

ISSUE 4



Should Environmental Policy Attempt to Cure Environmental Racism?

YES: Robert D. Bullard, from "Dismantling Environmental Racism in the USA," *Local Environment* (vol. 4, no. 1, 1999)

NO: David Friedman, from "The 'Environmental Racism' Hoax," *The American Enterprise* (November/December 1998)

ISSUE SUMMARY

YES: Professor of sociology Robert D. Bullard argues that environmental racism is a genuine phenomenon and that the government must live up to its mandate to protect all people.

NO: Writer and social analyst David Friedman denies the existence of environmental racism. He argues that the environmental justice movement is a government-sanctioned political ploy that will hurt urban minorities by driving away industrial jobs.

Archeologists delight in our forebears' habit of dumping their trash behind the house or barn. Today, however, most people try to arrange for their junk to be disposed of as far away from home as possible. Landfills, junkyards, recycling centers, and other operations with large negative environmental impacts tend to be sited in low-income and minority areas. Is this mere coincidence? Or is it deliberate? Does the paucity of poor people and minorities in the environmental movement indicate that these people do not really care? (See Robert Emmett Jones, "Blacks Just Don't Care: Unmasking Popular Stereotypes About Concern for the Environment Among African-Americans," *International Journal of Public Administration* [vol. 25, nos. 2 & 3, 2002]).

The environmental movement has, in fact, been charged with having been created to serve the interests of white middle- and upper-income people. Native Americans, blacks, Hispanics, and poor whites were not well represented among early environmental activists. It has been suggested that the reason for this is that these people were more concerned with more basic needs, such as jobs, food, health, and safety. However, the situation has been changing. In 1982, for example, in Warren County, North Carolina, poor black and Native American

communities held demonstrations in protest of a poorly planned PCB (polychlorinated biphenyl) disposal site. This incident kicked off the environmental justice movement, which has since grown to include numerous local, regional, national, and international groups. The movement's target is systematic discrimination in the setting of environmental goals and in the siting of polluting industries and waste disposal facilities—also known as environmental racism. The global reach of the problem is discussed by Jan Marie Fritz in "Searching for Environmental Justice: National Stories, Global Possibilities," *Social Justice* (Fall 1999).

In 1990 the Environmental Protection Agency (EPA) published "Environmental Equity: Reducing Risks for All Communities," a report that acknowledged the need to pay attention to many of the concerns raised by environmental justice activists. At the 1992 United Nations Earth Summit in Rio de Janeiro, a set of "Principles of Environmental Justice" was widely discussed. In 1993 the EPA opened an Office of Environmental Equity (now the Office of Environmental Justice) with plans for cleaning up sites in several poor communities. In February 1994 President Bill Clinton made environmental justice a national priority with an executive order. Since then, many complaints of environmental discrimination have been filed with the EPA under Title VI of the federal Civil Rights Act of 1964; and in March 1998 the EPA issued guidelines for investigating those complaints. However, in April 2001 the U.S. Supreme Court ruled that individuals cannot sue states by charging that federally funded policies unintentionally violate the Civil Rights Act of 1964. The decision is expected to limit environmental justice lawsuits (see Franz Neil, "Supreme Court Ruling May Hurt Environmental Justice Claims," *Chemical Week* [May 2, 2001]).

Critics of the environmental justice movement contend that inequities in the siting of sources of pollution are the natural consequence of market forces that make poor neighborhoods (whether occupied by whites or minorities) the economically logical choice for locating such facilities. Critics also charge that such facilities depress property values and drive more prosperous people away while attracting a poorer population. In the following selections, Robert D. Bullard describes the history of the environmental justice movement, argues that the inequities are not just economic, and calls for nondiscriminatory environmental enforcement. David Friedman, on the other hand, asserts that the environmental justice movement is a politically inspired movement that is unsupported by scientific facts. He calls environmental racism a hoax and argues that attacking it will harm the urban poor by denying them the industrial jobs they need.

zoning and land-use practices; and (5) exclusionary practices that limit some individuals and groups from participation in decision making.

The Environmental Justice Paradigm

During its 28-year history, the US EPA [Environmental Protection Agency] has not always recognised that many government and industry practices (whether intended or unintended) have adverse impacts on poor people and people of colour. Growing grassroots community resistance has emerged in response to practices, policies and conditions that residents have judged to be unjust, unfair and illegal. The EPA is mandated to enforce the nation's environmental laws and regulations equally across the board. It is required to protect all Americans—not just individuals or groups who can afford lawyers, lobbyists and experts. Environmental protection is a right, not a privilege reserved for a few who can 'vote with their feet' and escape or fend off environmental stressors.

