Advancing Net-Zero Goals to Achieve Environmental Justice

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The last two years have seen unprecedented levels of federal and state activity aimed at addressing historical environmental injustices prevalent in the United States. While the concept of environmental justice (EJ) as a national policy priority may seem relatively new, the recent activity is the result of decades of work by trailblazing community leaders and advocates, dating back to the Civil Rights Movement in the 1960s. Today, the U.S. Environmental Protection Agency (EPA) defines EJ as "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." EPA, *Environmental Justice*.

At the same time, over the last two years, corporate stakeholders—everyone from investors to customers and employees—have continued to demand measurable progress from environmental, social, and governance (ESG) programs. Traditionally, ESG efforts have revolved around readily quantifiable data for environmental, social, and governance factors. On the "E" side, this has translated to measuring and setting corresponding goals and targets for sustainability metrics such as climate and greenhouse gas emissions and renewable energy procurement, among other things. The goal of reaching net-zero emissions—adding no more greenhouse gas emissions to the atmosphere than the amount being taken out of the atmosphere—has become a common "E" goal. The "S" framework tends to focus on tracking corporate performance in issues of pay equity; health and safety; diversity, equity, and inclusion; human rights; and responsible sourcing. Recently, there have been increasingly frequent calls to bring corporate environmental justice performance into the "S" fold as well. *See, e.g.*, Beveridge & Diamond P.C., *Groundtruth: EJ & ESG, Intersected* (Mar. 17, 2022).

What has been less discussed, however, are the EJ implications of corporate ESG policies, programs, and goals, and whether and how companies should be considering EJ in crafting such policies, programs, and goals. Tracking EJ performance as a stand-alone ESG metric is clearly a wise corporate pursuit in its own right. However, it is also worth thinking about EJ as a foundational element in developing any ESG program. Given that consumer demand is the theoretical driving force behind many ESG programs' efforts to enact changes to corporate practices, it makes sense that corporations should frame their ESG goals to ensure that they reflect the needs and interests of *all* consumers, including disadvantaged and overburdened communities. And failing to factor in EJ as an upfront consideration in developing an ESG program can pose reputational and business risks, if and when ESG goals and targets are inadvertently pursued at the expense of disadvantaged communities. Additionally, shareholder advocacy groups are increasingly calling on large corporations to take actions to consider environmental justice in everyday operations. *See, e.g.*, Jessica DiNapoli, *Shareholder Advocacy Group Goes After "Environmental Racism*,*"* Reuters (Aug. 11, 2021). This includes publicly evaluating companies' environmental justice profiles and assigning ratings, as well as proposing specific shareholder actions. Early incorporation of environmental justice into ESG programs can help mitigate these risks.

This article explores the relationship and intersection of these environmental justice, ESG, and net-zero goals, and provides concrete recommendations for companies working to understand how ESG and EJ programs and policies fit together.

Inherently Intertwined

Today, most ESG programs focus on evaluating companies' environmental and social impacts by tracking corporate performance using climate change and sustainability–related metrics, with less of an emphasis on assessing EJ performance. While ESG reporting may be trending towards tracking EJ performance as its own ESG metric, sustainability and climate change–related metrics also have clear EJ implications.

Climate change is arguably the largest-scale environmental injustice in the world, with the countries with the smallest emission profiles—thus contributing the least to climate change—suffering some of its worst impacts. Press Release, United Nations Human Rights Office of the High Commissioner, The Global Climate Crisis Is a Racial Justice Crisis: UN Expert (Oct. 31, 2022). In the United States, it is well documented that disadvantaged communities—those that already experience disproportionate adverse environmental impacts—are and will continue to be disproportionately impacted by climate change. *See, e.g.*, U.S. Dep't of Hum. Health & Serv., *Climate Change & Health Equity, and Environmental Justice at HHS*.

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Establishing corporate programs and goals to reduce emissions and ameliorate climate change indisputably has potential to advance EJ. EJ communities, however, will not immediately feel the benefits of emission reductions programs—such programs are long-term investments. In the meantime, it is important for companies to consider how their commitments can impact EJ communities now, on both an international and domestic scale.

