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ENVIRONMENTAL JUSTICE**

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Taking the Next Steps Towards Environmental Justice

Patricia E. Salkin



New York is finally well on its way to developing a meaningful Environmental Justice (EJ) policy. Defined by the Environmental Protection Agency (EPA) as the "fair treatment for people of all races, cultures, and incomes, regarding the development of environmental laws, regulations and policies," until the last decade, EJ remained a theory that was largely discussed and advanced in the legal and social science literature.

Beginning in 1990, the federal government began to seriously consider the impacts of EJ or environmental equity in communities across the country. For example, an Environmental Equity Workgroup was created to examine distributional issues raised by environmental policies and enforcement in 1990; President Bush created the Office of Environmental Equity in 1992; in 1993 the National Environmental Justice Advisory Council was created, and in 1994 President Clinton issued an Executive order addressing EJ concerns affecting minority and low-income populations. The Region 2 Office of the EPA which covers New York recently issued an Interim Environmental Justice Policy.

Among other things, the policy provides guidance on conducting EJ analyses, and also on incorporating EJ into permitting, enforcement, community outreach, and the Federal superfund program. Utilizing a methodology to compare the demographics and environmental burden of a "community of concern" with a statistical reference area within the state, the Interim Policy assists decision makers in determining whether a community of concern consists of statistically high numbers of minority or low-income residents, and, if so, whether that community of concern also bears a significantly greater adverse environmental burden.

Under the leadership of former DEC Commissioner John P. Cahill, and with a \$100,000 EPA grant, New York began to address the serious concerns raised by the EJ movement. The NYS Environmental Justice Advisory Group - comprised of representatives of community groups, environmental groups, business, academics, and local, State, Federal, and tribal government - issued a report with recommendations on January 3, 2002. The report offers a number of recommendations designed to ensure that DEC permitting and other programs incorporate EJ considerations.

Highlights of the recommendations include: incorporating environmental justice into the review of actions under the State Environmental Quality Review Act ("SEQRA") and its implementing regulations; adopting of the methodology for identifying communities of concern and whether they are minority and low-income communities as set forth in the Region 2 Interim Policy; amending SEQRA regulations to require the Full Environmental

Assessment Form ("EAF") for Unlisted Actions occurring in a minority or low-income community, and revising the form to solicit more substantive information (including public health data) to be used in making such determination of significance; posting completed EAF forms on the DEC web site; and amending the regulations to require a coordinated review of the action among multiple involved agencies for Unlisted Actions in a minority or low-income community.

The Report recommends that comprehensive planning be encouraged in local government, and that DEC, through the Quality Communities Task Force, "explore the use of comprehensive planning to identify environmentally stressed communities and to assess ways to avoid or reduce the

imposition of additional environmental stresses through land use planning and zoning." It also recommends that DEC incorporate defined terms and methodologies for assessing disproportionate environmental impact, and require the evaluation of mitigation of such impact. Moreover, if the mitigation measures will not alleviate such impact, it was recommended that determinations be made on whether sufficient justification exists to proceed with the proposed action, after considering environmental impacts, public health or environmental benefits.

The EJ Advisory Group also offered a number of recommendations designed to further a State strategic environmental justice plan, including: conducting assessments of existing funding opportunities, enforcement efforts, agencies and activities exempt from SEQRA; and encouraging legislation or an executive order that directs DEC and other appropriate State and local entities to address EJ and provide resources to do so.

Other states, including California, Florida, Indiana, Louisiana, New Jersey, Rhode Island, Tennessee and Texas have enacted statutes, created and/or funded research centers and programs, and developed EJ policies and regulations. It is imperative that the work of New York's EJ Working Group be viewed as the first step, and that the January 2002 report truly be a starting point for lawmakers and policymakers at the state and local levels to begin to implement some of these ideas to ensure that EJ concerns are a more formal part of our decision making process.

Patricia E. Salkin is Associate Dean and Director of the Government Law Center of Albany Law School. She has written and lectured extensively on the subject of smart growth.