

Has the Environmental Justice Movement Come of Age?

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BLENDING civil rights and environmental advocacy, the environmental justice movement has come of age.

The movement seeks equitable policy and enforcement of environmental laws to protect persons of color as well as the socioeconomically disadvantaged from disproportionate effects of pollution and other environmental harms.



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It emerged from research studies in the past fifteen years by Professor Robert Bullard of Clark University in Atlanta, the U.S. General Accounting Office and the United Church of Christ, which documented a strong correlation between demographics and the location of environmental hazards.

With a case pending before the United States Supreme Court and many high-profile local developments, environmental justice is more than a topic of academic inquiry. Environmental justice has come to the fore in the recent furor over LAUSD's construction of Jefferson Middle School in South Los Angeles on a contaminated industrial site. Moreover, large urban industrial development such as the Alameda Corri-

dor, ECIS Sewer Line and MTA rail construction surely will raise environmental justice concerns and spur community organizing efforts. Land-use planners and policymakers must be prepared.

Federal Law and Policy

Next term, in *Chester Residents v. Seif*, 132 F.3d 935 (3d Cir. 1997), cert. granted, 118 S.Ct. 2296 (1998), the United States Supreme Court will review an environmental justice case based on Title VI of the federal Civil Rights Act of 1964. Title VI prohibits federal agencies from funding programs or projects that discriminate on

Title VI is a good avenue for the environmental justice plaintiff because a violation can be established based on unjustified discriminatory effect or disparate impact on minority communities. The plaintiff need not show a specific intent to discriminate.

In *Chester Residents*, the Third Circuit Court of Appeals allowed a Title VI suit to proceed against the Pennsylvania EPA relating to the permitting of a federally-funded soil remediation facility in a predominantly African-American community. Specifically, a group of residents in the City of Chester (see <http://www.penweb.org/chester>) alleged that the permitting of the facility violated the racial discrimination provisions of Title VI and accompanying federal EPA regulations. The group charged that the Pennsylvania EPA had violated Title VI rules by granting permits for five facilities in the City of Chester—which is 65% African American—and only two in the rest of the county, which is only 6.2% African American.

The Third Circuit Court, which presides in Philadelphia, held that the group may maintain a private cause of action in civil court based on violations of EPA's Title VI implementing regulations. The Court's decision was a major victory for environmental justice advocates throughout the United States. The case validated private plaintiffs' use of Title VI to file suits in civil courts concerning industrial facilities that create disproportionate environmental impacts on minority communities. Given data that suggest a strong correlation between the siting of polluting facilities in minority and low-income communities, the ruling could have nationwide effects on industrial growth as well as urban planning and policy-making.

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the basis of race, sex, or national origin. It covers a broad range of activities, including "programs for schools, highways, hospital construction, farm price supports, depressed areas, housing, urban renewal, vocational education ... and public health."

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Given the significance of the ruling, the United States Supreme Court granted review in June 1998. Most commentators believe that the Court's grant of review indicates that reversal is imminent. Oral arguments in the case have not yet been calendared, but the Court will likely issue a decision next year.

While reversal of *Chester Residents* would be a harsh blow to environmental justice advocates, there are many other legal and community-organizing strategies they can pursue.

In addition to a civil course, advocates can pursue administrative remedies with the federal EPA on Title VI grounds. Individuals may file complaints with the EPA alleging non-compliance with EPA's Title VI regulations. EPA investigates such complaints, and if violations are found, can terminate the violator's EPA funding. Thus far, 49 Title VI administrative complaints have been filed with EPA. Twenty-one remain under investigation or are otherwise unresolved.

The EPA recently promulgated draft guidance on how it will adjudicate administrative claims relating to its Title VI implementing regulations. Business entities and municipalities have hotly contested the draft guidance, citing negative impacts upon economic growth. In response, the EPA has invited additional public comment.

An additional development on the federal level is President Clinton's Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," issued in 1994.

The Order, directed to all federal agencies, declares: "Each federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or

environmental effects of its programs ... on minority populations and low income populations in the United States."

The Order directs each federal agency to create an environmental justice strategy and creates an Interagency Workgroup on Environmental Justice. However, the Order denies a private right of action to enforce its provisions. Thus, the direct utility of the Order is limited. Nonetheless, it has caused many federal agencies, including the De-

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partments of Defense, Energy, Transportation, and Housing and Urban Development, to take action by promulgating their own environmental justice strategies.

Regional Advocacy Tools

Los Angeles is a region of diverse population and large income disparities, and this creates a fertile ground for environmental justice concerns. Several studies of Los Angeles communities have found

that the burden of pollution and polluting industries correlates with the ethnic and socioeconomic demographics of the residents.

One major regional development is the South Coast Air Quality Management District's (SCAQMD) Environmental Justice Initiative. The SCAQMD is the comprehensive air pollution control agency for the four counties comprising the greater Los Angeles metropolitan area.

William Burke, new Director of the SCAQMD, shepherded the adoption of the 10-point Initiative in late 1997. Among other things, the Initiative calls for town hall meetings, monitoring of toxic air hot spots in minority communities, community response teams and creation of an environmental justice task force. Citizens' groups may use the SCAQMD Initiative to advocate and lobby for environmental justice and to ensure that the SCAQMD performs the duties required by the Initiative.

The community group that has led the way in these regional efforts—one which is almost universally acclaimed for its advocacy work by advocates and opponents alike—is Communities for a Better Environment (CBE) (see <http://www.igc.apc.org/cbe>). CBE supports the development of an environmentally sustainable manufacturing base, a minimization of the use of toxics, expansion of pollution prevention strategies and involvement of communities placed at highest risk by pollution in advocacy. CBE conducts scientific research, community organizing, and litigation in support of these goals.

As part of its legal strategy, in July 1997, CBE filed five federal Clean Air Act lawsuits against Los Angeles refineries and a federal Title VI administrative claim with the EPA's Office of Environmental Justice. Among other things, the

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suits claim that the SCAQMD's car scrapping program under Rule 1610 concentrates toxic pollution in low income communities of color here in the Los Angeles basin. While EPA has not resolved the complaint and is still working out its own Title VI regulations, the SCAQMD has substantially modified the car scrapping program.

Recently, CBE released a study of toxic hot spots in Southeast Los Angeles, finding correlations between pollution, income and race. CBE has used the study's results to advocate cumulative risk-based pollutant standards before the SCAQMD.

An additional tool for environmental justice advocates is the City of Los Angeles General Plan, dated December 1996. In the "Distribution of Land Use" section of the General Plan, the City sets forth the "goal" of "assurance of environmental justice and a healthful living environment" that is to be furthered by a "policy" which will: "assure that fair treatment of people of all races, cultures, incomes and education levels with respect to the

development, implementation and enforcement of environmental laws, regulations, and policies, in-

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cluding affirmative efforts to inform and involve environmental groups, especially environmental justice groups, in early planning stages through notification and two-way communication."

Advocates may cite the General Plan's environmental justice "policy" when zoning decisions or internal consistency within the General Plan are at issue. While the aspirational language of this "policy" may not guarantee a favorable outcome, it does ensure environmental justice advocates the right to participate in the land use decision-making process here in the City of Los Angeles. Moreover, environmental justice issues can emerge in the California Environmental Quality Act Environmental Impact Report process where economic and social effects may be taken into account.

Conclusion

In the past twenty years, the environmental justice movement has matured. As the year 2000 approaches, urban planners and policy makers must take note and recognize the strength of the movement. This is particularly true here in Los Angeles, where large industrial projects in urban areas may be challenged by vocal community-based environmental justice advocates. **TPR**