The current environmental protection apparatus is broken and needs to be fixed. The current apparatus manages, regulates and distributes risks. The dominant environmental protection paradigm institutionalises unequal enforcement, trades human health for profit, places the burden of proof on the 'victims' and not the polluting industry, legitimates human exposure to harmful chemicals, pesticides and hazardous substances, promotes 'risky' technologies, exploits the vulnerability of economically and politically disenfranchised communities, subsidises ecological destruction, creates an industry around risk assessment and risk management, delays clean-up actions and fails to develop pollution prevention as the overarching and dominant strategy.

Environmental justice is defined as the fair treatment and meaningful involvement of all people regardless of race, colour, national origin or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies. Fair treatment means that no group of people, including racial, ethnic or socio-economic groups, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal and commercial operations or the execution of federal, state, local and tribal programmes and policies.

A growing body of evidence reveals that people of colour and low-income persons have borne greater environmental and health risks than the society at large in their neighbourhoods, workplaces and playgrounds. On the other hand, the environmental justice paradigm embraces a holistic approach to formulating environmental health policies and regulations, developing risk reduction strategies for multiple, cumulative and synergistic risks, ensuring public health, enhancing public participation in environmental decision-making, promoting community empowerment, building infrastructure for achieving environmental justice and sustainable communities, ensuring inter-agency co-operation and co-ordination, developing innovative public/private partnerships and collaboratives, enhancing community-based pollution prevention strategies, ensuring community-based sustainable economic development and developing geographically oriented community-wide programming.



Robert D. Bullard

Dismantling Environmental Racism in the USA

Introduction

Despite significant improvements in environmental protection over the past several decades, millions of Americans continue to live in unsafe and unhealthy physical environments. Many economically impoverished communities and their inhabitants are exposed to greater health hazards in their homes, in their jobs and in their neighbourhoods when compared to their more affluent counterparts. This paper examines the root causes and consequences of differential exposure of some US populations to elevated environmental health risks.

Defining Environmental Racism

In the real world, all communities are not created equal. All communities do not receive equal protection. Economics, political clout and race play an important part in sorting out residential amenities and disamenities. Environmental racism is as real as the racism found in housing, employment, education and voting. *Environmental racism refers to any environmental policy, practice or directive that differentially affects or disadvantages (whether intended or unintended) individuals, groups or communities based on race or colour.* Environmental racism is just one form of environmental injustice and is reinforced by government, legal, economic, political and military institutions. Environmental racism combines with public policies and industry practices to provide *benefits* for whites while shifting *costs* to people of colour.

From New York to Los Angeles, grassroots community resistance has emerged in response to practices, policies and conditions that residents have judged to be unjust, unfair and illegal. Some of these conditions include: (1) unequal enforcement of environmental, civil rights and public health laws; (2) differential exposure of some populations to harmful chemicals, pesticides and other toxins in the home, school, neighbourhood and workplace; (3) faulty assumptions in calculating, assessing and managing risks; (4) discriminatory

The question of environmental justice is not anchored in a debate about whether or not decision makers should tinker with risk assessment and management. The environmental justice framework rests on an ethical analysis of strategies to eliminate unfair, unjust and inequitable conditions and decisions. The framework attempts to uncover the underlying assumptions and decisions that contribute to and produce differential exposure and unequal protection. It also brings to the surface the *ethical and political* questions of 'who gets what, when, why, and how much'. Some general characteristics of this framework include the following.

- The environmental justice framework adopts a public health model of prevention (i.e. elimination of the threat before harm occurs) as the preferred strategy.
- The environmental justice framework shifts the burden of proof to polluters/dischargers who do harm, who discriminate or who do not give equal protection to people of colour, low-income persons and other 'protected' classes.
- The environmental justice framework allows disparate impact and statistical weight or an 'effect' test, as opposed to 'intent', to infer discrimination.
- The environmental justice framework redresses disproportionate impact through 'targeted' action and resources. In general, this strategy would target resources where environmental and health problems are greatest (as determined by some ranking scheme but not limited to risk assessment).

Endangered Communities

Numerous studies reveal that low-income persons and people of colour have borne greater health and environmental risk burdens than the society at large. Elevated public health risks have been found in some populations even when social class is held constant. For example, race has been found to be independent of class in the distribution of air pollution, contaminated fish consumption, municipal landfills and incinerators, abandoned toxic waste dumps, the clean-up of superfund sites and lead poisoning in children....

