

Chapter 1

Environmental Justice in the Twenty-First Century*

The nation's environmental laws, regulations and policies are not applied uniformly—resulting in some individuals, neighborhoods and communities being exposed to elevated health risks. In 1992, staff writers from the *National Law Journal* uncovered glaring inequities in the way the federal EPA enforces its laws. The authors write:

There is a racial divide in the way the U.S. government cleans up toxic waste sites and punishes polluters. White communities see faster action, better results and stiffer penalties than communities where blacks, Hispanics and other minorities live. This unequal protection often occurs whether the community is wealthy or poor.¹

These findings suggest that unequal protection is placing communities of color at special risk. The *National Law Journal* study supplements the findings of earlier studies and reinforces what many grassroots leaders have been saying all along: Not only are people of color differentially impacted by industrial pollution, they also can expect different treatment from the government. Environmental decision making operates at the juncture of science, economics, politics, special interests and ethics.

This chapter examines how the dominant environmental protection model places communities of color at special risk. The dominant paradigm reinforces instead of challenges the stratification of people (race, ethnicity, status, power, etc.), place (central cities, suburbs, rural areas, unincorporated areas, Native American reservations, etc.) and work (i.e., office workers are afforded greater protection than farm workers). The dominant paradigm exists to manage, regulate and distribute risks. As a result, the current system has institutionalized unequal enforcement, traded human health for profit, placed the burden of proof on the "victims" and not the polluting industry, legitimated human exposure to harmful chemicals, pesticides, and hazardous substances, promoted "risky" technologies such as incinerators, exploited the vulnerability of economically and politically disenfranchised communities, subsidized ecological destruction, created an industry around risk assessment, delayed cleanup actions and failed to develop pollution prevention as the overarching and dominant strategy.²

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Toward an Environmental Justice Framework

The question of environmental justice is not anchored in a debate about whether or not decision makers should tinker with risk management. The framework seeks to prevent environmental threats before they occur.³ The environmental justice framework incorporates other social movements that seek to eliminate harmful practices (discrimination harms the victim) in housing, land use, industrial planning, healthcare and sanitation services. The impact of redlining, economic disinvestment, infrastructure decline, deteriorating housing, lead poisoning, industrial pollution, poverty and unemployment are not unrelated problems if one lives in an urban ghetto or barrio, rural hamlet or reservation.

The environmental justice framework attempts to uncover the underlying assumptions that may contribute to and produce unequal protection. This framework brings to the surface the ethical and political questions of "who gets what, why and how much." Some general characteristics of the framework include:

The environmental justice framework incorporates the principle of the "right" of all individuals to be protected from environmental degradation. The precedents for this framework are the Civil Rights Act of

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1964, Fair Housing Act of 1968 and as amended in 1988, and Voting Rights Act of 1965.

The environmental justice framework adopts a public health model of prevention (elimination of the threat before harm occurs) as the preferred strategy. Impacted communities should not have to wait until causation or conclusive "proof" is established before preventive action is taken. For example, the framework offers a solution to the lead problem by shifting the primary focus from *treatment* (after children have been poisoned) to *prevention* (elimination of the threat via abating lead in houses).

The environmental justice framework rests on the Precautionary Principle for protecting workers, communities and ecosystems. The Precautionary Principle asks, "How little harm is possible" rather than "How much harm is allowable." The Precautionary Principle demands that decision makers set goals for safe environments, examine all available alternatives for achieving the goals, and places the burden of proof of safety on those who are proposing to use inherently dangerous and "risky" technologies.⁴ In summary, the Precautionary Principle states (1) if you have reasonable suspicion of harm and (2) you have scientific uncertainty, then (3) you have a duty to take action to prevent harm by (4) shifting the burden of proof of safety onto those people whose activities raised the suspicion of harm in the first place, and evaluating the available alternatives to find the least harmful way, using a decision-making process that is open, informed and democratic and that includes the people who will be affected by the decision. In 2003, San Francisco became the first city in the country to adopt the Precautionary Principle.⁵

The environmental justice framework shifts the burden of proof to polluters/dischargers who do harm, discriminate or who do not give equal protection to racial and ethnic minorities and other "protected" classes. Under the current system, individuals who challenge polluters must "prove" that they have been harmed, discriminated against or disproportionately impacted. Few impacted communities have the resources to hire lawyers, expert witnesses and doctors needed to sustain such a challenge.

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The environmental justice framework would require the parties that are applying for operating permits (landfills, incinerators, smelters, refineries, chemical plants, etc.) to "prove" that their operations are not harmful to human health, will not disproportionately impact racial and ethnic minorities and other protected groups and are nondiscriminatory.

