

Fall 2011

Environmental Law and Justice Clinic Fall 2011 Report

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Founded in 1994, the Environmental Law and Justice Clinic serves the dual mission of training law students to be effective and ethical advocates and assisting low-income communities and communities of color to reduce the disparities of pollution. The clinic is staffed by ten to twelve law students, two full-time professors, a part-time staff scientist, and a Graduate Fellow. The State Bar certifies the law students to perform lawyerly tasks under the supervision of their professors.

The clinic's 2011 work focused primarily on reducing the disparities of air pollution. This Fall 2011 report highlights some of the clinic's work and accomplishments and describes why the clinic has focused its efforts on reducing air pollution.

National and Regional Projects

The clinic has projects that are national and regional in geographic scope. Work in these areas provides important environmental health gains both in the Bay Area as well as throughout the state and nation.

- **Moving California Towards a Clean Energy Future**
Policy decisions on energy storage and rules governing energy procurement will have profound impacts on California's energy landscape in the next decade for all people, and in particular those who live near power generating facilities who tend to be poorer or people of color. We've been working with *Pacific Environment*, intervening in the California Public Utilities Commission's Long Term Procurement Plan proceeding. We are advocating that no new fossil-fuel burning power plants are necessary. We have sufficient supply; and running existing plants intermittently and creating spikes in short-term pollution is unnecessary because energy can be stored. Our students have written many briefs and worked with witnesses to draft testimony in this proceeding.
- **Reducing Lead in Our Air from Aviation**
Based on the clinic's research, we petitioned the U.S. EPA for *Friends of the Earth* to urge the agency to make a determination that aviation gasoline containing lead endangers public health. Aviation gasoline used in "propeller planes" is currently the largest source of lead air pollution in the nation and has recently been shown to negatively impact people living near general aviation airports. (Seven such airports are located on or near the shores of the San Francisco Bay.) Our initial petition, which our students drafted, was successful in getting EPA and other regulators to take a close look at lead pollution from

airports, an issue that had been ignored for decades. Along with *Earthjustice*, we have been monitoring EPA's progress on this issue and sent EPA a notice of intent to sue for dragging its feet. Our students drafted the notice of intent to sue and supplemental comments to EPA.

- **Reducing Air Pollution from Pulp Mills**

We are representing *Greenpeace* and *Port Townsend Airwatchers* to compel EPA to review pollution rules for Kraft pulp mills. *Center for the Biological Diversity* is a co-plaintiff. These mills are a significant source of air toxics and greenhouse gases. EPA has failed to review these important rules for 25 years. Our students' research resulted in this case, and our students are writing the complaint and interviewing clients.

- **Encouraging Renewable Energy Development**

For years, the clinic has been working with many grassroots groups and large environmental groups, including *Black Mesa Water Coalition*, *Sierra Club* and *Grand Canyon Trust* on this highly complex case. We are advocating that the California Public Utilities Commission use funds generated from pollution credits to benefit the Hopi and Navajo and California ratepayers. The Tribes suffered when a California utility took coal and water from their lands and then when the power plant using the coal closed down. We are asking to use the funds from pollution credits to develop renewable energy projects. Our students have written briefs and drafted testimony in the proceeding.

- **Global Climate Change**

The clinic helped the State of California advance its forward-thinking approach to regulating GHG emissions from motor vehicles. We represented a group of prominent climatologists, including Dr. James Hansen of NASA, as friends of the court in the D.C. Circuit Court of Appeals to provide scientific information about climate change and its impacts. Recently, we also provided legal and scientific consultation to a group who is litigating multiple federal and California cases to demand that our governments take action to restore atmospheric greenhouse gases to a sustainable level for our children. Our students wrote significant reports on experts.

General Assistance to Local Communities with Pollution Problems

The clinic has provided a range of legal and technical services to grassroots environmental groups.