Impetus for Policy Shift

The impetus behind the environmental justice movement did not come from within government or academia, or from within largely white middle-class nationally based environmental and conservation groups. The impetus for change came from people of colour, grassroots activists and their 'bottom-up' leadership approach. Grassroots groups organised themselves, educated themselves and empowered themselves to make fundamental change in the way environmental protection is performed in their communities.

The environmental justice movement has come a long way since its humble beginning in rural, predominantly African-American, Warren County,

North Carolina, where a polychlorinated biphenyl landfill ignited protests and where over 500 arrests were made. The Warren County protests provided the impetus for a US General Accounting Office (1983) study, *Siting of Hazardous Waste Landfills and their Correlation with Racial and Economic Status of Surrounding Communities*. That study revealed that three out of four of the off-site, commercial hazardous waste landfills in Region 4 (which comprises eight states in the South) happened to be located in predominantly African-American communities, although African-Americans made up only 20% of the region's population.

The protests also led the Commission for Racial Justice (1987) to produce *Toxic Wastes and Race in the United States*, the first national study to correlate waste facility sites and demographic characteristics. Race was found to be the most potent variable in predicting where these facilities were located—more powerful than poverty, land values and home ownership. In 1990, *Dumping in Dixie: Race, Class, and Environmental Quality* chronicled the convergence of two social movements—social justice and environmental movements—into the environmental justice movement. This book highlighted African-Americans' environmental activism in the South, the same region that gave birth to the modern civil rights movement. What started out as local and often isolated community-based struggles against toxics and facility siting blossomed into a multi-issue, multi-ethnic and multi-regional movement.

The First National People of Color Environmental Leadership Summit (1991) was probably the most important single event in the movement's history. The Summit broadened the environmental justice movement beyond its anti-toxics focus to include issues of public health, worker safety, land use, transportation, housing, resource allocation and community empowerment. The meeting, organised by and for people of colour, demonstrated that it is possible to build a multi-racial grassroots movement around environmental and economic justice....

Federal, state and local policies and practices have contributed to residential segmentation and unhealthy living conditions in poor, working-class and people of colour communities. Several recent cases in California bring this point to life. Disparate highway siting and mitigation plans were challenged by community residents, churches and the NAACP LDF [National Association for the Advancement of Colored People Legal Defense and Education Fund], in *Clear Air Alternative Coalition v. United States Department of Transportation* (ND Cal. C-93-0721-VRW), involving the reconstruction of the earthquake-damaged Cypress Freeway in West Oakland. The plaintiffs wanted the downed Cypress Freeway (which split their community in half) rebuilt further away. Although the plaintiffs were not able to get their plan implemented, they did change the course of the freeway in their out-of-court settlement.

The NAACP LDF has filed an administrative complaint, *Mothers of East Los Angeles, El Sereno Neighborhood Action Committee, El Sereno Organizing Committee et al. v. California Transportation Commission et al.* (before the US Department of Transportation and US Housing and Urban Development), challenging the construction of the 4.5 mile extension of the Long Beach Freeway in East Los Angeles through El Sereno, Pasadena and South Pasadena. The plaintiffs argue

that the mitigation measures proposed by the state agencies to address noise air and visual pollution discriminate against the mostly Latino El Sereno community. For example, all of the freeway in Pasadena and 80% of that in South El Sereno will be below ground level. On the other hand, most of the freeway in El Sereno will be above-grade. White areas were favoured over the mostly Latino and accommodation to local schools....

Making Government More Responsive

Many of the nation's environmental policies distribute costs in a regressive pattern while providing disproportionate benefits for whites and individuals who fall at the upper end of the education and income scales. Lavelle & Coyle uncovered glaring inequities in the way the federal EPA enforces its laws:

There is a racial divide in the way the US 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.

This study reinforced what many grassroots activists have known for decades: all communities are not treated the same. Communities that are located on the 'wrong side of the tracks' are at greater risk from exposure to lead, pesticides (in the home and the workplace), air pollution, toxic releases, water pollution, solid and hazardous waste, raw sewage and pollution from industries.

Government has been slow to ask the questions of who gets help and who does not, who can afford help and who can not, why some contaminated communities get studied while others get left off the research agenda, why industry poisons some communities and not others, why some contaminated communities get cleaned up while others are not, why some populations are protected and others are not protected, and why unjust, unfair and illegal policies and practices are allowed to go unpunished.