The environmental justice framework redresses disproportionate impact through "targeted" action and resources. This strategy would target resources where environmental and health problems are greatest (as determined by some ranking scheme but not limited to risk assessment). Reliance solely on "objective" science disguises the exploitative way the polluting industries have operated in some communities and condones a passive acceptance of the status quo. Human *values* are involved in determining *which* geographic areas are worth public investments.⁶



St. James residents block a Shintech PVC plant, 1998 (Photo by EJRC)

Impetus for Paradigm Shift

The mission of the federal EPA was never designed to address environmental policies and practices that result in unfair, unjust and inequitable outcomes. EPA is a regulatory agency—not a health agency. EPA and other government officials are not likely to ask the questions that go to the heart of environmental injustice: What groups are most affected? Why are they affected? Who did it? What can be done to remedy the problem? How can communities be justly compensated and reparations paid to individuals harmed by

industry and government actions? How can the problem be prevented? Vulnerable communities, populations and individuals often fall between the regulatory cracks. They are in many ways “invisible” communities. The environmental justice movement served to make these disenfranchised communities visible and vocal.

The environmental justice movement has changed the way scientists, researchers, policymakers, educators and government officials go about their daily work. This “bottom-up” movement has redefined environment to include where people live, work, play and go to school, and it has renewed calls for aligning industrial production with the goal of maintaining the integrity of ecological life support systems. The impetus for changing the dominant environmental protection paradigm did not come from within regulatory agencies, the polluting industry, academia or the “industry” that has been built around risk management. The environmental justice movement is led by a loose alliance of grassroots and national environmental and civil rights leaders who question the foundation of the current environmental protection paradigm. They view environmental justice as a basic civil right and human right.

Despite significant improvements in environmental protection over the past several decades, millions of Americans continue to live, work, play and go to school in unsafe and unhealthy physical environments.⁷ Over the past three decades, the U.S. EPA has not always recognized that many of our government and industry practices (whether intended or unintended) have adverse impacts on poor people and people of color. Discrimination is a fact of life in America. Racial discrimination is unjust, unfair and is also illegal. Nevertheless, discrimination continues to deny millions of Americans their basic civil and human rights.

The EPA is mandated to enforce the nation’s environmental laws and regulations equally across the board. It is also required to protect all Americans from health threats that may result from locally undesirable land uses or LULUs—such as landfills, incinerators, chemical plants, refineries and other polluting facilities. Equity may mean different things to different people. Equity is distilled into three broad categories: procedural, geographic and social equity.

Procedural equity refers to the “fairness” question: the extent that governing rules, regulations, evaluation criteria and enforcement are applied uniformly across the board and in a nondiscriminatory way. Unequal protection might result from nonscientific and undemocratic decisions, exclusionary practices, public hearings held in remote locations and at inconvenient times, and use of English-only material as the language to communicate and conduct hearings for non-English-speaking publics.

Geographic equity refers to location and spatial configuration of communities and their proximity to environmental hazards and noxious facilities such as landfills, incinerators, sewage treatment plants, lead smelters, and refineries. For example, unequal protection may result from land-use decisions that determine the location of residential amenities and disamenities. Unincorporated, poor and communities of color often suffer a “triple” vulnerability of noxious facility siting.

Social equity assesses the role of sociological factors (race, ethnicity, class, culture, life styles, political power, etc.) on environmental decision making. Poor people and people of color often work in the most dangerous jobs, live in the most polluted neighborhoods, and their children are exposed to all kinds of environmental toxins on the playgrounds and in their homes.

Government Response to Environmental Injustice

For decades, grassroots activists have been convinced that waiting for the government to act has endangered the health and welfare of their communities. Unlike the federal EPA, communities of color did not first discover environmental inequities in the 1990s. The federal EPA only took action on environmental justice concerns in 1990 after extensive prodding from grassroots environmental justice activists, educators and academics.⁸

People of color have known about and have been living with inequitable environmental quality for decades—most without the protection of the federal, state and local governmental agencies.⁹

Environmental justice advocates continue to challenge the current environmental protection apparatus and offer their own framework for addressing environmental racism, unequal protection, health disparities and unsustainable development in the United States and around the world.¹⁰

In 1990, after receiving a letter from the "Michigan Coalition," EPA administrator William Reilly established the Environmental Equity Work Group and set up a series of meetings on Environmental Justice with grassroots leaders. In 1991, the Agency for Toxic Substances and Disease Registry convened the National Minority Environmental Health Conference in Atlanta, Georgia. A host of research scientists presented facts and figures detailing elevated environmental health risks experienced by people of color. As it turned out, having the facts was not sufficient to get government to act—especially when the problem disproportionately affects poor people and people of color.

