**Community Lawyering for Environmental Justice Part 5: Recap of Federal Environmental Justice Legislation and Regulations from 2022 Worksheet**

# Introduction: Community Lawyering for Environmental Justice Series, ELI Pro Bono Clearinghouse, and the Purpose of this Event

The Environmental Law Institute’s Pro Bono Clearinghouse is an easy way for communities that need pro bono support for their environmental legal issues to connect with attorneys and experts who are willing and able to help them. The major goal of the ELI Pro Bono Clearinghouse is to address our nation’s vast “legal deserts” where communities do not have ready access to the legal support they need.

Communities can use the Clearinghouse to connect with general practitioners or specialized experts. Law clinics and other non-profits can submit to the Clearinghouse any viable pro bono environmental matters that they are unable to take on due to resource limitations or because they are outside their scope of work. Clinics and non-profits can also post requests for Clearinghouse member attorneys to expand their capacity or provide expertise that they lack in-house. Clearinghouse member attorneys can offer their skills and take on new matters, whether as a long-term legal ally of a community or for a discrete legal task.

*Community lawyering*, sometimes known as empowerment lawyering, is key to meaningful environmental justice-oriented pro bono work. Community lawyering involves collaboration with individuals and community members as facilitative partners. As a result, it differs from the more traditional representational lawyering with which many attorneys are familiar.

Find out more about the Pro Bono Clearinghouse here: <https://www.eli.org/probono>.

* 1. **Overview of 2022 Environmental Justice Legislation and Regulations**

The Inflation Reduction Act (IRA)’s passage in 2022 was very significant. While the IRA does not create any substantive legal rights, it provides funding and tax credits for programs and activities which promote sustainability, air and water quality, and climate resilience. The IRA also contains a number of provisions which advance Environmental Justice, including provisions reducing legacy pollution, providing more affordable and accessible clean energy for disadvantaged communities, and creating better quality of life and good jobs.[[1]](#footnote-2)

One particularly important new program funded by the IRA is the Environmental and Climate Justice Block Grants. Through this program, the IRA allocated $3 billion to invest in community-led projects, including pollution monitoring, prevention, and remediation; low- and zero-emission and resilient technologies; and engagement of disadvantaged communities in state and federal advisory groups, workshops, rulemakings, and other public processes. By focusing on community-led initiatives, the Environmental and Climate Justice Block Grants help to address systemic issues and disempowerment by allowing communities to build power at the grassroots level.[[2]](#footnote-3)

Despite its many successes, the Inflation Reduction Act raises concerns among Environmental Justice advocates, including but not limited to the following:

* **Compromises with oil and gas.** Legislators negotiating the passage of the IRA made compromises with the oil and gas industry to secure the passage of the act. These compromises include provisions in the IRA requiring the federal government to open land leases on oil and gas projects on federal land, as well as requiring additional oil and gas leasing as a precondition for approving solar and wind energy products. Additional oil and gas leasing will likely increase pollution, especially for already overburdened communities.[[3]](#footnote-4) This concern is exacerbated by the reality that people of color and low-income communities are already at higher risks of pollution and related health risks.[[4]](#footnote-5)
* **Logistical challenges in the grant application process.** While grants can present great opportunities, the grant application process is time- and resource-intensive. Communities and local or state governments not only must have the time and staff to put together a successful application but must also understand how to navigate the often-onerous required paperwork and procedure.[[5]](#footnote-6) The communities which could benefit from grants the most are frequently also the communities who have the least resources and are thus the least equipped to submit successful applications. And the more competitive the grant process is, the more difficult it will become for communities with limited resources to obtain the grant funding that they need.
* **Unknown grant distribution process.** The process for allocating IRA grant funding is currently unknown, and Environmental Justice advocates have raised concerns that if the money is distributed by individual states, then states which are already “hostile toward communities, especially Black, Indigenous, people of color,” may continue to perpetuate existing inequality when distributing those funds.[[6]](#footnote-7) Similar concerns have been raised about which parties define the criteria for selecting successful applicants.[[7]](#footnote-8)
* **Barriers to benefitting from tax credits.** Before communities can benefit from tax credits, they must first hold the property which is a prerequisite to obtaining the credit, such as a home.[[8]](#footnote-9) Without first addressing disparities in property ownership, tax credits can continue to perpetuate existing inequality. Exacerbating this issue is the fact that tax credits are non-refundable under the IRA, meaning “approximately 40 percent of households with little or no federal income tax liability—disproportionately people of color—will continue to be largely excluded from installing rooftop solar, heat pumps, and other clean energy resources.”[[9]](#footnote-10)
* **Tax credits prolong reliance on fossil fuels.** Other tax credits for carbon capture and sequestration (CCS) could extend the financial and regulatory viability of coal-fired power plants. Extended reliance on coal will likely slow both the transition to cleaner energy and efforts to reduce pollution from coal.[[10]](#footnote-11)
  1. **Inflation Reduction Act of 2022 — Pub. L. 117–169**