Struggles for equal environmental protection and environmental justice did not magically appear in the 1990s. Many communities of colour have been engaged in life and death struggles for more than a decade. In 1990, the Agency for Toxic Substances and Disease Registry (ATSDR) held a historic conference in Atlanta. The ATSDR National Minority Health Conference focused on contamination. In 1992, after meeting with community leaders, academicians and civil rights leaders, the US EPA (under the leadership of William Reilly) admitted there was a problem, and established the Office of Environmental Equity. The name was changed to the Office of Environmental Justice under the Clinton Administration.

In 1992, the US EPA produced one of the first comprehensive documents to examine the whole question of risk and environmental hazards in their

equity report, *Environmental Equity: reducing risk for all communities*. The report, and its Office of Environmental Equity, were initiated only after protesting from people of colour, environmental justice leaders, activists and a few academicians.

The EPA also established a 25-member National Environmental Justice Advisory Council (NEJAC) under the Federal Advisory Committee Act. The NEJAC divided its environmental justice work into six sub-committees: Health and Research, Waste and Facility Siting, Enforcement, Public Participation and Accountability, Native American and Indigenous Issues, and International Issues. The NEJAC is comprised of stakeholders representing grassroots community groups, environmental groups, NGOs [nongovernmental organizations], state, local and tribal governments, academia and industry.

In February 1994, seven federal agencies, including the ATSDR, the National Institute for Environmental Health Sciences, the EPA, the National Institute of Occupational Safety and Health, the National Institutes of Health, the Department of Energy and Centers for Disease Control and Prevention sponsored a National Health Symposium entitled 'Health and research needs to ensure environmental justice'. The conference planning committee was unique in that it included grassroots organisations, affected community residents and federal agency representatives. The goal of the February conference was to bring diverse stakeholders and those most affected to the decision-making table. Some of the recommendations from that symposium included the following:

- Conduct meaningful health research in support of people of colour and low-income communities.
- Promote disease prevention and pollution prevention strategies.
- Promote inter-agency co-ordination to ensure environmental justice.
- Provide effective outreach, education and communications.
- Design legislative and legal remedies.

In response to growing public concern and mounting scientific evidence, President Clinton on 11 February 1994 (the second day of the National Health Symposium) 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.

Executive Order 12898 reinforces the 30-year-old Civil Rights Act of 1964, Title VI, which prohibits discriminatory practices in programmes receiving federal funds. The Order also focuses the spotlight back on the National Environmental Policy Act (NEPA), a 25-year-old law that sets policy goals for the protection, maintenance and enhancement of the environment. The NEPA's goal is to ensure for all Americans a safe, healthful, productive and aesthetically and culturally pleasing environment. The 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 Case of Citizens Against Nuclear Trash Versus Louisiana Energy Services

Executive Order 12898 was put to the test in rural north-west Louisiana. Since 1989, the Nuclear Regulatory Commission had under review a proposal for Louisiana Energy Services (LES) to build the nation's first privately owned uranium enrichment plant. A national search was undertaken by LES to find the 'best' site for a plant that would produce 17% of the nation's enriched uranium. LES supposedly used an objective scientific method in designing its site selection process.

The southern USA, Louisiana and Claiborne Parish ended up being the dubious 'winners' of the site selection process. Residents from Homer and the nearby communities of Forest Grove and Center Springs—two communities closest to the proposed site—disagreed with the site selection process and outcome. They organised themselves into a group called Citizens Against Nuclear Trash (CANT). CANT charged LES and the federal Nuclear Regulatory Commission (NRC) staff with practising environmental racism. CANT hired the Sierra Club Legal Defense Fund and sued LES.

The lawsuit dragged on for more than 8 years. On 1 May 1997, a three-judge panel of the NRC Atomic Safety and Licensing Board issued a final decision on the case. The judges concluded that 'racial bias played a role in the selection process'. The precedent-setting federal court ruling came some 2 years after President Clinton signed Executive Order 12898. The judges, in a 38-page written decision, also chastised the NRC staff for not addressing the provision called for under Executive Order 12898. The court decision was upheld on appeal on 4 April 1998.