After mounting scientific evidence and much prodding from environmental justice advocates, the EPA created the Office of Environmental Justice in 1992, and implemented a new organizational infrastructure to integrate environmental justice into its policies, programs and activities. The agency produced its own study, *Environmental Equity: Reducing Risks for All Communities*, finally acknowledging the fact that some populations shouldered greater environmental health risks than others.¹¹ The report found "clear differences between racial groups in terms of disease and death rates; racial 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; and great opportunities exist for EPA and other government agencies to improve communication about environmental problems with members of low-income and racial minority groups."

In September 1993, EPA established the National Environmental Justice Advisory Council (NEJAC). The NEJAC represented the first time that representatives of community, academia, industry, environmental, indigenous, as well as state/local/tribal government groups, were brought together in an effort to create a dialogue that can define and "reinvent" solutions to environmental justice problems.

In response to growing public concern and mounting scientific evidence, President William Clinton on February 11, 1994 (the second day of a national Symposium on Health Research Needs to Ensure Environmental Justice) issued Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." This Order attempts to address environmental injustice within existing federal laws and regulations.



*President Clinton signs Executive Order 12898, Washington, DC, 1994
(Photo by White House Press Office)*

Executive Order 12898 reinforces the four-decade-old Civil Rights Act of 1964, Title VI, which prohibits discriminatory practices in programs receiving federal funds. The Order also focuses the spotlight back on the National Environmental Policy Act (NEPA), a law that set policy goals for the protection, maintenance and enhancement of the environment. NEPA's goal is to ensure for all Americans a safe, healthful, productive and aesthetically and culturally pleasing environment. NEPA requires federal agencies to prepare a detailed statement on the environmental effects of proposed federal actions that significantly affect the quality of human health.

The Executive Order called for improved methodologies for assessing and mitigating impacts, health effects from multiple and cumulative exposure, collection of data on low-income and minority populations who may be disproportionately at risk, and impacts on subsistence fishers and consumers of wild game. It also

encourages participation of the impacted populations in the various phases of assessing impacts—including scoping, data gathering, alternatives, analysis, mitigation and monitoring.

The Executive Order focused on "subsistence" hunters and fishers. Everybody does not buy fish at the supermarket. There are many people who are subsistence fishers, who fish for protein, who basically subsidize their budgets and their diets by fishing from rivers, streams and lakes that are polluted by mercury, PCBs, flame retardants and other bio-accumulative persistent toxins, byproducts of industrial production. Likewise, many people of color, such as Alaskan Natives, rely heavily on wild game to meet their nutritional needs and maintain cultural traditions. These subpopulations may be underprotected when basic assumptions are made using the dominant risk management paradigm.

It is ironic that environmental justice at the U.S. EPA was initiated under the George H. W. Bush Administration. However, environmental justice faltered and became invisible at the EPA under the George W. Bush Administration. This fact is made crystal clear by a string of government reports that give EPA failing grades and the agency's attempts to dismantle the environmental justice apparatus, including the EJ Executive Order 12898.



Toxic drums are spread across the pristine Alaskan landscape, Savoonga, Alaska, 1998 (Photo by Alaska Community Action on Toxics)

The EPA has a spotty record protecting environmental civil rights under the statutory authority of Title VI of the Civil Rights Act, which prohibits discrimination on the bases or race, color and national origin. Federal agencies and recipients of federal assistance, including state environmental permitting programs, must ensure compliance with Title VI implementing regulations, and they must ensure prompt and fair resolution of discrimination complaints. In 1998, the EPA's Office of Civil Rights (OCR) issued its *Interim Guidance for Investigating Title VI Civil Rights Complaints*, which provided a framework for processing environmental discrimination complaints.

testament of how their administrative complaints had languished for years.¹² By 2001, more than 100 complaints had been filed, yet few had been resolved, often without adequate investigation, such as the *Select Steel* case in Michigan. Furthermore, no rulings were in favor of the complainant, in what amounts to a "conscious policy of non-enforcement."¹³ Although the EPA issued its final guidance in March 2006, it has yet to develop legally binding standards for what constitutes an adverse disparate impact and continues to abrogate its enforcement responsibility to oversee discriminatory practices of state environmental agencies in a credible manner.

