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## **2019 Environmental Law and Justice Clinic Report**

Golden Gate University School of Law

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**GOLDEN GATE UNIVERSITY**  
— **SCHOOL OF LAW** —  
ENVIRONMENTAL LAW AND JUSTICE CLINIC

## 2019 REPORT

Founded in 1994 in consultation with community leaders, the Clinic serves as a training ground for the next generation of advocates and provides critical legal services to underserved communities throughout California and beyond. As one of the first law clinics in the United States to prioritize environmental justice, the Clinic has been widely recognized as a provider of high-quality *pro bono* legal services to communities suffering the most from pollution. The Clinic has received numerous awards, including from the American Bar Association’s Section of Environment, Energy, and Resources and the Clinical Legal Education Association, particularly for decades of groundbreaking work to shift the region’s focus from fossil fuel use to clean energy and for pollution reduction advocacy.

Now in its third decade of service, the Clinic is focused this year on three core areas: (1) advocacy in support of coalition efforts focused on cleaning up water pollution caused predominantly by irrigated agriculture in the Central Coast and Central Valley regions; (2) ensuring proper cleanup of nuclear waste left behind at the Hunters Point Naval Shipyard, a Superfund site in San Francisco; and (3) advocacy for the reduction of air pollution from industrial sources near Bayview-Hunters Point in San Francisco. The Clinic additionally remains committed to lending its expertise to communities disproportionately affected by lax enforcement and widespread violations of air regulations at places other than at Bayview-Hunters Point. Aside from delivering direct services in these core areas, we provide advice to numerous community organizations fighting to build a better environment and seeking to ensure government accountability.



Students and staff at an engineered wetland in the Salinas Valley with our client representative Steve Shimek, the Executive Director of The Otter Project/Monterey Coastkeeper

## Safe Drinking Water for Communities Reliant on Contaminated Water

Access to clean drinking water is a basic human need and a requisite part of a developed society. Drinking water safety became big news when the story of Flint, Michigan broke. Residents of Flint, a predominantly African-American community, had been drinking contaminated water for more than a year before being told it was unsafe. Many other stories about unsafe drinking water, although not quite as shocking as that of the Flint tragedy, are still yet to be widely told.

Here in California, over 20 million residents rely on contaminated water for their daily needs. Contaminated water poses serious public health concerns and imposes economic burdens on affected communities. If left untreated, contaminated water can lead to “do not drink” orders from health agencies; residents are then forced to spend their limited resources on bottled water for everyday water needs. Even when treatment becomes an option, the high cost of treatment is often passed on to consumers. These burdens are particularly significant in communities that are already vulnerable – those who struggle with poverty, existing health conditions, and exposure to other environmental toxins, and who lack access to health information or care.

In November 2013, we joined California Rural Legal Assistance and the Stanford Environmental Clinic as co-counsel and filed a case in the Sacramento County Superior Court seeking more stringent regulation of irrigated agriculture in the Central Coast region. Among our clients are a diverse coalition of environmental justice, conservation, and fishing protection organizations: Santa Barbara Channelkeeper, The Otter Project, Environmental Justice Coalition for Water, Pacific Coast Federation of Fishermen’s Associations, and California Sportfishing Protection Alliance. We also represent Antonia Manzo, a resident of a labor camp who has limited income and has not been able to drink water from her tap for a decade because it is contaminated with agricultural waste.

The Central Coast includes areas that are among the nation’s most productive and intensively farmed agricultural regions, including Monterey County. A multi-billion dollar industry, irrigated agriculture is the predominant cause of widespread and severe nitrate pollution in the region. Aside from their potential to cause blue baby syndrome, a rare but deadly condition, nitrates have been linked to thyroid problems, reduced cognitive function, spontaneous abortions, and a variety of cancers. County residents exposed to nitrates in drinking and domestic use water have also reported symptoms such as persistent skin and eye irritation and hair loss.

The Salinas Valley, which is within the Central Coast area, has problems so severe that the California Legislature required the State Board to study the contamination. According to the Legislature-mandated study, one in ten people living in the study area – the Salinas Valley and the Tulare Lake Basin – is at risk of exposure to harmful levels of nitrates. If current agricultural practices of over-applying nitrates continue, a large percentage of the Salinas Valley population is expected to be exposed to unhealthful levels of nitrates from drinking water.

Over several semesters, our students pored through technical and legal documents and conducted extensive research. Our efforts resulted in a hard-won victory in the Sacramento Superior Court in August 2015, which the appellate court affirmed in large part in September 2018. These decisions require the state regulators to attain water quality standards to protect the many uses of water such as for drinking, recreation, and wildlife protection.

In addition to working on Central Coast advocacy, we've also focused on the Central Valley region, another area where irrigated agriculture severely contaminates drinking water sources. Students have participated in all aspects of this water protection work.

### Protecting Local Community Health

The history of residential segregation pooled low-income people of color – mostly African-Americans – in the Bayview-Hunters Point neighborhood, which became the most polluted and economically depressed place in famously progressive San Francisco. Despite its challenges, the neighborhood is located in a beautiful part of the city, with one of the highest rates of homeownership by African-Americans in the city. (But that has been changing with gentrification.)

Even with the closure of the two most polluting power plants in the area – an accomplishment to which the Clinic and its students over two decades contributed – this community remains heavily polluted. Most of San Francisco's industrial pollution sources are located near Bayview-Hunters Point, which is also situated along two major freeways and adjacent to the Port of San Francisco. The Bay Area Air Quality Management District has recognized that the air in the neighborhood is particularly toxic, designating it as a "Community Air Risk Evaluation (CARE)" area, deserving special regulatory focus. According to the Air District, the highest cancer risk levels from ambient toxic air contaminants in the Bay Area tend to occur in areas like Bayview-Hunters Point that are near a port and major freeways.