A clear racial pattern emerged during the so-called national search and multi-stage screening and selection process. For example, African-Americans comprise about 13% of the US population, 20% of the Southern states' population, 31% of Louisiana's population, 35% of the population of Louisiana's northern parishes and 46% of the population of Claiborne Parish. This progressive trend, involving the narrowing of the site selection process to areas of increasingly high poverty and African-American representation, is also evident from an evaluation of the actual sites that were considered in the 'intermediate' and 'fine' screening stages of the site selection process. The aggregate average percentage of black population for a 1-mile radius around all of the 78 sites examined (in 16 parishes) was 28.35%. When LES completed its initial site cuts, and reduced the list to 37 sites within nine parishes (i.e. the same as counties in other states), the aggregate percentage of black population rose to 36.78%. When LES then further limited its focus to six sites in Claiborne Parish, the aggregate average percentage of black population rose again, to 64.74%. The final site selected, the 'LeSage' site, has a 97.1% black population within a 1-mile radius.

The plant was proposed on Parish Road 39 between two African-American communities, just 0.25 miles from Center Springs (founded in 1910) and 1.25 miles from Forest Grove (founded in the 1860s just after slavery). The proposed site was in a Louisiana parish that has a per capita earnings average of only

\$3000 per year (just 45% of the national average, \$12,800), and where over 80% of the African-American population is below the poverty line. The two African-American communities were rendered 'invisible' since they were not even mentioned in the NRC's draft environmental impact statement.

Only after intense public comments did the NRC staff attempt to address environmental justice and disproportionate impact implications, as required under the NEPA and called for under Environmental Justice Executive Order 12898. For example, the NEPA requires that the government consider the environmental impacts and weigh the costs and benefits of the proposed action. These include health and environmental effects, the risk of accidental but foreseeable adverse health and environmental effects and socio-economic impacts.

The NRC staff devoted less than a page to addressing the environmental justice concerns of the proposed uranium enrichment plant in its final environmental impact statement (FEIS). Overall, the FEIS and the environmental report are inadequate in the following respects: (1) they assess inaccurately the costs and benefits of the proposed plant; (2) they fail to consider the inequitable distribution of costs and benefits of the proposed plant between the white and African-American populations; (3) they fail to consider the fact that the siting of the plant in a community of colour follows a national pattern in which institutionally biased decision-making leads to the siting of hazardous facilities in communities of colour, which results in the inequitable distribution of costs and benefits to those communities.

Among the distributive costs not analysed in relationship to Forest Grove and Center Springs are the disproportionate burden of health and safety, effects on property values, fire and accidents, noise, traffic, radioactive dust in the air and water, and the dislocation from a road closure that connects the two communities. Overall, the CANT legal victory points to the utility of combining environmental and civil rights laws and the requirement of governmental agencies to consider Executive Order 12898 in their assessments.

In addition to the remarkable victory over LES, a company that had the backing of powerful US and European nuclear energy companies, CANT members and their allies won much more. They empowered themselves and embarked on a path of political empowerment and self-determination. During the long battle, CANT member Roy Madris was elected to the Claiborne Parish jury (i.e. county commission), and CANT member Almeter Willis was elected to the Claiborne Parish School Board. The town of Homer, the nearest incorporated town to Forest Grove and Center Springs, elected its first African-American mayor, and the Homer town council now has two African-American members. In autumn 1998, LES sold the land on which the proposed uranium enrichment plant would have been located. The land is going back into timber production—as it was before LES bought it....

Conclusion

The environmental protection apparatus in the USA does not provide equal protection for all communities. The current paradigm institutionalises unequal enforcement, trades human health for profit, places the burden of proof on

the 'victims' and not on the polluting industry, legitimates human exposure to harmful chemicals, pesticides and hazardous wastes, promotes 'risky' technologies, exploits the vulnerability of economically and politically disenfranchised communities and nations, subsidises ecological destruction, creates an industry around risk assessment and delays clean-up actions, and fails to develop pollution prevention, waste minimisation and cleaner production strategies as a dominant goal.

The environmental justice movement emerged in response to environmental inequities, threats to public health, unequal protection, differential enforcement and disparate treatment received by the poor and people of colour. This movement has redefined environmental protection as a basic right. It has also emphasised pollution prevention, waste minimisation and cleaner production techniques as strategies to achieve environmental justice for all Americans without regard to race, colour, national origin or income.

Both race and class factors place low-income and people of colour communities at special risk. Unequal political power arrangements have also allowed the poor. However, there is little or no correlation between the proximity of industrial plants in communities of colour and the employment of nearby residents. Having industrial facilities in one's community does not automatically translate into jobs for nearby residents. More often than not, communities of colour are stuck with the polluting industries and poverty, while other people commute in for the jobs.