In August 2000, 125 community groups, environmental justice organizations, coalitions, networks, individuals and an Indian nation, in commenting on a revision to the guidance, provided

In January and February 2003, the U.S. Commission on Civil Rights (USCCR) held hearings on environmental justice. Experts presented evidence of environmental inequities in communities of color, including disproportionate incidences of environmentally related disease, lead paint in homes, hazardous waste sites, toxic playgrounds and schools located near Superfund sites and facilities that release toxic chemicals. In its 2003 report, *Not in My Backyard: Executive Order and Title VI as Tools for Achieving Environmental Justice*, the USCCR concluded that "Minority and low-income communities are most often exposed to multiple pollutants and from multiple sources. . . . There is no presumption of adverse health risk from multiple exposures, and no policy on cumulative risk assessment that considers the roles of social, economic and behavioral factors when assessing risk."¹⁴ The report was distributed to members of Congress and President Bush.

A March 2004 Office of Inspector General (OIG) report, *EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice*, summed up the treatment of environmental justice under the Bush administration. After a decade, EPA "has not developed a clear vision or a comprehensive strategic plan, and has not established values, goals, expectations and performance measurements" for integrating environmental justice into its day-to-day operations.¹⁵

A July 2005 U.S. Government Accountability Office report, *Environmental Justice: EPA Should Devote More Attention to Environmental Justice When Developing Clean Air Rules*, also criticized EPA for its handling of environmental justice issues when drafting clean air rules.¹⁶ In July 2005, the EPA was met with a firestorm of public resistance when it proposed dropping race from its draft Environmental Justice Strategic Plan as a factor in identifying and prioritizing populations that may be disadvantaged by the agency's policies.¹⁷

On September 18, 2006, the EPA's Office of Inspector General (IG) issued another study, *EPA Needs to Conduct Environmental Reviews of Its Program, Policies and Activities*, chastising the agency for falling down on the job when it comes to implementing environmental justice.¹⁸ The IG study may be new but its findings are not. The IG recommended and EPA accepted the following recommendations:

- *Require the Agency's program and regional offices to identify which programs, policies and activities need environmental justice reviews and require these offices to establish a plan to complete the necessary reviews.*
- *Ensure that environmental justice reviews determine whether the programs, policies and activities may have a disproportionately high and adverse health or environmental impact on minority and low-income populations.*
- *Require each program and regional office to develop, with the assistance of the Office of Environmental Justice, specific environmental justice review guidance, which includes protocols, a framework or directions for conducting environmental justice reviews.*
- *Designate a responsible office to (a) compile the results of environmental justice reviews, and (b) recommend appropriate actions to review findings and make recommendations to the decision-making office's senior leadership.*¹⁹

In recent years, the EPA has been hostile to environmental justice and environmental justice principles, Environmental justice advocates have always defended the rights of vulnerable populations, especially the rights of children. In late 2004, the EPA announced the launching of a study intended to learn more about how young children come into contact with household pesticides and other chemicals in their homes. According to the EPA's press release,²⁰ the study, called the Children's Environmental Exposure Research Study (CHEERS), would have involved following 60 children, ages 0 to 3 years, for two years. Funding for the project (\$2.1 million) was provided by the American Chemistry Council, which represents 135 companies including pesticide manufacturers.²¹

Many environmental justice and children health groups grew concerned as details of the study were released. The researchers were planning to use six Duval county health department clinics and three local hospitals as the sites of participant recruitment. According to the study, the six health clinics "primarily serve individuals with lower incomes" and the three hospitals report 51% of all births were to non-white mothers, with 62% of all mothers having only received an elementary or secondary education.²²

On April 8, 2005, under pressure from Sen. Barbara Boxer, D-California, and Sen. Bill Nelson, D-Florida, EPA's Acting Administrator Stephen L. Johnson cancelled the Children's Health Environmental Exposure Research Study.²³ The democratic senators said they would block Senate confirmation of the agency's new head if the pesticide study was not cancelled. In June 2006, EPA announced major changes to the Environmental Justice Strategic Plan. This proposal outraged EJ leaders from coast to coast. The EPA's 2006 Draft Environmental Justice Strategic Plan was described as a "giant step backward."²⁴ The changes

would clearly allow EPA to shirk its responsibility for addressing environmental justice problems in minority populations and low-income populations and divert resources away from implementing Executive Order 12898—actions that run counter to more than a decade of policy decisions and recent environmental justice legislation from the U.S. Congress.²⁵