On an international scale, calls for universal net-zero goals have been criticized as thwarting equity and climate justice. *See, e.g.*, Emily Pontecorvo, *Why Developing Countries Say Net-Zero Is "Against Climate Justice*,*"* Grist (Oct. 25, 2021). In the context of international climate treaty negotiations, developing nations have argued that they should not be expected or forced to cut emissions—often at the expense of economic development—on the same timeline as developed nations, which have had the benefit of building their economies on the backs of fossil fuels. A significant focus of these negotiations has been whether and how much financial and technical support richer countries should provide poor nations to help cut emissions and adapt to and mitigate the consequences of climate change. *Id.*

While corporate net-zero goals are clearly distinct from global demands for mandated national net-zero targets, potential conflicts between corporate net-zero goals and EJ communities become clearer when applying a domestic lens to the issue, with fossil fuel–reliant communities representing the most obvious manifestation of this conflict. Shifting our energy sources away from fossil fuels will necessitate the elimination of fossil fuel jobs, with potential to destroy communities that rely on such industries. *See* Grace Chesmore et al., *The Crisis of US Coal Communities: Strategies for a Just Transition to Renewable Energy*, 18 J. Sci. Pol'y & Governance 2, June 2021.

Corporate net-zero policies can also have indirect EJ impacts—for instance, purchasing renewable energy and market offsets can also have unintended EJ consequences. For example, carbon offset programs often involve purchasing carbon credits from conservation projects around the world, many of which involve lands occupied by Indigenous communities, where Indigenous or local land rights and rights to govern and benefit from carbon rights have not been secured. *See* Oliver Gordon, *The Interwoven Fortunes of Carbon Markets and Indigenous Communities*, Energy Monitor (Nov. 16, 2022). If these rights are not secured, Indigenous communities can face serious consequences, including losing control of the land, facing eviction, and being unjustly excluded from the potential financial benefits of managing a carbon sink.

Additionally, while renewable energy projects are generally viewed as only benefiting EJ communities, not all renewable energy developments are created equal in terms of proactive engagement and inclusion of surrounding communities. *See, e.g.*, Aman Azhar, *An African American Community in Florida Blocked Two Proposed Solar Farms. Then the Florida Legislature Stepped In*, Inside Climate News (Jan. 2, 2022). Without adequate engagement and outreach, communities closest to renewable energy developments can end up being excluded from planning decisions for a project from which they may not necessarily reap direct benefits (e.g., clean energy access). Companies should vet renewable energy projects in which they are considering investing for successful and robust track records of seeking and incorporating community input.

Harmonizing Corporate ESG and EJ Goals

The best way to ensure that ESG goals and policies are consistent with EJ is to view all ESG goals and policies holistically, keeping in mind the potential global and domestic ramifications of actions taken to implement them. Concrete ways companies can harmonize their net-zero goals (and other ESG goals) with EJ goals include:

Supporting fossil fuel communities in a just transition. Although energy companies will feel this most directly, all companies can take actions to consider such communities' needs in transitioning away from fossil fuel infrastructure to ensure that no one is left behind. In terms of ESG goals and metrics, this could translate to developing policies and tracking efforts to support new, clean energy career trajectories alongside plans to decarbonize.

Ensuring equitable access to renewable energy. In developing emissions reductions targets, companies can also consider developing strategies and goals to ensure that EJ communities have equal access to clean energy and energy-efficient housing and transportation. This could include investing in and supporting the development of community solar projects, as well as collaborating with community organizations in developing new renewable energy projects to ensure access and equitable distribution of benefits.

Conducting due diligence in purchasing renewable energy projects and carbon offsets. Companies purchasing carbon offsets should conduct due diligence in selecting carbon offset projects to ensure that Indigenous and local communities are involved in the carbon offset contracting process and able to exercise free, prior, and informed consent in all climate-related actions and investments. *See, e.g.*, *The Interwoven Fortunes of Carbon Markets and Indigenous Communities*, Energy Monitor (Nov. 16, 2022). Companies should also conduct due diligence in purchasing market offsets and renewable energy, to ensure that the renewable energy projects they are supporting have equitably engaged with potentially impacted nearby EJ communities. Consider whether a project will disproportionately impact any nearby EJ community during construction and/or operations, and whether the developer has considered and adopted adequate mitigation strategies.

Develop and track EJ-specific performance metrics. Consider developing stand-alone metrics used to track corporate EJ performance. Alternatively, consider incorporating into broader net-zero metrics methods of measuring impacts of net-zero-supporting activities on EJ communities.

Holistically assessing ESG programs' EJ implications will pay off in the long run, in terms of both bottom-line and reputational impacts.

Integrating EJ into all elements of an ESG program development can help mitigate risk, enhance corporate reputation, and get ahead of potential future EJ-related reporting obligations. Holistically assessing ESG programs' EJ implications will pay off in the long run, in terms of both bottom-line and reputational impacts.

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