

# ENVIRONMENTAL JUSTICE

## THE FIGHT FOR ENVIRONMENTAL JUSTICE: NEW SKIRMISHES IN THE BATTLE AGAINST INJUSTICE

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Recently, the news media have *discovered* that minorities suffer disproportionately from environmental health hazards. The fact that minorities bear the brunt of environmental degradation is old news. What *is* new is media and government interest. This new interest in the environmental problems facing minority communities creates the potential for significantly accelerating the movement to improve the quality of life in minority communities. That movement, which is being spearheaded by community groups all across the nation, is appropriately referred to as the environmental justice movement.

### THE PROBLEM

Numerous studies have established that minority communities bear an unfair share of the environmental health hazards produced by our industrial society. For example, in 1987, the United Church of Christ's Commission for Racial Justice published a trail blazing study which concluded: "Three out of five Black and Hispanic Americans live in communities with uncontrolled toxic waste sites."<sup>1</sup> This means that over eight million Latinos live in communities with one or more uncontrolled toxic

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1. Commission for Racial Justice, United Church of Christ, *Toxic Wastes and Race in the United States: A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites* xiv (1987) [hereafter *Toxic Wastes*].

waste sites.<sup>2</sup> Significantly, the Commission concluded that the results of its "study suggest that the disproportionate numbers of racial and ethnic persons residing in communities with commercial hazardous waste facilities is not a random occurrence, but rather a consistent pattern. Statistical associations between race and the location of these facilities were stronger than any other association tested."<sup>3</sup> The Commission also found that race was consistently a more important factor than socio-economic status.<sup>4</sup> The Commission's study marked a turning point in the environmental justice movement because it gave national prominence to the issue.

Even a cursory review of other studies investigating the issue confirms the Commission's general finding that minorities are subject to a disproportionate share of the nation's environmental problems.<sup>5</sup> For example, in addition to the Commission's study, the only other "national studies which looked at both income and race found race to be more importantly related to the distribution of environmental hazards than income."<sup>6</sup> Similarly, minority communities are subject to greater air pollution than are white communities,<sup>7</sup> and as many as 300,000 of the nation's farmworkers (80% to 90% of whom are Latinos) suffer pesticide related illnesses each year.<sup>8</sup>

Last June, the Environmental Protection Agency (EPA) published the final version of a long-awaited report entitled, "Environmental Equity." The EPA report conceded that "[r]acial minority and low-income populations experience higher than average exposures to selected air pollutants, hazardous waste facilities, contaminated fish and agricultural pesticides in the workplace."<sup>9</sup> The EPA's concession is significant because it provides official recognition that a problem exists. On the other hand, the EPA did not make a definitive conclusion as to

2. *Id.* Locally, the commission found that, "Los Angeles has more Hispanics living in communities with uncontrolled toxic waste sites than any other metropolitan area in the U.S." WE SPEAK FOR OURSELVES: SOCIAL JUSTICE, RACE AND ENVIRONMENT 9 (Dana Alston ed., 1990) (summarizing the findings of *Toxic Wastes*, *supra* note 1).

3. *Toxic Wastes*, *supra* note 1, at 15.

4. *Id.*

5. Paul Mohai & Bunyan Bryant, *Race, Poverty and the Environment*, EPA J., Mar./Apr. 1992, at 6 (a concise discussion of the results of over a dozen studies).

6. *Id.* at 8.

7. 2 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *Environmental Equity: Reducing Risk For All Communities* 13 (1992) (citing Minorities and Air Pollution: A Preliminary Geo-Demographic Analysis, Presentation at the Socioeconomic Research Analysis Conference II (June 27-28, 1991)).

8. *Id.* at 16 (citing other studies).

9. *Id.* at 3.

whether race and ethnicity, independent from income, caused this unfair situation.<sup>10</sup>

In essence, during the administration of President George Bush, the EPA's approach to environmental justice issues has been to downplay the significance of race and ethnicity. Consistent with this approach, the EPA's report on environmental equity generally does not make any conclusion on whether there is adequate evidence to link the environmental health hazards faced by minority communities to racial and ethnic factors, as opposed to economic, factors.<sup>11</sup> For example, after summarizing the findings in the report of the United Church of Christ Commission on Racial Justice, the EPA concluded: "It is clear that more study of this issue is required to fully understand the associations of race, income, and facility location."<sup>12</sup> While more extensive research is unquestionably desirable, I believe that the EPA's report evidences an institutional reluctance to acknowledge that, disturbing as it may be, race and ethnicity play a role in the creation and exacerbation of the environmental problems faced by minority communities.<sup>13</sup>

#### THE CAUSE

Commentators have speculated over whether the disproportionate environmental burden borne by minorities results from bias against minorities or from socio-economic factors, such as income and political influence.<sup>14</sup> In the final analysis, the question of whether minority communities suffer disproportionately from environmental problems is as important as the question of why minority communities are plagued by environmental problems. Both the EPA and minority activists agree that the answer to the former question is indisputably "yes." Given this answer, the most relevant question remains: What can we do to secure environmental justice for minority communities?

