and low-income communities. NJEJA will support community efforts to remediate and rebuild impacted neighborhoods, using the community’s vision of improvement, through education, advocacy, the review and promulgation of public policies, training, and through organizing and technical assistance.”

<sup>3</sup> Environmental Justice For All Act, H.R. 2021, 117<sup>th</sup> Cong., 2<sup>nd</sup> Sess. Section 7 (2021).

<sup>4</sup> For similar formal definitions of cumulative impacts see *Cumulative Impacts: Building a Scientific Foundation*, CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY, at 3 (2010); *Ensuring Risk Reduction In Communities With Multiple Stressors: Environmental Justice and Cumulative, Risks/Impacts*, NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL, at 5 (2004).

<sup>5</sup> See National Environmental Justice Advisory Council, *supra* note 4, at 11; *Framework for Cumulative Risk Assessment*, U.S. ENVIRONMENTAL PROTECTION AGENCY, at 1-2 (2003).

Another reason cumulative impacts has been such a difficult problem to resolve is its association with race and income. Here, an example from New Jersey is instructive. In 2009 the New Jersey Department of Environmental Protection (NJDEP) produced two figures that demonstrated a relationship between cumulative impacts, race and income in the state.<sup>6</sup> Using nine indicators,<sup>7</sup> NJDEP assigned a cumulative impacts score to every census block group<sup>8</sup> in New Jersey. In this context, cumulative impacts can be thought of as a very rough estimate of the total amount of pollution in a community. NJDEP then graphed the cumulative impacts scores against the number of people Of Color living in these communities (the census block groups) and the number of impoverished residents in each community. Separate graphs were produced for each of these two demographic categories, but results were similar. As the number of either Of Color or low-income residents increased in a block group, the level of cumulative impacts also increased. These very troubling figures provide evidence that the amount of pollution in New Jersey communities is connected to the residents' skin color and income and violates all norms of equity and fairness that the state and our country very proudly promote. Race has always been a particularly difficult issue in our society to solve and the fact that it is integral to cumulative impacts is one reason this EJ issue is particularly difficult to solve.

It is important to note that New Jersey is not the only area of the country where there is evidence of a disproportionate amount of pollution in communities Of Color and low-income communities, i.e., EJ communities. In fact, several investigations that found evidence of more unwanted land uses in EJ communities than in other communities helped start the grassroots EJ movement.<sup>9</sup> Since then, other studies have confirmed the finding of disproportionate siting<sup>10</sup> and also produced evidence of an elevated exposure to pollution in EJ communities. This is perhaps

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<sup>6</sup> The figures are contained in a technical report and power point which are both entitled "A Preliminary Screening Method to Estimate Cumulative Environmental Impacts". The figures can be found at page 3 of the report and slide 5 of the power point, which can be accessed at

[http://www.state.nj.us/dep/ej/docs/ejc\\_screeningmethods\\_pp20091222.pdf](http://www.state.nj.us/dep/ej/docs/ejc_screeningmethods_pp20091222.pdf) and [http://www.state.nj.us/dep/ej/docs/ejc\\_screeningmethods20091222.pdf](http://www.state.nj.us/dep/ej/docs/ejc_screeningmethods20091222.pdf), respectively.

<sup>7</sup> The indicators were (National Air Toxics Assessment (NATA) cancer risk, NATA diesel, NJDEP Benzene estimate, Traffic All, Traffic trucks, Density of Major Regulated sites, Density of Known Contaminated, Density of Dry Cleaners and Density of Junkyards.

<sup>8</sup> A census block group is a portion of a census tract that is typically constructed to contain between 600 and 300 people. See Census Glossary at

[https://www.census.gov/programs/surveys/geography/about/glossary.html#par\\_textimage\\_4](https://www.census.gov/programs/surveys/geography/about/glossary.html#par_textimage_4).

<sup>9</sup> The two reports were: *Toxic Wastes and Race in the United States: A National Report on the Racial and Socioeconomic Characteristics of Communities with Hazardous Waste Sites*, UNITED CHURCH OF CHRIST (1987); and "Siting Of Hazardous Waste Landfills And Their Correlation With Racial And Economic Status Of Surrounding Communities", GENERAL ACCOUNTING OFFICE (1983); Another influential report that focused on unequal enforcement of environmental violations and unequal clean-up times of polluted sites was M. Lavelle & M. Coyle, *Unequal protection: the racial divide on environmental law*, NATIONAL LAW JOURNAL (September 21, 1993).

<sup>10</sup> For example, see Robert D. Bullard et al., *Toxic Wastes and Race at Twenty 1987–2007: Grassroots Struggles to Dismantle Environmental Racism in the United States*, UNITED CHURCH OF CHRIST (2007); and Paul Mohai & Robin Saha, *Racial Inequality in the Distribution of Hazardous Waste: A National-Level Reassessment*, 54 SOCIAL PROBLEMS 343 (2007).

especially true for air pollution<sup>11</sup> where vehicular traffic<sup>12</sup> also contributes to the pollution from stationary sources. The association between race, income and pollution sources, and pollution exposure, that exists in our country is one reason why cumulative impacts is such a critical EJ issue.

The ultimate concern with the disproportionate siting of polluting facilities and disproportionate exposure to pollution in EJ communities is that they have contributed to health disparities in our nation which are rooted in race and income.<sup>13</sup> Therefore, if the country at least begins to address these very problematic issues it is reasonable to hope for a decline in these disparities.

