

Summer 2007

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Recommended Citation

Kibel, Paul Stanton and Lubarsky, Edward J., "Roots of the Grassroots: An Introduction to the Issue" (2007). *Publications*. Paper 68.
<http://digitalcommons.law.ggu.edu/pubs/68>

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ROOTS OF THE GRASSROOTS: AN INTRODUCTION TO THE ISSUE

PAUL STANTON KIBEL & EDWARD J. LUBARSKY***

In 1982, the citizens in Warren County, North Carolina—a largely low-income, Africa-American area—united to oppose the proposed siting of a disposal facility for toxic polychlorinated biphenyls (“PCBs”). These people were simply trying to keep themselves and their community safe, but their efforts led to the revelation of the nationwide disparate burden of industrial and toxic facilities born by poor, minority residents.

The Warren County protests and legal challenges to the PCB facility were unsuccessful in the narrow sense, in that the facility was built despite widespread local opposition. In the broader sense, however, the Warren County experience was a triumph. The experience brought the concepts of environmental justice and environmental racism into the general public discourse, resulted in groundbreaking studies that further documented the overwhelming concentration of polluting/hazardous substance sites in minority, low income communities, and served as the catalyst for greater political engagement and legislative representation by Warren County African-Americans. The Warren County protests were also a wake-up call for the environmental movement and mainstream national environmental organizations in the United States, which until that time had paid scant attention to issues of equity and race. As such, in the history of civil rights, environmental protection and environmental

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justice, the Warren County protests are rightfully recognized as a watershed event.

Two of the most influential studies to follow the Warren County protests were the United States General Accounting Office's 1983 report *Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities*¹ and the United Church of Christ's Commission for Racial Justice's 1987 report *Toxic Wastes and Race in the United States: A National Report on Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites*.² The former focused largely on facilities permitted by the United States Environmental Protection Agency in the southeast United States and the latter looked nationwide at both federally permitted and non-federally permitted facilities, presenting conclusive data showing the vast majority of hazardous substances sites are found in low-income, high-minority communities. These studies served as a jumping-off point for local organizers, policy makers and lawyers seeking to address the inequitable distribution of environmental hazards and striving to rid all communities (regardless of their demographic profile) of such hazards.

The continuing relevance today of the 1987 *Toxic Wastes and Race* report is evidenced by the release in February 2007 of a new study by the United Church of Christ's Commission for Racial Justice entitled *Toxic Wastes and Race at Twenty. 1987-2007: Grassroots Struggles to Dismantle Environmental Racism in the United States*.³ The findings in the 2007 *Toxic Waste and Race at Twenty* report are troubling: people of color make up the majority (56%) of those living in neighborhoods within 3 kilometers (1.8 miles) of the nation's commercial hazardous waste facilities, nearly double the percentage in areas beyond 3 kilometers (30%); host neighborhoods in an overwhelming majority of the 44 states with hazardous waste sites have disproportionately high percentages of Hispanics (35 states), African Americans (38 states), and Asians/Pacific Islanders (27 states); host neighborhoods of 105 of 149 metropolitan areas with hazardous waste sites (70%) have disproportionately high percentages of people of color, and 46 of these

¹ United States General Accounting Office, *Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities*, GAP/RCED 83-168 (1983). In July 2004, the General Accounting Office was renamed the Government Accountability Office.

² Commission for Racial Justice, United Church of Christ, *Toxic Wastes and Race in the United States: A National Report on Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites* (1987).

³ <http://www.ejrc/cau.edu/TWARTreport.htm>.

metro areas (31%) have majority people of color host neighborhoods.⁴ These statistics evidence that although the concept of environmental justice may now be more widely recognized and discussed since the days of the Warren County protests, the environmental inequities on the ground continue to persist.

Taking the 25th anniversary of the Warren County protests as a starting point, this inaugural edition of the *Golden Gate University Environmental Law Journal* recounts the evolution of environmental justice over the past two and a half decades. The articles included herein inventory and comment on the conditions of impacted communities, the environmental movement and environmental law a quarter-century after this historic event. What progress has been made? What legal approaches have worked? What new environmental justice issues have emerged in recent years and are new analytic frameworks and advocacy strategies needed to address them? These are the questions taken up in the contributions that follow.

The first article is by Dollie Burwell and Luke Cole. Burwell is co-founder of Warren County Concerned Citizens Against PCBs and a former co-chair of the State of North Carolina's Warren County PCB Landfill Working Group, and Cole is Executive Director of the Center for Race, Poverty and the Environment in San Francisco. In a piece that blends Burwell's first person narrative and Cole's legal commentary, the article covers not only the Warren County events of the early 1980s but also explains how these events have shaped the Warren County of today.