One possible solution is to lobby or pressure the EPA to act boldly and promptly eliminate the disproportionate burden borne by minorities. One must believe that the incoming EPA

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10. The notable exception is in the area of lead poisoning. The EPA concluded that lead poisoning is definitely more common among African American children than their white counterparts. *Id.*

11. *Id.* at 11.

12. *Id.* at 15.

13. I am not alone in my criticism of the EPA's handling of this issue. See Marianne Lavelle, *Residents Want 'Justice,' The EPA Offers 'Equity'*, NAT'L L. J., Sept. 21, 1992, at S12; Michael Weisskopf, *EPA's 2 Voices on Pollution Risks to Minorities*, WASH. POST, Mar. 9, 1992, at A15.

14. See, e.g., Rachel D. Godsil, Note, *Remedying Environmental Racism*, 90 MICH. L. REV. 394, 399 (1991) (discussing various explanations for the disproportionate burden).

Administrator, Carol Browner, will accelerate the effort to make the EPA sensitive to the environmental justice problem.<sup>15</sup> On the other hand, even if Browner is committed to fighting environmental injustice, it is very unfortunate that, at least according to one recent study, the EPA historically may have exacerbated or perpetuated the racial and ethnic disparities.

#### THE EPA'S ENFORCEMENT RECORD

Recently, based on a computer-assisted study of census data, the EPA's civil court case docket, and its records, the National Law Journal concluded, "The federal government, in its cleanup of hazardous sites and its pursuit of polluters, favors white communities over minority communities . . ."<sup>16</sup> The specific conclusions of the report included:

(1) Under the Superfund "cleanup program, abandoned hazardous waste sites in minority areas take 20 percent longer to be placed on the national priority action list [for cleanups] than those in white areas";<sup>17</sup>

(2) The average penalties imposed for violations of the Resource Conservation and Recovery Act, commonly known as RCRA, "vary dramatically with the racial composition—but not the wealth—of the communities surrounding the waste sites";<sup>18</sup> and

(3) In general, the average penalties for violations of federal environmental laws were 46% higher in white communities than in minority communities.<sup>19</sup>

Although the authors of the National Law Journal study did not charge the EPA with intentional discrimination, the study demonstrates that a serious problem exists. It also supports the contention of minority activists that their communities receive less environmental protection than do white communities.

Therefore, notwithstanding the EPA's recent efforts to address the environmental justice issue and the recent inauguration of a more sympathetic administration in Washington, minority

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15. My optimism concerning the new presidential administration and EPA administrator has been borne out by subsequent events. For example, on July 27, 1993, the White House Office on Environmental Policy circulated a draft executive order that, among other things, would require all federal agencies to "administer, interpret and enforce all regulations and conduct all programs affecting health or the environment, including facility siting or permitting, in a manner that addresses the exposure of minority and low-income populations to environmental hazards." *Federal Agencies Would Have to Address Environmental Equity Under Draft Order*, 24 *Env't Rep.* 620 (Aug. 13, 1993).

16. Marianne Lavelle & Marcia Coyle, *Unequal Protection; The Racial Divide in Environmental Law*, NAT'L L. J., Sept. 21, 1992, at S1, S2.

17. *Id.*

18. *Id.*

19. *Id.*; see also *id.* at S4 (stating that "[o]nly in Superfund enforcement cases . . . did fines in minority areas come out higher than in white areas, by 9 percent").

communities would be unduly optimistic if they relied primarily on the EPA to protect their rights. Instead, as usual, minority groups will have to rely primarily on their own resources to protect their communities.<sup>20</sup>

To determine the best tactics for fighting environmental injustice, I suggest a systematic examination of community groups that have led the fight for environmental justice. For illustrative purposes, I will recount a few stories about the Mothers of East Los Angeles,<sup>21</sup> a group of Latinas who have deservedly received nationwide recognition for their unending battles to protect their community.<sup>22</sup>

### *The Mothers of East Los Angeles*

Los Angeles and its surrounding communities are beset by numerous environmental hazards, including air pollution, water pollution and hazardous waste problems. Recently, minority groups, who bear the brunt of the area's environmental problems, have been fighting back with a few notable successes. The Mothers of East Los Angeles, commonly known as "MELA" or the "mothers," have played a critical part in many of those successes. In many ways, MELA typifies the community groups leading the fight for environmental justice.

