

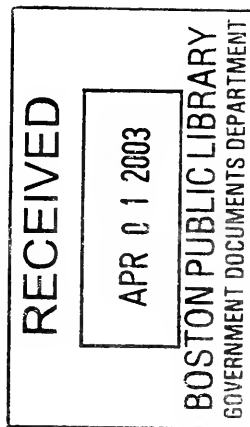
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ENVIRONMENTAL JUSTICE

HEARINGS
BEFORE THE
SUBCOMMITTEE ON
CIVIL AND CONSTITUTIONAL RIGHTS
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS
FIRST SESSION

MARCH 3 AND 4, 1993

Serial No. 64



Printed for the use of the Committee on the Judiciary

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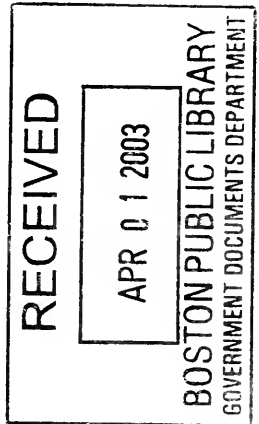
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ENVIRONMENTAL JUSTICE

WEDNESDAY, MARCH 3, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2237, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Don Edwards and Henry J. Hyde.

Also present: Catherine LeRoy, counsel; Melody Barnes, assistant counsel; Ivy Davis-Fox, assistant counsel; Jancelyn Pegues, secretary; and Kathryn Hazeem, minority counsel.

OPENING STATEMENT OF CHAIRMAN EDWARDS

Mr. EDWARDS. Good morning. The subcommittee will come to order.

Today's hearings move this subcommittee to the forefront of a new civil rights issue. Although the issue of environmental justice is new to the subcommittee, the essential problem of injustice is one with which we are very familiar. The problem of environmental injustice confronts African-American, Asian-American, Latino-, and Native-American communities across the country.

The facts are alarming. For example, 40 percent of this country's hazardous waste fill capacity is located in three minority communities. Shocking consequences result. Babies are being born with serious birth defects. Some die. Children are suffering from lead poisoning and men and women are battling with cancer, respiratory illnesses, rashes, and infections.

In fact, the Latino community in part of my former district in California continues to struggle with an asbestos contaminated rain levee which had been declared a Superfund site.

Therefore, today we begin the process of gathering more information about this problem and the manner in which the United States can be the most effective in protecting its citizens from lives plagued with toxins and illnesses.

Finally, I know I speak for everyone who believes this is an important issue when I congratulate National Law Journal reporters Marcy Coyle, Mary Ann Lavelle, and Claudia McLaughlin. These three reporters were honored with the George W. Polk Award for their comprehensive series, "Unequal Protection: The Racial Divide in Environmental Law."

We do congratulate them on a very good investigative reporting job.

Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

The focus of our hearings over the next 2 days is the issue of environmental justice. The claim has been made that racial minorities and the poor are exposed to life-threatening environmental hazards more often than middle class and nonminority communities. This hearing will examine whether this exposure is due to racism, as some have alleged, or it can be explained by other factors such as economic power and political organization.

Economic factors certainly account for some degree of increased exposure to environmental risk. Hazardous waste sites, factories and landfills are more likely to be located on cheaper land, where more minorities and low-income Americans reside.

According to the Environmental Protection Agency, however, there is a general lack of data on environmental health effects by race and income. With the exception of the problems created by lead contamination, the link between race exposure to environmental risks and adverse health effects has not been scientifically established.

Whatever the cause of these problems, it is the duty of the law and of the Federal agency enforcing the law to protect every individual regardless of his or her race or income level from exposure to life-threatening environmental hazards.

I hope these hearings will deepen our understanding of these very important issues, and I certainly look forward to the testimony of each of the witnesses.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Hyde.

Will the witnesses please raise your right hand?

[Witnesses sworn.]

Mr. EDWARDS. Thank you.

Mr. Hyde, would you be so kind as to introduce the witness panel?

Mr. HYDE. Thank you, Mr. Chairman.

The Rev. Dr. Benjamin Chavis is executive director of the United Church of Christ Commission for Racial Justice. In 1987, the Commission for Racial Justice released its landmark report, "Toxic Waste and Race in the United States."

Most recently, Dr. Chavis served on President Clinton's transition team in the natural resource and environment cluster. Dr. Chavis is a 30-year veteran and hero of the civil rights movement. As a member of the famed Wilmington 10, Dr. Chavis unjustly spent 4½ years in North Carolina prisons during the 1970's. Today, Dr. Chavis continues to provide national leadership in the areas of civil rights and environmental justice.

Hazel Johnson founded People for Community Recovery in 1982, a grassroots environmental organization located in the southeast side of Chicago, IL. In 1992, she received a Presidential medal for her educational work on environmental issues.

For the past 10 years, Ms. Johnson, along with one of her daughters, has fought to monitor and reduce the hazards in her community. She is now a model for others taking a stand on the environmental degradation in their communities.

Pat Bryant is the executive director of the Gulf Coast Tenants Association, a federation of tenant leaders in 42 communities in Louisiana, Mississippi, and Alabama. The Gulf Coast Tenants Association trains grassroots black community leaders to become organizers and advocates in human rights, including decent housing, job development, quality education, health care and a healthy environment.

Mr. Bryant is also a member of the Southern Organizing Committee for Economic and Social Justice.

And Clarice Gaylord is Director of the Office of Environmental Equity at the Environmental Protection Agency.

Welcome.

Mr. EDWARDS. Thank you, Mr. Hyde.

All of your statements in full will be made a part of the permanent record. We are asking each of the members of the panel to limit their remarks to about 5 minutes. When the red light comes on, if you could sort of wind it down. We would like to be able to stay here for several days and go into even more depth, but we do have some problems with time.

Ben, I guess you are first. You may proceed.

STATEMENT OF DR. BENJAMIN F. CHAVIS, JR., EXECUTIVE DIRECTOR, UNITED CHURCH OF CHRIST, COMMISSION FOR RACIAL JUSTICE

Dr. CHAVIS. Thank you. Good morning.

Mr. Chairman and members of the Subcommittee on Civil and Constitutional Rights, I am indeed pleased to have this opportunity to present testimony today on a subject matter of great importance to all Americans. The issue of environmental justice has emerged over the last several years as one of the most challenging justice issues facing our Nation as we begin the transition into the 21st century.

The convening of this congressional hearing is another critical step in defining and clarifying the complexity, magnitude, and crisis character of the growing problem of a disproportionate impact of environmental degradation on people-of-color communities throughout the United States of America.

On behalf of the Commission for Racial Justice, of the 1.6-million member United Church of Christ, I wish to state for the record our appreciation to the Committee on the Judiciary and the Subcommittee on Civil and Constitutional Rights for moving forward with this hearing.

I have known and have worked with the chairman of the subcommittee for over 20 years. The Honorable Congressman Don Edwards has been and continues to be an effective advocate for civil and constitutional rights.

We would also note that in the pursuit of civil rights, we have had for many years a constructive relationship with other distinguished members of the Judiciary Committee. The Honorable Congresspersons John Conyers, Patricia Schroeder, Craig A. Washington, Robert C. Scott, and Melvin T. Watt. I would just note back in the 1970's, Mr. Watt was one of the lawyers for the Wilmington 10. I am glad to see he is now in Congress.

There has been considerable progress made in the Nation during the past three decades concerning equal protection under the law and respect for the civil rights of all persons. Yet, today we are all aware of the lingering vestiges of racial discrimination, hatred and bigotry that have been institutionalized in the social fabric of our society.

While I have written remarks prepared, Mr. Chairman, I will try to stay within the timeframe, and I have some written material I would like to introduce into the record at the appropriate time.

Environmental racism, a definition of the problem. As a direct result of confronting the racial injustice of placing a toxic waste landfill in the predominantly African-American Warren County, NC, I coined the term, "environmental racism," in 1982. Environmental racism is defined as racial discrimination in environmental policy making, and the unequal enforcement of environmental laws and regulations.

It is the deliberate targeting of people-of-color communities for toxic waste facilities and the official sanctioning of a life-threatening presence of poisons and pollutants in people-of-color communities.

It is also manifested in the history of excluding people of color from the leadership of the environmental movement. The issue of environmental racism in our communities has become an issue of life and death. We believe that there is a direct correlation between a disproportionate presence of toxic-generating repository and/or disposal facilities and pollutants and the disproportionate increase in infant mortality, birth defects, cancer, and respiratory illnesses in people-of-color communities across the Nation.

In April 1987, the Commission for Racial Justice completed and released the first national research study that exposed a systematic national pattern of targeting people-of-color communities for toxic and hazardous waste sites. We researched every ZIP Code area in the entire Nation.

The name of the report is "Toxic Waste and Race in the United States, a National Report on the Racial and Socioeconomic Characteristics of Communities with Hazardous Waste Sites." For the purposes of this hearing, Mr. Chairman, I would request that a copy of this report in its entirety be entered into the record of this hearing.

Mr. EDWARDS. Without objection, it will be made a part of the record.

Dr. CHAVIS. Race did prove to be the most significant of the variables tested in the location of commercial hazardous waste facilities.

Two, although socioeconomic status appeared to play an important role, as Congressman Hyde alluded to in his opening statement, in the location of commercial waste facilities, race still proved to be the most significant.

Three, communities with the greatest number of commercial hazardous waste facilities had the highest composition of racial and ethnic residents.

Four, three out of every five African-Americans and Hispanic-Americans live in locations of uncontrolled toxic sites.

I see the red light, so I will conclude.

There is a convergence of the civil rights movement and the environmental justice movement. And we are pleased to report that in 1991, in October, we sponsored the first National People of Color Leadership Summit. I would like to enter into the record, Mr. Chairman, the proceedings of that historic summit in its entirety, because this is the most comprehensive overview of the issue of environmental justice and environmental racism, spoken by the various representatives of people-of-color communities themselves.

Mr. EDWARDS. Thank you. Without objection, it will be made a part of the file.

Dr. CHAVIS. Lastly, let me note for the record and for the information of the committee that Congressman John Lewis last year introduced the Environmental Justice Act. Senator Al Gore introduced it on the Senate side. It was H.R. 5326. The purpose of the bill was to establish a program to assure nondiscriminatory compliance with all environmental health, safety laws and to ensure equal protection of the public health.

I have talked with Congressman Lewis in the last 4 to 8 hours. I understand in the next few days he will reintroduce the Environmental Justice Act. And I have heard that Senator Wofford, Harrison Wofford on the Senate side, intends to introduce it in the next few days.

So there is something being put in the legislative hopper as a legislative remedy to the issue of environmental justice, environmental racism, and the question of environmental equity.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Reverend Chavis.

[The statement of Dr. Chavis follows:]

PREPARED STATEMENT OF DR. BENJAMIN F. CHAVIS, JR., EXECUTIVE DIRECTOR,
UNITED CHURCH OF CHRIST, COMMISSION FOR RACIAL JUSTICE

Mr. Chairman and members of the Subcommittee on Civil and Constitutional Rights, I am indeed pleased to have this opportunity to present testimony today on a subject matter of great importance to all Americans. The issue of environmental justice has emerged over the last several years as one the most challenging justice issues facing our nation as we begin the transition into the twenty-first century.

The convening of this Congressional hearing is another critical step in defining and clarifying the complexity, magnitude, and crisis-character of the growing problem of the disproportionate impact of environmental degradation on people of color communities throughout the United States of America.

On behalf of the Commission for Racial Justice of the 1.6 million-member United Church of Christ, I wish to state for the record our appreciation to the Committee on the Judiciary and to the Subcommittee on Civil and Constitutional Rights for moving forward with this hearing. I have known and have worked with the chairman of the subcommittee for over 20 years. The Honorable Congressman Don Edwards has been and continues to be an effective advocate for civil and constitutional rights.

We would also note that in the pursuit of civil rights we have had for many years a constructive relationship with other distinguished members of the Judiciary Committee: The Honorable Congresspersons John Conyers, Patricia Schroeder, Craig A. Washington, Robert C. Scott, and Melvin T. Watt.

There has been considerable progress made in the Nation during the past three decades concerning equal protection under the law and respect for the civil rights for all persons. Yet, today we are all aware of the lingering vestiges of racial discrimination, hatred and bigotry that have been institutionalized into the social fabric of our society.

ENVIRONMENTAL RACISM: A DEFINITION OF THE PROBLEM

As a direct result of confronting the racial injustice of placing a toxic waste landfill in the predominantly African American Warren County, North Carolina, I coined the term environmental racism in 1982. Environmental racism is defined as racial discrimination in environmental policy making and the unequal enforcement of environmental laws and regulations. It is the deliberate targeting of people of color communities for toxic waste facilities and the official sanctioning of a life threatening presence of poisons and pollutants in people of color communities. It is also manifested in the history of excluding people of color from the leadership of the environmental movement.

The issue of environmental racism in our communities has become an issue of life and death. We believe that there is a direct correlation between the disproportionate presence of toxic generating, repository and/or disposal facilities and pollutants and the disproportionate increase in infant mortality, birth defects, cancer, and respiratory illnesses in people of color communities across the Nation.

In April of 1987, the Commission For Racial Justice completed and released the first national research study that exposed the systematic national pattern of targeting people of color communities for toxic and hazardous waste sites. We researched every ZIP Code area in the entire Nation. The name of our report is *Toxic Wastes and Race in the United States: A National Report on the Racial and Socio-Economic Characteristics of Communities With Hazardous Waste Sites*. For the purposes of this hearing, Mr. Chairman, I request that a copy of this report in its entirety be entered into the record.

The major findings of our research showed that: 1. Race proved to be the most significant among variables tested in association with the location of commercial hazardous waste facilities; 2. Although socio-economic status appeared to play an important role in the location of commercial hazardous waste facilities, race still proved to be more significant; 3. Communities with the greatest number of commercial hazardous waste facilities had the highest composition of racial and ethnic residents; and 4. Three out of every five African American and Hispanic Americans lived in communities with uncontrolled toxic waste sites.

ENVIRONMENTAL JUSTICE MOVEMENT: THE CONVERGENCE OF CIVIL RIGHTS AND ENVIRONMENTAL RIGHTS

We are pleased to report that there is a growing national movement throughout the United States that has emerged to challenge environmental racism and injustice. The name of this multiracial and multicultural movement is "the environmental justice movement."

In October of 1991, we helped to sponsor the first national people of color environmental leadership summit here on Capitol Hill. Native American, African American, Latino American, and Asian and Pacific Islander American delegates came together from all 50 States and from other nations to confront environmental injustice.

Again, Mr. Chairman, I request that the entire proceedings of the people of color leadership summit on the environment be entered into the record of this hearing.

ENVIRONMENTAL JUSTICE ACT OF 1993: A LEGISLATIVE RESPONSE

Last year we supported the Environmental Justice Act of 1992, H.R. 5326, jointly introduced into Congress by the Honorable Congressman John Lewis and Senator Al Gore. The purpose of the bill is to establish a program to assure nondiscriminatory compliance with all environmental, health and safety laws and to ensure the equal protection of the public health. We understand that in a few days, Congressman Lewis will reintroduce this important legislation. We hope that this bill will get the fullest possible support by this subcommittee and from the entire Congress. I have also been informed that President Clinton and Vice President Gore support the passage of the Environmental Justice Act of 1993.

Mr. EDWARDS. I might add since we are mentioning names, in the remarkable rewriting of the Voting Rights Act, I believe it was in 1981, Mr. Hyde played a very important and key part. I am not sure at all we could have done the great improvements we did in that bill if it hadn't been for his help.

Dr. CHAVIS. Thank you. I didn't want to leave Mr. Hyde out. I want to salute everybody in the cause of civil rights. Whether you are a Republican or Democrat, we want you to keep on going.

Mr. EDWARDS. Ms. Johnson, you may proceed.

STATEMENT OF HAZEL JOHNSON, FOUNDER AND EXECUTIVE DIRECTOR, PEOPLE FOR COMMUNITY RECOVERY

Ms. JOHNSON. Good morning, Mr. Chairman and members of the Civil and Constitutional Rights Subcommittee.

I want to state that I live on the southeast side of Chicago, as already mentioned. It is an isolated area, with 100-percent Afro-American community—over 20,000 people live within my community.

People for Community Recovery is located in Altgeld Gardens which was built 53 years ago and constructed on a former garbage dump owned by the Pullman Boxcar Co. Altgeld Gardens is in the heart of the Calumet Industrial District and its neighbors include at least 50 landfills, a toxic waste site, a sewage treatment plant, a range of industries that utilize coke ovens, blast furnaces, refineries, scrap yards, and chemical companies.

The best way to describe Altgeld is as a toxic doughnut. We are surrounded by all these industries and we are constantly inhaling all types of fumes, and especially fumes from the sewage treatment plant.

During the summertime, the odor in my community is so unbearable that when you pass, you know where you are, on the southeast side of Chicago. It smells like decomposed bodies. We have gas odors. We have chemical odors. We have all kinds of odors in our community. And many of our people are ill from inhaling all of these toxins.

Mr. EDWARDS. Does the odor come right out of the ground?

Ms. JOHNSON. Sure. We have a sewer treatment plant, when they recycle that gas, that odor is horrible. When they put sludge out to dry, that is horrible, because it smells like hundreds of decomposed bodies. The odor just makes you sick, nauseated. The gas smell irritates our eyes, ears, nose, throat, and skin. We do have a problem within my community.

This community has been plagued with illnesses such as cancer. My husband died of lung cancer in 1969. Left me with seven children to care for. Many other people in my community have died of kidney disease—like my daughter's best friend right now, she is on dialysis every 4 hours.

It hurts to hear things like this. My daughter that was pregnant about 4 or 5 years ago, her baby had to be aborted because it was—it hurts to say it, the baby had to be aborted. Not only her baby. There are many young women within my community that were pregnant with kids that had to be aborted. We had babies that were born with tumors on the brain, and the majority of girls; some babies were born with cancer and died at 2 or 3 years old. They had one little baby with the head protruding—the brain was protruding from the head. They had to do surgery, but she died at 7 months.

We have a little girl now, she is 5, she had two brain surgeries by the time she had made it to 2 years old. She is blind, she can't do anything for herself, she can't walk or do anything.

And I am here because many people don't know—I am getting off my agenda because I am getting upset, but I have to tell my

story. I have seen many people in my community die. Some people on the respirator have to be on oxygen. Everywhere they go they have to pull the oxygen container along with them.

I don't think anybody should have to live under these conditions. And I think it is time for someone to do something about the problem that we are facing. I feel it is a form of genocide in my community; I have seen a lot of my friends and neighbors, die, or have terminal illnesses. It is just a question of time.

One of my best neighbors, she has been in a coma for a whole month. We are looking for her to expire. There is another guy just died this past Saturday. So we do have a problem. And it is time for something to be done.

The majority of these cases—I see the red light, but let me finish saying what I am here to say.

I want everybody to know that it is not just our community's problem. It is everybody's problem. A lot of people think this problem is not theirs, but they are wrong, because we are right next to it, we get the strongest doses of it, but please believe me, wherever the wind blows, you are getting part of it also.

Think about it. If we are affecting the ozone, don't you think that we right down here are being affected? And if we don't start doing something about the problem, then your grandchildren or your great grandchildren will not have a safe and healthy earth to live on. We must do something now, not wait for a study of 3 or 4 years from now. We have to do something immediately.

Thank you.

Mr. EDWARDS. Thank you, Ms. Johnson. That is very moving and challenging testimony.

[The prepared statement of Ms. Johnson follows:]

PREPARED STATEMENT OF HAZEL JOHNSON, FOUNDER AND EXECUTIVE DIRECTOR,
PEOPLE FOR COMMUNITY RECOVERY

Hello, my name is Hazel Johnson, I live on the Southeast Side of Chicago, Illinois. I am the founder of People for Community Recovery (PCR) which was incorporated on October 25, 1982.

PCR is located in Altgeld Gardens, a public housing development that was built fifty three years ago and was constructed on a former garbage dump owned by the Pullman Boxcar Company. Altgeld Gardens is in the heart of the Calumet Industrial District and its neighbors include at least fifty landfills, and toxic waste sites, a sewage treatment plant, a range of industries that utilize coke ovens, blast furnaces, refineries, scrap yards, and chemical plants. The best way to describe Altgeld Gardens is "the toxic doughnut." In every direction, it is surrounded by waste and hazardous materials of industry and consumer society.

This community has been plague with illnesses such as cancer, kidney problems, birth defects, respiratory ailments, arthritis and skin rashes. Looking at your loved ones suffering and dying while the polluters profit millions of dollars at the expense of poor communities. Even our Illinois Environmental Protection Agency and United States Environmental Protection Agency receive thousands of dollars for fines and penalties and the victims who are being exposed and hurt by toxins get nothing but ill health and deaths. The bureaucracy has to come up with a solution to these problems. Look around this country at all poor communities and you will see waste facilities in these communities. Why? Because these communities must deal with day-to-day survival and immediate issues which affect them directly. Our poor communities do not know how to voice their concerns politically and waste industries are experts at taking advantage and destroying communities where they want to put their facilities. It seems like our own government who is suppose to represent the people interests, they only represent polluters who usually do not comply with laws that regulate them. It just likes passing the bucks and making poor communities expendable.

The system that regulates industries and consumers must change now. We can start by working together towards pollution prevention within companies; creating health prevention programs in poor communities to alleviate the high cost of medical care for people like myself who can not afford health insurance; conserving natural resources that we are destroying so rapidly; create higher standards on toxin emissions and ground water contamination; promoting "green businesses and products availability" in poor communities for economic development; making recyclable materials affordable to the public and every community in this country should have a recycling center; place a moratorium on landfills and incinerators in residential areas; create laws that mandate waste industries to be accountable to communities where they are located; and create a council in every city in this country that comprise of community leaders, public officials, environmentalists, and businesses to oversee and evaluate any future development of any kind of businesses that would threaten our country.

America is suppose to be the leading country of the world and every country on this continent looks for direction from us and we must set examples that are positive and safe for you, me and the rest of the world. Make America an environmentally sound country so that we can regain the respect of citizens who fight hard every day of their lives to protect this earth.

Mr. EDWARDS. Mr. Bryant.

STATEMENT OF PAT BRYANT, EXECUTIVE DIRECTOR, GULF COAST TENANTS ASSOCIATION

Mr. BRYANT. Good morning, Mr. Chairman, Mr. Hyde.

I come from one of the safe zones to poison. Somehow or another in this country we have created safe zones to poison people and workers. It happens all over the country in a limited way to some extent. Every Latino and every African-American and Native-American and Asian community is a target.

But in the South, we take on about 65 percent of the Nation's waste, hazardous waste, and within the South, African-American communities in particular are the targets of a lot of this waste that comes from everywhere from around the country. And within the South, there are places that are super zones to poison. I live in one of those. The area called Cancer Alley, between Baton Rouge and New Orleans, where we have 130 petrochemical facilities owned by 80 multinational corporations.

They literally are engaged in chemical warfare. The practice is for these companies to move as close as they possibly can to long-established black communities. In this corridor they put out 2 billion pounds of poisons. About a fourth of it is known to be carcinogens. Nobody knows the effect of these chemicals when they are all mixed into the air, into the water, and they pump it into the land.

Now, somehow or another, here in Congress, we hear you talking about reducing, reducing pollution—we wish you wouldn't use that word, "pollution." We wish you would say "poisons." Sure, when we read the legislation, the legislation talks about reducing the poisoning. Nowhere do we see you talk about stopping the poisons. And that is very racist. Because we are the ones who suck this stuff up. We are the ones, our children are the ones whose lives have been snuffed out. We don't want to hear anybody talk about reducing. No, we want it stopped.

Now of course the EPA says, there is an acceptable risk here, that it is OK to keep putting these poisons out. All these companies I am talking about get a permit to do it. They are permitted to poison us. It is acceptable. It is the law. Just like segregation was the law. Their continued poisoning of us is the law.

Now, the EPA comes and they want to set up an Environmental Equity Office. They want to do this, you know, talk about equity. We are not concerned about that. We are concerned about equity, but we think that it is kind of a misleading way to do it. We don't want to have white people sharing in the poisons. We want the poisoning stopped.

The technology is available, Mr. Chairman, to stop the poisoning that is going on in the communities all over this country. But the corporations won't stop it. The corporations are trying to save as much as they can for the shareholders. That is the problem. So we want to stop the poisons.

Now, Mr. Hyde talked about scientific documentation. There is a lot of science or what purports to be science on the side of the industries and on the side of the Environmental Protection Agency. We don't want any more of that gobbledygook. They tell us it is OK, we are not dying from cancer down in Cancer Alley because of these companies. But nowhere are they looking at the synergistic effect of all these chemicals.

Lastly, we call on you in Congress to have a permanent moratorium on the poisons you are putting on us. No more landfills. No more incinerators. No more hazardous industries. And certainly we are asking for no more of these studies that say that everything is OK.

We are also asking compensation for the victims, that the people who have been poisoned get health care, they are compensated for the loss of earnings, loss of their health.

We are also asking that cleaning up the environment be made a national priority by deeds and words. We can create enough jobs to put America back to work if we just, Mr. Chairman, clean up the places that we have poisoned where people live.

One last thing. It is not just African-Americans. I looked at your hearing schedule. It is not just affecting African-Americans. Native-Americans, Latino-Americans, Asian-Americans also are in this melting pot, this poison pot. We hope that in your future hearings you will have some of those people here to talk about their experiences.

Thank you.

Mr. EDWARDS. Thank you very much, Mr. Bryant.

