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Environmental Justice: Arkansas Water & Wastewater Managers Association Fall Conference Presentation

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I undertook a presentation at the Arkansas Water & Wastewater Managers Association Fall Conference on November 3rd titled:

Environmental Justice ("Presentation")

The *Presentation* discussed the potential impact of Environment Justice ("EJ") on the federal and Arkansas environmental regulatory and grant programs.

The potential impacts related to:

- Enforcement
- Siting or Expand Facilities
- Grants
- Regulations

The relevance to water and wastewater facilities involves infrastructure such as:

- Pipelines
- Land application
- Pump stations
- Drinking water/wastewater treatment facilities
- Etc.

EPA defines EJ as:

... the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations and policies.

Fair treatment is typically defined to mean no group shall bear a disproportionate share of negative environmental consequences for government/private activities.

With disproportionate burden the concern is:

- Exposed community did not generate problem
- Exposed community receives marginal benefits
- Exposed community bears environmental burden

Examples were provided in which studies of solid waste facilities (landfills, hazardous waste facilities, and Superfund sites) indicated a higher proportion of minorities or low income communities in the vicinity of such facilities.

EPA's policy on EJ was noted to include meaningful involvement for people to participate in decisions about activities that may affect their environment and/or health.

A brief summary of the evolution of EJ was discussed, including a study from 1987 by the United Church of Christ's Commission for Racial Justice that found that race, even more than income, was the most significant variable in predicting residential proximity to certain hazardous waste facilities.

Title VI of the Civil Rights Act is identified as prohibiting intentional discrimination or discriminatory effect. However, it is noted that the statute provides no private right of action. Nevertheless, federal agencies (such as EPA) have regulations (e.g. 40 C.F.R. pt. 7) to attempt to address the issue within the scope of its activities.

EPA Administrator Regan is noted to have directed agency offices to consider EJ in their activities, which presumably extends to:

- Setting standards and promulgating rules
- Issuing licenses/permitting facilities
- Making grants (prioritizing EJ communities)
- Reviewing actions of other agencies
- Strengthening enforcement of violations in minority/low income communities that are burdened by pollution

The *Presentation* noted that current federal/Arkansas statutory authorities potentially address EJ issues to some extent, which include:

- National Environmental Policy Act (federal actions that significantly affect the human environment must prepare an Environmental Impact Statement [must consider a variety of issues such as disproportionate impacts, etc.])
- Federal Funding
- Federal Permits (Rivers and Harbors, 404, FERC, etc.)
- Clean Water Act/U.S. Corps of Engineers 404 Wetland Public Interest Review
- Arkansas Solid and Hazardous Waste Siting Requirements
- Executive Order 12898 (1994) requires federal agencies to address EJ concerns in considering grants or financial assistance to evaluate the potential impacts from their projects or minority and lower income communities.

The issue is noted to be driven to a great extent by the Biden Administration's (Executive Order 14008) federal initiatives.

A key question was what this means for a state like Arkansas which has been delegated the various federal environmental programs.

Three avenues were noted:

- Federal programs such as CWA 404 and National Environmental Policy Act
- Federal grant programs and delegation oversight
- Federal Overfiling Enforcement

The role of EPA's External Civil Rights Compliance Office ("ECRCO") was noted in terms of enforcement of civil rights laws and identifying potential violations of Title VI. The remedies are limited to removal of EPA funding and whether this is a realistic option was addressed. Efforts to streamline ECRCO's processes, develop guidance, and address a backlog of cases was discussed.

A recent example of the use of ECRCO and the Title VI process in the EPA context was addressed:

- Sierra Club objection to Title V Air Permit for Texas facility (Oxbow Calcining) alleging violations of Title VI EPA civil rights regulation (40 C.F.R. Part 7)
- Filed against TCEQ
- EPA accepted complaint for investigation
- Alleges subject individuals to discrimination or impairing objectives of the program on basis of race.

Similarly, the *Presentation* referenced the potential role of EJ in terms of EPA's promulgation of regulations and the oversight of grants. For example, the EPA Office of Inspector General states it is undertaking a review to determine:

- Have states have met their drinking water state revolving fund loan subsidy goals for disadvantaged communities as identified in their intended-use plans?
- Has EPA identified and addressed barriers, if any, that hindered states from spending the maximum allowed on loan subsidies for disadvantaged communities in their drinking water state revolving funds?

EPA's strategic plan in terms of EJ was noted which identified the following goals:

- Conduct 55% of inspections annually at facilities that affect communities with potential environmental justice concerns.
- Provide 1,722 Tribal, small, rural, or underserved communities with technical, managerial, or financial training or assistance to improve operations of their drinking water or wastewater systems.
- Ensure that each year, 40% of Superfund, Oil, Homeland Security, and FEMA exercises with EPA participation address environmental justice concerns.

Despite the predominant focus on governmental activities, it was noted that private companies/facilities could be affected. An example was provided in terms of USDA Farm Service Agency funding of confined feeding operations when federal jurisdiction is applied:

- National Environmental Policy Act
- 404

Note federal involvement.

The impact on grant programs was discussed in terms of providing additional scoring for EJ areas of concern and anticipating negative impacts on vulnerable populations.

An Arkansas statute that arguably addresses EJ was noted.

Ark. Code Ann. 8-6-1501 prohibits the citing of high impact solid waste management facilities through a rebuttable in certain circumstances. There is a rebuttable presumption against permitting construction or operation of any high impact solid waste management facility within 12 miles of another one. The intent was to ensure that areas were not disproportionately burdened by such facilities. Recycling and non-commercial private industry facilities were among the excepted facilities.

Proactively addressing EJ issues and the possibility of engaging with non-profit community organizations was addressed. An example cited included:

- Installation of pollution controls not necessarily required by law
- Funding of air quality monitors to measure certain pollutants despite not being required by law
- Funding for the community for better access to community health facilities
- An annual environmental report to a community for a better exchange of information

The *Presentation* put forth certain suggestions/predictions:

- Enhanced enforcement (Is EJ an additional pressure point?)
- Heightened citizen suit potential
- Focus on EJ community Superfund sites

- Increased intention to compliance in certain communities
- More consideration of EJ issues in development of rules and public notice procedures
- Consideration of EJ issues in facility permitting
- Civil and criminal enforcement pursuit potentially affected by EJ issues

Examples of potential proactive measures include:

- Community engagement
- Improved community/government relations
- Deeper understanding of issues
- Increase in community collaboration
- Good neighbor agreements
- Buyouts
- Services to the community
- Warnings
- Donating emergency response equipment
- Health Clinics

A copy of the slides can be downloaded [here](#).