21 Years Later: Has Executive Order 12898

(entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations*)

worked?

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4030.0 Health Disparities and Environmental Justice - II

Presenter Disclosures

Elizabeth Ann Glass Geltman

The following personal financial relationships with commercial interests relevant to this presentation existed during the past 12 months:

No relationships to disclose.

Background

- Executive Order (EO) 12898
  - Entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations*
  - Promulgated by President Clinton 21 years ago.
    - 59 Fed. Reg. 7629 (February 16, 1994).
  - EO12898 mandates that
    - federal agencies
    - consider and reduce
    - actions that will have a disproportionately high and adverse health or environmental effect
    - on minority and low-income populations
    - that could negatively impact the environment and hence health.

Photo: http://www.eeoc.gov/eeoc/history/35th/milestones/2000.html

EO12898 Requirements

- EO12898 also requires
  - each agency
  - develop a strategy
  - for implementing environmental justice.

Photo: http://www.deq.state.or.us/about/envjustice.htm

Purpose of EO12898

- EO12898 has three purposes:
  - (1) to promote nondiscrimination in federal actions affecting health and the environment;
  - (2) to provide minority and low-income communities better access to environmental and health information; and
  - (3) to promote public participation in minority and low-income communities regarding federal action that could negatively impact the environment and hence health.

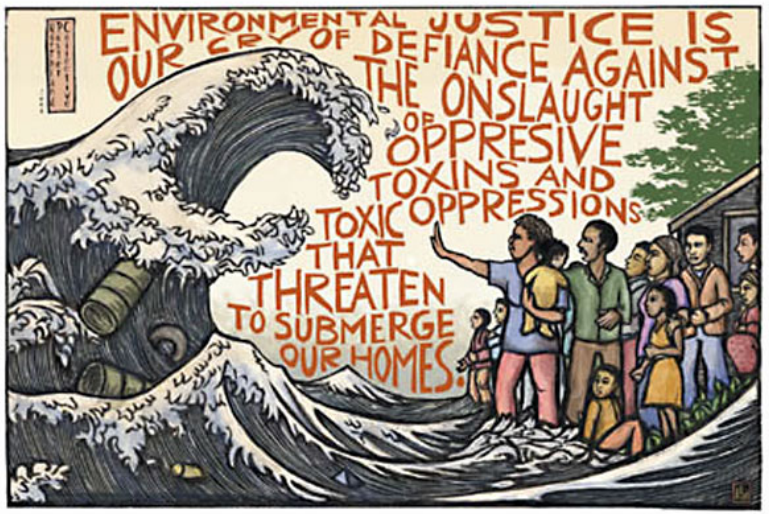
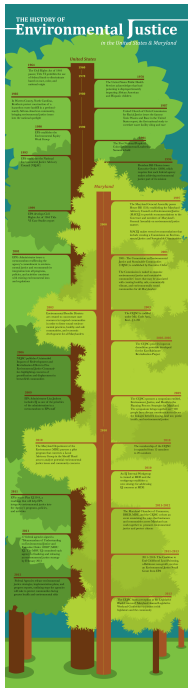


Illustration by: Ricardo Levins Morales
Source: http://www.columbia.edu/cu/EJ/casestudies_domestic.html

Research Question

- Examined the impact of EO 12898 on public health law (including environmental laws and regulation).



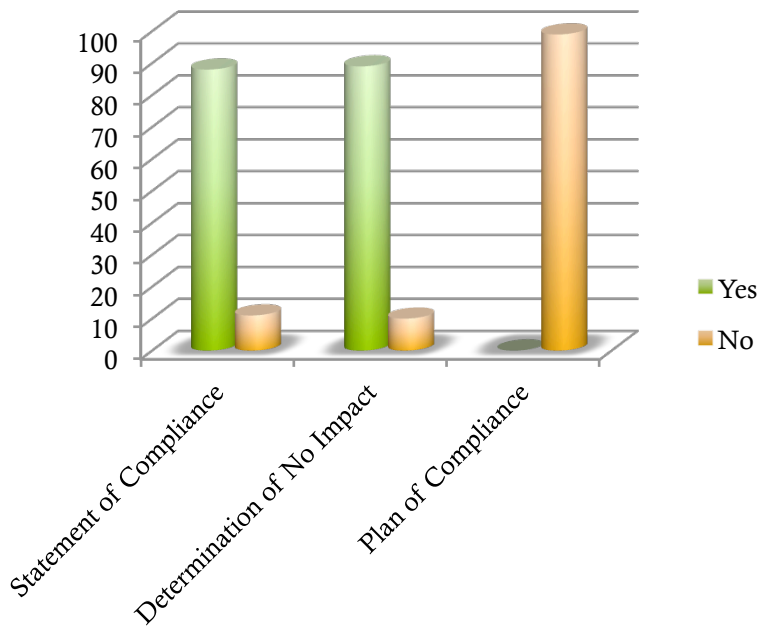
Source: https://www.behance.net/gallery/12157993/Environmental-Justice-Infographic

Methods: Study 1 Longitudinal

- We began by collecting documents referencing EO 12898 using LEXIS and http://regulations.gov
  - Random sampling across all agencies (from the promulgation of 12898 until February 1, 2014)
  - Reviewed every tenth document
    - against preset codes using LawAtlas WorkBench
- Coders crosschecked each other's work to determine consistency.

