

Procedural Justice and the Environment: Communities, Corporations, Government



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Environmental Justice

- For communities?
- For individuals?
- For the environment itself?
- For the global community?



Rulemaking and Corporate Decisionmaking

- Environmental Policy = Environmental outcomes
- Who gets to decide?
- How are those people selected?
- When is community input sought?



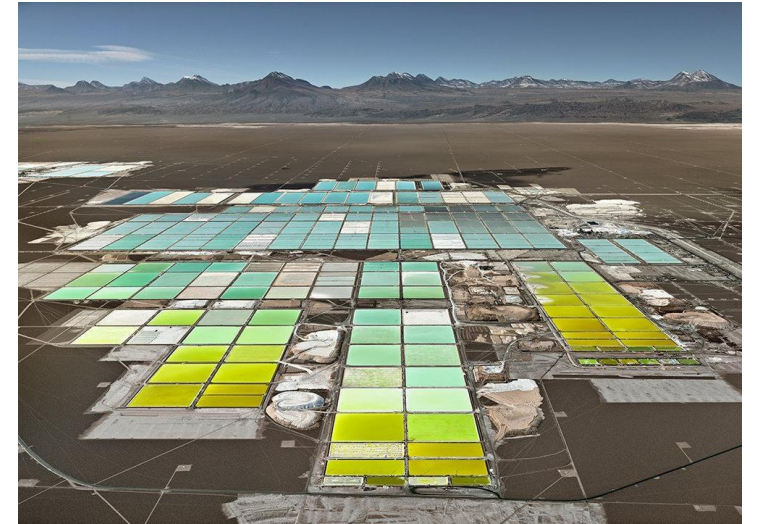
Public Choice Theory

- James Buchanan
- Self interest is rational
- Individual incentives – post-political life, reelection, comfort
- Key Idea: Politicians make decisions the same way regular people do.
- What matters? Process.



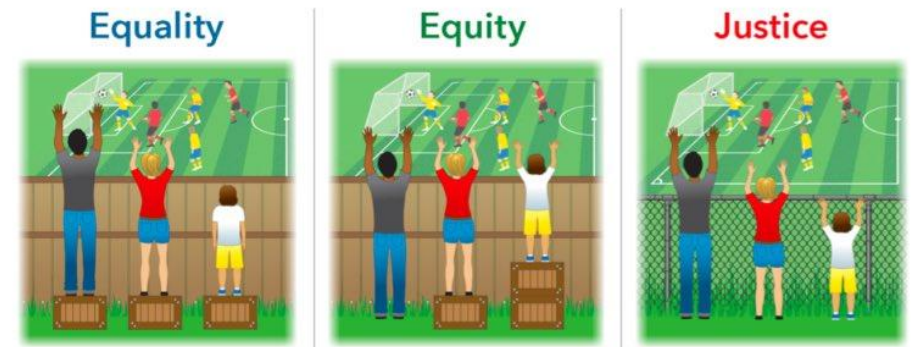
The Importance of Process

- EJ is about process that produces substantive EJ results.
- Incorporating EJ requires process change
- Example: A corporation seeks to establish a needed lithium mine. The corporation will sell lithium to electric vehicle manufacturers and battery storage companies. The lithium mine applies for the relevant air, waste, and water permits for a site it selected with a large lithium deposit. The agency approves the permits after seeking public comment and reviewing the environmental parameters of the project. OMB conducts a cost benefit analysis and finds the mine's revenue outweighs the diminished value to recreation, human life, and other costs.
- A neighborhood group tends a park that would be displaced by the lithium mine sues with the help of a dedicate environmental organization with limited resources. Litigation lasts several years, legal fees for intervening corporation soar into the millions.



The Importance of Process

- How could this process have gone differently? Where are the benefits going? What are the true costs of the project? Could those costs have been avoided ab initio?
- Who was included in the process? Is that representative legitimate? What are the barriers to inclusion? Who has access to legal representation? For how long? What is the net community benefit?



EO 12,898

Environmental justice (EJ) is 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 means no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.