MELA was originally organized to fight the state of California's plan to build a new prison in East Los Angeles. The East Los Angeles area, which is 90% Latino, already has seven lockup facilities.<sup>23</sup> After seven years of MELA's tireless efforts, the prison project was killed. MELA's victory in the prison battle resulted from a combination of heroic efforts by the mothers and other community groups, help from sympathetic public officials such as Supervisor Gloria Molina and Congresswoman Lucille Roybal-Allard, and intense court battles.<sup>24</sup>

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20. Traditional environmental groups generally recognize that they have ignored or given insufficient attention to the environmental justice issue. However, even though they are trying to develop a greater sensitivity to minority concerns and have begun to devote significant resources to fighting environmental problems affecting minorities, many more changes are needed. See, e.g., Claudia MacLachlan, *Tension Underlies Rapport With Grassroots Groups*, NAT'L L. J., Sept. 21, 1992, at S10; John H. Adams, *The Mainstream Environmental Movement*, EPA J., Mar./Apr. 1992, at 25, 27.

21. I have become acquainted with MELA through pro bono work to help oppose hazardous waste projects.

22. See, e.g., Priscilla Painton, *Greening From The Roots Up*, TIME, Apr. 23, 1990, at 76; *Mothers' Group Fights Back In Los Angeles*, N.Y. TIMES, Dec. 5, 1989, at A32; Louis Sahagun, *The Mothers of East L.A. Transform Themselves and Their Neighborhood*, L.A. TIMES, Aug. 13, 1989, § 2, at 1.

23. Susan S. Reynolds, *Mothers In Arms*, L.A. STYLE, Jan. 1992, at 1.

24. Terry Kelly and Carl Sonne of the Los Angeles office of Rogers & Wells served as the attorneys for MELA and the coalition of groups opposing the prison.

In addition to successfully spearheading the fight to halt the East Los Angeles Prison project, MELA has successfully opposed a number of hazardous waste projects and continues to fight a number of other hazardous waste projects. Of course, as their name suggests, the mothers are especially concerned about any threats to the welfare of the children of East Los Angeles. In two of MELA's most notable victories, the mothers successfully defeated two hazardous waste projects using the same tactics of public demonstrations, help from public officials, and aggressive litigation.

In short, I believe that MELA's victories demonstrate that the most effective way to struggle for environmental justice is to fight a multi-front campaign by organizing the community, marshalling the support of public officials, and recruiting volunteer attorneys.

#### THE LEGAL COMMUNITY'S ROLE IN THE STRUGGLE FOR ENVIRONMENTAL JUSTICE

Journalists reporting on the environmental justice movement frequently inquire about the viability of using civil rights laws to protect minority communities from environmentally hazardous projects. While civil rights lawsuits may ultimately become the central focus of the movement, most of the courtroom successes in the struggle for environmental justice have been won by asserting traditional environmental laws, such as the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA).<sup>25</sup>

Indeed, anyone prosecuting a civil rights lawsuit to oppose an environmentally hazardous project has substantial hurdles to overcome. To quote one law student commentator: "Minorities overburdened by toxic waste facilities will find it difficult to obtain a judicial remedy under either of the principal mechanisms for remedying official racial discrimination: the Equal Protection Clause of the Fourteenth Amendment or Section 1983 of the Civil Rights Act of 1866."<sup>26</sup> Absent evidence of intentional discrimination, civil rights lawsuits against most projects will be difficult to win.<sup>27</sup>

Simply put, the greatest practical service lawyers can give to the environmental justice movement is to provide legal counsel-

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25. For example, MELA's attorneys relied much more heavily on CEQA and NEPA than on any civil rights theories.

26. Godsil, *supra* note 14, at 408.

27. Cf. Marcia Coyle, *Lawyers Try to Devise New Strategy*, NAT'L L. J., Sept. 21, 1992, at S8 (discussing the possibility that Title VI of the 1964 Civil Rights Act could be used to challenge projects receiving federal funds).

ling on the community's rights under traditional environmental laws, and legal advocacy to assist community groups in asserting those rights.<sup>28</sup> By giving minority groups access to meaningful legal services, lawyers can help empower community groups and help mitigate the gross disparity between the political clout of minority and majority communities.

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28. Cf. Luke W. Cole, Correspondence, *Remedies for Environmental Racism: A View From The Field*, 90 MICH. L. REV. 1991, 1997 (1992).