**SEC. 60201. ENVIRONMENTAL AND CLIMATE JUSTICE BLOCK GRANTS.**

The Clean Air Act is amended by inserting after section 137, as added by subtitle A of this title, the following:

SEC. 138. (NOTE: 42 USC 7438.) ENVIRONMENTAL AND CLIMATE JUSTICE BLOCK GRANTS.

(a) Appropriation.--In addition to amounts otherwise available, there is appropriated to the Administrator for fiscal year 2022, out of any money in the Treasury not otherwise appropriated--

(1) **$2,800,000,000** to remain available until September 30, 2026, **to award grants** for the activities described in subsection (b); and

(2) **$200,000,000** to remain available until September 30, 2026, **to provide technical**  **assistance** to eligible entities related to grants awarded under this section.

(b) Grants.--

1. In general.--The Administrator shall use amounts made available under subsection (a)(1) to award grants for periods of up to 3 years to eligible entities to carry out activities described in paragraph (2) that benefit disadvantaged communities, as defined by the Administrator.
2. **Eligible activities.**--An eligible entity may use a grant awarded under this subsection for--
3. community-led air and other pollution monitoring, prevention, and remediation, and investments in low- and zero-emission and resilient technologies and related infrastructure and workforce development that help reduce greenhouse gas emissions and other air pollutants;
4. mitigating climate and health risks from urban heat islands, extreme heat, wood heater emissions, and wildfire events;
5. climate resiliency and adaptation;
6. reducing indoor toxics and indoor air pollution; or
7. facilitating engagement of disadvantaged communities in State and Federal advisory groups, workshops, rulemakings, and other public processes.

(3) **Eligible entities.**--In this subsection, the term `eligible entity' means--

(A) a partnership between--

(i) an Indian tribe, a local government, or an institution of higher education; and

(ii) a community-based nonprofit organization;

(B) a community-based nonprofit organization; or

(C) a partnership of community-based nonprofit organizations.

**SEC. 60103. GREENHOUSE GAS REDUCTION FUND.**

The Clean Air Act is amended by inserting after section 133 of such Act, as added by section 60102 of this Act, the following:

SEC. 134. (NOTE: 42 USC 7434.) GREENHOUSE GAS REDUCTION FUND.

(a) Appropriations.--

1. **Zero-emission technologies.**--In addition to amounts otherwise available, there is appropriated to the Administrator for fiscal year 2022, out of any money in the Treasury not otherwise appropriated, **$7,000,000,000**, to remain available until September 30, 2024, **to make grants, on a competitive basis** and beginning not later than 180 calendar days after the date of enactment of this section, to States, municipalities, Tribal governments, and eligible recipients **for the purposes of providing grants, loans, or other forms of financial assistance, as well as technical assistance, to enable low-income and disadvantaged communities to deploy or benefit from zero-emission technologies**, including distributed technologies on residential rooftops, and to carry out other greenhouse gas emission reduction activities, as determined appropriate by the Administrator in accordance with this section.
2. . . .
3. **Low-income and disadvantaged communities.**--In addition to amounts otherwise available, there is appropriated to the Administrator for fiscal year 2022, out of any money in the Treasury not otherwise appropriated, **$8,000,000,000**, to remain available until September 30, 2024, **to make grants, on a competitive basis** and beginning not later than 180 calendar days after the date of enactment of this section, to eligible recipients **for the purposes of providing financial assistance and technical assistance in low-income and disadvantaged communities** in accordance with subsection (b).