Meaningful involvement means:

- People have an opportunity to participate in decisions about activities that may affect their environment and/or health;
- The public's contribution can influence the regulatory agency's decision;
- Community concerns will be considered in the decision making process; and
- Decision makers will seek out and facilitate the involvement of those potentially affected.



Michigan EJ Policy

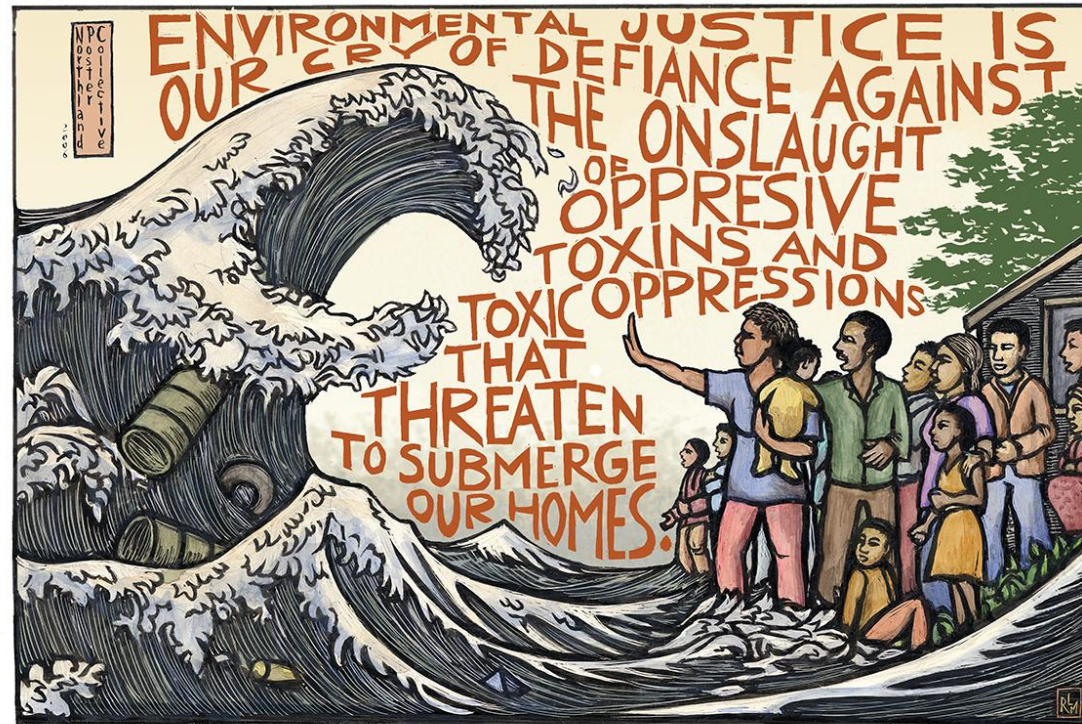
Environmental Justice Actions

- Creating the state's inaugural [Michigan Advisory Council on Environmental Justice](#)
- Collaboration with the [COVID Racial Disparities Task Force on Environmental Justice Issues](#)
- Developing EGLE's new [Limited English Proficiency \(LEP\) Plan](#)
- Launching an [Environmental Justice Community Resilience Plan Pilot in 48217/SW Detroit](#)
- Creation of the [Environmental Justice Community Schools HVAC Air Quality Project](#)
- Creation of the [Environmental Justice Community Mobil Air Monitoring Project](#)
- Developing and publicly posting an updated [EGLE Non-Discrimination Policy](#)
- Developing an updated [EGLE Public Participation Policy](#)
- Developing a [Tribal Consultation Policy](#)
- Training all EGLE employees on Integrating Environmental Justice in EGLE's Work



So why do disparities persist?

Should the definition of EJ be broader, narrower, or different in some way?





Water is Life!

Reciprocity, Responsibilities, Hope

"We've known for a long time that water is alive. Water can hear you. Water can sense what you are saying and what you are feeling. There's been a place where I put tobacco in the water, where the water is so still. It was dead. I prayed for it. I put my tobacco in the water and my tobacco started floating around. So the water came alive. It heard my prayers. It heard the song. So I know it listens, and it can come alive if you pay attention to it. Give it respect and it can come alive. Like anything. Like a person who is sick... if you give them love, take care of them, they'll come alive. They'll feel better. It's the same with our mother, the earth, and the water. Give it love."