[The prepared statement of Mr. Bryant follows:]

PREPARED STATEMENT OF PAT BRYANT, EXECUTIVE DIRECTOR, GULF COAST TENANTS ASSOCIATION

HIGHLIGHTS OF KEY SOUTHERN STRUGGLES FOR ENVIRONMENTAL JUSTICE

"Cancer Alley," the corridor between Baton Rouge and New Orleans, LA, remains one of the most poisoned areas anyplace. One hundred and thirty-eight petro-chemical facilities have made home in large plantations, most of the time as close as possible to African-American communities begun as home places for former slaves at the close of the civil war.

When most of the petrochemical industries located in these African-American and poor white communities they claimed to bring jobs and prosperity. Rarely have these corporations hired from the communities they poisoned. Several communities have been poisoned until they were destroyed. Revilletown, Morrisonville, and Sunrise were poisoned by Georgia Gulf, Dow Chemicals, and Placid Oil Company respectively. After poisoned communities fought sustained battles these companies responded to buy their land at giveaway prices and refused to compensate those whose health have been ruined.

Despite denials of petro-chemical industry financed studies, we know that cancer incidence in this corridor is higher than the national average. Cancer is so commonplace in "Cancer Alley" that almost every family is touched.

Roughly 2 billion pounds of poisons, about two-fifths, known to cause cancer and mutagenics, are dumped into the air, pumped in the land and water yearly in "Cancer Alley." This area has become a zone of national sacrifice. This is genocide at its finest, and is a national disgrace.

Lyons, LA, near Reserve on the Mississippi River's east bank about 35 miles west of New Orleans, is sandwiched between two poisoning corporations Cahgill Grain and Marathon Oil Company. Both companies located so close that children often throw rocks from their porches to hit facilities inside the plants. Grain dust settles constantly, seeps through closed windows, rust window screens, eats into paints, causes skin lesions, causes and aggravates respiratory disorders, and many more illnesses. Marathon Oil Company refines petroleum in the community with a constant barrage of ethylene and other chemicals and wastes from its productions. The mostly black community here suffer from all of the symptoms that characterize life around petro refineries and grain elevators including high blood pressure, heart disease, blood disorders, and respiratory ailments. The threat of explosion is a constant fear among workers and communities. Several areas inside the gates of both companies are heavily poisoned. Residents and workers fear these poisons leach into the surrounding community. Sugar cane, bound for America's dinner tables grow along side both plants.

All across the South are badly poisoned sites that have been lucky enough to be included on the national priority (superfund) and nearly all of these are very badly managed by the EPA without regard for the lives of people living in these communities. Columbia, Mississippi, located about twenty-five miles east of Hattiesburg and about one hundred twenty miles north of New Orleans, was host to a wood preservative plant and later a chemical plant at the same location in a poor white and black community. None of the residents, white or black, realized just how poisoned this community was until after an explosion in 1977 at the Reichold Chemical Company. Reichold moved and left behind 176 highly poisonous chemicals that altered the health of the community. Since 1984 EPA has been involved in cleaning up this site in the same haphazard fashion that the agency has handled superfund in people of color communities nationwide. The poisons have been recklessly spread to other communities, the cleanup technology was highly questionable, workers were exposed needlessly, and at each time contractors excavated at the site community folk became ill. The site is being excavated right now and residents complain from a variety of illnesses to the EPA. But the EPA won't halt the digging, nor will the EPA respond to the community's demand to be relocated from their homes where poisons have migrated from the site. Through the actions and inactions of the Region IV EPA Columbians have been left destitute, without a prayer, except for maybe Congress and the new administration. Leaders from around the South will gather at Columbia March 27 and 28 to confer on what actions we will take to get justice here. Columbians demand: relocation from the poisoned site; lifetime health monitoring by HHS; cleanup of the community by local residents trained in the best available technology; cleanup training funding and contracts to clean up the site.

So callous has been the EPA and other governmental agencies, that the U.S. Department of Housing and Urban Development (HUD) allowed a federally subsidized housing project for the elderly to be built along side a fence that cordons off the site. The complex was built after the explosion and after the area was designated a superfund site. Runoff rain water contaminates the housing project at nearly every rain. Fumes and vapors at the site are a constant complaint from the housing project residents.

In Chattanooga's mostly black district, the Alton Park community, forty-two poisoned sites, two of which are superfund are present. Property values have greatly decreased, sickness is everywhere, and the EPA's treatment is merely cosmetic along the Chattanooga Creek that meanders through the community. Meanwhile, the suffering that is commonplace in the community is ignored by the EPA and a host of poisoning communities go on with business as usual.

Lead poisoning is being fought in a lot of places in the South without the assistance of government. An example is Mississippi. The state health department refuses to screen, as required by federal law and regulations, children who are high risks for being lead loaded. Even when citizens test these children with private funds, the health departments do not assist with treatment of those who are found to have excessive levels of lead in their blood. Local housing authorities and HUD have not taken action on children who are found to have levels higher than the CDC threshold.

In hundreds of places like Noxube, County, Miss. and Cherokee, N.C., proposals to build new incinerators and landfills are the main focus of all kinds of groups in African-American, Native-Americans and poor white communities. These kind of struggles are commonplace and are the main kind of environmental activity in the South.

OUR CALLS TO ACTION

1. *Declare a Moratorium on Siting of Poisoning Facilities in the South:* We call on the Congress, state legislatures, and local government to legislate and ask the President to sign an executive order imposing an immediate moratorium on the siting of all hazardous waste facilities (South is home to 65 percent of hazardous waste facilities) and the placing of polluting and nuclear industries in the South. We will take action to stop dumping of industrial poisons on any communities—especially those of Native Americans, African Americans, Asian Americans, Latinos, and low-income whites in the South. And we will likewise take the position of "Not in my backyard." These dangers we are opposing should not be in anybody's backyard.

2. *End Industrial Pollution and Compensate its Victims:* We demand that all industries that poison workers, communities and the purchasers of their products and services stop the poisoning within one year and compensate their victims damages. This means that relocation of communities and people where this is required, lifetime medical services, and other appropriate measures.

Environmental justice demands that institutions that have profited from the earning created from the poisoning of people of color and poor white people return those unjust earnings to the poisoned communities. We call upon national church denominations and other religious orders, universities, pension funds, unions, and governments to divert their stock holdings from corporations that refuse to stop poisoning the earth and/or refuse to compensate their victims.

3. *Make Cleaning Up the Environment the Top National Priority:* We call upon the President, the Congress, state legislatures, and local government to pass legislation that will clean up all poisoned communities the top national priority, a foundation upon which to rebuild American. The first responsibility for paying for such clean-up belongs to the corporations which have profited from these enterprises, the government itself where it is responsible for the hazards. And where industry will not pay for the damages itself where it is responsible for the hazards. And where industry will not pay for the damages to our property, public lands, rivers, and our health, government must step in and do it quickly. The clean-up costs must be paid from monies saved from reducing the nation's military budget to 25 percent of its present level. Military bases to be closed in the South should be cleaned up with appropriate technology and leased to small industries and people-of-color farmers at nominal fees.

4. *Provide New Opportunities for Workers Displaced from Poisoning Industries, and Create a Massive Training and Jobs Program for Them and the Unemployed through the Clean-Up:* We insist that workers who have been the worst victimized by poisoning industry not be victimized again if their jobs are eliminated when clean-up begins. We call on this nation to commit itself to the creation of a Superfund for Workers, as has been proposed by some of our nation's labor leaders. This would be modeled on the GI Bill of Rights that was used after World War II to open up new opportunity to military personnel returning from the war. Such a Superfund would provide full pay and benefits, plus tuition costs, for any workers who lose their jobs because of environmental clean-up. This would cost tens of billions of dollars—but we know the money is available, hundreds of billions of dollars was spent from the taxpayers' money to bail out the corrupt savings and loan companies. The GI Bill of 40 years ago came at a time of the most tremendous dislocation of people our nation has ever known, with millions of soldiers returning to the domestic economy. But the nation was committed to their welfare, and it rose to the occasion. What we as nation did once in a period of massive transition, we can do again in the massive transition that is needed today.

And as part of this program of clean-up, we call for a massive jobs program to train and hire for the clean-up displaced workers who want these jobs, along with millions of our unemployed, especially our youth. This training and jobs program should be directed first of all to those who have lived in or near the polluted areas. But the clean-up must be done in a way that does not further endanger the health and lives of those who do the work. With proper use of modern technology and work-standards set by the health needs of workers, this can be done. We call upon labor unions, historically black colleges and universities, Southern community organizations and churches to be involved in the development and implementation of the

jobs/training component of the national environment clean-up. We also demand the necessary financing of networks and task forces of historically black colleges and universities and community organizations to work jointly to document the extent of poisoning in every Southern community and to develop solution utilizing the best available technology.

We want to point out that such a massive clean-up, if it's done on the scale it must be done—along with other public-interest construction programs mentioned in this manifesto—will solve our unemployment crisis, and provide jobs for all in our society far into the next century.

5. *Remove Lead Poisoning from Our Environment:* We demand that the President of Congress, our state legislatures, and local governments make removing lead from the environment the very highest environmental clean-up priority. Lead in paint, soil, and water pipes remains one of the most significant destroyers of African American and Latino life, and victimizes them at twice the rate of whites. Lead must be detoxified from the environment now.

6. *Restore the Sovereignty of Native Lands and Respect and Implement Treaties with Native Peoples.* All who are committed to environmental justice see the struggle. The genocide that has been committed against Native Americans, beginning 500 years ago and continuing today, remains one of the great shames of our country. Today, the lands of Native peoples are among the most frequent victims of toxic dumping and destruction. People of all color who are concerned for environmental justice have learned much from Native Americans in recent years, much about respect for Mother Earth and the need to preserve her natural resources. They have also learned that what has been done, successively, to other peoples since then. All of the Environmental Justice Movement stands today in solidarity with Native peoples as they wage their struggles, and we unite to demand that this country take now a totally new course in its dealings with indigenous people.

7. *Make the South's Workplaces Safe and Healthy.* We demand that Congress, state legislatures, local governments, and the President act in decisive ways to make workplaces throughout the South and the nation safe and healthy. This means, in the first place, that voluntary reporting by industry of the use and misuse of industrial poisons must be replaced by close government monitoring. However, we also know that the best guarantee of safe workplaces is an organized work force within them. Workers on the job know better than anyone when conditions endanger their lives. They must have the right to make regular inspections and mandate corrections, by stopping production if necessary. To have this right, they must have organized strength. That means they must have the unabridged right to organize unions if they so desire. This fundamental right has never been guaranteed in the South and has been undercut further by intense anti-labor actions of government at all levels in recent years. This must stop. The right of workers to organize must be unequivocal. Furthermore, we call on all community organizations to work closely with worker groups to monitor and inspect facilities that threatens the lives and safety of both workers and the community.

8. *Stop the Poisoning of Farm Production.* We demand action at all levels to stop the use of the pesticides that are causing sickness and death among our nation's farm workers, as well as endangering the workers who make these substances, and the consumers who eat the products that have been poisoned in the field. From factor, to field, to market, to dinner-table, these pesticides endanger us all.

9. *Stop the Destruction of Black Farmers and All Small Farms.* People-of-color farmers must be preserved and adequately subsidized. We demand that black land loss be stopped and reversed. The failed policy of subsidy to large multi-national agricultural industries disguised as economic development because the South remains the nation's economic backwaters. We call for re-development of a national bank to invest in community-based cooperatives for farmers and others and for small industries, nationally, but especially in the South, as the heart of the strategy to rebuild America. As in all such programs, measures initiated to save the victims of land loss among black farmers will set precedents for our nation that will benefit all small farmers, of all colors and nationalities.

10. *Launch a Massive Housing Construction Program.* We call upon the Congress, state legislatures, local governments, and the President to develop a national housing program that will eradicate homelessness within 10 years and insure that no family pays more than 25 percent of its income for housing. Homelessness, overcrowding and substandard housing are environmental issues that can no longer be ignored.

11. *End Academic Tracking and Create Equitable, Adequately Funded Public Schools for All.* We insist that our nation's schools be funded adequately and that environmental hazards be eliminated from schools as a priority. We insist that race-and-class-based tracking of people of color and low-income whites into non-academic

education be stopped in public schools. This should be replaced with equal access and opportunity to all curricula. mixed performance level classes. Remediation must be provided as needed.

12. *Provide Education Instead of Prisons.* We further demand a strategic shift in the resources used now to imprison people-of-color males, who are incarcerated at a rate far higher than that for whites and far higher than incarceration in other industrial countries. We propose that such resources be used to provide education and skills and employment, programs that would dramatically reduce the South's prison population. As things are today, military spending and prison construction remain our largest industries. These priorities state starkly the condition of our society—a condition no one who wants a good society for our children can tolerate. This must change, now.

13. *Provide Full and Adequate Health Care for All.* We in the Southern Environmental Justice Movement add our voice to the cry that is arising all across our land; we must end the national disgrace on the richest country in the world failing to meet the health-care needs of its citizens. We rejects all band-aid approaches to this problem, and join with those who demand immediate transition to a single-payer national health plan. And we insist that such a plan must include special measure to deal with the health care needs of those who are victims of poisoning.

14. *Stop the Drug Trade.* Drug importation into the United States must be stopped. Environmental justice demands that the President and the Senate make whatever treaties are necessary with the producers of cocaine and heroin to stop their production overseas and importation into the United States. Unless this is done quickly, a generation of our young people will be destroyed.

15. *Place Restrictions on Corporations that Move to Other Countries.* We as a nation can no longer sit idly by while corporations move to developing countries to avoid more stringent environmental regulations and organization of workers here. Products of such corporations should be barred from importation into the United States. Racism and sexist hiring policies of all businesses must be stopped and the victims of racist/sexist hiring policies be compensated. Environmental justice also demands that the assets of any company wishing to relocate in the developing world should be frozen until that company proves it does not leave environmental hazards behind, and until displaced workers have been fired and/or retrained at similar pay in other industries.

A PROGRAM FOR OUR ENTIRE REGION AND THE NATION

The program that is outlined in this manifesto has been developed by an organization of people of color, and its being projected by an Environmental Justice Movement that is led by people of color. But it is a program that is not for the benefit of people of color alone. Rather it is a program for our entire region, and indeed our entire country, a program that can turn our society in a humane and more democratic direction for all.

It is fully in keeping with our history as a society that this should be so. In this history, it has always been when people-of-color organized and demanded freedom and a better life that the entire society moved toward priorities that would meet the needs of *all* of its people. This was true in the South during the brief Reconstruction Period that followed the Civil War—when freed slaves led the most democratic governments to the South had even known and launched programs to provide education, health care, and public services that benefited everyone. It was true in the South during the 1930s, when African American workers took lead in organizing under literal police-state conditions—and thus launched movements that brought social benefits such as unemployment insurance and social security that we all take for granted today. It was true again in the 1960s, when the Freedom Movement of African Americans in the South established for a brief moment new national priorities that put people's need first. The results, although all too limited and cut short too soon, were programs like medicare and medicaid, job training, and education assistance at all levels that benefited all our people. Sometimes it is said today that whites will not follow people-of-color leadership. But the fact is that in the 1960's this entire nation was following leadership of people-of-color; they were setting the agenda for the country, and it was a humane agenda.

The simple fact is that because people of color have been pushed to the bottom of our society when they move to achieve justice and a better life, it pushes everything upward and outward, and expands the horizons of the society for everyone. Unfortunately, powerful forces in our society have long told whites that the opposite is true—that what people of color gain takes something away from them. But today, an increasing number of whites, especially poor and working-class people, are recognizing that Big Lie for what it is. We in the Environmental Justice Movement

in the South urge whites to recognize and respect the people-of-color leadership that has arisen from the grass-roots to make this movement possible. In this movement lies hope for us all, white as well as people of color. We urge whites to join this movement as equal partners in the struggle.

The Environmental Justice Movement that is growing and offering hope to the country today is possible because of the long struggles of color that have produced our current leadership. In order to make clear the roots from which we come, we propose that "Change the Earth Day" Movement be launched. We want to organize to celebrate Earth Day in March, on the day that is called "Bloody Sunday", when voting rights marchers were brutally attacked on the Edmund Pettus Bridge in Selma, Ala. That struggle was the turning point in the long fight of African Americans and their allies to win the right to vote in the South. People died in that struggle, and out of that has come our ability to organize and lead the nation to stop the poisoning of our communities today. We propose that the first "Change the Earth Day" be in March, 1994. It should involve a week of local/Southern/national actions including but not limited to: mass marches, oratorical, poster and art work contests in schools; lobbying, teach-ins; commencement of year-long petition gathering, voter registration, small group meetings, planning sessions and demonstrations; religious services—all focusing on the risk imposed by every industry in each community that poisons workers and the environment and negotiating agreements to stop the poisoning. Every elected official, every governing body in the South would be approached to sign, endorse, and implement our plan to clean up our communities.

And, in order to implement and enforce the demands that are made in this Manifesto, we are calling on all progressive organizations in the South to join us in campaigns to register 6 million new voters in people-of-color and low-income white communities in the next year.

FOR NEW PRIORITIES, FOR A NEW SOCIETY

We believe the program that is outlined here—and the Environmental Justice Movement that is growing at the local level throughout the South—can provide the impetus not only to save our environment and our lives, but turn our entire society in a more humane direction.

We call on people in diverse constituencies to join us. We call on our elected officials and all agencies of government to support this program. We call especially on people-of-color officials to take the lead. We are alarmed by the fact that since passage of the Voting Rights Act and the dramatic increase in African American and Latino elected officials in the South there has also been a dramatic increase in the poisoning of our communities. We are determined to campaign for and elect officials who will be accountable to us and will fight for environmental justice.

We urge all white-led national environmental organizations and universities to assist the emerging Environmental Justice Movement that is led by people of color. We ask that you dedicate the resources you have with no strings attached, including technology and money. We urge you to join with us and follow our leadership in the battle to make every community safe. We demand that the resources for community education and organizing designated by churches, foundations, private philanthropists, and unions be shared equitably with people-of-color organizations, and also with organizations in low-income white communities. We call on all progressive leaders and organizations in the South to unite for the common good in support of this Movement. We especially call on our religious activists to give leadership in this struggle.

Our society is in deep trouble—not only environmentally, but economically, politically, spiritually. But this new movement that is arising in the South around this life-and-death issue that affects us all offers a window of hope. Let us join together now and win a future that is bright for ourselves, for our children, and for generations yet unborn.

DRAFT

SOUTHERN ACTION MANIFESTO FOR ENVIRONMENTAL & ECONOMIC JUSTICE

A Proposal to End the Poisoning of Our Communities; Create Safe & Healthy Workplace; Provide Jobs, Education, Housing, Health Care, and a Clean Environment for All

This is a proposal for Southwide action to stop poisoning of our communities, create safe and healthy workplaces; clean up the land, water, and air; build and rehabilitate enough housing to end the housing crisis; restore the health of our communities, and compensate the victims of environmental injustice.

The proposal was first presented to the Southern Community/Labor Conference for Environmental Justice at Xavier University in New Orleans September 4-6, 1992, by the Gulf Coast Tenants Organization, a coalition of local tenant groups in Louisiana, Mississippi, and Alabama. It was amended by some of the participants in that conference, but is still a draft form, and is now being presented in draft form to the Committee on the Judiciary of the House of Representatives of the Congress of the United States.

The Southern Community/Labor Conference for Environmental Justice was a historic milestone in that struggle. It was hosted by the Gulf Coast Tenants Organization and sponsored by the Southern Organizing Committee for Economic & Social Justice, a Southwide multi-issue, multi-racial network of people working in their communities to end racism, war, economic injustice, and environmental destruction. It was co-sponsored by Xavier University and the SOC Education Fund, Inc., and endorsed by more than 100 other human-rights organizations. The conference was one of the regional follow-ups to the National People-of-Color Environmental Leadership Summit, which produced Principles of Environmental Justice, which are guiding the movement we are building in the South.

More than 2500 people attended the Southern conference, the largest environmental gathering ever in the U.S.—most of them from local community groups and worker organizations struggling against poisoning and dangerous working conditions in 14 Southern states, but joined by concerned activists from all parts of the nation. Included among the participants were African Americans, Native Americans, Latinos, Asian Americans, Caucasian/European Americans; community and labor organizers; traditional environmentalists; and representatives of church groups, women's groups and civil groups. More than 500 young people attended, organized by a Youth Task Force. Participants exchange numerous specific programs for unified Southwide action.

In early 1993, the Southern Organization Committee will convene a meeting of local leaders from the South to discuss these action proposals, establish priorities, and plan specific steps to implement as many of them as possible. At that time we will communicate to the final version of this document to the Committee on the Judiciary.

PREAMBLE

Environmental racism is the disproportionate and deliberate placing of poisoning waste facilities in communities of color, the unrestricted pollution of these communities by polluting industry and military establishments, and the ignoring of these threats to our lives by those in corporate/governmental/institutional power. Environmental racism is a crime against humanity, and it must be ended.

In this society, the treatment of and conditions of life and people-of-color have always been the bottom line which sets the standard for the treatment of and condition of life for all people. That is a society which turns it back on the human needs of any group ends up rejecting the human needs of all its people. Therefore, an inevitable result of environmental racism is that poor and working-class white communities—those where people lack power—are also disproportionate victims of toxic dumping and polluting industry.

When African Americans decided that racial segregation would be ended, even if our lives must be lost in the struggle, Jim Crow was killed. Now leaders of people of color in the South—joined by a growing number of working-class whites—are uniting to stop the poisoning of our workplaces and communities.

Beyond our fight to destroy environmental racism and injustice, we are uniting for a future that provides adequate housing for everyone at affordable prices, clean air, land and water for all; education without regard to color and class status; safe jobs at living wages; restoration of our health; and monetary compensation to those who have been poisoned by industry and the government.

We will not allow the "environment" to be defined narrowly so that it becomes the arena of a few single-issue, white, male-dominated national organizations. We are all becoming advocates for environmental justice. As such advocates, we have redefined the very term "environment" to include all the life conditions in our communities.

That means we call for changes in our economic and political system so that the wealthy are not made richer at the expense of the poor; so that our natural resources are protected from the profit seeking of multi-national corporation; so that we are not divided in our struggle because people-of-color workers are idled to the benefit of white workers anywhere; so that jobs, decent housing, education, health care, and a clean environment are recognized as basic human rights that will be protected for everyone.

Mr. EDWARDS. Ms. Gaylord.

STATEMENT OF DR. CLARICE GAYLORD, DIRECTOR, OFFICE OF ENVIRONMENTAL EQUITY, U.S. ENVIRONMENTAL PROTECTION AGENCY

Dr. GAYLORD. Good morning, Mr. Chairman and members of the subcommittee. I am Clarice Gaylord, Director of the Office of Environmental Equity. I appreciate the opportunity to be here this morning to discuss environmental justice and EPA's environmental equity programs.

I do not have a prepared testimony with me today because of the short notification we received on Friday, February 26, to appear before this subcommittee. We will provide a statement for the record at a later date.

As requested by your staff, I am also submitting for the record copies of EPA's report, "Environmental Equity, Reducing Risks for all Communities."

Environmental equity refers to the principle that all people are entitled to equal protection under environmental laws, and that these laws should be enforced without discrimination due to race, ethnicity, culture, socioeconomic status, or many other factors.

However, many reports in the literature and EPA's own studies have shown that environmental inequities do exist, that people of color and low-income communities are not equally protected.

We know that residents in these communities face a higher exposure to environmental hazards whether they are living near landfills, incinerators or hazardous waste sites, whether they are being exposed to lead, asbestos or radon in old, poorly maintained residential buildings, whether they are living on reservations being used as dump sites for solid or nuclear waste, or whether they are being poisoned by unprotected exposure to pesticides in farm fields.

When these environmental justice or environmental fairness issues emerged as a serious public concern among equity leaders, grassroots organizations, academia, affected communities, and Members of Congress to address these issues, EPA formed the Environmental Equity Work Group in June 1990 to assess the relative risks borne by minority racial communities and low-income communities.

By June 1992, EPA published the work report, "Environmental Equity, Reducing Risk for All Communities," which I have to admit is a first step for the Agency in better defining the distribution of environmental risks across populations.

In accordance with recommendations from this report, the Office of Environmental Equity was established 4 months ago, November

1992, to serve mainly as a focal point for equity initiatives, and to coordinate the implementation of the report recommendations.

Much of our initial focus has been in three major areas: education and outreach; community economic development; and technical and financial assistance.

Under education and outreach, we have been promoting and sponsoring public awareness and public action conferences with our regions, our States, our local communities, community groups and industry. The idea is to set up communication links between these groups so they can sit down and identify and work on local environmental problems which are perpetuating adverse situations.

Our goal is to increase the involvement of these communities at local environmental decisionmaking. All 10 of our regions are sponsoring some type of equity conference this year.

When we started training in awareness outside the Agency, we found out we had to train and make aware EPA employees as well. We have put together a training module which we hope to be exported to our regions and local officials within the next couple of months.

We established a hot line to make EPA accessible to communities experiencing environmental problems. We have set up a referral and tracking assistance to the regions and program offices that have responsibility to address these issues.

One of our problems is we do not have any kind of legislative authority to do anything in this Office. We were put together by public pressure, and that is one of our limitations.

As part of our outreach, we are dealing with the black satellite network and the Hispanic national radio to broadcast programs on environmental equity and environmental racial problems.

