

C O M M E N T

DUAL-PURPOSE OUTREACH TO ENHANCE PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISIONMAKING

by Chandra T. Taylor-Sawyer

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In my work at the Southern Environmental Law Center (SELC), I often face the question of how to do everything possible during the policymaking process to involve the people who are most harmed by environmental contamination. I have practiced in this area since 2006, and I have learned it helps to take a step back and make sure we are thinking about the problem we want to fix. In this case, we are talking about environmental injustice and the disproportionate burden of environmental harm on people of color and people who do not have a lot of money. The environmental contamination in these communities is the symptom of the problem, and the bigger problem is the legacy of economic and political disempowerment of communities of color that have persisted for generations.¹ SELC has dedicated a lot of time to addressing the problem and its symptoms in partnership with community groups that are experiencing environmental harm.² We bring with us the entire tool kit of laws, regulations, and policies that could possibly prevent or lessen these burdens.

There are ways in which citizen-driven and government-driven efforts toward greater public participation

can help work on the symptoms. For example, SELC worked with a partner group and community against a pipeline, in an effort to protect the community's aquifer, as well as the use and enjoyment of their historic and predominantly African-American neighborhoods.³ This 49-mile crude oil pipeline, called the Byhalia Pipeline, could have contaminated drinking water for one million Memphis/Shelby County residents.⁴ The citizen-driven public participation at the local government level against this project was led by a very dedicated base of activists who became environmental advocates because they cared about their community and were opposed to this project⁵—vigorous citizen-driven public participation can be expected more when there is a specific project with known threats affecting a particular place.

However, we also need to look at the bigger picture—the problem of economic and political disempowerment rooted in a long history of segregation of communities of color⁶ and how government-driven efforts for enhanced public participation can be better implemented. To do this, we have looked to the guidance and executive orders that outline how the federal government is addressing these issues. For example, Executive Order No. 12898⁷ is focused on the fair treatment and meaningful involvement of communities of color and low-wealth communities. The meaningful involvement part is so hard to achieve—or it seems

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1. See, e.g., Henry M. Lane et al., *Historical Redlining is Associated With Present-Day Air Pollution Disparities in U.S. Cities*, 9 ENV'T. SCI. & TECH. LETTERS 345, 345 (2022), <https://pubs.acs.org/doi/pdf/10.1021/acs.estlett.1c01012>; Daniel Cusick, *Past Racist "Redlining" Practices Increased Climate Burden on Minority Neighborhoods*, E&E NEWS (Jan. 21, 2020), <https://www.scientificamerican.com/article/past-racist-redlining-practices-increased-climate-burden-on-minority-neighborhoods/>; VT. L. SCHOOL ENV'T JUSTICE CLINIC ET AL., *FEDERAL DERELICTION OF DUTY: ENVIRONMENTAL RACISM UNDER COVID-19* (2021), <https://www.vermontlaw.edu/sites/default/files/2021-08/Federal-Dereliction-of-Duty-Full-Report.pdf>.
2. *Environmental Justice: Troubling the Water*, S. ENV'T L. CTR., <https://www.southernenvironment.org/topic/environmental-justice-troubling-the-water/> (last visited May 25, 2022).

3. *Victory for Southwest Memphis: Byhalia Pipeline Is Done*, S. ENV'T L. CTR. (July 2, 2021), <https://www.southernenvironment.org/news/victory-for-southwest-memphis-byhalia-pipeline-is-done/>.
4. *Hydrogeologic Report Warns of Pipeline Threats to Memphis Drinking Water Source*, S. ENV'T L. CTR. (Feb. 24, 2021) (citing Douglas Cosler, *Evaluation of the Risk of Contamination of the Memphis Sand Aquifer by the Proposed Byhalia Connection Pipeline* (Feb. 1, 2021)), <https://www.southernenvironment.org/news/hydrogeologic-report-warns-of-pipeline-threats-to-memphis-drinking-water-source/>.
5. See STOP THE PIPELINE, <https://www.memphiscap.org/home> (last visited May 25, 2022); PROTECT OUR AQUIFER, <https://www.protectouraquifer.org/> (last visited May 25, 2022).
6. See Shannon Roesler, *Racial Segregation and Environmental Justice*, 51 ELR 10773, 10773 (Sept. 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3929124.
7. Exec. Order No. 12898, 3 C.F.R. §859 (1995).

difficult when we look at broader policies to address political disempowerment and economic disempowerment.

Prof. Jaime Lee's idea of constituent empowerment is one that I'm very excited to learn has been implemented in Baltimore, and I am excited to think about how it would be implemented across varying public participation processes. By way of example, in North Carolina, where I live and work, our government has a new environmental justice and climate and transportation executive order that was issued in January 2022,⁸ implementation of which has included the use of a private consulting firm to request in-depth feedback from the public. We also have a task force that focuses on the state's response to COVID-19 and how it has had disproportionate harm on low-wealth communities and communities of color.⁹ That Task Force employs some combinations of more traditional methods of public hearings, updating the process via phone and virtual platform convenings.

As an advocate, part of my role is to emphasize the importance of getting public comments and community feedback in the administrative record. I am always looking out for opportunities to provide input to citizen advisory groups that are asking questions about how to fix this

problem—but not everyone is aware of the opportunities to provide feedback.

When governmental entities go out and talk to communities, or provide social services or benefits, the opportunity exists to ask more questions. General questions could be asked about how communities would like to prioritize funding to assist on environmental issues or types of additional environmental amenities. A dual-duty approach is compelling. Asking governmental entities to start thinking about how they can get more feedback from communities of color and low-wealth communities—communities that data show are known to have an additional burden from years¹⁰—holds a lot of promise. This approach helps our governmental entities, in addition to permit applicants, by asking more questions of the people who would be most impacted by a particular activity. And, asking for that information earlier would save permit applicants money and time as well.

These are two ways in which Professor Lee's model can help solve the actual problem and enable us to spend less time on the symptoms of the problem down the road. It would assist in getting more information earlier in the decisionmaking process.

8. North Carolina's Transformation to a Clean, Equitable Economy, Exec. Order No. 246, 36 N.C. Reg. 1287 (Feb. 1, 2022), <https://files.nc.gov/oah/documents/files/Volume-36-Issue-15-February-1-2022.pdf?VersionId=wUeoomVhFzLfZOlkPFD.lfdLITgxxTMv>.

9. Addressing the Disproportionate Impact of COVID-19 on Communities of Color, Exec. Order No. 143, 35 N.C. Reg. 10, 13 (July 1, 2020), <https://files.nc.gov/oah/documents/files/Volume-35-Issue-01-July-1-2020.pdf?VersionId=URkLBb1ngPC6TyOGyRTot1vzjdM2BZvJ> (creating the Andrea Harris Social, Economic, Environmental, and Health Equity Task Force).

10. See, e.g., Marccus D. Hendricks & Shannon Van Zandr, *Unequal Protection Revisited: Planning for Environmental Justice, Hazard Vulnerability, and Critical Infrastructure in Communities of Color*, 14 ENV'T JUST. 87 (2021); Vann R. Newkirk II, *Trump's EPA Concludes Environmental Racism Is Real*, ATLANTIC (Feb. 28, 2018), <https://www.theatlantic.com/politics/archive/2018/02/the-trump-administration-finds-that-environmental-racism-is-real/554315/>; Roesler, *supra* note 6, at 1076-77.