Governments must live up to their mandate of *protecting* all peoples and the environment. The call for environmental and economic justice does not stop at US borders but extends to all communities and nations that are threatened by hazardous wastes, toxic products and environmentally unsound technology. The environmental justice movement has set out the clear goal of eliminating the unequal enforcement of environmental, civil rights and public health laws, the differential exposure of some populations to harmful chemicals, pesticides and other toxins in the home, school, neighbourhood and workplace, faulty assumptions in calculating, assessing and managing risks, discriminatory zoning and land-use practices, and exclusionary policies and practices that limit some individuals and groups from participation in decision-making.

The solution to environmental injustice lies in the realm of equal protection for all individuals, groups and communities. Many of these problems could be eliminated if existing environmental, health, housing and civil rights laws were vigorously enforced in a non-discriminatory way. No community, rich or poor, urban or suburban, black or white, should be allowed to become a 'sacrifice zone' or dumping ground.

NO



David Friedman

The "Environmental Racism" Hoax

When the U.S. Environmental Protection Agency (EPA) unveiled its heavily criticized environmental justice "guidance" earlier this year, it crowned years of maneuvering to redress an "outrage" that doesn't exist. The agency claims that state and local policies deliberately cluster hazardous economic activities in politically powerless "communities of color." The reality is that the EPA, by exploiting every possible legal ambiguity, skillfully limiting debate, and ignoring even its own science, has enshrined some of the worst excesses of racialist rhetoric and environmental advocacy into federal law.

"Environmental justice" entered the activist playbook after a failed 1982 effort to block a hazardous-waste landfill in a predominantly black North Carolina county. One of the protesters was the District of Columbia's congressional representative, who returned to Washington and prodded the General Accounting Office (GAO) to investigate whether noxious environmental risks were disproportionately sited in minority communities.

A year later, the GAO said that they were. Superfund and similar toxic dumps, it appeared, were disproportionately located in non-white neighborhoods. The well-heeled, overwhelmingly white environmentalist lobby christened this alleged phenomenon "environmental racism," and ethnic advocates like Ben Chavis and Robert Bullard built a grievance over the next decade.

Few of the relevant studies were peer-reviewed; all made critical errors. Properly analyzed, the data revealed that waste sites are just as likely to be located in white neighborhoods, or in areas where minorities moved only after permits were granted. Despite sensational charges of racial "genocide" in industrial districts and ghastly "cancer alleys," health data don't show minorities being poisoned by toxic sites. "Though activists have a hard time accepting it," notes Brookings fellow Christopher H. Foreman, Jr., a self-described black liberal Democrat, "racism simply doesn't appear to be a significant factor in our national environmental decision-making."

This reality, and the fact that the most ethnically diverse urban regions were desperately trying to attract employers, not sue them, constrained the environmental racism movement for a while. In 1992, a Democrat-controlled Congress

ignored environmental justice legislation introduced by then-Senator Al Gore. Toxic racism made headlines, but not policy.

All of that changed with the Clinton-Gore victory. Vice President Gore got his former staffer Carol Browner appointed head of the EPA and brought Chavis, Bullard, and other activists into the transition government. The administration touted environmental justice as one of the symbols of its new approach.

Even so, it faced enormous political and legal hurdles. Legislative options, never promising in the first place, evaporated with the 1994 Republican takeover in Congress. Supreme Court decisions did not favor the movement.

So the Clinton administration decided to bypass the legislative and judicial branches entirely. In 1994, it issued an executive order—ironically cast as part of Gore's "reinventing government" initiative to streamline bureaucracy—which directed that every federal agency "make achieving environmental justice part of its mission."

At the same time, executive branch lawyers generated a spate of legal memoranda that ingeniously used a poorly defined section of the Civil Rights Act of 1964 as authority for environmental justice programs. Badly split, confusing Supreme Court decisions seemed to construe the 1964 Act's "nondiscrimination" clause (prohibiting federal funds for states that discriminate racially) in such a way as to allow federal intervention wherever a state policy ended up having "disparate effects" on different ethnic groups.

Even better for the activists, the Civil Rights Act was said to authorize private civil rights lawsuits against state and local officials on the basis of disparate impacts. This was a valuable tool for environmental and race activists, who are experienced at using litigation to achieve their ends.

Its legal game plan in place, the EPA then convened an advocate-laden National Environmental Justice Advisory Council (NEJAC), and seeded activist groups (to the tune of \$3 million in 1995 alone) to promote its policies. Its efforts paid off. From 1993, the agency backlogged over 50 complaints, and environmental justice rhetoric seeped into state and federal land-use decisions.