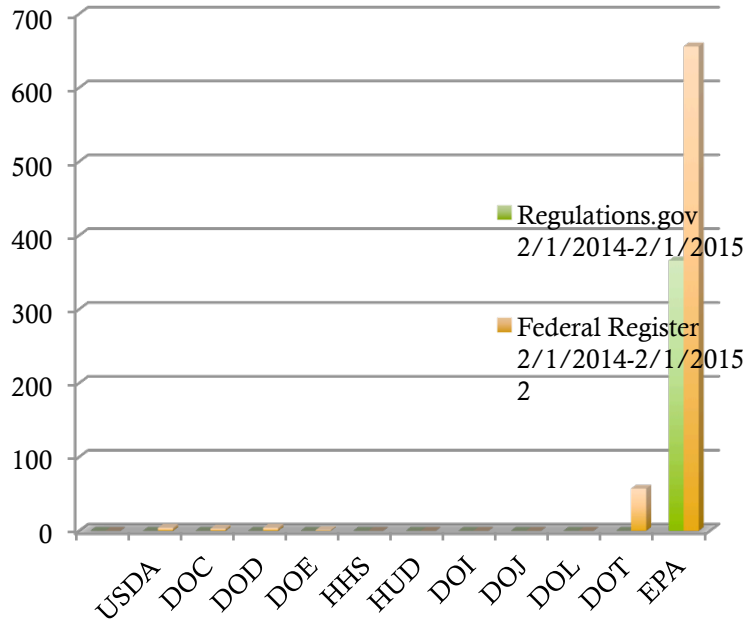
Longitudinal Findings

- Acknowledged the applicability of EO 12898
  - & considered environmental justice impacts before publishing the notice.
- Action would not have any impact, positive or negative, on environmental justice.
- No need for an EO 12898 compliance plan.



Methods: Study 2 Cross Sectional

- Evaluated the actions of
  - USDA -4
  - DOC- 3
  - DOD- 4
  - DOE -1
  - HHS- 0
  - HUD -0
  - DOI -0
  - DOJ -0
  - DOL -0
  - DOT -57
  - EPA - 366
  - from February 1, 2014 through February 1, 2015
  - to consider how EO13211 impacted specifically environmental regulation.
- Coders crosschecked each other's work to determine consistency

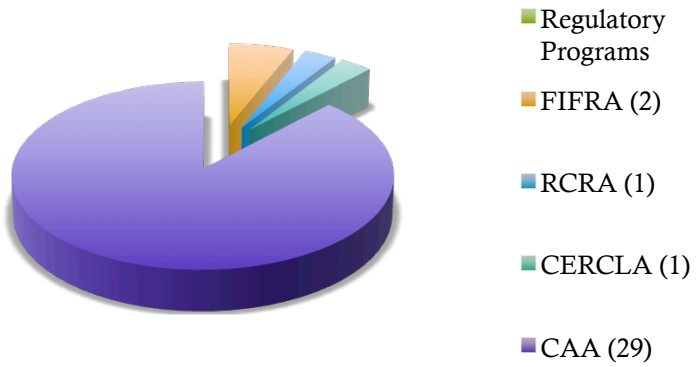


Little Activity Outside of EPA

- Between 2/1/14- 2/1/15, there was very little activity on EO 12898 for any federal agency except EPA.

EPA Actions Considering EO12898

- 366 EPA rulemakings between 2/1/14- 2/1/15
- Random sample of 37 EPA actions, EPA included a statement of compliance in all.
- The agency determined there would either be no negative impact or there would be a positive change in environmental conditions as a result of the action in 36 out of the 37 regulatory actions.



Conclusion

- There was no evidence that EO 128988 had altered proposed environmental or health regulations or significantly improved environmental injustices.
- Across the board, federal agencies treated EO 12898 as boilerplate needed to complete OMB review

President Barack Obama on the 20th Anniversary

- *"And recognizing these same communities may suffer disproportionately due to climate change, we must cut carbon emissions, develop more homegrown clean energy, and prepare for the impacts of a changing climate that we are already feeling across our country."*

  - *Presidential Proclamation – 20th Anniversary of Executive Order 12898 on Environmental Justice*, Office of the Press Secretary, (Feb. 10, 2014), http://www.whitehouse.gov/the-press-office/2014/02/10/presidential-proclamation-20th-anniversary-executive-order-12898-environ

Sample EPA Language

- **Executive Order 12898**
- *This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).*

Source: Significant New Use Rules on Certain Chemical Substances, http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPPT-2014-0908-0001

Update

- US EPA, Guidance on Considering Environmental Justice During the Development of Regulatory Actions (May 2015),
  - http://www3.epa.gov/environmentaljustice/resources/policy/considering-ej-in-rulemaking-guide-final.pdf
  - Recent Rulings
    - WOTUS Rule, 80 Fed. Reg. 37054 (June 29, 2015).
    - Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64662 (Oct. 23, 2015).

Sample EPA Language: SIP Approval

- Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:
  - Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
  - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et se.*);
  - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et se.*);
  - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
  - Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
  - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
  - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
  - Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because it does not involve technical standards; and
  - **Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).**
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

Source: http://www.regulations.gov/#!documentDetail;D=EPA-R10-OAR-2015-0259-0001

Compared to Study of Impact of EO13211

- **329348 Policy Surveillance on the Impact of Bush's Executive Order 13211 (Requiring Preparation of a Statement of Energy Effects as a Condition to Federal Action) on Environmental and Public Health Policy**
  https://apha.confex.com/apha/143am/webprogram/Paper329348.html

- Monday, November 2, 2015: 2:30 p.m. - 4:00 p.m.
  - **3372.0 Innovative Approaches to Evaluating Public Health Laws**

Photo: http://georgewbush-whitehouse.archives.gov/news/releases/2004/08/images/20040827-6_w9w8952jpg-515h.html