Next, Veronica Eady, Senior Staff Attorney and Coordinator of the Environmental Justice Program at New York Lawyers for the Public Interest, discusses the relationship between the environmental justice movement and the main national environmental organizations in the United States. Eady deconstructs why these organizations had and continue to have such difficulty in accepting environmental justice principles and incorporating these principles into their core agenda.

The third article is written by Charles Lee, Acting Director for the United States Environmental Protection Agency's Office of Environmental Justice. Before being named Acting Director, Lee was Director for Policy and Interagency Liaison at the Office of Environmental Justice. His paper discusses Warren County's legacy in connection with efforts to eliminate health disparities in low-income communities and communities of color. As one of the authors of the landmark 1987 *Toxic Wastes and Race* report, Lee is uniquely situated to assess this legacy. This contribution focuses extensively on the role that

⁴ *Id.*

community-driven urban planning and urban design can play in providing opportunities for those residents most impacted by environmental hazards to re-envision local land uses.

Turning to Warren County's particular legacy on the federal statutory framework, the fourth article discusses efforts to pursue environmental justice through the use of Title VI of the Civil Rights Act of 1964. This piece tracks the evolution of employment of Title VI claims to address environmental inequities through the successive administrations of United States Presidents George W. Bush, William J. Clinton, and George H.W. Bush. It notes that while the United States Supreme Court's 2001 decision in *Sandoval v. Alexander*⁵ represented a setback for environmental justice advocates, there will be opportunities for the federal judiciary to revisit this holding and for the executive and legislative branches to take actions to limit its scope. The article's author, Bradford Mank, is James Helmer Jr. Professor of Law and the University of Cincinnati College of Law.

In the next piece, Anhtu Hoang, General Counsel for West Harlem Environmental Action (WE ACT for Environmental Justice) considers Warren County's legacy for federal and state environmental impact assessment laws. Environmental impact assessment laws like the National Environmental Policy Act, California Environmental Quality Act, and New York's State Environmental Quality Act set forth a process for examination of proposed projects' environmental impacts before such projects are undertaken or approved by the government. Hoang discusses the extent to which environmental justice considerations have been incorporated into such assessments.

The sixth article, by Caroline Farrell (attorney with the Center for Race, Poverty and the Environment and alumni of Golden Gate University School of Law) reports on the implementation of SB 115, California's environmental justice legislation adopted in 2000. Farrell notes that although SB 115 imposes procedural rather than substantive requirements in regard to environmental justice, communities and their lawyers are nonetheless finding ways to use these procedural requirements in the pursuit of agency action to address environmental inequities. The article also suggests that the time is ripe for California to consider adoption of a more substantive regulatory approach to environmental justice.

We then consider environmental justice in the context of the distribution of urban parkland. Robert Garcia and Audrey White, respectively Executive Director and Project Director for The City

⁵ 532 U.S. 275 (2001).

Project, have been and are actively involved in disputes involving proposed parks in minority, low-income communities in Los Angeles, including disputes pertaining to the Cornfield and Taylor Yard sites along the Los Angeles River and Ascot Hills in East Los Angeles. Garcia and White explain that while environmental justice principles initially focused on the inequitable demographic distribution of environmental burdens, these principles are equally applicable when dealing with the inequitable demographic distribution of environmental benefits (such as parkland).

Finally, the edition concludes with a piece on the use of environmental justice-based advocacy along the Mexico-United States border. Amelia Simpson, Director of the Border Environmental Justice Campaign for the San Diego-based Environmental Health Coalition, discusses the plight of the abandoned Metales y Derivados industrial plant—a maquiladora (formerly owned and operated by private United States interests) located in Mexico one-mile south of the border. Simpson uses the Metales y Derivados case to highlight environmental justice challenges in Mexico in particular and Latin America in general, and also to report on the efforts of communities surrounding the abandoned plant to use the citizen submission process established in 1994 pursuant to the North American Agreement on Environmental Cooperation between Canada, Mexico and the United States.⁶

As the articles in this inaugural edition of the *Golden Gate University Environmental Law Journal* reveal, the 1982 Warren County protests continue to inspire and inform the environmental justice movement and the field of environmental justice law. The articles gathered in this edition reaffirm the critical role that Warren County residents played in the convergence of the civil rights and environmental agendas, and the work that remains to be done before we can claim environmental protection for all rather than just for some.

⁶ See Commission for Environmental Cooperation, North American Agreement on Environmental Cooperation Between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America, http://www.cec.org/pubs_info_resources/law_treat_agree/naaec/index.cfm?varlan=English (articles 14 and 15).