The neighborhood has also borne the brunt of San Francisco's construction boom in recent years. The Port of San Francisco has developed an "Eco-Industrial Park" to process aggregate and concrete intended for recycling. These activities generate significant particulate matter (PM) pollution that raise health concerns for this community. The Clinic has worked with community groups, including Clean Air Health Alliance and Greenaction for Health and Environmental Justice, to address this PM problem using an array of tools.



Bayview-Hunters Point neighborhood: some sources of PM

In 2014, the city's Planning Department approved, without proper notice to nearby neighbors, a plan to implode Candlestick Park Stadium, which would have sent a plume of intense dust clouds into the neighborhood. The Clinic's students met with the Planning Department, testified at hearings before city agencies, and threatened to sue; along with our client, we wrote an op-ed piece for a local paper. In February 2015, the developer in charge of the demolition of the stadium finally agreed to abandon implosion in favor of mechanical demolition. This work garnered much press for our clients and the Clinic.

## Investigation of Concrete Manufacturers and Material Suppliers

Following the work on the Candlestick Park stadium demolition, Clinic students investigated other sources of PM in the Bayview-Hunters Point neighborhood. The Clinic began an investigation in 2015 focused on concrete batch plants and material suppliers at the Port that generate harmful particulate matter: Cemex Construction Materials Pacific, LLC (Cemex), Central Concrete Supply Co., Inc. (Central), and Hanson Aggregates Mid-Pacific, Inc. (Hanson). Because asthma is prevalent in Bayview-Hunters Point, particulate matter pollution particularly concerns both residents and public health advocates.

After our investigation found permit violations at all three of the San Francisco companies, we expanded the scope to include concrete plants owned by the three companies in other disadvantaged communities in the Bay Area. Students submitted multiple Public Records Act (PRA) requests and reviewed voluminous and highly technical records to discover potential violations. Based on these documents, the Clinic found numerous violations of permit conditions intended to bring these sources of harmful particulate matter under control.

To publicize these violations, students drafted *Concrete Manufacturers and the Regulatory Role of the Bay Area Air Quality Management District*, released in May 2017. This report criticized the Air District's enforcement culture and its system for responding to PRA requests, and offered recommendations for improvement. We simultaneously worked with reporters from the NBC Bay Area Investigative Unit, providing documents and guidance, and the [resulting coverage](#) showcased our student.

Despite the media attention and the detailed report we produced, the Air District has done very little in the past three years to correct noncompliance. A revised report and other strategies will be needed to ensure that these polluters will comply with the law.



Students give a presentation before regulators and the Bayview-Hunters Point community about the concrete batching plant violations.

## Fraudulent Cleanup of Radioactive Contamination at Hunters Point Naval Shipyard

Hunters Point Naval Shipyard in San Francisco's southeast corner was used as a naval base from before World War II until 1976 and leased to a private ship repair company until 1986. Because of widespread chemical and radiological contamination, it is a National Priorities List ("Superfund") site. The cleanup has been underway since the mid-1990s. On completion, the property is intended to be transferred to the City of San Francisco, which has contracted with a developer to build a mammoth new neighborhood including numerous businesses and thousands of units of housing. One parcel has already been transferred, and 300 units are occupied.

In 2012, the Navy discovered that 36 samples taken by its radiological-cleanup contractor, Tetra Tech EC, Inc., were fraudulent. Both Tetra Tech and the Nuclear Regulatory Commission ("NRC") conducted investigations and concluded that the fraud was quite limited. But whistleblowers who alleged more widespread fraud contacted Greenaction for Health and Environmental Justice, which asked the Clinic to investigate these claims in conjunction with the whistleblowers' lawyer. Students and staff reviewed documents, conducted interviews of whistleblowers, helped draft their declarations, and submitted those declarations to support our actions.

These declarations document widespread fraud spanning many years, ordered by on-site supervisors: (1) taking thousands of samples from a different area to ensure they would come out "clean," while reporting that they were actually taken from another place known to be contaminated; (2) discarding samples and analytical results when they came back too "hot" (i.e., above the cleanup standard); (3) altering scanning data to make them appear "clean"; (4) conducting false building surveys in which certain scan results were fabricated and falsified; (5) remediating soil improperly, resulting either in the shipment of potentially radioactively-contaminated soil offsite or in its use as backfill for trenches at the Shipyard; and (6) by altering scanning procedures, allowing radioactively contaminated soil to be shipped offsite for commercial purposes. U.S. EPA has determined that Tetra Tech's work has to be redone. According to the Navy, the fraud apparently will cost the government \$100 to \$300 million to fix.

Our students' efforts were critical in exposing the need to redo the contractor's work. As a result of the students' legal work, the Navy has made an unprecedented decision to conduct extensive retesting at the Shipyard to ensure the protectiveness of the future cleanup.

In June 2017, after a six-month investigation, the Clinic filed a petition with the NRC on behalf of Greenaction, seeking revocation of Tetra Tech's materials license. The Clinic also filed a petition with the California Department of Public Health in July 2018 to revoke the company's state radiological materials license. Both petitions are still pending.

The Clinic has continued to monitor the Navy's cleanup of the Shipyard. In the fall of 2019, we submitted comments to the Navy stating that its radiological cleanup goals at the Shipyard were not sufficiently protective of human health. U.S. EPA agreed with several of our comments in November 2019, determining that the Navy's proposed radiological cleanup goals for soil were not protective of human health for long-term protectiveness.

The media has widely covered this case. News stories have good maps and provide a general idea of the harm that has resulted from the fraud. Two of these stories are [here](#) and [here](#).