Under community economic development, we are developing self-help programs designed to improve the environmental quality of these communities as well as to stimulate economic growth. Two job and training projects for residents are currently being demonstrated in the District of Columbia and Cleveland, OH, areas as a prototype for national programs. Our belief is that residents can be put to work to clean up their own communities, and that is a program we are testing.

We are trying to provide technical assistance by way of grant funding to organizations engaged in developing equity policy, research, surveys, assessment, monitoring studies, and cleanup demonstrations. This has been limited in my Office because we still have not been given granting authority and funding is very restrictive in my Office.

On a broader scale, all program areas, whether in solid waste, Superfund, air, water and toxics are currently doing equity analysis and gathering data on the demographic profiles of communities living near polluting sources. The idea is that once high-risk communities are identified, efforts can be taken to reduce the exposure and hopefully to reduce the risks.

Reduction efforts include using pollution prevention strategies and the use of waste limitization technology. EPA in conjunction with other agencies like the Agency for Toxic Substance Disease Registries are looking at ways to strengthen the scientific and health effects data used in equity analysis.

There is a need to demonstrate better correlation between exposure and the onset of disease, particularly exposure from multiple sources, as these communities are experiencing, cumulative and synergistic effects and different pathways of exposures.

The Agency is also devising ways to target inspections, enforcement and compliance monitoring efforts in highly exposed communities. Air and radiation, for instance, is trying to better target its efforts in urban communities having the highest nonattainment areas.

EPA has set up an internal cross-media policymaking process whereby environmental equity considerations can be integrated into routine Agency business, including the development and modification of existing policies, directives, strategic plans, operating guides, budgets and research development efforts.

In short, Mr. Chairman, EPA is committed to reducing risk in all communities and is dedicated to executing its responsibilities to achieve this goal. We realize, however, we have only made the first steps. We will be happy to furnish any additional information the subcommittee requests. Thank you.

[The prepared statement of Dr. Gaylord follows:]

PREPARED STATEMENT OF DR. CLARICE GAYLORD, DIRECTOR, OFFICE OF ENVIRONMENTAL EQUITY, U.S. ENVIRONMENTAL PROTECTION AGENCY

BACKGROUND

Environmental equity refers to the principle that all persons should be treated equally under environmental laws and that environmental policies should be enforced in an equitable manner without discrimination due to race, ethnicity, culture, economic status, etc. However, reports have suggested that environmental inequities may exist—that people of color and low-income communities may not be equally protected. Residents in low-income and people of color communities face a higher exposure to environmental hazards if they: live near landfills, incinerators, or hazardous waste sites; are exposed to lead, asbestos, or radon in old, poorly maintained urban residential buildings; live on reservations that are used as dump sites for solid or hazardous wastes; or are poisoned by unprotected exposure to pesticides in farm fields.

Environmental justice, or fairness, has emerged as a serious public concern among equity leaders, grassroots organizations, academia, affected communities, and members of Congress. EPA began officially addressing the issue of environmental equity after receiving a letter from an organization called the "Michigan Coalition" in early 1990. To address these concerns, EPA formed the Environmental Equity Workgroup in June, 1990, to review information on the relative risks borne by racial minority and low-income communities. By June, 1992, EPA published the Workgroup report entitled, *Environmental Equity: Reducing Risk for All Communities*, which is considered a *first step* for the Agency in better defining the issues associated with determining the current distribution of environmental risks across populations. In accordance with recommendations from this report, the Office of Environmental Equity was established in November, 1992, to serve mainly as a focal point for environmental equity initiatives and to coordinate the implementation of the report's recommendations. Much of the Office's initial focus has been in three major areas: 1) Education and outreach; 2) community economic development; and 3) technical and financial assistance to community groups.

EDUCATION AND OUTREACH

Informing and empowering communities to participate in their local environmental decision-making process is central to the Office's strategy. The Office has been promoting and sponsoring public awareness/public action conferences with EPA's Regional Offices, State and local governments, academia, community groups, and private industry. The objective is to encourage regular communication links between these groups so that they can identify and work on resolving local environmental problems which are perpetuating inequitable environmental conditions. All

ten EPA Regions are sponsoring some type of equity outreach conferences within the year.

The Office is expanding its own outreach and consciousness awareness efforts by offering equity training to EPA employees and State and local decision-makers. A training module for these groups will be available within the next few months. Efforts are underway to reach communities of color by sponsoring environmental equity broadcasts and publications with the Black College Satellite Network and the Hispanic Network Radio. These programs will inform communities of current environmental delivery services and encourage identification of any needed services. Finally, the Office has established an Environmental Equity Hot-line (1-800-962-6215) to make the Agency more accessible to communities experiencing adverse environmental problems. A referral and tracking system has been set up to ensure that responsible Offices and Regions address community concerns.

COMMUNITY ECONOMIC DEVELOPMENT

The Office is developing "self-help" programs designed to improve the environmental quality, as well as stimulate economic growth, in communities suffering from disparate exposures. The concept is to train, certify, and employ residents in environmental remediation and abatement programs, or recycling and solid waste management initiatives that will benefit the community. For example, lead contamination is a major problem in urban, poor communities. If residents can be trained in lead inspection and removal, and hired by their local municipalities or by private industries, they can reduce their exposure while at the same time improve their environmental quality. Similarly, if local markets for recyclables can be established, residents can be trained in solid waste management and new recycling businesses can be created to strengthen the local economy. Demonstrations of economic development programs are currently underway in the District of Columbia and in Cleveland, Ohio as prototypes for national programs.

TECHNICAL AND FINANCIAL ASSISTANCE TO LOCAL COMMUNITIES

Currently, one of the mechanisms for communities to receive technical and financial assistance to deal with local environmental hazards is by applying for one of Superfund's Technical Assistance Grants (TAG). This excellent program, however, is restricted to individuals living near Superfund sites and does not meet the needs of communities being exposed to non-Superfund regulated activities such as incinerators, petrochemical factories, sewage treatment facilities, etc. The Environmental Equity Office is in the process of obtaining granting authority which will allow direct funding support for equity related projects to local organizations engaged in community education and awareness, research surveys, assessment, monitoring, and clean-up demonstrations. The intent is to be able to offer such support in FY '94.

NATIONAL EQUITY INITIATIVES

All Headquarters Program offices (Solid Waste and Emergency Response; Air and Radiation; Water; Prevention, Pesticides and Toxic Substances; Research and Development) and Regions are currently doing "equity analysis" and are gathering data on the demographic profiles of communities living near polluting sources using various databases (the 1990 Census Data, the Toxic Release Inventory (TRI), etc.) in conjunction with the Geographic Information System (GIS). Some offices have modified their analyses to include data by race, ethnicity, and income, and others have undertaken new equity analyses. How the Agency analyzes risk with regard to income and ethnicity will be central to developing our risk reduction strategies. Once high risk communities are identified, efforts can be taken to reduce the exposures and, hopefully, to reduce the risk. Reduction efforts include using pollution prevention strategies, recycling, and waste minimization technologies.

EPA Offices are re-evaluating how the siting and permitting process is used to determine where hazardous and solid waste facilities are placed. Concerted efforts are being taken to work with State and local governments to incorporate socio-economic factors into these decisions.

EPA, in conjunction with health agencies like the National Institute of Environmental Health Sciences (NIEHS) and the Agency for Toxic Substances and Disease Registry (ATSDR), are looking at ways to strengthen the scientific and health effects data used in equity analyses. There is a need to demonstrate better correlation between exposure and the onset of disease, particularly exposure from multiple sources, cumulative and synergistic effects, and effects from different pathways of exposure. There has been one major conference on environmental equity issues, *Equity in Environmental Health: Research Issues and Needs*, held August 24-25, 1992,

in Research Triangle Park, North Carolina. Over one hundred participants concluded that differential health risks do in fact exist among low-income and people of color populations. A follow-up symposium is planned for July, 1993.

The Agency is devising strategies to target inspections, enforcement, and compliance monitoring in high-risk communities. By identifying and focusing on population groups which are more likely to experience adverse environmental effects, EPA can increase both the efficiency and equity of its actions. For example, because urban centers tend to have greater numbers of people of color and low-income populations, as well as having the highest proportion of air quality non-attainment areas, EPA's Office of Air and Radiation intends to better target its enforcement efforts in these areas.

EPA has set up an internal cross-media, policy making work group which has responsibility for integrating environmental equity considerations into routine agency business including the development and modification of existing policies, directives, enforcement, strategic plans, agency operating guidance, budget, and research and development efforts. The Workgroup's objective is to institutionalize equity concerns into the Agency's core business and to develop an agency action plan for change.

The Agency is establishing an Interagency Task Force on Environmental Equity to address common equity issues. Federal agencies such as the Department of Energy, the Department of Defense, the Department of Health and Human Services, the Department of the Interior, and the Agriculture Department will focus on overarching strategies to address equity concerns.

In conclusion, EPA has committed to reducing risk in all communities and is dedicated to executing its responsibilities to achieve this goal. We realize, however, that we have only taken the first steps toward this goal. We will be pleased to furnish any additional information that the Subcommittee requests. Thank you .

U.S. ENVIRONMENTAL PROTECTION AGENCY'S ANSWER TO CHAIRMAN EDWARDS'
QUESTION FROM THE MARCH 3, 1993, HEARING ON ENVIRONMENTAL EQUITY

Question: You requested information on an EPA Office of General Counsel (OGC) opinion issued in 1971 which stated that civil rights laws do not apply to environmental laws and on former EPA Administrator Ruckelshaus' 1971 testimony before the U.S. Commission on Civil Rights to that effect.

Answer: Several articles and documents that have been recently published and circulated (e.g. *The National Law Journal* article "Unequal Protection," the Environmental Justice Transition Group's "Recommendations to the EPA Transition Team"), cite an OGC opinion and former EPA Administrator Ruckelshaus' previous testimony as being partly responsible for EPA's historical posture *vis-a-vis* minority and low income communities.

EPA's OGC has been unable to locate such an opinion and doubts that such an opinion was written or ever existed.

EPA has obtained a copy of Mr. Ruckelshaus' June 15, 1971, testimony before the U.S. Commission on Civil Rights. A close reading of this testimony indicates that EPA was not unsupportive of the Civil Rights Act. In his testimony Mr. Ruckelshaus described the "limitations" on a "regulatory agency" to fulfill its mandate to achieve pollution control and its Title VI responsibilities. In several places in the testimony, Mr. Ruckelshaus clearly stated that EPA supports both Titles VI and VIII of the Civil Rights Act.

Enclosed is a copy of Mr. Ruckelshaus' testimony as well as copies of 40 CFR Part 30 (1972) and 40 CFR Part 7 (1984), regulations which implement EPA's civil rights commitments in these areas.

UNITED STATES COMMISSION ON CIVIL RIGHTS

TUESDAY, JUNE 18, 1971

CHAIRMAN HESBORGH. Ladies and gentlemen, may we come to order, please.

Before beginning this morning, I would like to swear in the reporter.

(Whereupon, Miss Nancy Gibson was sworn in as Reporter.)

CHAIRMAN HESBORGH. I'd like to call our first witness of the morning, the Honorable William D. Ruckelshaus, Administrator of the Environmental Protection Agency.

Before you sit down, we'd like to swear you in, and would you introduce your companions, please.

MR. RUCKELSHAUS. Norris Sydnor, the Director of our Office of Equal Opportunity, and Mr. Alex Greene, who is in charge of our grants program from the Environmental Protection Agency.

(Whereupon, Mr. William D. Ruckelshaus, Mr. Norris Sydnor, and Mr. Alexander Greene were sworn by the Chairman and testified as follows:)

TESTIMONY OF MR. WILLIAM D. RUCKELSHAUS, ADMINISTRATOR; MR. NORRIS SYDNOR, DIRECTOR, OFFICE OF EQUAL OPPORTUNITY; AND MR. ALEXANDER GREENE, DIRECTOR OF GRANTS ADMINISTRATION, ENVIRONMENTAL PROTECTION AGENCY, WASHINGTON, D.C.

CHAIRMAN HESBORGH. Mr. Ruckelshaus, we are delighted that you could come this morning, and we normally would prefer to have something put in the record and then be able to talk informally, if we might. We might be able to cover more ground that way. Would that be agreeable with you?

Mr. Ruckelshaus. Yes, Mr. Chairman. I talked to Mr. Glickstein before we started and I have a draft statement. I would like to submit the statement after the testimony here so that any questions that were not clarified in the questioning period here I could clarify in the statement. This will, I think, make it very clear what our procedures are and what we are doing in an effort to comply with Title VI and Title VIII.

Chairman Hesburgh. Fine, that would be perfectly agreeable with us.

(This Statement appears on p. 1011.)

John Powell, would you begin the questioning?

MR. POWELL. Would you each please state your name and position for the record?

MR. RUCKELSHAUS. I am William D. Ruckelshaus, Administrator of the Environmental Protection Agency.

MR. SYDOR. I am Norris W. Sydor, Jr., Director of the Office of Equal Opportunity in the Environmental Protection Agency.

MR. GREENE I am Alexander J. Greene, the Director of Grants Administration for the Environmental Protection Agency.

MR. POWELL. Your agency, Mr. Ruckelshaus, was created in December of 1970, is that correct?

MR. RUCKELSHAUS. That's correct.

MR. POWELL. Now, as we understand it, your agency's major grant program, at least in monetary terms, is the program for the construction of final sewage treatment facilities through which funds are distributed to municipal, local, and State agencies, is that correct?

MR. RUCKELSHAUS. That's correct, Mr. Powell.

MR. POWELL. And grants for the placement of sewage pipe or connecting lines are made primarily by HUD and not EPA?

MR. RUCKELSHAUS. We have some funds for interceptor sewers but the major lateral sewers and sewers in general are paid for either by HUD or by the local community or by the cooperative agreement between the local community and HUD or the State and local community.

MR. POWELL. Now, with respect to these grants for final sewage treatment facilities, they are allocated to States which meet certain prerequisites according to a distribution formula established by law, is that correct?

MR. RUCKELSHAUS. That's correct.

MR. POWELL. Each State determines the priority among local jurisdictions for the receipt of grants. EPA then reviews each individual proposal to make sure that EPA's requirements are met, is that correct?

MR. RUCKELSHAUS. Yes, that's correct.

MR. POWELL. With respect to these grants, how much money was authorized for this program for this fiscal year?

MR. RUCKELSHAUS. There was a billion dollars appropriated for fiscal year 1971.

MR. POWELL. What is the projected budget for fiscal 1972?

MR. RUCKELSHAUS. The Administration has requested a 100 percent increase or \$2 billion appropriation for fiscal year 1972, and actually, in our authorization bill, we have requested this amount for the next 3 years, so it's a \$6 billion Federal program for the next 3 years.

MR. POWELL. Has EPA adopted regulations to effectuate the purposes of Title VI of the 1964 Civil Rights Act, which prohibits discrimination in federally assisted programs?

MR. RUCKELSHAUS. We do not have any regulations of the Agency as yet but they are being prepared for publication in the Federal Register.

MR. POWELL. As I understand it, you are now using the regulations of the Department of Interior, is that correct?

MR. RUCKELSHAUS. That's right, of the inherited Agency, the Federal Water Quality Administration.

MR. POWELL. But you do plan to adopt Title VI regulations—when was that? How soon do you think these regulations will be adopted? -

MR. RUCKELSHAUS. Well, I can't give you an exact date but we are in the process of adopting them and we hope to have them out very shortly.

MR. POWELL. With reference to the Department of Interior Title VI regulations which are currently applicable to sewage treatment facility grants, how does EPA determine whether or not the applicant's sewage treatment project is in violation of Title VI?

MR. RUCKELSHAUS. Well, the grant itself is reviewed in terms of Title VI and if there is a violation there are a number of things which can happen. We have a Form T-128, which I can submit as part of the record if you like, and one of the problems with this form under our present procedure, and one of the reasons for our changing our regulations, is that the form which indicates compliance with Title VI is not submitted to the Agencies or signed by the applicant until after the actual application itself for the construction of the sewage treatment plant is approved; so that it's submitted prior to payment of any money, and we may have—it's certainly possible that we could have as much as 25 percent of the project completed before we recognize there was any violation of Title VI under the present regulations.

MR. POWELL. Will your future regulations provide for getting information before appropriations are made?

MR. RUCKELSHAUS. Yes, they will. That is one of the primary things we are addressing ourselves to in the new regulations.

MR. POWELL. What kind of information is gathered in this Form T-128? Does it require a showing of the racial composition of the community?

MR. RUCKELSHAUS. Yes, it does. It calls for a showing of the minority makeup of the community.

MR. POWELL. Does it provide an analysis to show whether or not the minority population is being equally served by the facility?

MR. RUCKELSHAUS. Yes, it does. It has a section for an explanation of why the sewerage or sewage treatment is not provided for a particular section of the community.

MR. POWELL. Has EPA ever terminated or suspended any sewage treatment facility grant because of the recipient's failure to meet Title VI obligations?

MR. RUCKELSHAUS. In the case of Sealy, Texas, Mr. Powell, there was an application for a grant in which a portion of the community was not sewered. As a matter of fact, that portion of the community was served by an inadequate septic tank system. It was primarily minority, primarily a black community, and prior to the making of the grant itself we requested that the city, and the State also requested, that the city provide a plan for the sewerage of the entire community and it was only after this plan was submitted that we agreed to the grant.

Also, in the case of Boca Raton, Florida, there was a portion—5 percent of the community was minority, was black, and there were no provisions for connecting sewers whose wastes were to be treated by the municipal sewage treatment plant, and through negotiation with that community we were able to see that the 5 percent of the population

that had not had connecting sewers, that the connecting sewers were constructed.

MR. POWELL. In evaluating grants for final sewage treatment facilities, do you coordinate your program with HUD's program for the provision of funds for connecting lines?

MR. RUCKELSHAUS. Yes.

MR. POWELL. If HUD were not to grant funds for a community that was discriminating against minorities, would you follow that lead?

MR. RUCKELSHAUS. We do coordinate our program with HUD and I think it's necessary first of all to understand exactly how our program operates. If the State approves, say, 10 municipal sewage treatment plants of new constructions or additions to existing plants, then the city itself, in making the application to the State also has to have that application approved by the Environmental Protection Agency. We have a provision in our regulations calling for regional plans to be submitted with each application to insure that the wastes of the entire region are being handled pursuant to some kind of plan. If within that region there was a community eligible for HUD's sewer grants and HUD had refused to make those grants because there had not been compliance with some section of the Civil Rights Act, we certainly would cooperate in every way with HUD to insure that the community that had made application to us for a grant was in compliance with the act.

MR. POWELL. Mr. Ruckelshaus, in the President's June 11 statement on Federal policy relative to equal housing opportunity, he stated that: "To qualify for Federal assistance, the law requires that a community development project be part of a plan that expands the supply of low- and moderate-income housing in a racially nondiscriminatory way." How will EPA implement its sewage treatment grant program in light of this requirement?

MR. RUCKELSHAUS. Well, we would implement our sewage treatment plant program, clearly, so as to do whatever we could to insure that this statement by the President, as an interpretation of the Civil Rights Act, was carried out. We are again, I think, in a peculiar position, and I think a comparison between our agency and HUD is relevant to an explanation of that position. We are a regulatory agency, and in making sewage treatment plant grants to communities we are attempting to get those communities into compliance with water quality standards that have been established by State and Federal Government in that particular area. So that there are limitations as a regulatory agency to the kinds of things that we can do to insure compliance with the Civil Rights Act because by withholding funds, for instance, in such a case, it would not be a penalty against that community at all and it would be no incentive for them to go ahead and do what we were asking them to do, because in fact they might consider it a benefit not to have to spend that additional money for the construction of a sewage treatment plant which our matching fund would force them to spend. So that what we have to do is look at each individual situation, each individual case as it arises, and see where we can use what-

ever leverage we might have in the granting of construction funds for sewage treatment plants.

MR. POWELL. Doesn't EPA have the power to obtain injunctions prohibiting communities from polluting interstate waters?

MR. RUCKELSHAUS. Yes, we do. Let me qualify that. We do within certain restrictions. We have to first of all give them a 180-day notice to comply, which was done just recently with several large cities in the country. Then if they refuse to comply, we can then proceed by court order to attempt to get them into compliance.

MR. POWELL. Now, if a community were under such a court order prohibiting pollution, would not a community have a strong incentive to obtain EPA funds to assist it in building sewage treatment facilities?

MR. RUCKELSHAUS. Yes, it would. I would hope that it would.

MR. POWELL. So that you do have some leverage to get communities to follow this requirement?

MR. RUCKELSHAUS. Yes, we do. Now, let me make another explanatory comment. In the past, I mentioned how much money was appropriated for the sewage treatment plant construction program for 1971, Fiscal Year 1971. In the past, the difference between the money authorized for the program and the amount actually appropriated has been tremendous. The program has been woefully underfunded in the past, and the communities around the country, not pursuant to the law itself, but pursuant almost to custom, have assumed that they did not have to go ahead and construct sewage treatment plants unless there were Federal matching funds available for that construction. This has not been what the law said but it has been built into the State-Federal relations and the communities' understanding of what the law was over the last 10 or 15 years. So that really if we are going to expect to have a strong enforcement program against municipalities, there is a necessity to have sufficient funds appropriated that we can come up with the amount of Federal matching funds necessary to meet our obligations which at this point are at a maximum of 55 percent for the construction of those facilities.

With the \$1 billion this year and the \$2 billion we are requesting next fiscal year, we are for the first time really going to have sufficient funds to be able to launch a really vigorous enforcement program. But that is what we are in the process of doing and I think that we will be able to be in a much stronger position now to push communities to do what they are supposed to do under the Water Quality Act than we have in the past.

MR. POWELL. In connection with this requirement for the provision of low- and moderate-income housing, do you intend to issue implementing criteria as HUD has done?

MR. RUCKELSHAUS. I am not sure I understand. Would you repeat that question?

MR. POWELL. In connection with the requirement that the President has mentioned that any community development project be part of a plan that expands the supply of low- and moderate-income housing in a racially nondiscriminatory way, do you intend to issue implementing

criteria as HUD has done?

MR. RUCKELSHAUS. We have no present plans to do that. We obviously have to coordinate our efforts, to insure that the purpose of Title VIII is carried out, very closely with HUD, and to the extent that we can in any way bolster HUD's efforts to insure that Title VIII is carried out, we will do so. The difficulty in trying to adopt an implementing regulation or some kind of guidelines is that the situations vary so greatly from community to community that we have found, at least at this point, that it's almost impossible to generalize about those situations. I could give you several examples of what I mean by the difficulty in saying just what ought to be done.

If you take, for instance, a city like Cleveland, which treats 32 suburban communities, the wastes of 32 suburban communities surrounding the metropolitan area, we can move against the city itself and ask them to construct adequate sewage treatment facilities for all of the areas that they service. The city has very limited authority over the 32 surrounding suburban communities, and if one of these suburban communities were engaged in activities that were in violation of Title VIII or, at least, in the spirit of the Civil Rights Act, we could withhold funds for the construction of the sewage treatment plant, thereby penalizing very greatly the people that live in the city of Cleveland, and maybe only minimally penalizing the people that live in the suburban areas; where in fact what we want to do is insure that one social purpose, the adequate treatment of waste, is achieved, and at the same time achieve another social purpose of integration of the surrounding communities. Our ability to do this through the withholding of funds in the case of Cleveland may be very minimal. Now there are any number of different kinds of situations like that that arise, and attempting to deal with them through the adoption of regulations or implementing guidelines under Title VIII is very difficult to conceive or to conceptualize. That doesn't mean we won't continue to look at our program and look at Title VIII and see if there isn't some way we can adopt implementing regulations that will make it clear what has to be done.

MR. POWELL. In connection with finally issuing the regulations implementing Title VI and Title VIII, has HUD or the Department of Justice ever given you any guidance on this?

MR. RUCKELSHAUS. We have met several times with HUD on this problem. We have just signed, or at least I have just signed, an agreement—I don't know whether it's been signed by HUD yet or not relating to our two sewer programs as to how they are to be administered so as to comply with our regional plan to insure a regionwide treatment of the wastes of all the people in a particular river basin, for instance, and the agreement indicates that they will do everything they can in the administration of their sewer program to insure that it's in compliance with our plan. By the same token, we are in close contact with them in terms of any overall metropolitan plan that may have been funded by HUD to insure that our program is compatible with the purposes of that plan.

MR. POWELL. Has that agreement just been signed in the last couple

of days?

MR. RUCKELSHAUS. Yes. It's an agreement that I am not sure has been signed by HUD as yet. I remember signing it.

MR. POWELL. Does this provide for provision of low-and moderate-income housing as one of the considerations?

MR. RUCKELSHAUS. No. This agreement does not relate to the housing patterns as such. It relates to our overall regional plans for the treatment of the wastes of the people that live within that region, and the necessity of HUD's administration of its sewer program to be compatible with that plan.

MR. POWELL. I have no further questions, Mr. Chairman.

CHAIRMAN HESTER. Thank you. Would some of the Commissioners like to question? **Mrs. FROGMAN?**

CONGRESSWOMAN FREEMAN. Mr. Ruckelshaus, I am not sure I understand exactly how the agency initiates its program. How do you select the city or States, or will you tell us something about how you proceed?

