



A legal pillar of environmental justice is now under attack

BY JAMES GOODWIN AND ROB VERCHICK, OPINION CONTRIBUTORS — 09/01/21 10:30 AM EDT
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A few weeks ago, the Army Corps of Engineers made a startling [announcement](#): It would give [Sharon Lavigne](#) and her neighbors in St. James Parish, La., a chance to tell their stories. The fact one of the world's largest chemical companies has [fought](#) for years to keep Lavigne quiet tells you how commanding her stories are. Those stories may stop this particular company from building a [multi-billion dollar chemical plant surrounding her neighborhood](#).

For this, we can thank a simple law, signed by President Nixon in 1970, called the [National Environmental Policy Act \(NEPA\)](#). Unlike other environmental laws, NEPA doesn't tell agencies what choices they must make — like where to erect a levee or whether to permit a plastics plant. But it does insist their choices be informed. So, before the Army Corps can approve a company's wetlands development permit it has to study whatever effects that chemical plant might have on the health of people in that community and on the properties they own.

One critical way that agencies like the Army Corp learn about such effects is by giving people — particularly local residents a chance to share their concerns in [their own words](#). You don't need a degree in law or chemistry to have a say, although sometimes it takes a dose of courage. It's not easy to speak or write publicly about having to cook with [tainted tap water](#), visiting with neighbors on a [foul-smelling porch](#), or dreading some [rare cancer](#) that's been associated with your zip code. As far as NEPA is concerned, those stories are just as important as ones that global chemical companies have to tell.

As Lavigne and her neighbors are now demonstrating, a decision-making process can be a powerful thing, particularly when it levels the playing field between ordinary people and the most powerful companies on earth. St. James Parish is located in an area known as "[Cancer Alley](#)" due to the more than 200 petrochemical facilities located there. Like other communities in the region, St. James is composed predominantly of the [working poor and people of color](#). When a chemical giant sought to build yet another polluting facility, Lavigne founded [RISE St. James](#) to help organize her neighbors in opposition. By recognizing the significance of their stories, NEPA is boosting these efforts.

Environmental justice advocates have long recognized that [procedural fairness](#) is just as important as substantive fairness. That's why they are concerned with not only how environmental benefits and harms are distributed, but also how those decisions are made. Given its attention to procedural fairness, NEPA breathes life into environmental justice principles, even though it preceded the formal [launch](#) of the environmental justice movement by [more than a decade](#).

Corporate polluters recognize the power of process, too. For decades, they have waged a [stealthy campaign](#) to rig key procedural rules in their favor. This strategy is important because it permits them to avoid the public criticism that would come from trying to weaken the substantive requirements in protective statutes like the Clean Water Act or the Federal Food, Drug, and Cosmetic Act.

Not surprisingly, NEPA is one of the [main targets](#) in this campaign. Corporate interests are using fast-moving infrastructure legislation as a vehicle for dismantling crucial [procedural safeguards](#) afforded by NEPA, wrongly claiming that the law stands in the way of a green energy grid, expanded mass transit, and other aspects of a green economy. The bipartisan infrastructure bill pending in the House of Representatives would, among other things, exempt many kinds of government actions from NEPA's requirements and make it harder for communities to hold agencies accountable when they fail to comply with the law.

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The cynical ploy is obvious: Cast two of the Biden administration's priorities — climate action and environmental justice — as incompatible and insist that one be sacrificed

President Joe Biden and supporters of good governance in Congress should reject this gambit. We can't tackle the climate crisis by throwing critical members of our team off the field. Community advocates like Sharon Lavigne and the other members of RISE St. James should have more opportunities to enter the decision-making process, not less. For more than a half-century, NEPA has helped us protect the environment and pursue social justice at the same time. It's time to build on that legacy, not undo it.

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