Congress, industry, and state and local officials were largely unaware of these developments because, as subsequent news reports and congressional hearings established, they were deliberately excluded from much of the agency's planning process. Contrary perspectives, including EPA-commissioned studies highly critical of the research cited by the agency to justify its environmental justice initiative in the first place, were ignored or suppressed.

The EPA began to address a wider audience in September 1997. It issued an "interim final guidance" (bureaucratic for regulation-like rules that agencies can claim are not "final" so as to avoid legal challenge) which mandated that environmental justice be incorporated into all projects that file federal environmental impact statements. The guidance directed that applicants pay particular attention to potential "disparate impacts" in areas where minorities live in "meaningfully greater" numbers than surrounding regions.

The new rules provoked surprisingly little comment. Many just "saw the guidance as creating yet another section to add to an impact statement," explains Jennifer Hernandez, a San Francisco environmental attorney. In response, companies wanting to build new plants had to start "negotiating with community advocates and federal agencies, offering new computers, job training, school or library improvements, and the like" to grease their projects through.

In December 1997, the Third Circuit Court of Appeals handed the EPA a breathtaking legal victory. It overturned a lower court decision against a group of activists who sued the state of Pennsylvania for granting industrial permits in a town called Chester, and in doing so the appeals court affirmed the EPA's extension of Civil Rights Act enforcement mechanisms to environmental issues.

(When Pennsylvania later appealed, and the Supreme Court agreed to hear the case, the activists suddenly argued the matter was moot, in order to avoid the Supreme Court's handing down an adverse precedent. This August, the Court agreed, but sent the case back to the Third Circuit with orders to dismiss the ruling. While activists may have dodged a decisive legal bullet, they also wiped from the books the only legal precedent squarely in their favor.)

Two months after the Third Circuit's decision, the EPA issued a second "interim guidance" detailing, for the first time, the formal procedures to be used in environmental justice complaints. To the horror of urban development, business, labor, state, local, and even academic observers, the guidance allows the federal agency to intervene at any time up to six months (subject to extension) after any land-use or environmental permit is issued, modified, or renewed anywhere in the United States. All that's required is a simple allegation that the permit in question was "an act of intentional discrimination or has the effect of discriminating on the basis of race, creed, or national origin."

The EPA will investigate such claims by considering "multiple, cumulative, and synergistic risks." In other words, an individual or company might not itself be in violation, but if, combined with previous (also legal) land-use decisions, the "cumulative impact" on a minority community is "disparate," this could suddenly constitute a federal civil rights offense. The guidance leaves important concepts like "community" and "disparate impact" undefined, leaving them to "case by case" determination. "Mitigations" to appease critics will likewise be negotiated with the EPA case by case.

This "guidance" subjects virtually any state or local land-use decision—made by duly elected or appointed officials scrupulously following validly enacted laws and regulations—to limitless ad hoc federal review, any time there is the barest allegation of racial grievance. Marrying the most capricious elements of wetlands, endangered species, and similar environmental regulations with the interest-group extortion that so profoundly mars urban ethnic politics, the guidance transforms the EPA into the nation's supreme land-use regulator.

Reaction to the Clinton administration's gambit was swift. A coalition of groups usually receptive to federal interventions, including the U.S. Conference of Mayors, the National Association of Counties, and the National Association

of Black County Officials, demanded that the EPA withdraw the guidance. The House amended an appropriations bill to cut off environmental justice enforcement until the guidance was revised. This August, EPA officials were grilled in congressional hearings led by Democratic stalwarts like Michigan John Dingell.

Of greatest concern is the likelihood the guidance will dramatically increase already-crippling regulatory uncertainties in urban areas where ethnic populations predominate. Rather than risk endless delay and EPA-brokered activist shakedowns, businesses will tacitly "redline" minority communities and shift operations to white, politically conservative, less-developed locations.

Stunningly, this possibility doesn't bother the EPA and its environmentalist allies. "I've heard senior agency officials just dismiss the possibility that their policies might adversely affect urban development," says lawyer Hernandez Dingell, a champion of Michigan's industrial revival, was stunned when Ann Goode, the EPA's civil rights director, said her agency never considered the guidance's adverse economic and social effects. "As director of the Office of Civil Rights," she lectured House lawmakers, "local economic development is not something I can help with."