MR. RUCKELSHAUS. Yes. Under the Federal Water Pollution Control Act that was first passed initiating this program in 1956, the Congress has set up a distribution formula for the allocation of sewage treatment plant construction funds. Essentially the funds are distributed on the basis of population throughout the country to the individual States so that if we have a billion dollars, each State will get a portion of that billion dollars based on the number of people living within the State. We are in amendments to the act as a sidelight trying to get that distribution formula changed because the number of people does not necessarily have anything to do with the needs for the treatment of the sewage of a particular State. We want to get the allocation formula based more closely on the needs of the people in the particular State. But that is the way we presently allocate the money. The State then determines which communities within the State, through a formula that they have, are eligible for those funds, and the State then certifies to us which communities are eligible, and the communities make application for the grant or for a portion of that money for the construction of a sewage treatment plant in their particular community. That application is reviewed by the State and is also reviewed by our Agency and, if approved, why then the construction starts and we make the portion of the payments that the Federal Government must under the law.

CONGRESSWOMAN FREEMAN. At this point at which the State indicates to your Agency the communities that it deems to be necessary, what does the Agency do in determining whether the community is eligible or not? Does it make an onsite inspection of the community?

MR. RUCKELSHAUS. No, we have not in the past, and this is another thing we have to start to do. That is another reason why we are rewriting our regulations to insure that before the application is approved we make onsite inspections. We insure that Title VI is complied with. We insure that all the provisions of the Civil Rights Act are complied with in this particular grant. And the way it has been done in the past in the Agencies that we inherited, the real investigation into Title VI and the

Civil Rights provisions wasn't done until after construction was started, in which case there would have to have been a withholding of funds already committed, as opposed to the refusal of the first application.

COMMISSIONER FREEMAN. In response to one of the questions with respect to whether there would be withholding of funds, you indicated that the Agency is a Regulatory Agency, and I got the impression that you considered that being a Regulatory Agency sort of relieved the Agency of its affirmative responsibilities to enforce Title VI, and this is a point that is disturbing to me.

MR. RUCKELSHAUS. No, I certainly don't mean to imply that, and if I gave that implication I misled you. I think we do have an affirmative obligation to insure that Title VI is complied with. My reason for saying that we are a Regulatory Agency was to illustrate that we do have a somewhat different set of problems in attempting to take affirmative action to see that Title VI is complied with. Because, by withholding funds from a particular community ourselves as an ultimate sanction that we could use to insure that Title VI is complied with, we are also contributing, at least arguably contributing, to the fact that the water quality standards are continuing to be violated by that particular community, and even if we were to go into court and get an injunction on the basis that in the historical way that these cases proceed, we are probably talking about a considerable delay in the adequate treatment of the wastes of the citizens of that community and of the upgrading of water quality standards to comply with the law in order to achieve the purposes of the Civil Rights Act. That doesn't mean that we won't do it. But what I am saying is that there are circumstances that can arise where it would seem that our ability to achieve the purposes of the Civil Rights Act flies in the face of our mandate by Congress to insure that water quality standards are complied with. And what we have to do is view each situation on its particular merits and see how capable we are of achieving this dual purpose that our Regulatory Agency might have.

COMMISSIONER FREEMAN. The application which you refer to, I'd like to know if the Commission could have a copy of that application.

MR. RUCKELSHAUS. Yes, certainly.

COMMISSIONER FREEMAN. And particularly we would like to know, in the initial inquiry on that first application for funds, if there are questions that are raised for which answers can be received as to the racial composition of any and every community, and if you could also give for this Commission the names of the communities that have been funded so far for sewage treatment facilities.

MR. RUCKELSHAUS. That's about every community in the country. We can certainly give you that list.

COMMISSIONER FREEMAN. As you know, we have certain areas in which there are large segments of the population that are Mexican American or black that are not receiving these benefits and we, of course, are interested to see whether your Agency has funded any of those.

MR. RUCKELSHAUS. Yes, we certainly will supply that information

to you, Mrs. Freeman.

COMMISSIONER FREEMAN. Thank you.

CHAIRMAN HESMERON. Dr. Mitchell?

COMMISSIONER MITCHELL. Well, just to pursue one point Mrs. Freeman raised, what your Agency does to improve the treatment of sewage and the quality of the environment essentially benefits every one.

MR. RUCKELSHAUS. That's right.

COMMISSIONER MITCHELL. You are not a civil rights agency. The Government has not established the Environmental Protection Agency for the purpose of imposing sanctions on communities that do not behave themselves with respect to the civil rights circumstances, that's correct, isn't it?

MR. RUCKELSHAUS. Well, that's correct, but I think there is an overall policy in the Civil Rights Act clearly that the Government is to act in as coordinated a way as possible to insure that the purposes of that act are carried out and we are attempting to do that.

COMMISSIONER MITCHELL. Well, I am not suggesting anything else. I am just suggesting that there are Agencies whose primary purpose, regardless of whether they appear before this Commission in matters of civil rights concern, are not civil rights but rights or activities of general benefit to the entire society.

MR. RUCKELSHAUS. That's right.

COMMISSIONER MITCHELL. Indeed, it could well be the case that if you improved the treatment of sewage in a community that was all-white, for example, you would be benefiting communities downstream, if such a situation existed, that were neither white nor subject to your benefits, is that correct?

MR. RUCKELSHAUS. That's entirely correct, and I might say that supposing we had a community that at least arguably was in violation of Title VIII in terms of their housing policies, it might be an all-white community, and we would issue an order against them to take care of their sewage problem, and in the process of that order we would say that the Federal Government will match a certain amount of the funds necessary for the construction of the plant. If we were to—in some instances this is certainly conceivable—say, "Unless you change your housing patterns we will refuse to grant this money," the community may be perfectly willing to say, "All right, we won't accept the grant, and we won't go ahead with the construction of the facilities." We could attempt to enforce the act through the courts but this has certain problems with it. The fact of the matter is that the people who really will suffer from our failure to grant the money may be the very people we are attempting to help who might be downstream, one minority group or another, who will suffer much greater than the people in the community whose sewage is not being treated.

COMMISSIONER MITCHELL. That is precisely my point. It seems to suggest that one must exercise some care in the application of constraints in your Agency but the results be just the reverse of those that would superficially appear to be most desirable.

MR. RUCKELSHAUS. That is right.

COMMISSIONER MITCHELL. Do you know of any instance in which low- or moderate-income housing has not been built because of a refusal on the part of your Agency to provide funds for sewage treatment facilities or related facilities?

MR. RUCKELSHAUS. I don't know of any.

COMMISSIONER MITCHELL. Thank you very much.

CHAIRMAN HEBBURN. Mr. Ruiz?

COMMISSIONER RUIZ. I have no questions, Father.

CHAIRMAN HEBBURN. Mr. Vice Chairman?

VICE CHAIRMAN HORN. I was interested in your response to both Commissioners Freeman and Mitchell because the problem has been correctly pointed out that you cannot always predict in advance what are the civil rights considerations, and there might be some broader considerations that ultimately might affect civil rights in other communities that would be affected by a particular grant downstream or whatever. I think one of the things that interests this Commission is not only the coordination within an Agency to bring civil rights priorities into focus, prior to the allocation of Federal monies, but an additional and perhaps even more basic question is the coordination between Federal Agencies, as your answer just suggested that you are well aware of the need for coordination between Agencies to carry out the Civil Rights Act.

What I am wondering is, what is the coordinative apparatus that you foresee between your Agency and the rest of the Federal Government on all of the various projects that you might have a part of, HUD might have a part of, and others, in an area. Do you foresee a review committee, for example, in a regional office through which all of you would meet once every few weeks and review applications in housing, sewer construction, whatever? Do you foresee a review apparatus here in Washington that tries to pull this together? Or do you see your own Agency enforcing its civil rights responsibility only when they get, say, a complaint from HUD that some community is in violation in a particular housing project or whatever, and therefore ask you to invoke your sanctions or to think about invoking your sanctions? I am trying to get at the apparatus involved.

MR. RUCKELSHAUS. Yes. I think the latter way may have been the procedure in some instances in the past and clearly this is not the best way to go about it. There has to be some anticipatory mechanism to avoid these kinds of problems in the future and to avoid our simply responding to complaints as they come in. And I think that clearly the coordinating agency has to be HUD, whose primary responsibility it is to enforce these provisions of the act or to see that they are complied with, and that we will, in our relationship with HUD, rely very greatly on them as the motivating Agency to insure that we can do whatever possible to insure that these provisions and the spirit of the act are carried out.

VICE CHAIRMAN HORN. All right. Now, HUD has put out, I guess as of yesterday, a series of fairly elaborate evaluation applications with

criteria for both low-rent public housing, rent supplement, and I guess 235, 236 housing, I can't find on those applications, but perhaps staff can correct me, where other considerations of programs by other Agencies are also involved, and I just wonder if maybe the Federal Government needs one basic form in this sort of general Federal grant area as it relates to the municipality or local regional area which could be sent to the appropriate Agencies at the time for review and comment, and either, as I suggested earlier, pull together at the regional level or in Washington.

I think one of the problems we have seen in hearings in St. Louis and Baltimore is the problem of regional coordination. When we talk to real estate brokers and builders, as we did yesterday and on other occasions, there is a real problem as to getting answers out of HUD, for example, because all the paper seems to have to trickle to Washington, and there is a great delay in implementing these programs. What some of us are trying to get is, can we develop criteria which can be administered in the field in some of the civil rights areas and yet achieve coordination, and as you correctly suggest, I think, in the answer to my last question, not just depend on sort of a happenstance of an individual initiative within one Federal Agency to notify another Federal Agency. Do you have any feelings on that?

MR. RUCKELSHAUS. Yes, one of the things we have done—we have done two things in relation to your question since the Agency has come into existence. One is review our entire grants procedure in an effort to streamline that procedure and cut out as much of the redtape as possible, because one of the problems that certainly we have had in our grants procedure in the past is the proliferation of paper that is involved in the acceptance of one of these applications. Second is to reorganize our entire regional structure. We had different regions for air pollution and water pollution, solid waste disposal, and pesticides all over the country. We have now taken all of those regions and combined them into the 10 regions that have been adopted by the five major domestic Agencies, so we are in the same cities of the country with our regional offices as is HUD and the other domestic Agencies. We have attempted to strengthen very greatly our regional offices so that by the first of July, when we will announce our final structure for the regions, we will probably have the strongest regional structure with more delegation of authority and responsibility as any Agency in the Federal Government. We believe this is a necessary step in order to achieve a much stronger regional approach to the problems of the environment and waste treatment in general. So that we would be very much in favor of what you are saying as an approach to the handling of this problem at the regional level, with coordination between our Agency and HUD and the other domestic Agencies that are involved.

VICE CHAIRMAN HOEK. All right. Then, to summarize, as I get your answer, you say, one, it is feasible to decide these questions at the regional level. In the case of your Agency there will be sufficient power delegated to the regions, and in this area, as far as civil rights coordination goes within the Federal Government, because of the interrela-

tionships, you would look to HUD to serve as the major coordinator of the civil rights aspect within the region, is that correct?

MR. RUCKELSHAUS. Yes, that's right. The question of its feasibility, I suppose, remains to be seen, but we are hoping that it's feasible because of the approach that we have taken.

VICE CHAIRMAN HORN. Thank you.

CHAIRMAN HESBURGH. Mr. Staff Director, do you have any questions?

MR. GLICKSTEIN. I have a few questions. I am interested in your historical perspective. You said, Mr. Ruckelshaus, that one of the disadvantages of strictly enforcing civil rights requirements is that the people that you are trying to help might suffer. I remember back in 1963 when this Commission proposed Title VI, one of the arguments that was made throughout the Government was that sort of a weapon was very impractical and undesirable because it would result in hurting the people that you were trying to help.

It seems to me, though, that you have a variety of weapons, and I am particularly interested in litigation. If you sued a community and got an order requiring them to do something about the sewage, don't you really have them where you want them? Either they are going to have to raise the money to do this or accept a grant from you, and at that point comply with civil rights requirements?

MR. RUCKELSHAUS. Yes, we do. If we go through the process of 180-day notice and the suit, we would, through the injunction process, be able to get an order against a community forcing them to take some kind of action.

MR. GLICKSTEIN. Well, one of your, as I understand it, hesitations about going through that process is that in the meantime the rivers will continue to be polluted while you are trying to get a court order, but 180 days seems a rather short time to me. We have been waiting 100 years to enforce the 14th and 15th amendments and waiting a little bit longer to clean up some of our rivers doesn't strike me as too much of a delay.

MR. RUCKELSHAUS. No, I don't mean to imply that we are not using this mechanism because we are, and we are using it in as forceful a way as we can in attempting to push communities into compliance with the water quality standards. The main inhibiting force against using it in the past has been the lack of Federal funds, the very thing that we are discussing here that there is a possibility of withholding to insure compliance with the Civil Rights Act. There has evolved in the last 15 years an understanding on the part of communities and States, and to a certain extent even the Federal Government that there was no obligation on the community to move ahead with the construction of sewage treatment plants unless the Federal matching funds were available.

MR. GLICKSTEIN. That's not correct.

MR. RUCKELSHAUS. That is not correct now because the funds are available and we are in a much stronger position.

MR. GLICKSTEIN. But even if you didn't have funds you'd be able to sue a community to stop water pollution, isn't that correct?

MR. RUCKELSHAUS. That's correct. The understanding of the States and communities has not been a part of the law. It's been more a part of a tradition that's built up.

MR. GLICKSTEIN. Assuming that next year Congress decided not to give you any money for grants for sewage treatment you still would have the authority to litigate.

MR. RUCKELSHAUS. That's correct, and we would use that authority, and I can't by any means predict what individual judges might do if Congress failed to appropriate the money and they had the argument that the Federal Government isn't doing its part, which is the argument they always use.

MR. GLICKSTEIN. Thank you.

CHAIRMAN HESBURGH. Mr. Ruckelshaus, we have found in some of our hearings that there are these regional councils. In other words, all the top people in a given region for HUD or for housing or for highways, or whatever, get together and talk over the total Federal approach. If you will, to the assistance of the communities within a given region.

I noted that you mentioned you are reorganizing your regional offices to go along with the 10 that have been established throughout the Nation. I was wondering whether or not there are such councils to which you belong in some of these regions.

MR. RUCKELSHAUS. Yes, we have requested that we be made a member of these regional councils so that our Agency's efforts are coordinated with the other Agencies in that region.

CHAIRMAN HESBURGH. This has really been one of the great problems we have found, the coordination problem. It may be that coming in as a new Agency you can ask the obvious question that the older ones have forgotten to ask: Who has got the responsibility here for all of us that we are working together to comply with the law regarding civil rights or equality of opportunity or equal protection? Do you have a special office within EPA for compliance with civil rights?

MR. RUCKELSHAUS. Yes, we have an Office of Equal Opportunity which Mr. Sydnor is the Director of, and also the Office of Contract Compliance which is in the Grants Office.

CHAIRMAN HESBURGH. They report directly to you?

MR. RUCKELSHAUS. Yes, Mr. Sydnor does. The Office of Contract Compliance works through the Grants Office itself.

CHAIRMAN HESBURGH. I see. Are there any other questions on the part of the Commission?

(No response.)

If not, is there anything you'd like to ask us, Mr. Ruckelshaus? Turn around is fair play, they say.

MR. RUCKELSHAUS. No, I have no questions of the Commission, Mr. Chairman.

COMMISSIONER MITCHELL. Just ask for half a billion dollars.

MR. RUCKELSHAUS. Yes, I'd be glad for you to appropriate some more money.

CHAIRMAN HESBURGH. We'd be happy to have anything you'd like to leave us in the way of witness testimony and any subsequent statement you'd like to add we could include in the record.

MR. RUCKELSHAUS. We will submit a statement outlining very carefully all of these things we have discussed here today so that it's as clear as we can possibly make it.

7—NONDISCRIMINATION IN PROGRAMS RECEIVING FEDERAL ASSISTANCE FROM THE ENVIRONMENTAL PROTECTION AGENCY

Subpart A—General

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Appendix A—EPA ASSISTANCE PROGRAMS AS LISTED IN THE "CATALOG OF FEDERAL DOMESTIC ASSISTANCE"

Section 701. The Civil Rights Act of 1964, amended (42 U.S.C. 20004 et seq.), and the Rehabilitation Act of 1973, as amended (5 C.F.R. 794), sec. 13, Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500.

40 FR 1659, Jan. 12, 1984, unless otherwise noted.

Subpart A—General

§ 7.10 Purpose of this part.

This part implements Title VI of the Civil Rights Act of 1964, as amended; section 504 of the Rehabilitation Act of 1973, as amended; and section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500, (collectively, the Acts).

§ 7.15 Applicability.

This part applies to all applicants for, and recipients of, EPA assistance in the operation of programs or activities receiving such assistance beginning February 13, 1984. New construction (§ 7.70) for which design was initiated prior to February 13, 1984, shall comply with the accessibility requirements in the Department of Health, Education and Welfare (now the Department of Health and Human Services) nondiscrimination regulation, 45 CFR 84.23, issued June 3, 1977, or with equivalent standards that ensure the facility is readily accessible to and usable by handicapped persons. Such assistance includes but is not limited to that which is listed in the *Catalogue of Federal Domestic Assistance* under the 66.000 series. It supersedes the provisions of former 40 CFR Parts 7 and 12.

§ 7.20 Responsible agency officers.

(a) The EPA Office of Civil Rights (OCR) is responsible for developing and administering EPA's compliance programs under the Acts.

(b) EPA's Project Officers will, to the extent possible, be available to explain to each recipient its obligations under this part and to provide recipients with technical assistance or guidance upon request.

§ 7.25 Definitions.

As used in this part:

"Administrator" means the Administrator of EPA. It includes any other agency official authorized to act on his or her behalf, unless explicitly stated otherwise.

"Alcohol abuse" means any misuse of alcohol which demonstrably interferes with a person's health, interpersonal relations or working ability.

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"Applicant" means any entity that files an application or unsolicited proposal or otherwise requests EPA assistance (see definition for "EPA assistance").

"Assistant Attorney General" is the head of the Civil Rights Division, U.S. Department of Justice.

"Award Official" means the EPA official with the authority to approve and execute assistance agreements and to take other assistance related actions authorized by this part and by other EPA regulations or delegation of authority.

"Drug abuse" means:

(a) The use of any drug or substance listed by the Department of Justice in 21 CFR 1308.11, under authority of the Controlled Substances Act, 21 U.S.C. 801, as a controlled substance unavailable for prescription because:

(1) The drug or substance has a high potential for abuse,

(2) The drug or other substance has no currently accepted medical use in treatment in the United States, or

(3) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

NOTE: Examples of drugs under paragraph (a)(1) of this section include certain opiates and opiate derivatives (e.g., heroin) and hallucinogenic substances (e.g., marijuana, mescaline, peyote) and depressants (e.g., methaqualone). Examples of (a)(2) include opium, coca leaves, methadone, amphetamines and barbiturates.

(b) The misuse of any drug or substance listed by the Department of Justice in 21 CFR 1308.12-1308.15 under authority of the Controlled Substances Act as a controlled substance available for prescription.

"EPA" means the United States Environmental Protection Agency.

"EPA" assistance" means any grant or cooperative agreement, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which EPA provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of personnel; or

(3) Real or personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if EPA's share of its fair market value is not returned to EPA.

"Facility" means all, or any part of, or any interests in structures, equipment, roads, walks, parking lots, or other real or personal property.

"Handicapped person:"

(a) "Handicapped person" means any person who (1) has a physical or mental impairment which substantially limits one or more major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. For purposes of employment, the term "handicapped person" does not include any person who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current drug or alcohol abuse, would constitute a direct threat to property or the safety of others.

(b) As used in this paragraph, the phrase:

(1) "Physical or mental impairment" means (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; and (ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(2) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means:

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(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined above but is treated by a recipient as having such an impairment.

"Office of Civil Rights" or OCR means the Director of the Office of Civil Rights, EPA Headquarters or his/her designated representative.

"Project Officer" means the EPA official designated in the assistance agreement (as defined in "EPA assistance") as EPA's program contact with the recipient; Project Officers are responsible for monitoring the project.

"Qualified handicapped person" means:

(a) With respect to employment: A handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question.

(b) With respect to services: A handicapped person who meets the essential eligibility requirements for the receipt of such services.

"Racial classifications:"¹

(a) *American Indian or Alaskan native.* A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

(b) *Asian or Pacific Islander.* A person having origins in any of the original peoples of the Far East,

Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

(c) *Black and not of Hispanic origin.* A person having origins in any of the black racial groups of Africa.

(d) *Hispanic.* A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

(e) *White, not of Hispanic origin.* A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

"Recipient" means, for the purposes of this regulation, any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

"Section 13" refers to section 13 of the Federal Water Pollution Control Act Amendments of 1972.

"United States" includes the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and all other territories and possessions of the United States; the term "State" includes any one of the foregoing.

Subpart B—Discrimination Prohibited on the Basis of Race, Color, National Origin or Sex

§ 7.30 General prohibition.

No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving EPA assistance on the basis of race, color, national origin, or on the basis of sex in any program or activity receiving EPA assistance under the Federal Water Pollution Control Act, as amended, including the Environmental Financing Act of 1972.

¹Additional subcategories based on national origin or primary language spoken may be used where appropriate on either a national or a regional basis. Subparagraphs (a) through (e) are in conformity with Directive 15 of the Office of Federal Statistical Policy and Standards, whose function is now in the Office of Information and Regulatory Affairs, Office of Management and Budget. Should that office, or any successor office, change or otherwise amend the categories listed in Directive 15, the categories in this paragraph shall be interpreted to conform with any such changes or amendments.

Environmental Protection Agency**§ 7.50****§ 7.35 Specific prohibitions.**

(a) As to any program or activity receiving EPA assistance, a recipient shall not directly or through contractual, licensing, or other arrangements on the basis of race, color, national origin or, if applicable, sex:

(1) Deny a person any service, aid or other benefit of the program;

(2) Provide a person any service, aid or other benefit that is different, or is provided differently from that provided to others under the program;

(3) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, aid, or benefit provided by the program;

(4) Subject a person to segregation in any manner or separate treatment in any way related to receiving services or benefits under the program;

(5) Deny a person or any group of persons the opportunity to participate as members of any planning or advisory body which is an integral part of the program, such as a local sanitation board or sewer authority;

(6) Discriminate in employment on the basis of sex in any program subject to section 13, or on the basis of race, color, or national origin in any program whose purpose is to create employment; or, by means of employment discrimination, deny intended beneficiaries the benefits of the EPA assistance program, or subject the beneficiaries to prohibited discrimination.

(7) In administering a program or activity receiving Federal financial assistance in which the recipient has previously discriminated on the basis of race, color, sex, or national origin, the recipient shall take affirmative action to provide remedies to those who have been injured by the discrimination.

(b) A recipient shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, national origin, or sex.

(c) A recipient shall not choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this part applies on the grounds of race, color, or national origin or sex; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of this subpart.

(d) The specific prohibitions of discrimination enumerated above do not limit the general prohibition of § 7.30.

Subpart C—Discrimination Prohibited on the Basis of Handicap**§ 7.45 General prohibition.**

No qualified handicapped person shall solely on the basis of handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving EPA assistance.

§ 7.50 Specific prohibitions against discrimination.

(a) A recipient, in providing any aid, benefit or service under any program or activity receiving EPA assistance shall not, on the basis of handicap, directly or through contractual, licensing, or other arrangement:

(1) Deny a qualified handicapped person any service, aid or other benefit of a federally assisted program;

(2) Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless the action is necessary to provide qualified handicapped persons with aids, benefits, or services that are as effective as those provided to others;

(3) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an entity that discriminates on the basis of handicap in providing aids, benefits, or services to beneficiaries of the recipient's program;

(4) Deny a qualified handicapped person the opportunity to participate

propriate evaluation a determination has first been made in writing and included within the grant file that the applicant is responsible within the meaning of §§ 30.304-2 and 30.304-3. Any applicant who is not determined to be responsible shall be notified in writing of such finding and of the basis therefor.

§ 30.305 Award of grant.

Generally, within 90 days after receipt of a completed application (excluding suspension periods for submission of supplemental information), the application will be (a) approved for grant award; (b) deferred due to lack of funding or other specified reason; or (c) disapproved. The applicant shall be promptly notified in writing of any deferral or disapproval. A deferral or disapproval of an application shall not preclude its reconsideration or a reapplication. The applicant shall not be notified of an approval or grant award prior to transmittal of the grant agreement for execution by the applicant pursuant to § 30.305-2.

§ 30.305-1 Amount and term of grant.

The amount and term of a grant shall be determined by the Administrator or his authorized representative at the time of grant award.

§ 30.305-2 Grant agreement.

Upon approval of a grant for award, the grant agreement will be transmitted by certified mail (return receipt requested) to the applicant for execution. The grant agreement must be executed by the applicant and returned to the Grants Officer within 3 weeks after receipt, or within any extension of such time that may be granted by the Grants Officer. The grant agreement shall set forth the approved project work, approved budget and the approved commencement and completion dates for the project or major phases thereof. In the case of State and local assistance grants, the grant shall become effective and shall constitute an obligation of Federal funds in the amount and for the purposes stated in the grant agreement, at the time of approval of the project for grant award. In the case of all other EPA grants, the grant shall become effective and shall constitute an obligation of Federal funds in the amount and for the purposes stated in the grant instrument, only upon execution of the grant agree-

ment by the parties thereto. Except as may be otherwise provided by statute, no costs may be incurred prior to the execution of the grant agreement by the parties thereto.

§ 30.305-3 Effect of grant award.

Neither the approval of a project nor the award of any grant shall commit or obligate the United States to award any continuation grant or enter into any grant amendment with respect to any approved project or portion thereof.

§ 30.306 Continuation grants.