- **Working to Require Environmental Assessment of Railroad**

The clinic is representing *Californians for Alternatives to Toxics* to ensure that Californians have enough information about toxics before a government agency funds a reconstruction of an old railway. Critical information that communities need include details about toxic substances present in the rail corridor, the resulting pollution of the surrounding environment, and chemicals introduced during reconstruction. Communities affected include the rural poor, especially children in schools near the railway, many of whom qualify for the free school lunch programs. Our students wrote briefs, gathered evidence, and participated in settlement negotiations in this case.
- **Reduction of Power Plant Air Pollution**

The clinic has been involved in numerous permit proceedings and litigation advocating for reduction of pollution from new power plants as well as trying to prevent additional fossil-fueled plants. We've had several recent successes in the Pittsburg-Antioch area which already hosts 10 such plants, and whose residents have a relatively high rate of asthma. Our work on behalf of diverse clients, including *Communities for a Better Environment*, has resulted in fines against a power plant, reduction in pollution, and prevention of unnecessary power plant construction. Our students wrote briefs and gathered evidence in these matters.
- **Advocating for Policy Change to Reduce Air Pollution from Metal Melters**

The clinic provided scientific and legal support to *West Berkeley Alliance for Clean Air & Safe Jobs*, a community group working to reduce air pollution from a local steel foundry. We helped the Alliance evaluate health risks, and advocate for reduction of, air pollution from the facility. Partly because of this work, including a lawsuit against the foundry, the regional air quality agency is now promulgating a new regulation to further reduce air emissions from metal-melting facilities. Our students helped our client strategize and prepare for rulemaking workshops.
- **Advocating for Reduction of Air Pollution from Sewage Composting**

We brought a successful suit on behalf of Hinkley residents in their fight against the development of an environmentally unsound sewage sludge composting facility. The residents' fight to seek a cap on the facility to abate greenhouse gases and other air pollutants has been ongoing for over four years. Our work with *Helphinkley.org* and *Center for Biological Diversity* is ongoing. Our students wrote briefs on this matter this semester.



Bay Area Environmental Justice Coalitions

We provided significant technical and policy support to a health coalition in the San Francisco Region.

- **Bay Area Environmental Health Collaborative**

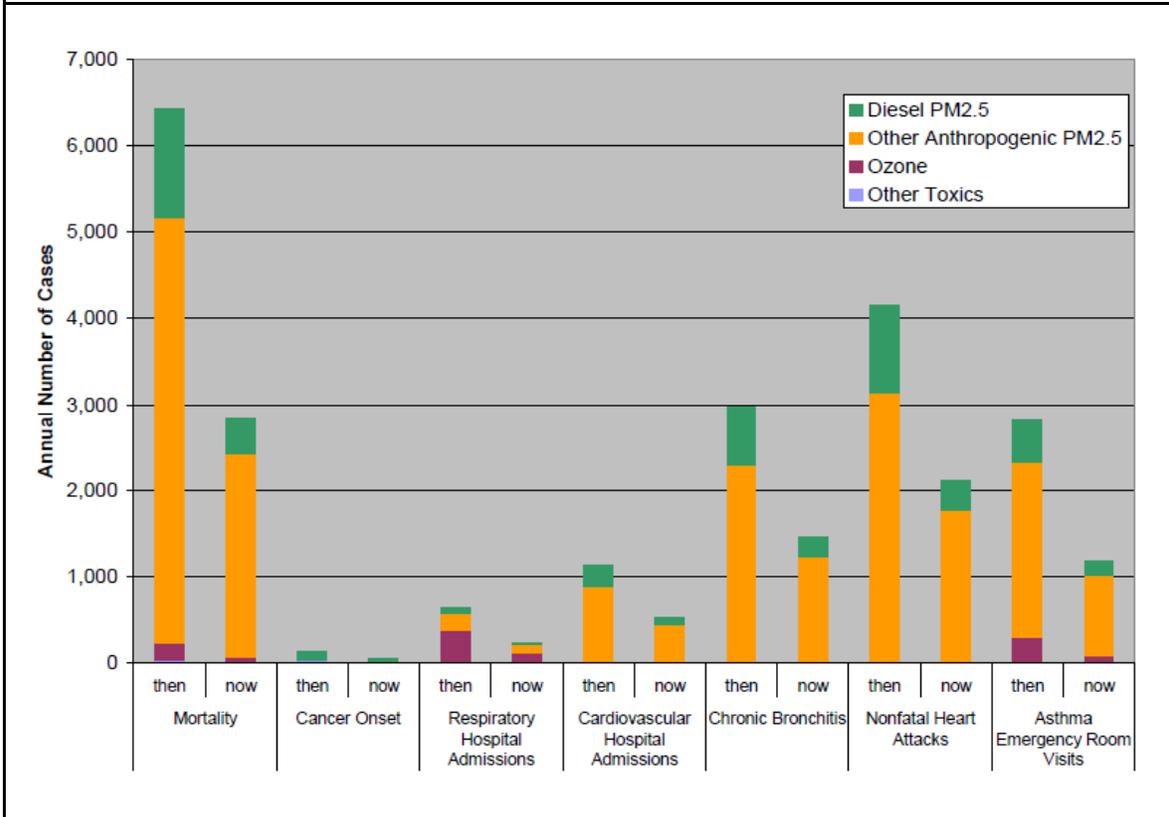
The collaborative is a group of environmental health and justice organizations engaged in policy advocacy to reduce the cumulative impacts of air pollution throughout the region. The clinic has supported BAEHC since it formed, and the clinic's scientist has provided significant technical assistance to the group such as GIS mapping, environmental health trainings, and environmental policy development. The collaborative has been successful in pushing the local air pollution control agencies to direct resources toward reducing air emissions in highly polluted parts of the Bay Area.

