

CALIFORNIA RURAL LEGAL ASSISTANCE AND ENVIRONMENTAL JUSTICE*

RALPH SANTIAGO ABASCAL†

CRLA first became involved in environmental issues twenty-four years ago, with a lawsuit which resulted in the ban against the pesticide DDT. The plaintiffs were six nursing mothers, all farm workers. We wanted to bring light to the fact that DDT stays within the body for long periods of time, and as a consequence, when a woman is nursing a child, that child runs a high risk of being exposed to the harmful effects of DDT contamination.

CRLA discovered that farm workers throughout the state of California had a deep sensitivity about the dangers and hazards of pesticides. This discovery led CRLA not only to deal with pesticide issues, which had previously been handled primarily by private practitioners, but also to address statutory and regulatory pesticide policies which had a widespread impact.

Similarly, CRLA did and continues to work on water issues, specifically involving the price of water. The taxpayers of the United States almost entirely subsidize the water that large farmers use to grow many crops that eventually become surplus; surplus that we do not need. The taxpayer double subsidizes a type of no-fault farming. CRLA has struggled for a long time to increase the price of water. Why? The value of crops grown will increase as the price of water increases, thus reducing the volume of low-value crops grown and put into surplus. Low-value crops are typically cotton, wheat, and grains. High-value crops are grapes, orchard fruit, and vegetables, all of which are labor intensive. In other words, the higher the price of water, the more jobs there are for farm workers.

CRLA is currently representing a group in Kettleman City. Kettleman City is a small community of about 1500 people, 95% Latino, of which more than 50% are monolingual Spanish speakers. The problem arose when Chemical Waste Management, the largest waste management company in the country, decided to

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† General Counsel, California Rural Legal Assistance (CRLA).

place a hazardous waste incinerator in Kettleman City to burn 222 million pounds of hazardous waste annually. If it is constructed, the incinerator would be the first one in California.

There are three class-one toxic waste sites in California. There is one in Kettleman City which is 95% Latino; one in Buttonwillow, which is 52% Latino and 11% African American; and the third one is in Westmoreland, which is 72% Latino. Chemical Waste Management has twelve major facilities throughout the country. Among them, one is in Emelle, Alabama, which is 90% African-American; another is in Saugus, Illinois, which is 87% African-American; and one is in East St. Louis, which is 95% African-American. There is a clear pattern. This is not just about cheap land. If the state were to subsidize the cost of hazardous waste facilities so that the cost of siting is the same whether in Beverly Hills or Kettleman City, would this solve the problem? No, because another difference exists; the political power that exists in Beverly Hills is incomparable to that in Kettleman City.

For three years, we represented the group administratively before the Kings County Board of Supervisors. The Board, in a 3 to 1 vote, granted Chemical Waste Management its permit. Prior to our involvement, Kettleman City residents repeatedly requested Spanish translation of all the documents which were always in English. However, the residents were only met with much resistance.

CRLA filed a lawsuit under the California Environmental Quality Act (CEQA). This Act requires the preparation of an environmental impact report (EIR), which is supposed to inform a community of the consequences of any major action so that it can decide whether to oppose an action that might have environmental consequences. CRLA's environmental claim under the Act stated that the EIR prepared in this case was defective under the criteria set forth by Act. CRLA also argued that the EIR failed to inform the community because it was written solely in English and, therefore failed to fulfill the fundamental purpose of the Act—to inform people. We did a computerized analysis of the document's readability and found that four years of college were required to understand the EIR. We challenged the validity of the document in that it could not be understood by the average person who reads or speaks Spanish *or* English. CRLA's claims under the Act and the failure to inform argument were both successful. The County did not appeal the latter issue, but it

did appeal the environmental claims under CEQA. That appeal is presently ongoing.¹

The incidence of environmental risks are borne disproportionately by racial minorities and poor people.² The United States Constitution has provisions against discrimination on the basis of race or ethnicity.³ However, one of the mistakes that lawyers have made in the past few years is to bring environmental justice claims only under equal protection analysis. The law requires a showing of an intent to discriminate, and this is a difficult burden of proof to meet.⁴

Fundamentally, while the health risk of major environmental hazards concerns many people, it is stigma that concerns people the most. Even if the cost of land was equalized, hazardous waste projects would still be placed where they would confront the least resistance. The disproportionate placement of environmental hazards in minority communities because they lack political power is degrading; it is disempowering and disrespectful.

However, the ultimate objective should not be equal distribution of dangerous facilities. There are other ways to combat environmental issues. Take the conflict between jobs and the environment. Many environmental policies present potential job opportunities for poor people and minorities. For example, we see environmentalists on the streets of every major city. They are running around picking up bottles and cans, and keeping our sidewalks and streets clean. They do it for survival because they get a penny a can or two cents a bottle. More generally, recycling is a labor intensive alternative to the disposal of waste products.

When traditional environmentalists talk about dangers, they seem most concerned about dangers to the health interests of people, but there is rarely discussion about the impact on job opportunities. Herbicides, for example, take jobs from people who could cut the weeds. That is how the environmental poverty lawyer puts things in perspective. Furthermore, we may be better off choosing more labor intensive alternatives because they may also be less dangerous.

1. The appeal was dismissed on Sept. 9, 1993, when Chemical Waste Management withdrew its application to construct the incinerator.

2. See Luke W. Cole, *Empowerment As The Key To Environmental Protection: The Need For Environmental Poverty Law*, 19 *ECOLOGY L. Q.* 619, 621-34 (1993).

3. The 14th Amendment of the United States Constitution provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.

4. For a discussion of potential non-constitutional claims, see Richard J. Lazarus, *Pursuing "Environmental Justice": The Distributional Effects of Environmental Protection*, 87 *Nw. U. L. REV.* 787, 827-34 (1993); Naikang Tsao, Note, *Ameliorating Environmental Racism: A Citizens' Guide To Combatting The Discriminatory Siting of Toxic Waste Dumps*, 67 *N.Y.U.L. REV.* 366, 379-405 (1992).

My point is that we cannot concentrate solely on the negatives, on keeping waste sites out of our communities. We must look upon environmental issues as potential areas for increased job opportunities. The conflicts that exist are short term and they are capable of resolution. We should learn from past actions; on one occasion, the EPA banned a pesticide and then paid the producer \$150 million in public funds. The plant was a Superfund site so the government also paid for the clean up around the plant. Meanwhile, the workers who lost their jobs were paid nothing. While the Superfund paid for the dirt contaminated by the chemicals, the workers just lost jobs. *The dirt got a better deal.* Why is there not a Superfund for workers? Thus, when conflicts arise between the environment and employment, there is some way to compensate for the labor interests which will be adversely affected. Although this approach requires much creativity, given that it is unlikely that environmental hazards will be completely eliminated, we must look for positive results or alternatives in this area.