Upon written application and after receipt of such progress, fiscal or other reports as may be required pursuant to this Regulation, a continuation grant may be awarded in accordance with this Subpart B upon a finding by the Grants Officer that the progress made during the budget period warrants continuation within the project period.

✓ Subpart C—Grant Conditions

§ 30.400 General.

All EPA grants shall be subject to applicable statutory provisions, to requirements imposed pursuant to Executive orders, and to the Grant Conditions set forth in this subpart or in Appendix A to this subchapter. Additional special conditions necessary to assure accomplishment of the project or of EPA objectives may be imposed upon any grant or class of grants by agreement with the grantee.

§ 30.401 Statutory conditions.

All EPA grants are awarded subject to the following statutory requirements, in addition to such statutory provisions as may be applicable to particular grants or grantees or classes of grants or grantees.

(a) The National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., as amended, particularly as it relates to the assessment of the environmental impact of federally assisted projects (42 U.S.C. 102(1)(C)).

(b) Section 306 of the Clean Air Act, 42 U.S.C. 1857h-4, as amended, requiring that facilities receiving Federal assistance by way of grant, loan, or contract shall comply with the Clean Air Act

✓ (c) The Civil Rights Act of 1964, 42 U.S.C. 2000a et seq., as amended, and particularly title VI thereof, which pro-

vides that no person in the United States shall on the ground of race, color, religion, sex, or national origin be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance, as implemented by regulations issued thereunder.

(d) The Hatch Act, 5 U.S.C. 1501 et seq., relating to political activities of certain State and local employees.

(e) The Freedom of Information Act, 5 U.S.C. 552, as amended, relating to the right of the public to obtain information and records.

(f) The National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq., as amended, relating to the preservation of historic landmarks.

(g) The Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3301 et seq., as amended, and particularly section 204 thereof, which requires that applications for Federal assistance for a wide variety of public facilities projects in metropolitan areas must be accompanied by the comments of an areawide comprehensive planning agency covering the relationship of the proposed project to the planned development of the area, as implemented by OMB Circular No. A-98 (June 5, 1970).

(h) The Intergovernmental Cooperation Act of 1968, 42 U.S.C. 4201 et seq., as amended, which requires coordination by and between local, regional, State, and Federal agencies with reference to plans, programs, and development projects and activities, as implemented by OMB Circular N. A-95 (Rev. Feb. 9, 1971) and OMB Circular No. A-98 (June 5, 1970).

§ 30.402 Executive orders.

All EPA grants are subject to the requirements imposed by the following Executive orders, in addition to such other lawful provisions as may be applicable to particular grants or grantees or classes of grants or grantees.

(a) Executive Order 11246 (3 CFR, 1964-1965 Comp., p. 339) dated September 24, 1965, as amended, with regard to equal employment opportunities, and all rules, regulations and procedures prescribed pursuant thereto.

(b) Executive Order 11296 (3 CFR, 1966-1970 Comp., p. 571) dated August 10, 1966, regarding evaluation of flood hazard in locating federally owned or financed buildings, roads, and other

facilities, and in disposing of Federal lands and properties.

(c) Executive Order 11514 (3 CFR, 1966-1970 Comp., p. 902) dated March 5, 1970, providing for the protection and enhancement of environmental quality in furtherance of the purpose and policy of the National Environmental Policy Act of 1969.

(d) Executive Order 11602 (3 CFR, 1971 Comp., 36 F.R. 12475) dated June 29, 1971, requiring compliance with the Clean Air Act in the award and administration of Federal grants, and all rules, regulations, and procedures prescribed pursuant thereto.

§ 30.403 Additional requirements—federally assisted construction.

Grants for projects that involve construction are subject to the following additional requirements:

(a) The Davis-Bacon Act, as amended, 40 U.S.C. 276a et seq., 276c, and the regulations issued thereunder, 29 CFR 5.1 et seq., respecting wage rates for federally assisted construction contracts in excess of \$2,000.

(b) The Copeland (Anti-Kickback) Act, 18 U.S.C. 874, 40 U.S.C. 276c, and the regulations issued thereunder, 29 CFR 3.1 et seq.

(c) The Contract Work Hours and Safety Standards Act, 40 U.S.C. 327 et seq., and the regulation issued thereunder.

(d) The Uniform Relocation Assistance and Land Acquisition Policies Act of 1970, 42 U.S.C. 4621 et seq., 4651 et seq., and the regulations issued thereunder, 40 CFR Chapter 1, Part 4.

§ 30.404 Noncompliance with grant conditions.

In addition to such other remedies as may be provided by law, in the event of noncompliance with any condition imposed pursuant to this Regulation, a grant may be annulled and all EPA grant funds recovered or it may be terminated pursuant to Article 5 of the Grant Conditions (Appendix A), the project work may be suspended pursuant to Article 4 of the Grant Conditions, an injunction may be entered by an appropriate court, or such other action may be taken by the Grants Officer as the Administrator shall direct: *Provided*, That no such action shall be taken without prior consultation with the grantee.

Mr. HYDE. I have no specific questions, Mr. Chairman.

I must say this has been a revelation. I don't think many people have focused on the fact that the poorer valued land is going to be a dumping ground for toxic waste and all of the rest. But what we need to think about is that people live there, all kinds of people live there.

We are troubled by the presence of so many diseases in our world, things we don't know too much about, but surely poison—and that is a good word rather than “pollution,” it is poison—is at the root of a lot of it.

So I am just pleased to have us focused today, our attention brought to this very human problem. Hopefully out of these hearings, heightened sensitivity to the problem, to the people who are the bottom line in everything, people who are decimated by this poison, can get some consideration that they deserve.

This is a good subcommittee, and this is one that will take your testimony to heart and try to do something about it, or try to get something started.

Thank you.

Mr. EDWARDS. Thank you, Mr. Hyde.

I guess the glaring question is, the EPA has been in existence for 13 years, has it—

Dr. GAYLORD. Twenty. EPA has been in existence a little over 20 years.

Mr. EDWARDS. Twenty years, and why haven't some of these places been cleaned up by now? What about in Louisiana?

Dr. GAYLORD. From what we can tell, Mr. Edwards, when EPA was first created, the General Counsel made a ruling in 1971 that—I guess it was a new agency trying to focus on the regulatory and scientific mission—they made a ruling that civil rights laws did not apply to environmental laws. This was reiterated again when then Administrator Ruckelshaus appeared before the U.S. Commission on Civil Rights, and basically testified that civil rights laws did not apply to environmental laws. And apparently the Agency has been operating on that principle.

When this was brought again to Mr. Reilly's attention, and the study was done, it is only now that EPA is rethinking that ruling that is still on the books since 1971. That is not an excuse. It is just an explanation.

Mr. EDWARDS. A lot of people have died, haven't they, since before this rethinking began?

Mr. BRYANT. Mr. Chairman, I would like to offer a couple of other explanations about why there has not been a focus here. You mentioned Louisiana. We have 700 abandoned waste, hazardous waste sites in Louisiana. Many of them are places where people live: schools, hospitals, you name it. The Environmental Protection Agency has not focused in a real way on any of these.

Mr. EDWARDS. What about the companies that did this pollution? Under the law they are supposed to clean them up themselves. You clean up your own mess in this country.

Mr. BRYANT. Many of them are still in business poisoning other places. They move around. As they were involved in production, it was legal to do it, and it is still legal in the places where they are doing it.

I can name you a number of examples, like Columbia, MS. A chemical company poisoned there for years with impunity. The plant exploded. They simply left the mess there in that community and moved 75 miles away to Gulfport and are doing the exact same thing there, exact same thing. And it is permitted by the Environmental Protection Agency. This time they are doing it to a poor white community. If poor blacks are not around, Native-Americans are not around, they do it to poor white folks.

Mr. EDWARDS. But they have to get a permit from the local government to start a factory or anything.

Mr. BRYANT. That is correct.

Mr. EDWARDS. So the local governments are not doing their work.

Mr. BRYANT. That is correct. The local governments, the EPA, and the State governments aren't doing their work. I have talked to some elected officials, and here is what they share with me. Some elected officials indicate that when they voted to bring a certain industry in, what they were thinking about was jobs. This would bring jobs to those communities. And a couple of them really got real honest with me. A couple of white lawmakers said, "Look, we didn't think anything bad was going to happen, but we kind of thought if it was anything bad, maybe it would be better if we had it over where the black folks live."

Mr. HYDE. They said that? Is that quoted somewhere?

Mr. BRYANT. I have had a couple of people tell me that, elected officials, at the time these facilities were put there. I think that is part of the psyche that is operating here. You have a safe zone to put the stuff. America thinks that it is OK to poison if there is some convenient place to hide it away. That is the logic we are dealing with. And the Environmental Protection Agency has followed the drift of that.

And then communities begin to raise hell, they say, We are going to reduce poison, we are going to reduce pollution.

Mr. EDWARDS. Reverend Chavis, your report made some recommendations; is that correct?

Dr. CHAVIS. Yes, a number of recommendations, for Federal, State, and local levels.

Mr. EDWARDS. Can you briefly tell us what those recommendations were?

Dr. CHAVIS. This is a 1987 report—we made several recommendations, one in terms of the Environmental Protection Agency reversing that ruling that Clarice referred to.

It does not make sense for any agency to say that civil rights laws don't apply to their work. In fact, we believe that any form of racial discrimination ought to be illegal under the Constitution—is illegal, should be prohibited. Yet, here we have a Federal agency that has the statutory responsibility to protect the environment taking an exception to the application of the civil rights laws. So one of our recommendations back in 1987 was to change that ruling.

Second, we believe there needs to be some better thinking of how we compile the information. The various agencies that have been talked about today, there is no cross-referencing of all these data bases. I agree with Pat Bryant and Hazel, we can study and study and study while people are dying. And I believe that there is

enough data already in existence. The problem is the correlation of this data.

We also, you know, really didn't just restate what we recommended in 1987, Mr. Chairman. I really believe that if we can get the Environmental Justice Act enacted during this session of Congress, it would at least be an act of Congress mandating that certain things happen: one, that areas like Cancer Alley and Altgeld Gardens in Chicago and other places, in Columbia, MS, will get the kind of attention that they need in terms of not speculating.

The equity report the EPA released last year talked about data gaps. Data gaps are the question of the epidemiological threshold. Is there a causal link between the exposure of these hazards and cancer and birth defects and things that Hazel and others have described very vividly.

We feel this sort of pointing the finger back and forth, passing the buck, while other people are suffering should be intolerable, and we call upon Congress to take immediate measures to try to not only identify all of the areas that have not only the greatest problems but greatest relative toxicity, to get these studies done so that people can get relief.

Everything we have described this morning is well known. The absence has been any serious effort, particularly during the last 12 years, of the Federal Government stepping in saying we should have oversight over this, and we should intervene in this on behalf of those communities that have been most victimized.

Mr. EDWARDS. Thank you.

Ms. Gaylord, is it your testimony that EPA has finally been born again on this issue?

Dr. GAYLORD. Well, it is a start. They are listening, and the fact they created an office to address it I think is a beginning.

A lot of the legislative deficiencies that have been mentioned by Reverend Chavis are basically part of the problem. A lot of the decisions to site incinerators, to site factories, EPA says they are local decisions, and most of our laws permit that. Federal permitting for RCRA occurs at the local level.

Maybe the legislation should consider whether that is wise in situations where you are dealing with communities that have high exposure.

So there are a lot of areas where I think legislation would certainly help. I know the Agency is in support of the environmental justice bill. So these are areas that I think EPA has shown a slight rebirth. As I said in my testimony, it is a beginning, and it is better than it was before.

Mr. EDWARDS. Thank you.

Ms. Johnson, what is going on in your community? Are efforts being made? Do you have a Superfund site? Has the commitment been made to get in there and do some cleanup work?

Ms. JOHNSON. The reason why we are not considered as a Superfund site is because it is not affecting our drinking water. But if it had been affecting our drinking water, then it would be considered as a Superfund site.

Let me say this much so you can understand thoroughly what is happening in my community. We have one of the largest sewage treatment plants. We have waste management incinerators that

burn hazardous waste from many parts of the United States. We have 51 landfills. Four of them are active. We have a chemical company, a paint factory, we have two steel mills. Like I said, we are sitting in the center at a toxic doughnut. Our area is a Superfund site but nobody is doing anything for us.

Mr. HYDE. Ms. Johnson, isn't that where the mayor wanted to put the airport out there?

Ms. JOHNSON. Yes, it is.

Mr. HYDE. The new airport?

Ms. JOHNSON. Yes, it is, and the people fought against it. On the other side of the expressway is Heckwich, and Heckwich is a community where mostly senior citizens and whites live. They have been living there for many years. They are Polish people, and those are their roots, and they didn't want to give up their roots. Their grandparents lived there, they got married and went to school there. That is where they wanted to live. And the worst part about it was that even though the airport was coming in, our mayor was not providing anyplace to move them. They had to move on their own.

Mr. HYDE. But I thought environmentally they would have to do a lot of cleanup work out there. Maybe it doesn't do you much good if your home is taken away. They would clean up a site for an airport, not for people to live there.

Ms. JOHNSON. No, they are not doing that for us. We even asked that they relocate us. When they went into the lagoon, they only cleaned 14 tons. There was stuff that was in that lagoon so long they couldn't determine what it was. But they had a few barrels, they could see what it was. It was pigs and sharks that had been used for a medical experiment that were preserved in formaldehyde.

Mr. EDWARDS. What will your organization do about it? What are your plans?

Ms. JOHNSON. Just continue fighting to have them clean up our area. The little Calumet River is so highly contaminated it would take 5 years to clean it up, if you could clean it up then.

Mr. EDWARDS. Ms. Gaylord, would you go through the records over at EPA, if you can, see if you can find some documentation for the statement that civil rights laws do not apply to environmental concerns. I would be very interested in tracking that down, where that started.

Dr. GAYLORD. We were in a meeting yesterday with the Office of Civil Rights, the Civil Rights Commission, and we asked them to send the testimony—the 1977 testimony of Administrator Ruckelshaus that had that statement. So we are in the process of gathering that information. We will send that to you.

Mr. HYDE. To the committee. Thank you.

Ms. JOHNSON. May I say one more thing. This area has been a dumping ground ever since 1873. This has been many years. I think it is time to take the dump elsewhere.

Mr. EDWARDS. Well, this has been very valuable, if shocking testimony. It just cries for responses from the Government, and of course the local governments who are still issuing permits without some kind of a bonding arrangement that requires these companies to clean up their mess.

I know in Newark, CA, a little city I have represented for a long time, they had a steel mill, and when the steel mill finally went out of business and we thought we were going to have a fine new development of stores and jobs, we were told that they can't use the 25 acres because it is so polluted from 30 or 40 years of the steel mill. And the steel mill went bankrupt, so they can't—it has to be cleaned up locally.

It also left the employees of the steel mill without any pensions, because it was financed in that particular way. So the bankruptcy court turned over the site to the pensioners, so the pensioners, people who used to work there, own the site now, and I guess their great grandchildren will get a few nickels out of it, but those are the results of pollution that people don't think about.

And these are people that need the money, you know, and need a little help. They counted all their lives, all of their working lives on getting a pension, and they end up with some kind of an interest in some land that is almost worthless.

But your testimony has been very, very helpful.

Yes, Mr. Bryant.

Mr. BRYANT. Mr. Chairman, we are very glad that you have taken this initiative here, and I would like to be exact in what I report back to my brothers and sisters in the South about what this committee will be doing, and what has moved you about our testimony today.

What can I say to people back in the South who are concerned that the South is a dumping ground for the Nation's hazardous waste, and the black communities, Native-American communities in the South are the repositories of this?

Mr. EDWARDS. You can tell them that this subcommittee for several decades has been responsible for all of the improvements in civil rights generally, and voting rights, and although we have never interpreted the civil rights laws as giving protection to minorities who are being discriminated against through environmental policies, you can see from Mr. Hyde's and my attitude that we are in the learning process.

We don't have jurisdiction over much of this material. We do have jurisdiction, sole jurisdiction over civil rights. And that is something we are going to look at right away, as to whether or not the civil rights laws can be interpreted to include a right—and Ms. Gaylord, you are going to help us do that insofar as your own records are concerned—for a decent livelihood and freedom from being poisoned and discriminated against, where the white middle class don't have to suffer from this contamination, and yet poor minorities do. That is not the way this country is supposed to run.

So that is the best you can tell your people. We will certainly do whatever we can with our limited jurisdiction. And we thank you very much. You have been all very helpful and good witnesses.

Now, the members of the final panel will please come to the table.

Mr. HYDE. Mr. Chairman, our first witness, although he need not be first, but certainly at the table, on our left and on the room's right, is Robert Bullard. He is a professor of sociology at the University of California, Riverside. His scholarship and activism in the areas of urban land use, housing, community developing and indus-

trial facility siting have made him one of the leading experts on environmental justice.

He is the author of numerous articles and books, including "Dumping in Dixie: Race, Class, and Environmental Quality," and "Confronting Environmental Racism: Voices from the Grassroots."

Dr. Bullard recently served on President Clinton's transition team in the natural resources and environment cluster.

Deeohn Ferris works with the Lawyers' Committee for Civil Rights Under Law, as program director for their Environmental Justice Project. The project provides legal and technical assistance to communities nationwide.

Formerly, Ms. Ferris was the national director of environmental quality with the National Wildlife Federation. She began her career with the EPA as Director of the Special Litigation Division in the EPA's Office of Enforcement.

Kent Jeffreys is the director of environmental studies at the Competitive Enterprise Institute, an organization committed to free enterprise and limited government. Previously, Mr. Jeffreys was the energy and environment policy analyst with the Heritage Foundation.

Charles McDermott is director of government affairs at Waste Management, Inc. Mr. McDermott has responsibility for business and political issues with a focus on Waste Management, Inc.'s relationship with minority communities. Previously, Mr. McDermott was manager of project development at Boston's Citizens' Energy Coordination.

Mr. EDWARDS. Thank you.

Will all the witnesses please raise their right hand.

[Witnesses sworn.]

Mr. EDWARDS. Without objection, all of your excellent testimony will be made a part of our hearing record. Again, we are forced because of time constraints to ask you to limit your testimony today to a little after you see the light on.

Mr. Bullard, we welcome you. You may proceed.

STATEMENT OF ROBERT D. BULLARD, PROFESSOR OF SOCIOLOGY, DEPARTMENT OF SOCIOLOGY, UNIVERSITY OF CALIFORNIA

Mr. BULLARD. Mr. Chairman, members of the subcommittee, I am a professor of sociology at the University of California, and in my work I have observed, studied, and written about environmental problems borne by communities of color for more than 14 years. Much of my research has shown clear link between environmental threats and racial composition of surrounding communities.

In my work, which has taken me across this country, I have interviewed victims of our environmental and industrial policies, from West Harlem to East L.A., from the Southside Chicago to West Dallas, people are crying out for answers to their environmental dilemmas.

Despite the laws, mandates, and directives by the Federal Government to eliminate discrimination in housing, voting, et cetera, few efforts have been made to address discriminatory practices in the environment.

All communities not created equal. Some communities bear greater burdens than others. If the community happens to be poor, working class, rural, powerless, communities of color, it is more likely to be disproportionately affected.

Many studies have documented that environmental inequities exist based on class and race. Elevated public health risks are found in some populations even when socioeconomic status, that is, income, education, occupation, are controlled.

For example, race has been found to be independent of class in the distribution of air pollution, contaminated fish consumption, location of municipal landfills and incinerators, and abandoned toxic waste dumps, cleanup of Superfund sites and lead poisoning in children.

Environmental decisionmaking operates at the juncture of science, economics, politics and ethics. The current paradigm places communities of color at special risk. Many of the differences in environmental quality between communities of color and white communities result from institutional racism. Institutional racism influences local land uses, enforcement of environmental regulations, industrial facility siting, and where people of color live, work and play.

Environmental racism is real. Environmental racism refers to any policy, practice or directive that differentially affects or disadvantages, whether intended or unintended, groups or communities based on race. They provide benefits for whites while shifting costs to people of color.

Although the U.S. EPA has been in business more than two decades, it has yet to conduct a national study of environmental problems in communities of color. I repeat, it has yet to do a national study, not reviewing current literature, but a study itself.

On the other hand, it took a church-based civil rights organization to produce the first definitive study, "Toxic Waste and Race," by the United Church of Christ Commission for Racial Justice.

The findings in "Dumping in Dixie," the book I wrote that came out in 1990, clearly shows that the Southern United States and African-Americans in particular bears a disproportionate burden of hazardous waste landfills and incinerators, lead smelters, petrochemical plants and a host of other noxious communities.

Before the 1990's, through National Law Journal articles, there are numerous studies that pointed to this disparate impact. Blacks and whites do not have the same opportunities to vote their feet and escape unhealthy physical environments. This is not just a poverty thing, as some of us would want to note.

African-Americans, who make \$50,000 are as residentially segregated as a Latino or Asian making \$5,000. In many cases, institutionalized discrimination in housing limits mobility and limits ability to escape unhealthy physical environments.

Waste facility siting imbalances were uncovered as early as 1983 by the Federal Government. A 1983 GAO study documented four off-site commercial hazardous landfills in region 4, eight Southern States. Three out of four are located in African communities—75 percent—whereas African-Americans made up only 20 percent of that region's population.

Many of the at risk communities are victims of land-use decision-making that mirrors the power arrangements of the dominant society. Discrimination exists at local levels in terms of city planning, ordinances, zoning ordinances, industrial policies, at State levels that do not take into account communities that are at risk, communities already saturated.

When permits are granted, the whole notion of vulnerability is not taken into account. These types of strategies must be addressed. Inequities must be addressed in the form of looking at inequality and disparate impact, disproportionate impact, unequal protection, as a civil rights issue. There are strategies to address this using the scientific approach as well as using the legal approach.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you very much.

[The prepared statement of Mr. Bullard follows:]

PREPARED STATEMENT OF ROBERT D. BULLARD, PROFESSOR OF SOCIOLOGY,
DEPARTMENT OF SOCIOLOGY, UNIVERSITY OF CALIFORNIA

Mr. Chairman and Members of the Subcommittee:

I am a professor of sociology at the University of California, Riverside. I have observed, studied, and written about environmental problems borne by communities of color for the past fourteen years. Much of my research has shown a clear link between environmental threats and racial composition of surrounding communities. In my research which has taken me across this nation, I have interviewed the "victims" of our environmental and industrial policies. From West Harlem to East Los Angeles and from Southside Chicago to South Central Los Angeles, people are crying out for answers to their environmental dilemmas.

The findings in *Dumping in Dixie* show that African Americans in the South bear a disparate burden in the siting of hazardous waste landfills and incinerators, lead smelters, petrochemical plants, and a host of other noxious facilities.¹ Although the U.S. Environmental Protection Agency (EPA) has been in business for more than two decades, it has yet to conduct a national study of the toxic waste problems in communities of color. On the other hand, the United Church of Christ Commission for Racial Justice, a church-based civil rights organization, conducted the first national study on this topic in 1987.² The Commission for Racial Justice's landmark *Toxic Wastes and Race* study found race to be the single most important factor (i.e., more important than income, home ownership rate, and property values) in the location of abandoned toxic waste sites.³

Blacks and whites do not have the same opportunities to "vote with their feet" and escape unhealthy physical environments. Institutional barriers such as housing discrimination, redlining, and residential segregation make it difficult for people of color to buy their way out of health-threatening physical environments. An African American who has an income of \$50,000 is as residentially segregated as a African American who has an income of \$5,000.⁴

Despite the many laws, mandates, and directives by the federal government to eliminate discrimination in housing, education, employment, and voting few attempts have been made by the government to address discriminatory environmental practices.

IMPACT OF ENVIRONMENTAL RACISM

All communities are not created equal. Some communities are subjected to all kinds of environmental assaults. Many of the differences in environmental quality between communities of color and white communities result from institutional racism. Institutional racism influences local land use, enforcement of environmental regulations, industrial facility siting, and where people of color live, work, and play.

Environmental racism is real. Environmental racism refers to any policy, practice, or directive that differentially affects or disadvantages (whether intended or unintended) individuals, groups, or communities based on race or color. Environmental

NOTE.—See footnotes at end of prepared statement.

racism combines with public policies and industry practices to provide benefits for whites while shifting costs to people of color.⁵

Waste facility siting imbalances that were uncovered by the U.S. General Accounting Office (GAO) in 1983 have not disappeared.⁶ A decade later, African Americans still make up about one-fifth of the population in EPA Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee). In 1993, 100 percent of hazardous waste disposed of in the region are located in zip codes where African Americans comprise a majority of the population.

Many of the at-risk communities are victims of land-use decisionmaking that mirrors the power arrangements of the dominant society. Historically, exclusionary zoning (and rezoning) has been a subtle form of using government authority and power to foster and perpetuate discriminatory practices. Generally, planning and zoning commissions are not known for their racial and ethnic diversity. Exclusionary and restrictive practices that limit participation of people of color in decision-making boards, commissions, regulatory bodies, and management staff are all forms of environmental racism.

WORK FORCE DIVERSITY AS ENVIRONMENTAL JUSTICE

Demonstration of as strong commitment to a diverse work force is essential achieving the federal EPA's mission of protecting human health and the environment. Limiting the access of African Americans, Latino Americans, Asian Americans, and Native Americans to management positions has no doubt affected the outcomes of some important agency decisions in at-risk communities. In order to get *balanced* and *just* decisions, the decision makers (managers) will need to reflect the diversity—cultural, racial, ethnic, and gender—of this nation.