(c) Definitions.--In this section:

(1) Eligible recipient.--The term `eligible recipient' means a nonprofit organization that--

1. is designed to provide capital, leverage private capital, and provide other forms of financial assistance for the rapid deployment of low- and zero-emission products, technologies, and services;
2. does not take deposits other than deposits from repayments and other revenue received from financial assistance provided using grant funds under this section;
3. is funded by public or charitable contributions; and
4. invests in or finances projects alone or in conjunction with other investors.

[Note: this section does not define ‘low-income’ or ‘disadvantaged communities’]

**2. Notes: Fill out the following during our speakers’ remarks.**

**A. Overview of Environmental Justice Legislation**

1. Passage of 2022 Environmental Justice legislation
2. What legislation passed in 2022 has advanced Environmental Justice? How did it do so?
3. What social and climate mobilization led to the passage of this legislation?

1. Examples of key statutory provisions and/or regulations that communities can leverage to advance Environmental Justice
2. How can the budget reconciliation process incorporate Environmental Justice?

# B. Environmental Justice and Industry

1. The business case for Environmental Justice
2. Why should companies consider incorporating environmental justice into their governance and operations?
3. Are there emerging opportunities for industry and communities to work together to advance EJ? How might community lawyering and pro bono technical assistance bolster those opportunities?

1. Key new statutory and regulatory provisions affecting industry
   1. Examples of new federal statutory provisions and regulations that will impact industry
   2. How can communities use these new programs to encourage new, expanded, or modified collaboration with industry?
   3. How can these new programs benefit industry?
   4. What are the greatest challenges that these recent developments introduce for industry?

# Community-Based Environmental Justice Advocacy at the State Level

1. Equity in regulatory proceedings
2. Define each of the four types of equity
   1. Distributive Justice
   2. Corrective Justice
   3. Procedural Equity
   4. Intergenerational Equity
3. What are some important considerations when assessing the effectiveness of community engagement and equitability of outcomes, either as a community advocate or a regulator?
4. What are some barriers to engaging with communities and amplifying their voices?

1. Impacts of new federal statutory provisions and regulations on state-level regulatory proceedings and community engagement
   1. Examples of new federal statutory provisions and regulations that will impact state-level regulatory proceedings or create new opportunities for community engagement
   2. How will these new laws and regulations benefit communities?
   3. How will these new laws and regulations create any additional hurdles or inequities for communities?
2. Examples from practice
3. Examples of effective amplification of communities’ voices and/or meaningful community engagement in regulatory proceedings
4. Examples of barriers to meaningful community engagement

1. Senate Democrats, Environmental Justice in the Inflation Reduction Act (2022), https://www.democrats.senate.gov/imo/media/doc/environmental\_justice\_in\_the\_inflation\_reduction\_act.pdf. [↑](#footnote-ref-2)
2. Tatum McConnell, *Environmental Justice Advocates Respond to the Inflation Reduction Act*, Sierra Club (Sept. 1, 2022), https://www.sierraclub.org/sierra/environmental-justice-advocates-respond-inflation-reduction-act. [↑](#footnote-ref-3)
3. Sierra Club, *supra* note 2; *What the Inflation Reduction Act Means for Climate*, EarthJustice (Aug. 16, 2022), https://earthjustice.org/brief/2022/what-the-inflation-reduction-act-means-for-climate [↑](#footnote-ref-4)
4. Sierra Club, *supra* note 2. [↑](#footnote-ref-5)
5. Sierra Club, *supra* note 2; Hannah Perls, *Breaking Down the Environmental Justice Provisions in the 2022 Inflation Reduction Act*, Harv. Env’t & Energy Law Program (Aug. 12, 2022), https://eelp.law.harvard.edu/2022/08/ira-ej-provisions/. [↑](#footnote-ref-6)
6. Sierra Club, *supra* note 2. [↑](#footnote-ref-7)
7. Perls, *supra* note 5. [↑](#footnote-ref-8)
8. Sierra Club, *supra* note 2. [↑](#footnote-ref-9)
9. Lew Daly, *The Inflation Reduction Act: A Climate Down Payment, but Doubts on Environmental Justice*, Roosevelt Inst. (Aug. 5, 2022), https://rooseveltinstitute.org/2022/08/05/a-climate-down-payment-but-doubts-on-environmental-justice/. [↑](#footnote-ref-10)
10. EarthJustice, supra note 3. [↑](#footnote-ref-11)