Perhaps it should be. Since 1980, the economies of America's major urban regions, including Cleveland, Chicago, Milwaukee, Detroit, Pittsburgh, New Orleans, San Francisco, Newark, Los Angeles, New York City, Baltimore, and Philadelphia, grew at only one-third the rate of the overall American economy. As the economies of the nation's older cities slumped, 11 million new jobs were created in whiter areas.

Pushing away good industrial jobs hurts the pocketbook of urban minorities, and, ironically, harms their health in the process. In a 1991 *Health Physics* article, University of Pittsburgh physicist Bernard L. Cohen extensively analyzed mortality data and found that while hazardous waste and air pollution exposure takes from three to 40 days off a lifespan, poverty reduces a person's life expectancy by an average of 10 years. Separating minorities from industrial plants is thus not only bad economics, but bad health and welfare policy as well.



Such realities matter little to environmental justice advocates, who are really more interested in radical politics than improving lives. "Most Americans would be horrified if they saw NEJAC [the EPA's environmental justice advisory council] in action," says Brookings's Foreman, who recalls a council meeting derailed by two Native Americans seeking freedom for an Indian activist incarcerated for killing two FBI officers. "Because the movement's main thrust is toward ... 'empowerment' ... , scientific findings that blunt or conflict with that goal are ignored or ridiculed."

Yet it's far from clear that the Clinton administration's environmental justice genie can be put back in the bottle. Though the Supreme Court's dismissal of the Chester case eliminated much of the EPA's legal argument for the new

rules, it's likely that more lawsuits and bureaucratic rulemaking will keep the program alive. The success of the environmental justice movement over the last six years shows just how much a handful of ideological, motivated bureaucrats and their activist allies can achieve in contemporary America unfettered by fact, consequence, or accountability, if they've got a President on their side.





POSTSCRIPT

Should Environmental Policy Attempt to Cure Environmental Racism?

The problems that led to the environmental justice movement have been documented in many reports. For example, in "Who Gets Polluted? The Movement for Environmental Justice," *Dissent* (Spring 1994), Ruth Rosen presents a history of the environmental justice movement, stressing how the movement has woven together strands of the civil rights and environmental struggles. Rosen argues that racial discrimination plays a significant role in the unusually intense exposure to industrial pollutants experienced by disadvantaged minorities, and she expresses the hope that "greening the ghetto will be the first step in greening our entire society." In addition, Bullard's *Dumping in Dixie: Race, Class and Environmental Quality* (Westview Press, 1990, 1994, 2000) has become a standard text in the environmental justice field. Also see his *Unequal Protection: Environmental Justice and Communities of Color* (Sierra Club Books, 1994); Michael Heiman's "Waste Management and Risk Assessment: Environmental Discrimination Through Regulation," *Urban Geography* (vol. 17, no. 5, 1996); and Luke W. Cole and Sheila R. Foster's *From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement* (New York University Press, 2000). David W. Allen, in "Social Class, Race, and Toxic Releases in American Counties, 1995," *Social Science Journal* (vol. 38, no. 1, 2001), finds that the data support the existence of environmental racism but that the effect is strongest in the southern portion of the United States (the Sun Belt).

Those who criticize the environmental justice movement tend to focus on other studies. In "Green Redlining: How Rules Against 'Environmental Racism' Hurt Poor Minorities Most of All," *Reason* (October 1998), Henry Payne labels the Environmental Protection Agency's efforts to impose environmental equity "redlining" and, like Friedman, argues that the practice reduces job opportunities and economic benefits for minorities.

There is great contrast in the sides to this debate. In such cases, the reader must not ignore the social values and political commitments of the debaters. The reader must also be careful to consider the data relied on by the debaters and to watch for unsupported claims and simplistic explanations for events whose causes are likely to be more complicated.

Where is government policy going? Jim Motavalli, in "Toxic Targets: Polluters That Dump on Communities of Color Are Finally Being Brought to Justice," *E: The Environmental Magazine* (July-August 1998), states that although minorities and the poor have been forced to bear a disproportionate share of the burden of industrial pollution, changes in environmental policy and law are finally offering remedies. And in an August 6, 2000, *Environmental Justice* article,

the Environmental Protection Agency's stance on environmental justice, EPA administrator Christine Todd Whitman wrote, "The Environmental Protection Agency has a firm commitment to the issue of environmental justice and its integration into all programs, policies, and activities, consistent with existing environmental laws and their implementing regulations.... [E]nvironmental justice is the goal to be achieved for all communities and persons across this Nation. Environmental justice is achieved when everyone, regardless of race, culture, or income, enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work."