The EPA has over 18,000 employees. One third of the agency's employees are assigned to Headquarters offices in the Metropolitan Washington, DC area and two-thirds work in regional and laboratory offices scattered throughout the United States. The EPA work force is about evenly divided between men (51%) and women (49%) and a little over one-fourth (26%) of EPA employees are member of minority groups. However, women and minorities continue to be under represented in EPA's management staff. In 1992, women and minorities comprise 28% and 9.7% of the management staff, respectively.

Data from a 1992 EPA report, *Women Minorities and People with Disabilities*, show that the agency missed numerous opportunities to further diversify its work force. In Fiscal Year 1991, for example, a total of 412 management hires were made, with only 33 (8.0%) going to minorities and 142 (34.%) going to white women. In Fiscal Year 1992, 354 management hires were made, with 42 (11.9%) going to minorities and 126 (35.6%) going to white women.⁷

EPA's 1991 EEOC report reveals that the agency lagged behind many other federal agencies in hiring and promoting racial and ethnic minorities in professional positions. Of the 56 federal agencies that have 500 or more employees, the EPA ranked 35th in the percent of African Americans in professional positions, 22nd in the percent of Latino Americans in professional positions, and 39th in Native Americans in professional positions. Clearly, work force diversity is an essential component in any environmental justice strategy.

DISPARATE AND REGRESSIVE IMPACTS

Racism influences the likelihood of exposure to environmental and health risks as well as accessibility to health care.⁸ Many of the nation's environmental policies distribute the costs in a regressive pattern while providing disproportionate benefits for whites and individuals who fall at the upper end of the education and income scale.⁹ Numerous studies, dating back to the seventies, reveal that people of color communities have borne greater health and environmental risk burdens than the society at large.¹⁰

Elevated public health risks are found in some population even when social class is held constant. For example, race has been found to be independent of class in the distribution of air pollution,¹¹ contaminated fish consumption,¹² location of municipal landfills and incinerators,¹³ abandoned toxic waste dumps,¹⁴ cleanup of superfund sites,¹⁵ and lead poisoning in children.¹⁶

Lead poisoning is a classic example of an environmental health problem that disproportionately impacts African American children at every class level. Lead affects between 3 to 4 million children in the United States—most of whom are African American and Latinos who live in urban areas. Among children 5 years old and younger, the percentage of African American children who have excessive levels of lead in their blood far exceeds the percentage of whites at all income levels.¹⁷

The federal Agency for Toxic Substances Disease Registry (ATSDR) found that for families earning less than \$6,000, 68 percent of African American children had lead poisoning, compared with 36 percent for white children. In families with income exceeding \$15,000, more than 38 percent of African American children suffer from lead poisoning compared with 12 percent of whites.¹⁸ Even when income is held constant, African American children are two to three times more likely than their white counterparts to suffer from lead poisoning.

Virtually all of the studies of exposure to outdoor air pollution have found significant differences in exposure by income and race. African Americans and Latinos are more likely to live in areas with reduced air quality than are whites. For example, National Argonne Laboratory researchers Wernette and Nieves found the following:

In 1990, 437 of the 3,109 counties and independent cities failed to meet at least one of the EPA ambient air quality standards . . . 57 percent of whites, 65 percent of African Americans, and 80 percent of Hispanics live in 437 counties with substandard air quality. Out of the whole population, a total of 33 percent of whites, 50 percent of African Americans, and 60 percent of Hispanics live in the 136 counties in which two or more air pollutants exceed standards. The percentage living in the 29 counties designated as nonattainment areas for three or more pollutants are 12 percent of whites, 20 percent of African Americans, and 31 percent of Hispanics.¹⁹

The public health community has insufficient information to explain the magnitude of some of the air pollution-related health problems. However, we do know that persons suffering from asthma are particularly sensitive to the effects of carbon monoxide, sulfur dioxides, particulate matter, ozone, and nitrogen oxides.²⁰ African Americans, for example, have significantly higher prevalence of asthma than the general population.²¹ Environmental problems are endangering the health of communities all across this nation.

South Central Los Angeles. In the heavily populated Los Angeles air basin, for example, over 71 percent of African Americans and 50 percent of Latinos live in areas with the most polluted air, while only 34 percent of whites live in highly polluted areas.²² For a few days in 1992, the entire world was affixed on the flames of Los Angeles.

Even before the Spring 1992 uprising, *San Francisco Examiner* reporter Jane Kay described the zip code in which the now riot-torn South Central Los Angeles neighborhood is located as the "dirtiest" zip code (90058) in California.²³ The one-square-mile area is saturated with abandoned toxic waste sites, freeways, smokestacks, and waste water pipes from polluting industries.

Southside Chicago. Chicago is the nation's third largest city and one of the most racially segregated cities in the country. Over 92 percent of the city's 1.1 million African American residents live in racially segregated areas. Southside Chicago's Altgeld Gardens public housing project is encircled by municipal and hazardous waste landfills, toxic waste incinerators, grain elevators, sewer treatment facilities, smelters, steel mills, and a host of other polluting industries. Because of their physical location, Hazel Johnson (a community organizer in the neighborhood) has dubbed the area a "toxic doughnut."

The Southeast side neighborhood is home to 150,000 residents (of whom 70 percent are African American and 11 percent are Latino). It also has 50 active or closed commercial hazardous waste landfills, 100 factories (including seven chemical plants and five steel mills), and 103 abandoned toxic waste dumps.²⁴

The Bronx. In 1990, New York City adopted a "Fair Share" legislative model designed to ensure that every borough and every community within each borough bear its fair share of noxious facilities. Public hearings have begun to address risk burdens in New York City's boroughs. Proceedings from a hearing on environmental disparities in the Bronx point to concerns raised by African Americans and Puerto Ricans who see their neighborhoods threatened by garbage transfer stations, salvage yards, and recycling centers. The reports reveals that:

On the Hunts Point peninsula alone there are at least thirty private transfer stations, a large-scale Department of Environmental Protection (DEP) sewage treatment plant and a sludge dewatering facility, two Department of Sanitation (DOS) marine transfer station, a citywide private regulated medical waste incinerator, a proposed DOS resource recovery facility and three proposed DEP sludge processing facilities.

A policy whereby low-income and minority communities have become the "dumping grounds" for unwanted land uses, works to create an environment of disincentives to community-based development initiatives. It also undermines existing businesses.²⁵

Southeast Louisiana. Threatened communities in Southeast Louisiana's petrochemical corridor (the 85-mile stretch along the Mississippi River from Baton Rouge to New Orleans) typify the industrial madness that has gone unchecked for too long. The corridor has been dubbed "Cancer Alley" by some environmentalists.²⁶ Health concerns raised by residents and grass-roots activists who live in small towns along the Mississippi River such as Alsen, St. Gabriel, Geismer, Morrisonville, and Lions (all of which are located in close proximity to polluting industries) have not been adequately addressed by local, state, and federal agencies, including the federal EPA or the Agency for Toxic Substances and Disease Registry (ATSDR).

Native Lands. The threat to Native lands exists for the Mohawks in New York to the Gwichin in Alaska.²⁷ More than three dozen reservations have been targeted for landfills and incinerators. Nearly all of these proposals have been defeated or are under review. In 1991, for example, the Choctaws in Philadelphia, Mississippi defeated a plan to locate a 466-acre hazardous waste landfill in their midst.²⁸ In the same year, a Connecticut-based company proposed to build a 6,000-acre municipal landfill on the Rosebud reservation in South Dakota. The giant landfill was proposed by a firm that had never operated a municipal landfill. The project was later tagged "Dances with Garbage."²⁹ The Good Road Coalition, an alliance of grassroots groups, led a successful campaign that derailed the proposal to build the giant municipal landfill on Sioux lands.

THE CASE OF UNEQUAL PROTECTION

The nation's environmental laws, regulations, and policies are *not* applied uniformly across the board resulting in some individuals, neighborhoods, and communities being exposed to elevated health risks. A 1992 study by staff writers from the *National Law Journal* uncovered glaring inequities in the way the federal EPA enforces its laws. The authors write:

There is a racial divide in the way the U.S. 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.³⁰

Environmental decisionmaking operates at the juncture of science, economics, politics, and ethics. The current environmental model places communities of color at special risk.

West Dallas. One clear example of unequal protection is the case of West Dallas (TX)—a mostly African American and Latino inner-city neighborhood. The lead contamination problem in West Dallas was documented by the Dallas Health Department as far back as 1969. A 1983 federal study established that the local smelter was the source of elevated blood lead levels in children who lived in the neighborhood.³¹ A citizen lawsuit forced the lead issue into public debate. After operating for more than fifty years, the smelter was shut down by the City of Dallas under a zoning ordinance—the smelter never obtained the necessary use permits to operate in the residential area. Clean-up delays by the federal EPA amounted to "waiting for a body count."³² A superficial cleanup of the neighborhood was conducted in 1984.

The City of Dallas was not the only governmental body that was slow to act on behalf of the West Dallas residents. It took more than two decades for the EPA to initiate a comprehensive clean-up of the lead in the neighborhood. The neighborhood has failed to be declared a Superfund site. Nevertheless, clean-up activity began in the West Dallas site on January, 1992—nearly twenty years after the first published government report documented the problem. An estimated 30,000 to 40,000 cubic yards of lead-contaminated soil will be removed from several West Dallas sites, including school property and the yards of some private homes at the cost of \$3.4 million.³³

Native Lands. As environmental regulations have become more stringent in recent years, Native American lands have become prime targets for "garbage imperialism." Native American lands pose a special case for environmental protection.³⁴ Reservations are "lands the feds forgot" and their inhabitants "must contend with some of America's worst pollution."³⁵ More than three dozen waste disposal facilities have been proposed for Native lands.³⁶ Few reservations have environmental regulations or the waste management infrastructure equivalent to that of states or the federal government.

A MODEL ENVIRONMENTAL JUSTICE FRAMEWORK

The environmental justice framework attempts to uncover the underlining assumptions that may influence environmental decision making. The framework consists of five basic characteristics:

- (1) incorporates the principle of the "right" of all individuals to be protected from environmental degradation;
- (2) adopts a public health model of prevention (elimination of the threat before harm occurs) as the preferred strategy;
- (3) shifts the burden of proof to polluters/dischargers who do harm, discriminate, or who do give equal protection to racial/ethnic minorities, and other "protected" classes;
- (4) allows disparate impact and statistical weight, as opposed to "intent," to infer discrimination; and
- (5) redresses disproportionate risk burdens through targeted action and resources.

The goal of an environmental justice framework is to make environmental protection more democratic. More importantly, it brings to the surface the *ethical* and *political* questions of "who gets what, why, and in what amount." It is time for environmental discrimination to be made illegal.

Therefore, a federal "Fair Environmental Protection Act" is needed. This Act could be modeled after the various federal civil rights acts that promote nondiscrimination in such areas as housing, education, employment, and voting. The Act would need to address public policies, land use decisions, and industry practices that discriminate against racial and ethnic minorities.

Environmental decision makers have failed to address the "justice" question 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 some communities get cleaned up at a faster rate than others, why one cleanup methods are selected over others, and why industry poisons some communities and not others.

Environmental justice and pollution prevention need to be incorporated into our national environmental policy. If this nation is to achieve environmental justice, the environment in urban ghettos, barrios, reservations, and rural "poverty pockets" must be given the same protection as that provided to the suburbs. All communities—black or white, rich or poor—deserve to be protected from the ravages of pollution.

ENDNOTES

¹ See Robert D. Bullard, *Dumping in Dixie: Race, Class, and Environmental Quality* (Boulder, CO: Westview Press, 1990), chapter

² Commission for Racial Justice, *Toxic Wastes and Race in the United States* (New York: United Church of Christ Commission for Racial Justice, 1987).

³ *Ibid.*, pp. xiii-xiv.

⁴ See Nancy Denton and Douglas Massey, "Residential Segregation of Blacks, Hispanics, and Asians by Socioeconomic Status and Generation," *Social Science Quarterly* 69 (1988): 797-817; Gerald Jaynes and Robin Williams, *A Common Destiny: Blacks and the American Society* (Washington, DC: National Academy Press, 1989), pp. 144-145; Robert D. Bullard and Joe R. Feagin, "Racism and the City." Pp. 55-76 in M. Gottdiener and C.V. Pickvance, eds., *Urban Life in Transition* (Newbury Park, CA: Sage, 1991).

⁵ See Robert D. Bullard, ed., *Confronting Environmental Racism: Voices from the Grassroots* (Boston: South End, forthcoming); Robert D. Bullard, "The Threat of Environmental Racism," *Natural Resources & Environment* 7 (Winter, 1993): 23-26; Bullard, *Dumping in Dixie*; Bunyan Bryant and Paul Mohai, eds., *Race and the Incidence of Environmental Hazards* (Boulder, CO: Westview Press, 1992); Regina Austin and Michael Schill, "Black, Brown, Poor and Poisoned: Minority Grassroots Environmentalism and the Quest for Eco-Justice." *The Kansas Journal of Law and Public Policy* 1 (1991): 69-82; K. C. Colquette and Elizabeth A. Henry Robertson, "Environmental Racism: The Causes, Consequences, and Commendations." *Tulane Environmental Law Journal* 5 (1991): 153-207; Rachel D. Godsil, "Remediating Environmental Racism." *Michigan Law Review* 90 (1991): 394-427.

⁶ See U.S. General Accounting Office, *Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities* (Washington, DC: U.S. General Accounting Office, 1983), p. 1.

⁷ See U.S. Environmental Protection Agency, *Women, Minorities and People with Disabilities* (Washington, DC: EPA, 1992); U.S. Environmental Protection Agency, *EPA Headquarters Cultural Diversity Survey: Draft Final Report* (Washington, DC: EPA Cultural Diversity Task Force, 1992).

⁸ See J. A. Kushner, *Apartheid in America: An Historical and Legal Analysis of Contemporary Racial Segregation in the United States* (Frederick, MD: Associated Faculty Press, 1980); Joe R. Feagin and Clairece B. Feagin, *Discrimination American Style: Institutional Racism and Sexism* (Malabar, FL: Krieger Publishing Co., 1986); Bullard and Feagin, "Racism and the City," pp. 55-76.

⁹ See R. B. Stewart, "Paradoxes of Liberty, Integrity, and Fraternity: The Collective Nature of Environmental Quality and Judicial Administration of Action." *Environmental Law* 7 (1977), 172; Leonard Gianessi, H.M. Peskin, and E. Wolff, "The Distributional Effects of Uniform Air Pollution Policy in the U.S." *Quarterly Journal of Economics* 56 (May, 1977): 281-301.

¹⁰ See W. J. Kravant, "People, Energy, and Pollution." Pp. 125-167 in D. K. Newman and Dawn Day, eds., *The American Energy Consumer* (Cambridge, Mass.: Ballinger, 1975); Robert D. Bullard, "Solid Waste Sites and the Black Houston Community." *Sociological Inquiry* 53 (Spring, 1983): 273-288; United Church of Christ Commission for Racial Justice, *Toxic Wastes and Race in the United States: A National Study of the Racial and Socioeconomic Characteristics of Communities with Hazardous Waste Sites* (New York: Commission for Racial Justice, 1987); Michel Gelobter, "The Distribution of Pollution by Income and Race." Paper presented at the Second Symposium on Social Science in Resource Management, Urbana, Illinois (June, 1988); Dick Russell, "Environmental Racism." *The Amicus Journal* 11 (Spring, 1989): 22-32; Bullard, *Dumping in Dixie*; Paul Ong and Evelyn Blumenberg, "Race and Environmentalism." Graduate School of Architecture and Urban Planning, UCLA (March, 1990); Eric Mann, *L.A.'s Lethal Air: New Strategies for Policy, Organizing, and Action* (Los Angeles: Labor/Community Strategy Center, 1991); Leslie A. Nieves, "Not in Whose Backyard? Minority Population Concentrations and Noxious Facility Sites." Paper presented at the Annual Meeting of the American Association for the Advancement of Science, Chicago (February, 1991); D. R. Wernette and L. A. Nieves, "Breathing Polluted Air: Minorities are Disproportionately Exposed." *EPA Journal* 18 (March/April, 1992): 16-17; Robert D. Bullard, "In Our Backyards: Minority Communities Get Most of the Dumps." *EPA Journal* 18 (March/April, 1992): 11-12; Bryant and Mohai, *Race and the Incidence of Environmental Hazards*.

¹¹ See Myrick A. Freedman, "The Distribution of Environmental Quality." in Allen V. Kneese and Blair T. Bower (eds.), *Environmental Quality Analysis* (Baltimore: Johns Hopkins University Press for Resources for the Future, 1971); Michel Gelobter, "The Distribution of Air Pollution by Income and Race." Paper presented at the Second Symposium on Social Science in Resource Management, Urbana, Illinois (June 1988); Leonard Gianessi, Henry M. Peskin, and Edwin Wolff, "The Distributional Effects of Uniform Air Pollution Policy in the U.S." *Quarterly Journal of Economics* (May 1979): 281-301.

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¹⁴ United Church of Christ Commission for Racial Justice, *Toxic Wastes and Race*; Paul Mohai and Bunyan Bryant, "Environmental Racism: Reviewing the Evidence." in Bryant and Mohai, *Race and the Incidence of Environmental Hazards*.

¹⁵ Marianne Lavelle and Marcia Coyle, "Unequal Protection." *National Law Journal*, September 21, 1992.

¹⁶ Agency for Toxic Substances Disease Registry, *The Nature and Extent of Lead poisoning in Children in the United States: A Report to Congress*. Atlanta: U.S. Department of Health and Human Resources, 1988, pp. 1-12.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Wernette and Nieves, "Breathing Polluted Air." pp. 16-17.

²⁰ See Mann, *L.A.'s Lethal Air*.

²¹ See H. P. Mak, H. Abbey, and R.C. Talamo, "Prevalence of Asthma and Health Service Utilization of Asthmatic Children in an Inner City." *Journal of Allergy and Clinical Immunology* 70 (1982): 367-372; I.F. Goldstein and A.L. Weinstein, "Air Pollution and Asthma: Effects of Exposure to Short-Term Sulfur Dioxide Peaks." *Environmental Research* 40 (1986): 332-345; J. Schwartz, D. Gold, D.W. Dockey, S.T. Weiss, and F.E. Speizer, "Predictors of Asthma and Persistent Wheeze in a National Sample of Children in the United States." *American Review of Respiratory Disease* 142 (1990): 555-562.

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²⁵ Fernando Ferrer, "Testimony by the Office of Bronx Borough President." *Proceedings of the Public Hearing on Minorities and the Environment: An Exploration into the Effects of Environmental Policies Practices, and Conditions on Minority and Low-Income Communities* (Bronx, NY: Bronx Planning Office, September 20, 1991), 27.

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²⁸ Adam Nossiter, "Proposed Toxic Waste Dump Divides Choctaws, Alarm Environmentalists." *The Atlanta Journal-Constitution*, February 5, 1991.

²⁹ Thomas Daschle, "Dances with Garbage." *Christian Science Monitor*, February 14, 1991.

³⁰ Marianne Lavelle and Marcia Coyle, "Unequal Protection." *The National Law Journal*, September 21, 1992, S1-S2.

³¹ U.S. Environmental Protection Agency, "Report of the Dallas Area Lead Assessment Study," (Dallas, Texas: U.S. Environmental Protection Agency Region VI, 1983), p. 8.

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³³ Randy Lee Loftis, "Louisiana OKs Dumping of Tainted Soil," *The Dallas Morning News*, February 12, 1992, pp. A1, A30.

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³⁶ Angel, *The Toxic Threat to Indian Lands*.

Mr. EDWARDS. Ms. Ferris.

STATEMENT OF DEEOHN FERRIS, PROGRAM DIRECTOR, ENVIRONMENTAL JUSTICE PROJECT, LAYWERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

Ms. FERRIS. Thank you, Mr. Chairman.

I am pleased to appear before the subcommittee today to talk about some very important issues, information that has been shared with you by the first panel and Professor Bullard. It is particularly pertinent that we appear before the civil rights committee to discuss these issues.

My testimony or the premise of my testimony is based on the belief that the right to equal protection under the law extends to the right to equal protection from pollution under the law, and clearly, based on data collected to date, people of color that are poor in this country are not being equally protected from pollution.

As requested, Mr. Chairman, my testimony takes the form of five specific recommendations regarding actions that need to be taken at the Federal level to address and begin to eliminate the disproportionate impact of pollution on people of color.

Since I presented a historic overview of the problem in my testimony, I will limit my remarks to those five specific recommendations, noting that while we spend a lot of time talking today about the Environmental Protection Agency and its responsibilities, there are several Federal agencies with environmental jurisdiction that do have impact on people of color, such as the Department of Defense, the Department of Energy, the Department of Health and Human Services, and so forth, and some of these agencies are identified in the testimony I submitted to the subcommittee.

The first recommendation I make is that the Environmental Protection Agency and other agencies with jurisdiction over environmental laws and regulations must prioritize environmental programs to redress disproportionate pollution risks.

Second, EPA and other Federal agencies must enforce laws and regulations in communities adversely affected by disproportionate pollution.

Third, the Federal Government must create an interagency council to elevate these issues and coordinate development of effective remedies to eradicate the impact of disproportion at exposure to environmental hazards.

Fifth, the U.S. Department of Justice and other Federal civil rights agencies should assume an active role in ensuring equal protection from pollution.

Finally, the Federal Government must remove impediments to coordinating nationwide grassroots efforts to achieve environmental justice.

As in other areas of government activity and harmful private conduct, the Federal Government has an obligation to ensure equal protection from pollution under the law. The duty to aggressively address discriminatory impact derives from this obligation.

To fulfill these duties, EPA and other Federal agencies within environmental jurisdiction should prioritize these issues and protection of human health in the environment, centering on improving programs in these areas as they affect communities of color.

Integral aspects of improving these programs include conducting impact analyses on affected communities when siting decisions and other decisions affecting facilities in these communities are made.

Another integral aspect of improving these programs includes a targeted governmentwide research and development agenda and restructuring Federal activities regarding data reporting, data collection and analysis.

Prioritizing these programs must be based on protecting overexposed and sensitive populations. Progressive reorientation of Federal compliance and enforcement programs is also necessary to redress environmental problems in underprotected communities.

Immediately coordinating targeted Federal inspection and enforcement resources to alleviate discriminatory pollution impact will establish as a high governmentwide priority development and implementation of solutions to remedy disparate impact resulting from noncompliance.

In addition, a concerted Federal approach combining civil rights criteria and environmental protection goals would prohibit discrimination in all environmental programs receiving Federal funds.

A civil rights approach merged with traditional environmental enforcement initiatives should be intensely examined as a means to providing remedies of law for communities faced with distribution inequities. As the lead civil rights enforcement arm of the Government, this examination could be conducted by the Department of Justice in conjunction with other Federal civil rights agencies.

I recommend creating a Federal coordinating council which would facilitate refocusing government to address disproportionate risk. The council's imperatives should be threefold. First, to reinforce that the principles of equal environmental protection pertain to the entire scope of environmental issues.

Second, to undertake a comprehensive interagency evaluation of Federal practices and policies that contribute to disparate impact.

And third, to galvanize equitable implementation of environmental programs.

Clearly, members of the subcommittee, the evidence indicates that the problems associated with disproportionate impact are serious, warranting expedited redress. Effective interagency coordination and action is crucial if government is to address the needs of communities facing patterns of unequal protection under the law.

Thank you.

Mr. EDWARDS. Thank you.

[[The prepared statement of Ms. Ferris follows:]]

PREPARED STATEMENT OF DEEOHN FERRIS, PROGRAM DIRECTOR, ENVIRONMENTAL JUSTICE PROJECT, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to appear before you today to outline a framework for an effective federal approach to remedying the disproportionate effects of pollution on communities of color in this nation.

The Lawyers' Committee for Civil Rights Under Law is a non-partisan, non-profit organization formed in 1963 at the request of President John F. Kennedy to involve the private bar in the provision of legal services to victims of racial discrimination. Through legal representation, public policy advocacy and public education on civil rights matters, we implement our mission. As Program Director of the Lawyers' Committee's Environmental Justice Project, I focus on devising interdisciplinary strategies and mechanisms to influence governmental and private sector decisionmakers concerning disproportionate environmental risks experienced by people of color and the poor.

The goal of the Environmental Justice Project is to strengthen community-based environmental justice activists in their efforts to prohibit environmental discrimination and develop remedies for the adverse consequences of prior discrimination. Our objective is to obtain equality by providing legal and technical resources for the needs of people of color, ensuring fair, equitable political participation and eliminating all barriers to equal environmental protection.

INTRODUCTION

The concept of environmental justice has emerged from the growing recognition that people of color and people with low incomes more often live and work in areas in the United States where environmental risks are high. People of color and people with low incomes are most often the unwilling recipients of hazardous waste sites, incinerators, industrial production facilities, pesticides and radiation exposure.¹ Furthermore, communities already adversely affected by disproportional pollution risks in the ambient environment may be inundated by indoor air pollution, caused by asbestos or lead-based paint, and occupational exposure in the workplace.

Racial disparities in the treatment of pollution risks are verifiable. Increasingly, evidence produced by scholars, attorneys, scientists, journalists and citizens demonstrates that, even more important than income, race is the determining factor in terms of who is exposed to higher levels of environmental contaminants.²

People of color and ethnic groups represented in communities experiencing elevated pollution risks cross the spectrum, including African-Americans, Latinos, Asian-Americans, Pacific-Islanders, and Native Americans.³ In general, communities of color face pollution exposures at levels not regularly experienced by other segments of this society. Community-based organizations, academicians, attorneys, civil rights and environmental organizations, organized labor, health professionals and church groups are coalescing on these issues comprising elements of an omnibus campaign: the environmental justice movement.