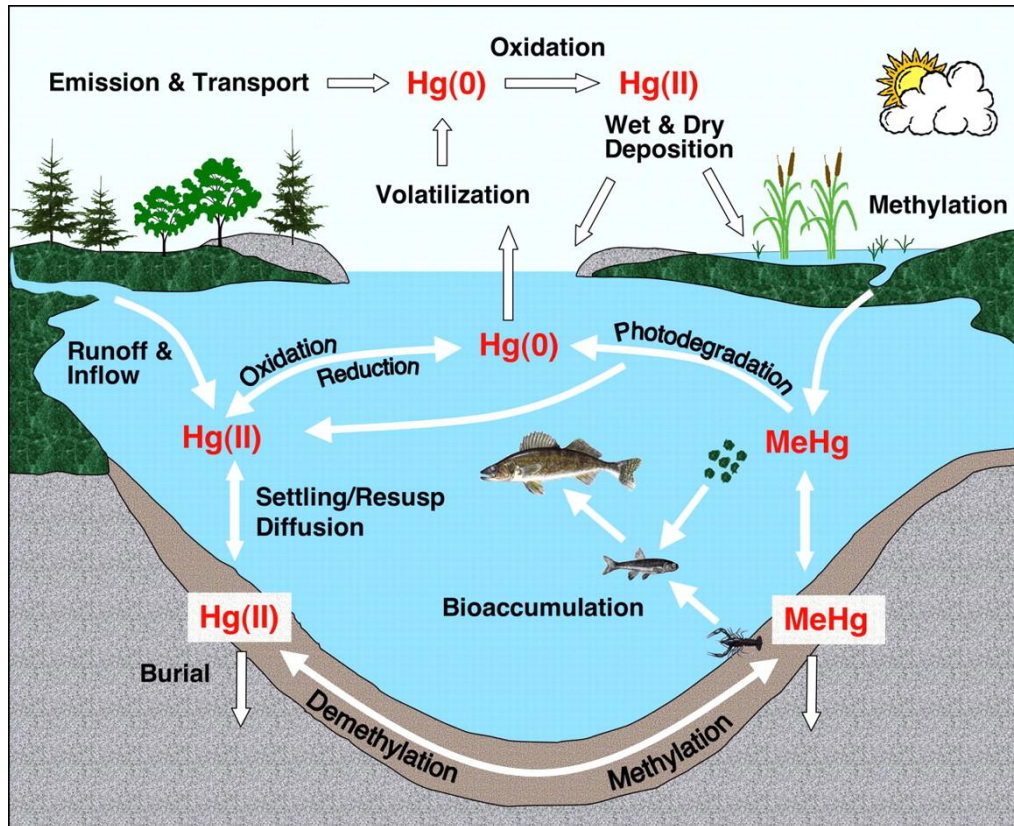
***Elder Josephine Mandamin,
Ojibway, Lake Superior, Ontario***

Pollution hotspots: 48217, Flint, Benton Harbor

- Despite policy, disproportionate impact continues. Why?
- Structural? The Clean Air Act functions through capping and delegating.
- Political? Carbon pricing, stranded assets, entrenchment, procedural access
- Is EJ possible under the current framework?



Community Benefits and Costs



- Impacts to remote communities.
- How are these impacts compensated? Where is it included in the cost benefit analysis? Was it weighed appropriately? Who gets to define “appropriate”?

EJ Means: Fair Access to Process



EJ Means: Neutral and Democratic Decisionmaking Mechanisms



EJ Means: Citizenry-centered Weighing of Costs and Benefits



Internal and External Process Checks



Procedural Justice

- “Procedural justice speaks to the idea of fair processes, and how people’s perception of fairness is strongly impacted by the quality of their experiences and not only the end result of these experiences. Procedural justice theory has been applied to various settings, including supervisor-employee relations within organizations, educational settings, and the criminal justice system. In the criminal justice context, most procedural justice research has focused on citizen-police interactions” – Yale Law School
- Who can pay for a good lawyer? Who can’t?