One of the successes of the EJ grassroots movement has been moving EJ issues from the margins to the mainstream of environmental policymaking discussions. However, even though at times extensive support for EJ has been expressed by environmental policymakers<sup>14</sup>, significant policy victories have been slow in coming. Adoption of the cumulative impacts policy contained in the Environmental Justice For All Act would be one such victory. The Act addresses cumulative impacts by requiring that any pollution permit requested pursuant to the Clean Air or Clean Water Act should be denied if there is not a reasonable certainty of no harm to the relevant community due to cumulative impacts.<sup>15</sup> The relevant community is the one that would be affected if the pollution permit would be granted.<sup>16</sup>

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<sup>11</sup> See C.W. Tessum et al., *PM<sub>2.5</sub> pollutants disproportionately and systemically affect people of color in the United States*, SCIENCE ADVANCES, Vol. 27 (no. 18) (2021); C.W. Tessum et al., *Inequity in consumption of goods and services adds to racial-ethnic disparities in air pollution exposure*, PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES OF THE U.S. (2019); Michael Ash et al., *Justice in the Air: Tracking Toxic Pollution from America's Industries and Companies to Our States, Cities, and Neighborhoods*, POLITICAL ECONOMY RESEARCH INSTITUTE, UNIVERSITY OF MASSACHUSETTS AMHERST (2009); Manuel Pastor et al., *The air is always cleaner on the other side: Race, space, and ambient air toxics exposures in California*, 27 JOURNAL OF URBAN AFFAIRS 127 (No. 2) (2005); Douglas Houston et al., *Structural disparities of urban traffic in Southern California: implications for vehicle related air pollution exposure in minority and high poverty neighborhoods*, 26 JOURNAL OF URBAN AFFAIRS 565 (No. 5) (2004); Manuel Pastor et al., *Waiting to Inhale: The Demographics of Toxic Air Release Facilities in 21st-Century California*, 85 SOCIAL SCIENCE QUARTERLY 420 (No. 2) (2004); Michael Jarrett et al., *A GIS- environmental justice analysis of particulate air pollution in Hamilton, Canada*, 33 ENVIRONMENT AND PLANNING A 955 (No. 6) (2001); D.R. Wernette and L.A. Nieves, *Breathing Polluted Air*, 18 EPA JOURNAL 16 (1992).

<sup>12</sup> David Reichmuth, *Air Pollution from Cars, Trucks, and Buses in the US: Everyone is Exposed, But the Burdens are not Equally Shared*, UNION OF CONCERNED SCIENTISTS (2019).

<sup>13</sup> For information on health disparities see *Health, United States, 2012: With Special Feature on Emergency Care*, NATIONAL CENTER FOR HEALTH STATISTICS (2013); Rachel Morello Frosch et al., *Understanding the Cumulative Impacts of Inequalities In Environmental Health: Implications for Policy* 30 HEALTH AFFAIRS 879, 880-881 (2011); N. Adler & D. Rehkopf, *US disparities in health: descriptions, causes, and mechanisms*, 29 ANNU REV PUBLIC HEALTH 235 (2008); William Dressler, *Race and Ethnicity in Public Health Research: Models to Explain Health Disparities*, 34 ANNU. REV. ANTHROPOL. 231 (2005); Roberta Spalter-Roth, *Race, Ethnicity, and the Health of Americans*, AMERICAN SOCIOLOGICAL ASSOCIATION SERIES ON HOW RACE AND ETHNICITY MATTER, SYDNEY S. SPIVACK PROGRAM IN APPLIED SOCIAL RESEARCH AND SOCIAL POLICY (2005); George Mensah, *State of disparities in cardiovascular health in the United States*, 111 CIRCULATION 1233 (No. 10) (2005).

<sup>14</sup> For example, see the U.S. Environmental Protection Agency's EJ program that is involved in a number of activities. Their website can be accessed at <https://www.epa.gov/environmentaljustice/factsheet-epas-office-environmental-justice>.

<sup>15</sup> Environmental Justice For All Act, H.R. 2021, 117<sup>th</sup> Cong., 2<sup>nd</sup> Sess. Section 7 (2021).

<sup>16</sup> *Id.*

It should also be observed that the Act would positively impact another federal law, the National Environmental Policy Act (NEPA),<sup>17</sup> that is important to cumulative impacts. The previous Administration removed a portion of the NEPA regulations which required cumulative impacts analyses be included in environmental reviews performed pursuant to the legislation.<sup>18</sup> The EJ community is hopeful that the current Administration will restore this requirement to the NEPA regulations.<sup>19</sup> Among other things, the Environmental Justice Act For All would place additional community involvement requirements into NEPA.<sup>20</sup>

I applaud the Environmental Justice For All Act for converting words into action by including a cumulative impacts policy, that if adopted, would reduce pollution, decrease illness and save lives in communities, particularly communities Of Color and low-income communities. This Act would significantly benefit EJ communities in the United States and move us closer to a just society for all of our nation's residents.

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<sup>17</sup> 42 U.S.C. § 4321 et seq.

<sup>18</sup> See CEQ, Notice of Proposed Rulemaking, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 1684, 1699, 1707-1708, 1728 (§1508.1(g)(2)) (Jan. 10, 2020). Also see comments submitted by the New Jersey Environmental Justice Alliance on the topic: New Jersey Environmental Justice Alliance, *Comments on CEQ's Proposed Changes to the Regulations That Implement Procedural Provisions of the National Environmental Policy Act*, Docket ID No. CEQ-2019-0003, Notice of Proposed Rulemaking, 40 CFR Parts 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, and 1508, prepared by Nicky Sheats (March 10, 2020).

<sup>19</sup> See New Jersey Environmental Justice Alliance, *Comments on National Environmental Policy Act Implementing Regulations Revisions*, Docket No. CEQ-2021-002, prepared by Nicky Sheats (November 22, 2021).

<sup>20</sup> See Environmental Justice For All Act, H.R. 2021, 117<sup>th</sup> Cong., 2<sup>nd</sup> Sess. Section 14 (2021).