Disproportionate risks posed by pollutants occur in both rural and urban areas with statistically significant populations of people of color. For example, urban communities face elevated exposures associated with air, land and water pollution; migrant farm workers (most often Latinos and African-Americans) in rural commu-

¹ See e.g., "Transforming A Movement," Dana Alston, *Race, Poverty and the Environment* 1 (Fall 1991/Winter 1992).

² "Black, Brown, Poor and Poisoned: Minority Grassroots Environmentalism and the Quest for Eco-Justice," 1 *Kansas Journal of Law and Public Policy* 68 (1991).

³ "Environmentalism and the Politics of Equity: Emerging Trends in the Black Community," Bullard and Wright, 12 *Mid-American Review of Sociology* 25 (1987).

² See, e.g., *Race and the Incident of Environmental Hazards*, Bunyan Bryant and Paul Mohai (West view Press, Boulder, Colorado, 1992).

Dumping in Dixie: Race, Class and Environmental Quality, Robert Bullard (West view Press, Boulder, Colorado, 1990).

² "Toward a Model of Environmental Discrimination." *The Proceedings of the Michigan Conference on Race and the Incident of Environmental Hazards*, Bunyan Bryant and Paul Mohai eds., (University of Michigan School of Natural Resources, Ann Arbor, Michigan).

² "The Distribution of Air Pollution by Income and Race," Michel Gelobter (Paper Presented at the 2d Symposium on Social Science in Resource Management, Urbana, Illinois, June, 1988).

³ See e.g., *We Speak for Ourselves: Social Justice Race and the Environment*, Dana Alston, ed. (Panos Institute, September 1990).

EPA Journal: Environmental Protection—Has It Been Fair?, U.S. Environmental Protection Agency, Volume 18, Number 1, March/April 1992.

nities frequently are overexposed to dangerous pesticides; and exposure to low-level and high-level radiation is endangering Native Americans on their lands.⁴

Documentation of environmental injustices experienced by people of color dates back two decades. Regional and nationwide studies, dating from 1971, show significant exposures for people of color as compared to whites, to with noise, hazardous air pollutants, siting of commercial hazardous waste facilities, uncontrolled toxic waste, water pollution, pesticide poisoning, and location of solid waste landfills.⁵ The federal government also documented inequities related to location of hazardous waste landfills in the South in a 1983 report by the U. S. General Accounting Office.⁶

Raising public awareness and agitating for change in this tragic predicament, the multi-cultural, multi-racial coalition of environmental justice activists across the United States, hearkening to the civil rights movement, are part of a growing mass social justice movement that demands equal protection for all people, including equal protection from pollution.⁷

Activists in this movement are highlighting the need for additional empirical investigation and development of aggressive action plans at the federal and state levels, legislation, a new regulatory approach to redress the discriminatory distribution of environmental risks, and targeted federal environmental enforcement.⁸

Based on my background and experience with environmental issues, this testimony identifies impediments to achieving equal environmental protection under law in this nation and sets forth recommendations in five parts. These five parts are:

I. The U. S. Environmental Protection Agency and other federal agencies with jurisdiction over environmental laws and regulations must prioritize environmental programs to redress disproportionate pollution risks;

II. The U. S. Environmental Protection Agency and other federal agencies with jurisdiction over environmental laws and regulations must enforce laws and regulations in communities adversely affected by disproportionate pollution risks;

III. The federal government must create an inter-agency council to coordinate development of effective remedies to eradicate the impact of disproportionate exposure to environmental hazards;

IV. The U.S. Department of Justice and federal civil rights agencies should assume an active role in ensuring equal protection from pollution; and

V. The federal government must remove impediments to coordinating nationwide grassroots efforts to achieve environmental justice.

⁴See e.g., *Environmental Racism: Reviewing the Evidence*, Paul Mohai and Bunyan Bryant (Paper delivered at the University of Michigan Law School Symposium on Race, Poverty, and the Environment, January 1992).

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

Natural Resources Issue: Race Class and Environmental Regulation, *University of Colorado Law Review*, Volume 63, No. 4, 1992.

"Native Hawaiian Historical and Cultural Perspectives on Environmental Justice," *Race Poverty and the Environment*, Volume III, No. 2 (Spring 1992).

⁵See e.g., *The Environmental Justice Framework: A Strategy for Addressing Unequal Protection*, Robert Bullard, Draft, Unpublished 1992.

Reviewing the Evidence, *Ibid*.

⁶Report by the U.S. General Accounting Office, *Siting of Hazardous Waste Landfills and Their Correlation With Racial and Economic Status of Surrounding Communities*, GAO/RCED 83-168, June 1, 1983.

⁷*We Speak for Ourselves*, *Ibid*.

Activists are organizing from the bottom up creating community-based grassroots groups and regional networks to identify problems, and develop common strategies to create solutions. For example, grassroots groups and their invitees have participated in several landmark meetings and conferences: The First National People of Color Environmental Leadership Summit involved nearly 1000 activists from the United States, Africa and South America conferring in Washington, D.C. in October 1991; for the past three years, the Southwest Network for Environmental and Economic Justice has convened an annual gathering of activists representing ten states; over 2500 participants joined the Southern Community Labor Conference in December 1992 to discuss the concerns of grassroots groups representing a radius of 14 southern states.

⁸See generally "A Challenge To EPA," Deohn Ferris, *EPA Journal*, Volume 18, No. 1, U.S. Environmental Protection Agency, March/April 1992.

1. The U.S. Environmental Protection Agency (EPA) and Other Federal Agencies With Jurisdiction Over Environmental Laws and Regulations Must Prioritize Environmental Programs to Redress Disproportionate Pollution Risks

As in other areas of government activity and harmful private conduct, the federal government has an obligation to ensuring equal protection from pollution under the law. The duty to aggressively redress discriminatory disproportionate pollution exposures derives from this obligation. To fulfill these duties, EPA and other federal agencies with jurisdiction over environmental laws and regulations must prioritize eliminating disproportionate impact and protecting the health and environment of those who are affected, i.e., communities of color in this nation.

Prioritizing disproportionate impact issues and protection of human health and the environment should center on improving programs in these areas as they affect communities of color. Integral aspects of improving these programs include a targeted government-wide research and development agenda and restructuring federal activities regarding data reporting, data collection and analysis.

Protecting human health and the environment should be the principal federal priority. Commonly, however, cost-benefit analysis is the test applied in promulgating environmental regulations. In general, cost-benefit analysis provides an in-depth record of the price of regulation to industry but, reveals little information about either the toll of synergistic pollution or disproportionate risk on human health or the costs of failure to protect the environment. Emphasizing scrutiny on the health and environment of populations most exposed to environmental contamination during the regulatory development process will support development of regulations to protect communities of color, in particular, as well as the general population.

Technological advancement in the tools of environmental and human health measurement is a requisite component of this increased scrutiny. Revising risk measurement and monitoring systems, and improving the effectiveness of exposure data correlation to encompass synergistic effects, multiple sources and sensitive populations are ingredients essential to ensuring quality of life for over-exposed communities. To catalyze this shift in the risk analysis agenda, the government could fund academic institutions historically associated with people of color and regional research institutes to focus on research responsive to achieving environmental justice goals.

Modifications to the federal framework for protecting human health and the environment also are mandatory. Foremost, federal initiatives must vigorously pursue as goals pollution prevention, waste minimization, reuse and recycling to reduce and, where possible, eliminate levels of potential disproportionate exposure. Furthermore, the framework must incorporate a pre-market strategy and, where feasible, post-market strategies for evaluating whether toxic and hazardous substances will enter (or continue in) the stream of commerce.

In addition to environmental justice, key elements of this evaluation framework should include assessments of the following characteristics: (1) multiple and synergistic exposure pathways (2) health and environmental effects, including sensitive populations; (3) product safety; (4) need for the substance; (5) availability of less harmful substitutes and alternatives; (8) persistence and degradability; and (9) bioaccumulation factors.

Effectively, this evaluation matrix would shift the burden of proof. Instead of requiring affected communities to prove that exposure to a substance or substances causes adverse health and environmental effects, industries which profit from their manufacture would bear the burden of proving the safety of those products. Without reducing scientific rigor, shifting the burden of proof to industry adjusts the regulatory process to a presumption in favor of safety and protection.

Similarly, in terms of prospective siting decisions, such as those involving energy production, chemical manufacturing, and waste treatment storage and disposal, pertinent analyses must include an assessment of the health, environmental, economic and distributive impacts on the projected recipient community. A government that evaluates paperwork burden on industry, regulatory impact on small business and effects on endangered wildlife should do no less than scrutinize the impact on people.

Finally, prioritizing environmental programs must be based on protecting over-exposed and sensitive populations. For example, in December, 1992, the Environmental Justice Transition Group established a protocol for prioritizing EPA programs affecting people of color in a document entitled "Recommendations To The Presidential Transition Team for the U.S. Environmental Protection Agency on Environmental Justice Issues." This document is attached and, hereby, incorporated into the Subcommittee's hearing record.

Briefly, the Environmental Justice Transition Group recommends that work on issues affecting communities of color commence at EPA in eleven specific areas: (i) farm worker protection; (ii) protecting indigenous peoples; (iii) radiation exposure;

(iv) waste facility siting and cleanup; (v) clean air; (vi) clean water; (vii) drinking water; (viii) urban areas; (ix) free trade and border issues; (x) strategic planning and budgets; and (xi) state program implementation.

Creation of a Federal Coordinating Council on environmental justice issues would expedite similar program prioritization in other agencies with jurisdiction over federal environmental laws and regulations. This concept is described in more detail in Part III below.

II. *The U.S. Environmental Protection Agency (EPA) and Other Federal Agencies With Jurisdiction Over Environmental Laws and Regulations Must Enforce Laws and Regulations in Communities Adversely Affected by Disproportionate Pollution Risks*

Federal action pursuant to environmental laws and regulations consistent with equal protection principles is key to achieving equal protection from environmental exposures. However, a recent study by the *National Law Journal*, *Unequal Protection: The Racial Divide in Environmental Law*, Volume 15, No. 3 (September 2, 1992), revealed a failure to neutrally enforce environmental laws, with regard to ongoing activities which cause pollution, as well as past activities.

The alarming findings show disparities in environmental enforcement penalties in people of color communities compared to whites. Inequalities in enforcement are likely to exacerbate health risks and mortality rates caused by environmental exposures in communities experiencing disproportional effects.

According to the *National Law Journal*, disparities in enforcement pertain across the board to enforcement of federal air, water and waste statutes. For example, the report shows that penalties under the Resource Conservation and Recovery Act⁹ are from 46% to 500% higher in white communities than in communities of color (despite the overall absence of disparity between affluent and poor communities). The report also revealed disparities in the rate at which uncontrolled hazardous waste sites are listed on the Superfund¹⁰ National Priority List and the pace and quality of cleanups conducted in people of color communities compared to white communities.

The evidence indicates that the federal government compliance and enforcement response in communities of color is unequal to compliance and enforcement activities in white communities. As stated by Robert Bullard, a noted sociologist and researcher on environmental justice issues, "Not only are people of color differentially impacted by . . . pollution, they can expect different treatment by the government."¹¹

The need for an urgent federal response to correct these inequities is paramount. Federal agencies with jurisdiction over environmental issues directly affecting people of color are integrally involved in enforcement activities that have wide-ranging implications for affected communities. Therefore, the federal government is uniquely positioned to demonstrate leadership which will ensure that the Constitutional principle of equal protection is implemented in all aspects of federal sector enforcement activity.

Excluding criminal enforcement measures, two traditional enforcement approaches affecting people of color are civil judicial environmental cases and civil rights cases. In general, civil environmental cases involve commission of a statutorily defined unlawful act, a violation of regulations or permits; and civil rights cases involve violations of specific statutory mandates and legal protections. In these two areas, the federal government should undertake coordinated initiatives to vigorously pursue causes of action targeted at remedying disproportionate impact.

Progressive reorientation of federal compliance and enforcement programs would address environmental problems in under-protected communities. Immediately coordinating targeted federal inspection and enforcement resources to alleviate discriminatory pollution exposures in communities of color will establish as a high government-wide priority development and implementation of solutions to remedy disparate environmental effects resulting from noncompliance.

In addition, establishing the applicability of civil rights laws and regulations to environmental governance, whether through reconsidering the applicability of current civil rights statutes, Executive Order or by statute, reinforces the principles of equal protection which are essential to achieving equitable implementation of federal environmental programs.

⁹ 42 U.S.C. § 6901 *et seq.*

¹⁰ Comprehensive Environmental Response, Compensation and Liability Act, as amended 42 U.S.C. § 9601 *et seq.*

¹¹ *The Environmental Justice Framework*, Bullard, *Ibid.*

A concerted federal approach combining civil rights criterion and environmental protection goals would prohibit discrimination in federal programs, as well as all environmental programs receiving federal funds.

III. The Federal Government Must Create an Inter-Agency Council to Coordinate Development of Effective Remedies to Eradicate the Impact of Disproportionate Exposure to Environmental Hazards

Environmental justice concerns affect every media area (i.e., land, air and water), as well as all federal regulatory, compliance and enforcement programs involving environmental issues. The list of federal entities with jurisdiction over some aspect of either ambient or indoor domestic environmental/health programs encompasses at least nine Departments including Energy, Defense, Interior, Health and Human Services, Agriculture, Housing and Urban Development, Transportation, Justice and Labor; and at least 6 agencies including EPA, the Occupational Safety and Health Administration, National Institutes of Health, National Institute of Environmental Health Sciences, Centers for Disease Control, and the Agency for Toxic Substances and Disease Registry.

In view of the pervasive impact of government on the environment, these and other agencies must incorporate into the federal decision-making process factors necessary to safeguard communities facing disproportional pollution exposures. A Federal Coordinating Council should be established to facilitate an effective and comprehensive government-wide response to eliminating disproportionate risk, including regulatory development, targeted compliance and enforcement activities.

The Council's imperatives should be to threefold: First, to reinforce that the principles of equal environmental protection pertain to the entire scope of environmental issues; second, to undertake a comprehensive inter-agency evaluation of federal practices and policies that contribute to disparate impact on communities of color; and third, to galvanize equitable implementation of environmental programs.

The focus of the Council should incorporate ongoing dialogue on formulating solutions appropriate to under-protected communities, including meetings with environmental justice activists to assess current issues and efforts, identify problems, assemble data necessary to develop effective devices for addressing disproportionate exposures, and annually report on the status of communities facing high levels of exposure to pollution. Council agencies that have relationships with Native American Tribes should establish as a near-term goal, providing support and assistance to Tribes in developing and implementing effective environmental programs on Tribal lands and fully funding those programs.

Finally, to provide much-needed resources to communities in need, the Federal Coordinating Council should evaluate the viability of a legislative scheme to redirect a portion of collected civil penalties and criminal fines from the United States Treasury to directly benefit those communities adversely affected by environmental violations that are the subject of those fines and penalties. For example, instead of reverting to the Treasury, these monies could be expended to furnish funds for economic development in depressed areas, job training, ongoing health assessments and medical follow-up or environmental restoration.

The evidence indicates that the problems associated with disproportionate impact are serious warranting expedited redress. Effective inter-agency coordination is crucial if government is to address the needs of communities facing a pattern of unequal protection under the law.

IV. The U.S. Department of Justice and Federal Civil Rights Agencies Should Assume an Active Role in Ensuring Equal Protection From Pollution

Presently, erosion of civil rights law in this country has created difficulties in terms of proving discrimination and racism in areas ranging from employment opportunities and education to housing and voting rights. Even in obvious situations there can be enormous difficulties of proof.

In the environmental context, the burden of proof has proven insurmountable. To date, racial discrimination, in terms of disproportionate environmental effects, virtually has never been established in a court of law. Faced with the most blatant facts and statistics, courts have refused to find racial discrimination.

Most cases involving claims of environmental discrimination relate to one of the most controversial and bitterly contested areas of environmental regulation—waste facility siting decisions. Until recently, these siting claims have challenged governmental decisions pursuant to the equal protection or due process provisions in the Constitution or 42 U.S.C. §1983, all requiring proof of intentional discrimination. Essentially, none of these cases have been successful due to this rigorous standard.

Nevertheless, a civil rights approach merged with traditional environmental enforcement initiatives should be intensively examined as an innovative means to pro-

viding remedies at law for communities faced with distribution inequities. As the lead civil rights enforcement arm of the government, this examination should be conducted by the Department of Justice in conjunction with other federal civil rights agencies. According to noted legal scholars, for example, Title IV of the Civil Rights Act presents a viable opportunity for redressing environmental discrimination.¹²

In addition to developing innovative means to provide remedies at law for communities facing immediate distribution inequities, the Department of Justice should coordinate with federal civil rights and environmental agencies to create a framework for future efforts in communities of color.

Working with environmental justice activists, the federal government can demonstrate leadership by developing legislative amendments that can be incorporated into existing statutes to eliminate disproportionate impact. For example, the Department could support enactment of a private cause of action against environmental discrimination, such as the cause of action embodied in draft Environmental Justice Act legislation scheduled to be reintroduced in the 103rd Congress.

Together with coordinating development of legislative initiatives targeted at ensuring equal environmental protection, the Department of Justice is uniquely situated to spearhead an assessment of the means by which federal mechanisms can be applied to overcome impediments posed by interpretations of Title VI and other civil rights laws in remedying disproportionate pollution risks experienced by communities of color.

V. The Federal Government Must Remove Impediments to Coordinating Nationwide Grassroots Efforts to Achieve Environmental Justice

In addition to the absence of a comprehensive federal offensive on disproportionate environmental exposures, coordination of efforts by community-based grassroots activists to achieve environmental justice is impeded by several factors, foremost of which are: (a) the seemingly unlimited range of environmental concerns posed by disproportionate risk; (b) lack of resources, and (c) limited access to and responsiveness of public policy decision makers.

(a) The Range of Environmental Risk is Wide

Communities of color hardest hit by environmental hazards represent the spectrum of people of color including Asian Americans, Native Hawaiians, Pacific-Islanders, African Americans, Native Americans and Latinos. Disproportional pollution experienced by people of color envelops air, land and water; for example, mobile sources and stationary facilities that emit air contaminants, publicly-owned waste water treatment works, storm water and combined sewer overflows, radioactive wastes, solid and hazardous waste, land laid waste due to forestry harvesting and energy production activities, lead and asbestos poisoning, occupational exposures, application of dangerous pesticides, contaminated drinking water, and toxic fish consumption.

As mentioned above, the environmental justice movement has spawned multi-cultural, multi-racial coalitions and organizational networks around the U. S. based on unanimity of resistance to categorization as a disposable segment of the population and agreement on an action agenda shared by people of color on eliminating disproportionate environmental exposures.

Recognizing that solutions to the range of problems as wide as those confronting this movement cannot be unilateral and are often complex to investigate, the government has failed to respond with either the rigor, discipline or seriousness of purpose integral to redirecting the way environmental protection mechanisms are implemented in this nation.

Coupled with the existence of nearly identical concerns confronted at state and local levels, environmental justice activists are inundated with issues to redress, hostile (or at a minimum, unresponsive) governments and, too often, resources available to the struggle for equal protection are too limited to compel meaningful government or private sector response.

(b) Lack of Resources Impedes Progress

Due to often severe resource limitations, progress that could be accomplished by environmental justice activists is constrained to a pace far slower than desirable. Bona fide environmental protection encompasses equal protection from pollution for all people, as well as initiatives to remedy distributional inequities. However, these goals cannot be achieved without broad-based support and participation. Private sector and public energies and resources must be applied to give voice to under-pro-

¹² "Pursuing Environmental Justice: The Distributional Effects of Environmental Protection," Richard J. Lazarus, 87 *Northwestern University Law Review*, No. 3 (March 1993).

tected people seeking to remedy disproportionate exposure to environmental hazards.

Government funding, similar to the Technical Assistance Grants (TAG) mechanism authorized by the Comprehensive Environmental Response, Compensation & Liability Act (Superfund), would facilitate community input and participation into the process to achieve environmental justice. Using a modified TAG model, communities could access funds sufficient to provide a meaningful role in development of public policy.

Developing public and private resources necessary to strengthen community-based organizations, including legal and technical support, is crucial to developing solutions compatible with restoring the health and productivity of these communities.

(c) Access To and Responsiveness of Public Policy Decisionmakers

Related to difficulties associated with limited resources, are the problems of limited access to and responsiveness of public policy decisionmakers. Too often, populations affected by disproportional pollution are invisible either at federal, state and local levels. (For purposes of this discussion, invisibility equates with being ignored.)

Invisibility of affected people of color is attributable to a combination of factors: public policy discussions on environmental issues don't often meaningfully include people of color, tools to measure their risk do not exist, funding for the tools and mechanisms for their advocacy is nascent or nonexistent, and their efforts are often outweighed by comparatively unlimited resources of opposing industry and government.

Linkages between public policy decisionmakers and community-based organizations and their representatives are crucial. Congress and the federal government, as well as state and local government, must engender mechanisms to facilitate hearing from community people about what they identify as issues of concern, potential solutions and needed expertise to aid their struggle for equal protection under law.

CONCLUSION

The federal government must immediately undertake initiatives to remedy hazards posing disproportionate risks to the health and environment of people of color in the United States. Committed leadership in the federal sector is crucial to ensuring that communities of color no longer bear a disproportional share of our national pollution burden. In terms of alleviating discriminatory impact, a coordinated federal approach to environmental laws, compliance and enforcement activities is integral to focusing already limited resources into areas where they are most needed and most effective.

Mr. EDWARDS. We will now hear from Mr. Jeffreys.

STATEMENT OF KENT JEFFREYS, DIRECTOR, ENVIRONMENTAL STUDIES, COMPETITIVE ENTERPRISE INSTITUTE

Mr. JEFFREYS. Thank you, Mr. Chairman.

Racism is not a uniquely American phenomenon. Any examination of current events around the world would find that race, culture and religion are the source of much conflict, and even war.

Environmental problems are also universal. The global nature of the debate over ecological issues often leads me to address the issue of environmental equity from an international perspective. Racism exists and environmental problems exist, but these facts do not reveal whether environmental racism exists.

Regardless of whether any particular case fits the definition of environmental racism, the fact remains that environmental problems, even from a minority perspective, are rather trivial in comparison to the larger economic and civil liberties involved. Solve those problems, and you have so solved most, if not all, of the environmental inequities.

The real problem in America is that we have politicized environmental issues. Years ago, the Government essentially condemned an easement in favor of pollution across all property and across all people in America. Since the State now determines how much pol-

lution is appropriate or legally acceptable, the politically powerful who are best able to focus their attention on State mechanisms of control, will be more likely to have their interests protected.

In addition, it is important to remember some of the other priorities. Murder is the leading cause of death among young male African-Americans. While over 400 people were murdered in D.C. last year alone, not a single person died because of groundwater contamination from hazardous waste sites in this city. I think environmental issues need to be placed in perspective.

Furthermore, it is often irrelevant from a human health perspective how close one is to a site containing potential groundwater contamination. Without a consistent standard by which to judge individual cases, racism is in the eye of the beholder.

In any event, most of the information that is available on hazardous waste sites does not indicate the actual exposures to potentially hazardous substances. So certainly further research would be called for. But living next door to a state-of-the-art waste handling facility may expose an individual to far less risk than drinking a morning cup of coffee. So I question whether this is truly a civil rights concern.

In many industrial areas, including most of those now condemned as physical evidence of environmental racism, for example, the Southside of Chicago, minorities were given their first access to the American dream. Employers who were motivated by the capitalist urge to make a profit and regardless of their personal racism or lack thereof, hired the best workers they could find at the lowest wage they could pay. Regardless of our current attitudes, this often worked to the advantage of the economically disadvantaged, especially minorities, and it gave them their first opportunity to enter the industrial workplace.

In addition, workers prefer to live close to their place of employment, for obvious reasons. Thus, they moved to the general vicinity of the pollution sources. This resulted in one of the largest internal migrations in American history as rural-born African-Americans moved to industrial urban areas. So even with the pollution and low-wage jobs, their lives were greatly improved.

It would be ironic that the economic force that has eventually spawned the civil rights movement would be condemned as environmental racism today.

One point we haven't really raised here today but I think will be raised later in testimony is the question of Native-Americans. Native-American reservations suffer from enormous problems. However, most of these stem from the welfare state conditions that result from anachronistic Federal policies. The reservation system is a system of apartheid-style homelands and it suffers from many of the same flaws that its more famous descendants face in South Africa.

To a large degree, environmental hazards of the sort usually contemplated by the EPA are frivolous matters in comparison to the very real problems of alcoholism, inadequate health care, education, and housing—and the list goes on—found on American reservations.

American apartheid is complex. It could not exist without Federal Government's support, which is almost hopelessly entangled in

treaty obligations. Moreover, many tribal leaders are coconspirators in keeping their people down. Property rights and individual civil liberties are often ignored and trampled. Such are the results of true racism.

There is an indisputable relationship between human health and human wealth. On average, wealthier is healthier. Thus, wasting resources in a fruitless search for perfectly safe environments may in fact reduce society's well-being. So I would call into question some of the proposals to spend a great number of resources cleaning up sites that may not be contributing to any sort of health concern.