In the Fall 2005, EPA announced plans to change the Toxic Release Inventory (TRI) program. According to many environmental advocates, the new program would severely weaken the program, deny the public information and set back EPA efforts to confront the most serious public issues related to toxic chemicals.²⁶ In July 2006, EPA's Science Advisory Board Committee opposed these changes in a harsh letter to EPA administrator Stephen L. Johnson. In December 2006, the EPA announced final rules that undermine this critical program by eliminating detailed reports from more than 5,000 facilities that release up to 2,000 pounds of chemicals every year; and eliminating detailed reports from nearly 2,000 facilities that manage up to 500 pounds of chemicals known to pose some of the worst threats to human health, including lead and mercury. Some of the extraneous changes include a reporting requirement of every two years (instead of the more adequate yearly reporting currently in place), raising the threshold amount required to report toxic releases, the elimination of the requirement that forced industry to report more detailed reports and the weakening of other important programs at EPA because of the lack of relevant information previously generated with TRI data.²⁷ Since 1987, EPA has collected and stored TRI information in a central database that is accessible on the Internet. It has been used by thousands of neighbors, journalists and local officials to evaluate the environmental performance of nearby facilities. The program is widely credited with reducing releases of program chemicals by 65 percent.

Although EPA's library services remain high, EPA's libraries have been receiving less funding every year for the past four or five years.²⁸ In President Bush's proposed 2006 budget, the U.S. Environmental Protection Agency was slated to shut down its network of libraries that serve its own scientists as well as the public.²⁹ In addition to the libraries, the agency will shut down its electronic catalog which tracks tens of thousands of unique documents and research studies that are available nowhere else.

Under President Bush's plan, \$2 million of a total agency library budget of \$2.5 million will be lost, including the entire \$500,000 budget for the EPA Headquarters library and its electronic catalog that makes it possible to search for documents through the entire EPA library network. Established in 1971, the EPA's library program offers a wide range of information on environmental protection and management, basic sciences such as biology and chemistry, applied sciences such as engineering and toxicology, and topics featured in legislative mandates, such as hazardous waste, drinking water, pollution prevention and toxic substances. The EPA operates a network of 28 libraries from its Washington, D.C., headquarters and 10 regional offices nationwide.

The size of the cuts will force the Headquarters library and most of the regional libraries to shut their doors and cease operations. Each year, the EPA libraries handle more than 134,000 research requests from its own scientific and enforcement staff, house and catalog an estimated 50,000 "unique" documents that are available nowhere else, operate public reading rooms and provide the public with access to EPA databases.

In the fall of 2006, EPA continued to dismantle long-standing environmental justice initiatives around the country. The EPA's Northwest regional office announced the elimination of the local environmental justice office. The proposal calls for the reassigning of members of its environmental-justice program to new divisions and eliminating its director's position, according to government officials.³⁰ According to EPA officials the changes are part of ongoing staff cuts and reorganization at the agency, but they will not diminish the importance of environmental justice or civil rights issues.³¹

As in previous budgets, the Bush Administration FY08 budget recommends a 28.4 percent cut to the budget of EPA's Office of Environmental Justice (recommending \$4.58 million which is down from \$6.34 million enacted in the FY 06 budget and FY07 continuing resolution).³² The EPA has indicated the cuts will result in fewer grants for communities. The agency has not done an analysis of the impact this funding shortfall will have on environmental justice communities.

Conclusion

Clearly, the environmental justice movement over the last two decades has made a difference in the lives of people and communities that are overburdened with environmental pollution. This progress did not come easy. Nor has it been easy fending off attacks and proposals that would dismantle or weaken the hard fought gains made by individuals and groups that put their lives on the frontline.

Although environmental justice has now become a household word, the nation is still a long way from achieving it for all communities. Polluting industries still follow the path of least resistance—whether at home or abroad. For many industries, it is a “race to the bottom,” where land, labor and lives are cheap. It’s about profits and the “bottom line.” Environmental “sacrifice zones” are seen as the price of doing business. Environmental justice activists and grassroots community leaders have served notice to polluting industries and government alike that their health and safety are not for sale at any price. These “frontline warriors” have drawn a line in the dirt and have vowed to protect their homes, playgrounds, neighborhoods and communities against toxic assaults. They refuse to accept their communities becoming environmental “sacrifice zones.”

They are demanding that U.S. EPA end its attempts to roll back environmental justice and take aggressive steps to implement the EJ Executive Order 12898, provide targeted enforcement where the needs are the greatest and where unequal protection place low-income and people of color populations at special risk. They are also demanding ecologically sustainable and economically just redevelopment with clean production technologies and living wages for local residents as essential ingredients to protection of environmental civil rights and basic human rights.

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