Why We Are Focusing on Air Pollution

Over the last two decades, numerous studies of environmental hazards have confirmed the presence of environmental injustice throughout the U.S. as well as in California. Public health researchers have found that environmental injustice arises because poor communities and people of color are disproportionately exposed to hazardous conditions at work and at home. And these same groups may be more susceptible to harm from the exposures they receive: the cumulative impact of multiple adverse conditions, including pollution, excessive noise, poor housing, and socio-psychological stress reduces resistance to disease. Being exposed to a combination of such hazards can make a person increasingly sensitive to any one of them.

In the Bay Area and other parts of the nation, air pollution is one of the more significant environmental hazards that people face. For example, the accompanying figure shows the health impact of air pollution in the Bay Area.

Health Effect Estimates for Various Forms of Air Pollution in the Bay Area *



* Reproduced from the BAAQMD Bay Area 2010 Clean Air Plan, Figure A-1. “Then” refers to 1970 for ozone, and the late 1980s for toxics and PM_{2.5}. “Now” refers to 2008.

These figures show that fine particulate matter pollution (PM_{2.5}, in both its diesel and general forms) appears to be responsible for the lion’s share of health impacts. Moreover, air pollution is still responsible for many thousands annually of premature mortalities, non-fatal heart attacks, asthma emergency room visits, hospital admissions for chronic bronchitis and other serious health problems.

The study from which these figures are taken also confirms what we already know from other studies – that air pollution exposure is frequently associated with race and socioeconomic status. For example, diesel particulate concentrations are 2 to 10 times higher in areas with dense truck and non-road diesel traffic, and people living in these



areas tend to be poorer or are people of color. In one recent Bay Area study, the California Air Resources Board recently estimated that diesel air concentrations in the largely African-American community of West Oakland, CA, were significantly higher than in other parts of Oakland, due to diesel emissions from Port of Oakland activities.¹

More recently, global climate change has also been identified as an important source of environmental injustice. Global warming will exacerbate heat waves and raise air pollution levels in some of our large urban centers, where disproportionate numbers of people of color and the poor live. Episodes of intense heat and increased pollution are expected to cause additional illness and death in these populations who also have less capacity to avoid or resist adverse health outcomes.

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¹ See the diesel risk assessment for West Oakland published by the California Air Resources Board, at <http://www.arb.ca.gov/ch/communities/ra/westoakland/documents/factsheet112508.pdf>.