

Durbin, Duckworth Introduce Sweeping Environmental Justice Bill

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WASHINGTON — U.S. Senators Dick Durbin (D-IL) and Tammy Duckworth (D-IL), along with U.S. Senator Cory Booker (D-NJ), introduced sweeping legislation to address the environmental injustices that harm communities of color, low-income communities, and indigenous communities around the country. The Environmental Justice Act of 2019 would require federal agencies to mitigate environmental injustices through agency action and would strengthen the legal protections of those affected by environmental injustices.

“Breathing clean air and using clean water shouldn’t be a privilege for the few. It’s a right for everyone in Illinois,” Durbin said. “Too often we see lower income communities and neighborhoods of color face a disproportionate amount of environmental hazards that we know hurt public health. They are also prevented from seeking justice in the courts. Our bill ensures that these communities have the resources they need to fight for justice when faced with these challenges.”

“Every American has the right to breathe safe air, drink clean water and live on uncontaminated land regardless of their zip code, the size of their wallet and the color of their skin. However, too often that is not the case, especially for low income communities and people of color,” said Senator Duckworth. “That’s why I’m proud to join Senators Booker and Durbin in introducing this legislation and it’s why I started the Senate’s first Environmental Justice Caucus earlier this year: to raise awareness of the fact that communities of color face public health challenges at alarming rates while too many in power look the other way. Together, we will be strong advocates for every person’s right to a safe, healthy and livable environment.”

Last year, a Chicago Tribune report found that air monitors recorded dangerous levels of brain-damaging manganese at Watco Transloading on Chicago’s Southeast Side. Durbin, Duckworth, and U.S. Representative Robin Kelly (D-IL-02) wrote to then-EPA Administrator Pruitt about the agency’s failure to consistently hold facilities accountable for dangerous emissions of manganese.

According to the Centers for Disease Control and Prevention, high levels of manganese dust exposure can cause serious neurological effects, learning difficulties, and memory loss. Recent studies have shown a link between manganese exposure and lower child IQ scores. Researchers at University of Illinois at Chicago’s School of Public Health found that children in Southeast Chicago have higher levels of manganese in their toenails than children in other parts of the City.

Additionally, for years, uncovered piles of petroleum coke have been stored in Southeast Chicago near homes and local baseball fields. Petroleum coke is a byproduct of refining crude oil into fuels such as gasoline and diesel. Expanded production from Canadian tar sands has dramatically increased the amount of pet coke entering the United States.

In March, Durbin, Duckworth, Kelly, and Senator Gary Peters (D-MI), introduced bicameral legislation that would address the concerns of petroleum coke and pave the way for federal environmental safety regulations on the fuel. The Petroleum Coke Transparency and Public Health Act of 2019 would require the federal government to study the potential health risks posed by petroleum coke exposure as well as the environmental impacts. On Earth Day in April, Duckworth co-founded the Senate’s first-ever Environmental Justice Caucus to call Congress’ attention to the many environmental justice issues affecting our nation along with Senators Booker and Tom Carper (D-DE).

The Environmental Justice Act of 2019 is also cosponsored by U.S. Senators Kamala Harris (D-CA), Richard Blumenthal (D-CT), Ed Markey (D-MA), Tom Udall (D-NM), Bernie Sanders (I-VT), Jeff Merkley (D-OR), Elizabeth Warren (D-MA), Tom Carper (D-DE), Brian Schatz (D-HI), and Chris Van Hollen (D-MD).

Specifically, the bill does the following:

Codifies and expands the 1994 Executive Order on Environmental Justice. Executive Order 12898 focused federal attention on environmental and human health impacts of federal actions on minority and low-income communities. The Environmental Justice Act of 2019 would codify this order into law, protecting it from being revoked by future Presidents. It would also expand the EO by improving the public's access to information from federal agencies charged with implementing the bill and creating more opportunities for the public to participate in the agencies' decision-making process.

Codifies the existing National Environmental Justice Advisory Council (NEJAC) and environmental justice grant programs. The bill ensures that NEJAC will continue to convene and provide critical input on environmental justice issues to federal agencies, and that several important environmental justice grant programs, including Environmental Justice Small Grants and CARE grants, will continue to be implemented under federal law. Since these grant programs and NEJAC have never been Congressionally authorized, they are susceptible to being discontinued by future Administrations.

Establishes requirements for federal agencies to address environmental justice. The bill requires agencies to implement and update annually a strategy to address negative environmental and health impacts on populations and communities of color, indigenous communities, and low income communities. In addition, the bill codifies CEQ (Council on Environmental Quality) guidance to assist federal agencies with their NEPA (National Environmental Policy Act) procedures so that environmental justice concerns are effectively identified and addressed. The bill also codifies existing EPA guidance to enhance EPA's consultations with Native American tribes in situations where tribal treaty rights may be affected by a proposed EPA action.

Requires consideration of cumulative impacts and persistent violations in federal or state permitting decisions under the Clean Water Act and the Clean Air Act. Currently, Clean Air Act and Clean Water Act permitting decisions do not take into account an area's cumulative pollutant levels when a permit for an individual facility is being issued or renewed. This can result in an exceedingly high concentration of polluting facilities in certain areas. The bill also requires permitting authorities to consider a facility's history of violations when deciding to issue or renew a permit.

Clarifies that communities impacted by events like the Flint water crisis may bring statutory claims for damages and common law claims in addition to requesting injunctive relief. Under current legal precedent, environmental justice communities are often prevented from bringing claims for damages. The bill would ensure that impacted communities can assert these claims.

Reinstates a private right of action for discriminatory practices under the Civil Rights Act. The bill overrules the Supreme Court decision in *Alexander v. Sandoval* and restores the right for individual citizens to bring actions under the Civil Rights Act against entities engaging in discriminatory practices that have a disparate impact. Currently citizens must rely upon federal agencies to bring such actions on their behalf.