I would say that, in conclusion, all government actions are likely to become skewed in favor of politically powerful groups. However, if the State assumes its proper rule and explores property-rights-based solutions to pollution, a decentralized self-policing process can arise. Respect for contract and private property rights will solve much of the apparent dilemma over racially disparate environmental results.

Thank you.

Mr. EDWARDS. Thank you very much.

[The prepared statement of Mr. Jeffreys follows:]

PREPARED STATEMENT OF KENT JEFFREYS, DIRECTOR, ENVIRONMENTAL STUDIES,
COMPETITIVE ENTERPRISE INSTITUTE

My name is Kent Jeffreys and I am the Director of Environmental Studies for the Competitive Enterprise Institute in Washington, DC. CEI is a non-partisan, non-profit public interest organization dedicated to the principle of individual liberty. Many important issues are raised by this discussion of environmental equity. Unfortunately, I will be forced to limit myself to only a few.

ENVIRONMENTAL RACISM

Racism is not a uniquely American phenomenon. Any examination of current events would find that race, culture and religion are the source of much conflict (and even war) in the world today. Environmental problems are also universal, and the global nature of the debate over ecological issues also leads me to address the issue of environmental equity from an international perspective in my testimony.

Racism exists. Environmental problems exist. These facts, however, do not reveal whether or not *environmental racism* is occurring. Regardless of whether any particular case fits the definition of environmental racism, the fact remains that environmental problems—from a minority perspective—are rather trivial in comparison to the larger economic and civil liberty issues: solve these and you have solved most, if not all, of the environmental inequities.

The real problem is that we have politicized environmental issues. Years ago, government essentially condemned an easement in favor of pollution across all property (and all people) in America. Since the state now determines how much pollution is appropriate or legally acceptable, the politically powerful, who are best able to focus their attention on state mechanisms of control, will be more likely to have their interests protected.

The environmental problems which confront the vast majority of people on this planet are not recent (nor even human) in origin; in fact they date from Biblical times. Bacterial contamination of water and food remain the primary environmental risks faced by human beings. Yet in America, with isolated exceptions, even poor members of minority groups find most of these worries to be greatly reduced, if not eliminated. The environmental issues most often debated in Congress are largely irrelevant to the average person: global climate change, ozone depletion, acid rain, endangered species, and so on. The animal species dominating inner cities across America—rats and roaches—are hardly endangered. Much has been said of potentially harmful levels of lead in the bloodstream of inner-city minorities. Yet the primary risk of "lead poisoning" in urban areas comes from the mouth of a gun rather than a water faucet or a paint can. Murder is the leading cause of death among young male African Americans. While over 400 people were murdered in DC last

year, not a single person died because of groundwater contamination from a hazardous waste site. Environmental issues must be placed in perspective.

HAZARDOUS WASTE FACILITY SITING DECISIONS

Much of the support for the theory of environmental racism is derived from studies of the siting of hazardous waste facilities. It is difficult to assess hazardous waste facility siting decisions without complete information. However, the definition of "minority community" seems to vary widely in the published reports. In one instance it may refer to a county, in another, a particular neighborhood. Some cases even appear to consider only the owner of the nearest parcel of property. It seems that an effort is often made to maximize the apparent racial disparity of hazardous waste siting decisions.

As an illustrative example, consider the published reports of the *National Law Journal*, an organization that has strongly pushed the notion of environmental racism. An EPA spokesperson (to rebut the assertion that apparently lower environmental fines levied in minority communities are not based on racial factors) stated that, "For a marginal company that operates in an economically depressed area, even a small penalty hurts."¹ The *NLJ* proceeds to point out, as evidence of environmental inequity, that "small fines in minority areas have been lodged against industrial giants: a \$22,000 air pollution penalty against Procter & Gamble Co. in Staten Island, N.Y."²

However, Staten Island, overall, is 85 percent white. It is also the site of Fresh Kills (the world's largest landfill) which takes in garbage and waste from the other boroughs of New York (which have much higher minority populations). In addition, it is hard to imagine that air pollution on Staten Island can be confined to a particular minority enclave.

Yet in other cases, the *NLJ* cites county population as conclusive evidence of racial discrimination. For example, the infamous PCB disposal facility case³ in North Carolina arose in "the county with the highest percentage of minority residents in the state."⁴ For all we know, that county may also have the lowest population density, thus providing a non-racial reason to site such a facility. High population densities may be avoided because of a fear of accidents. This would make it more likely that rural sites would be selected.

Furthermore, it is often irrelevant (from a human health perspective) how close one is to a site containing potential groundwater contamination. Without knowing the hydrology of an area, it is impossible to predict the flow of the contaminant. Thus, it may actually migrate away from the minority community. Without a consistent standard by which to judge individual cases, "racism" will be in the eye of the beholder.

Unmentioned through most of this debate is the fact that even the experts on Superfund sites admit that the health risks are very low. Superfund is a program in almost complete failure, and racist motivations would be the least of the problems with Superfund. By any reasonable standards, Superfund does not provide significant health or environmental benefits to the American public. Many Superfund sites have required over thirty million dollars in environmental "cleanup" expenditures. Which minority community would not find it more valuable to turn at least a portion of such sums toward higher priority expenditures? CEI is investigating whether or not Superfund might be converted into a revolving state loan fund with the loans at least partially available for alternative community investments such as health clinics, scholarship or tutorial funds, public parks, or private police protection. An individual's quality of life is the product of many variables. Focusing on one—in this case the environment—to the exclusion of others may be ineffective or even counterproductive.

In any event, most of the information available on hazardous waste sites does not indicate the actual exposures to potentially hazardous substances. Living next door to a state-of-the-art waste handling facility may expose an individual to far less risk than drinking a morning cup of coffee. Is this truly a concern of the civil rights movement?

LOW LAND VALUES ATTRACT—AND BENEFIT—POOR PEOPLE

Poor people and minorities do not attract polluters. Low-cost land does, and for the same reasons that it attracts poor people. In many industrial regions, including most of those now condemned as physical evidence of "environmental racism" (the South Side of Chicago, for example) minorities were given their first access to the

NOTE.—See footnotes at end of statement.

American Dream. Employers motivated by the capitalist urge to make a profit (and regardless of their personal racism or lack thereof) hired the best workers they could find at the lowest wage they could pay. Regardless of our current attitudes, this often worked to the advantage of the economically disadvantaged, especially minorities, giving them their first opportunity to enter the industrial workplace. In addition, workers preferred to live close to their place of employment, for obvious reasons. Thus, they moved to the general vicinity of the pollution sources. This resulted in one of the largest internal migration in American history as rural-born African Americans moved to industrial urban areas. Even with the pollution and the low wage jobs, their lives were greatly improved. How ironic that the very economic forces that eventually spawned the civil rights movement would be condemned as environmental racism today.

NATIVE AMERICAN ISSUES

Native American reservations suffer from enormous problems. However, most of them stem from the welfare-state conditions that result from anachronistic federal policies. The reservation system is a system of apartheid-style homelands, and it suffers from many of the same flaws that its more famous descendant displays in South Africa. To a large degree, environmental hazards (of the sort usually contemplated by the EPA) are frivolous matters in comparison to the very real problems of alcoholism, inadequate health care, inadequate education, inadequate housing . . . the list goes on. American apartheid is complex: it could not exist without federal government support which is almost hopelessly entangled in treaty obligations. Moreover, many tribal leaders are willing co-conspirators in keeping down their kin. Property rights and individual civil liberties are often ignored or trampled. Such are the results of *true* racism.

INTERNATIONAL ENVIRONMENTAL RACISM

What is true domestically is also true internationally. Yet developing countries rarely have sufficient resources or proper political institutions to deal effectively with the environmental agenda of the industrialized nations. Consider these examples:

Population control

Many environmental groups are officially in favor of population control efforts. Such efforts are disproportionately directed at people of color around the world. A near constant refrain within the environmental lobby is the claimed need to control population. "All other environmental issues," we are told, "depend upon population controls in the developing world." Furthermore, the environmental lobby demands that economic growth and aspirations around the world be severely limited. Importantly, the scholarly literature does not support many of the assumptions underlying over-population worries.⁵

Wildlife Protection

Richard Leakey, a white man born in East Africa, is Kenya's Director of Wildlife Conservation. Leakey takes his job very seriously. So seriously that he has a small, well-armed platoon which is authorized to "shoot to kill" suspected animal poachers. Leakey is a passionate protector of wildlife. He is also a spokesman for Rolex watches (see attachment A). A single Rolex watch costs several times the \$400 per capita annual income of black Kenyans. Leakey is also strongly supported by environmental organizations and I will probably be strongly criticized for suggesting that Leakey is little more than a plantation overseer.

Only in recent years has the general public begun to realize that wildlife should not be cherished above human life. For example, the *New York Times Magazine* has just documented how inappropriate international policies were imposed on native Africans by the environmental lobby.⁶ This article exposes the hypocrisy and counterproductive nature of the ban on commerce in ivory. Until the people of Africa are permitted to own the local wildlife (and profit from that ownership) both human rights and wildlife will remain in peril. My own organization, CEI, has a long history of support for private property rights as a fundamental human right, particularly in regard to international wildlife issues.⁷ The African elephant issue is one which we will continue to press until two-legged Africans receive at least the same respect from environmentalists as do four-legged Africans.

ENVIRONMENTALISTS AGAINST THE POOR

The EPA has typically responded to an elite constituency, not minorities or the poor. EPA has little bureaucratic incentive to cut the costs of environmental programs, yet this inevitably leads to reduced coverage of the poor by these programs. This is not a racist impulse, but a bureaucratic one displayed even by minorities in government jobs.

In most cases, the agenda of the environmental elites does not coincide with the interests of minorities. One of the biggest current issues is the battle over automobile fuel efficiency. Arguments are sometimes made that higher fuel efficiency would benefit the poor by lowering their cost of transportation. This is but a political fig leaf to cover the real impact of these regulations. Higher mileage is strongly correlated with lower vehicle weight. Lower weight unambiguously leads to higher rates of injury and death in car crashes.⁸ CEI recently won a federal court case declaring that the federal government had distorted and disregarded safety data in an effort to justify higher fuel efficiency standards.⁹

Now President Clinton calls for higher gasoline taxes (hidden within his overall Btu tax proposal) and claims they will benefit the American environment, among other miraculous results. However, Clinton must admit that gas taxes are punishingly regressive, taking a much bigger bite from the paychecks of the poor than of the rich. Clinton's solution? He cynically proposes to offset the gas tax's impact on the poor by enlarging the federal Food Stamp program! This is environmental elitism at its worst: Under the guise of an "environmentally important" gas tax, Clinton is taking money from the poor and replacing it with Food Stamps. The *Washington Post* reports that Clinton's tax proposal "has the strong support of only one bloc: the environmental lobby." This environmental policy will reduce the independence and well-being of minorities and the poor and replace it with greater dependence on the state. Yet I have not heard any criticisms of this policy from the civil rights community.

WEALTHIER IS HEALTHIER

There is an indisputable relationship between human health and human wealth. On average, wealthier is healthier. Thus, wasting resources in a fruitless search for perfectly safe environments may, in fact, reduce societal well-being. Around the world, greater prosperity is closely associated with life expectancy. (see attachment B) While the United States can afford to spend well over \$120 billion on compliance with environmental regulations each year, in developing countries, there is no money available for basic health matters, let alone minute environmental risks from trace contaminants.

Yet even in America, wasting resources on trivial environmental risks can lower the net wealth of a community, and result in higher mortality rates over time. In other words, environmental regulations should not be based merely on a calculation of "costs vs. benefits" but rather on one risk vs. another risk. A large volume of academic literature is being produced on this topic and while the precise estimates vary, almost every study indicates that slight increases in income produce dramatic decreases in mortality rates. This research should be applied to the question of environmental racism to determine if we are, in fact, overlooking important increases in income which more than offset increases in pollution exposure. After all, one of the most unhealthy conditions known to health researchers is unemployment. Simply creating jobs in minority communities may correct for any past environmental degradation.

CONCLUSION

The attitudes of the environmental elites are distinct from the needs of minorities and the poor. Statistical surveys indicate that the memberships of the major environmental organizations are overwhelmingly white, wealthy, well-educated, and politically organized. Thus, much of what passes for racism in America today would be more properly described as elitism. Class privilege and political power cannot be eliminated through political action. It would seem that much of the debate over so-called environmental racism is misplaced.

If environmental racism exists (however one chooses to define it) it can only be corrected through empowerment. Legislation is unlikely to solve all of the problems; Jim Crow environmental laws do not exist, so they cannot be repealed. If environmental racism exists, it is de facto rather than de jure. The civil rights movement taught us long ago that changing laws is easier than changing attitudes.

Whenever enforcement depends upon the careful attention and direct action of state or federal officials, minorities are likely to receive less attention and less direct

action than the majority. All government actions are likely to become skewed in favor of politically powerful groups. However, if the state assumes its proper role and explores property rights-based solutions to pollution, a decentralized, self-policing process can arise. Respect for contract and private property will solve much of the apparent dilemma over racially disparate environmental results.

ENDNOTES

¹"Negotiations Are Key to Most Fines" by Marianne Lavelle, the National Law Journal, September 21, 1992, page S-6.

²Ibid.

³*NAACP v. Gorsuch*, 82-768 (E.D.N.C. 1982)

⁴"Lawyers Try to Devise New Strategy" by Marcia Coyle, The National Law Journal, September 21, 1992, page S-8.

⁵See, for example: David Osterfeld, *Prosperity Versus Planning: How Government Stifles Economic Growth*, (New York: Oxford University Press, 1992) and Julian Simon, *The Ultimate Resource* (Princeton: Princeton University Press, 1981).

⁶"Crying Wolf Over Elephants" by Raymond Bonner, The New York Times Magazine, February 7, 1993.

⁷See, for example, "Wildlife Preservation: Save an Elephant—Buy Ivory" by Randy Simmons (visiting scholar at the Competitive Enterprise Institute) and Urs Kreuter, The Washington Post, October 1, 1989, Outlook Section.

⁸The environmental elites are generally wealthy enough to afford larger, heavier vehicles such as the various Volvo models so popular with the likes of Joan Claybrook of Public Citizen (and a loud advocate for higher fuel efficiency standards).

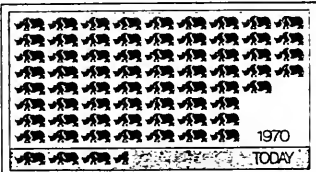
⁹*CEI v. NHTSA* 956 F.2d 32 (D.C. Cir. 1992)

¹⁰"Energy Tax Proposal Has 'Green' Tint" by Thomas W. Lippman, The Washington Post, March 2, 1993, page D-1.

Kenya. Vast herds of animals converge on a hot, dusty African plain. A bright orange sun hangs low on the horizon. Zebras, rhinos, giraffes, and elephants abound.

A pleasant dream, but the unfortunate reality is that due to poaching and human encroachment, the majestic herds are fast disappearing. It's Dr. Richard Leakey's job to see that they don't.

Leakey is Kenya's Director of Wildlife Conservation. "A somewhat curious position for a paleontologist," he admits, "but perhaps I understand better than most the patterns of evolution. What we do today will affect future generations."



"Statistics indicate that our conservation efforts have reversed this decline of Kenya's black rhino population." Dr. Leakey

Beyond being a scientist, Richard Leakey is first and foremost an African, born and raised on the plains of East Africa. It is his love for this continent, and the rare and beautiful species in it, that has led him to this job.



"Saving our wildlife is not only an environmental necessity, it's a cultural one as well."

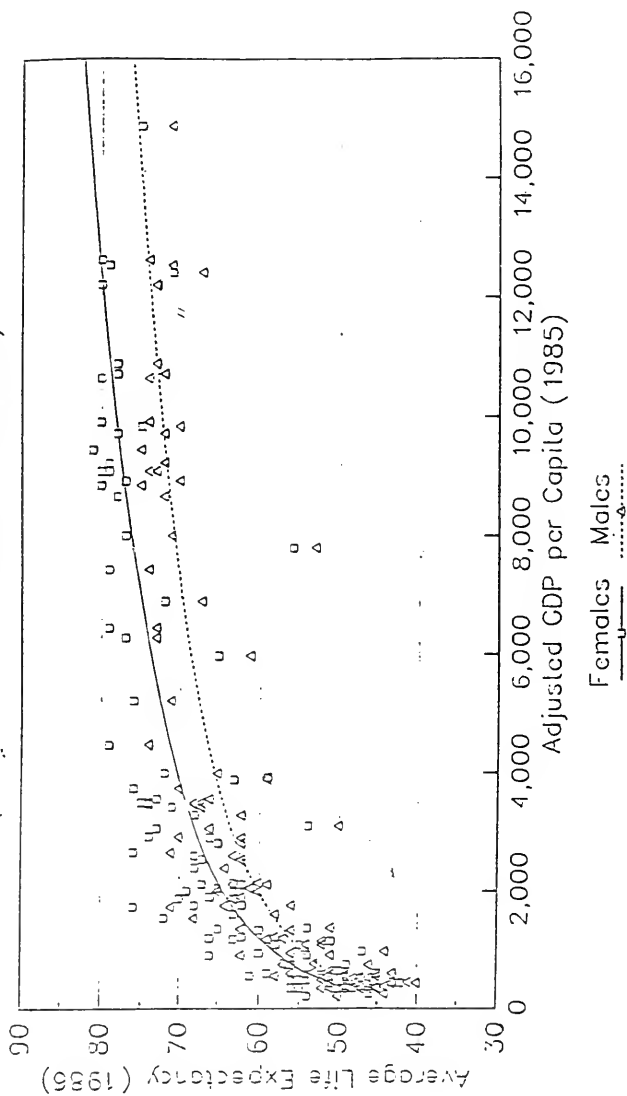


Dr. Richard Leakey

"In 1970, there were over sixty thousand black rhinos in Africa," Leakey notes. "Today, there are about three and one-half thousand. Through our efforts we've managed to reverse this headlong avalanche toward extinction. It's important because the natural beauty of our wildlife is an intrinsic part of Kenya. To lose it would be to lose a major portion of our soul."

ATTACHMENT B
 KENT JEFFREYS TESTIMONY ON ENVIRONMENTAL EQUITY

Gross Domestic Product per Capita v. Longevity
 (Cross-Section of 106 Countries)



Sources: World Bank, "World Development Report", 1991;
 Summers, R., and A. Heston, (1988) "A New Set of International Comparisons of
 Real Product and Price Levels, Estimates for 130 Countries," Review of Income
 and Wealth, vol. 34, pp. 1-25.

Mr. EDWARDS. Mr. McDermott.

**STATEMENT OF CHARLES J. McDERMOTT, DIRECTOR,
GOVERNMENT AFFAIRS, WASTE MANAGEMENT, INC.**

Mr. McDERMOTT. Thank you, Mr. Chairman. Thank you, Mr. Hyde.

I am Chuck McDermott, director of government affairs for waste management, Inc., the country's largest provider of comprehensive environmental services.

As waste managers, when we look at the intersection of the issues of waste and the environment. We see one problem is fundamental, one often lost in the emotion of this debate. And the problem is pollution.

Environmental equity concerns the lives and health of people as they are threatened by pollution. And that pollution must have a source. But often in the discussion of environmental equity, the focus is on some sources and not on others, irregardless of the environmental risks as best we understand them.

Given our experience in environmental management and our familiarity with much of what has been written and researched in this area, we accept the premise that environmental assets and environmental liabilities in this country are not evenly distributed among racial groups, ethnic minorities or economic groups. To accurately evaluate this inequity, we must recognize a fundamental principle underlying America's system of environmental controls. And that is we have established different pollution standards for those activities which generate the waste, and those devoted to managing waste.

For waste generation, we have bargained for decades over the levels of emissions that are considered acceptable byproducts of economic development. For waste disposal facilities, in contrast, we have essentially set a zero emissions standard. That is as it should be. And the zero emissions standard has not always been achieved. But waste management technologies are more effective today than 10 or 20 years ago and they will be more effective 10 years from now than they are today.

However, we believe that the waste management system in this country protects human health and the environment as effectively as that of any industrialized nation in the world. This is not to say the system is perfect, nor does it deny the inequities various environmental policies have created in this country.

But it is absolutely clear that the relative risks to human health and the environment posed by permitted treatment and disposal facilities are far better known and substantially lower than those attributable to many commonplace industrial activities generating waste, and our only method for addressing past polluting activities.

For example, EPA region 5 in May 1991 ranked the relative risks posed by 26 different environmental problems ranging from ozone depletion and radon exposure to several common industrial activities and RCRA or federally permitted disposal facilities. Of the 26 problems studied, the EPA ranked the risk posed by permanent waste facilities as 26th out of 26, 26 being the lowest.

We acknowledge that is not how the public perceives the relative risk posed by waste facilities. In fact, public concern tends to focus

on the subset of offsite commercial hazardous waste disposal facilities. This is despite the fact that the entire commercial hazardous waste industry—that is our company and all its competitors—handled only 3 percent of the hazardous waste generated in this country. The other 97 percent is handled onsite by the entity that generates it.

There are obviously wide gaps between perceived risks and actual risks in this area, and frankly, the waste management industry shares the fault for that. We have let linger the mental image of the old town dump. We have not educated the public about the dramatic changes that have taken place in the regulatory world over the past 10 years, transforming an industry from one of virtually no regulatory oversight to one of the most scrutinized activities on earth.

However, this is not to suggest that waste facilities be ignored in this discussion. They should not. Insofar as waste facilities pollute, their operation and location deserves scrutiny. Not in isolation, but ranked fairly among other activities which pose environmental challenges.

But at the same time, the capacity for Waste Management's facilities to isolate or destroy dangerous substances otherwise available to the public should be considered a tool in the environmental justice movement, because waste is not going away.

We need to fully avail ourselves of everything that recycling and source reduction have to offer. And our company, for instance, is active in both those fields. But today we generate more than one ton of hazardous waste for every man, woman and child in America every year. And the numbers for solid waste are only slightly lower. Even if we were to cease generating all waste starting today, the problem would be far from solved.

It is estimated that given current disposal capacity at current disposal rates, so you don't build another landfill or incinerator, the disposal of waste associated with past activity would take 100 years. So we can't wish this problem away.

At the same time, the impacts of unabated pollution from past activities should not be underestimated. For instance, look at the proliferation and the impact of lead in the environment. A great deal is known about the health impairments caused by lead. And the impact on the poor and on minorities is devastating. For families earning under \$6,000 a year, 68 percent of black children suffer from lead poisoning, 36 percent of white.

The impact is two to one between the racial groups, and both numbers are too high, the number for black children staggeringly so. When you get to families earning over \$15,000 a year, the overall percentages drop but the spread between racial groups goes to three to one. Thirty-eight percent of black children suffer from elevated levels of lead versus 12 percent of white.

Were there a comprehensive program to remove lead from housing stock and contaminated soils, which there is not, it would make obvious the need for technologically advanced disposal capacity to contain and isolate the problem.

One of the purposes of today's hearing is to explore the fairness of siting decisions. In discussing the siting of waste facilities, it is necessary to understand the profound impact Federal regulation

has had on the waste management industry. As early as 1980, there were no standards for the operation of these facilities. EPA's first action, the Hazardous Waste Regulatory System, began in 1980 when it established an interim status program, which provided an immediate baseline protection until final permitting standards were developed.

Under the interim status program, facilities already accepting waste could come forward and get a permit to continue to do so for an interim period of time until final rules were promulgated. Several thousand facilities were granted interim status permits in 1980 and 1981. Today there are roughly 160 facilities that are permitted to handle hazardous waste.

During that same period, only one "greenfield" or newly sited facility has navigated the permitting process. So we have gone from several thousand to 160 in the last 13 years with only one new facility being sited.

Independently of this, Waste Management, Inc., has wanted to know if Waste Management facilities are prominently located in minority communities. Using the same methodology employed on the Commission for Racial Justice study, it was determined that 76 percent of our disposal facilities are located in communities with a white population equal to or greater than the host State average.

It is often overlooked although it has been mentioned today that siting is to a large extent a local land-use issue. It is a legal, emotional, political, and sometimes irrational process, and more community involvement in that process is a good thing. But that participation must be coupled with a clear, accurate discussion of risk. If the risks of hosting a waste facility are routinely exaggerated, it is likely that only the voiceless will play host to these necessary activities.

The more reasonable the discussion, the greater the likelihood that a diverse mix of communities will determine that a well-managed landfill be a positive complement to the area's residential and industrial land uses.

In our opinion, siting should be driven by environmental protection. Risk is a function of exposure, not simple proximity. The most advanced designs and technology should be required, and sites should be selected based upon their effectiveness in limiting exposure. We should insist upon state-of-the-art, redundant safeguards at facilities located where Mother Nature provides a backup.

Land-use authorities must recognize their role and responsibility in ensuring that needed facilities can be sited in these locations. Environmental decisionmakers have not been attentive to fairness in the social justice context.

We must ensure that the provision of these environmental services and protection is more evenly distributed amongst all Americans. To do so, we feel the focus must shift to a broader understanding of the source of pollution in our society, and how that pollution affects different populations.

We must better understand the cumulative loadings over time in view of multiple media of toxic emissions on the individual geographic areas. The EPA has begun to recognize that, as has been testified to today, and recently Congress has begun to tackle the problem as well.

Representatives John Lewis and Vice President Al Gore, as has been mentioned, introduced the Environmental Justice Act last week, which has been discussed. We see that as a promising approach.

In summary, we feel there must be an honest and fair discussion of risk, a reexamination of how environmental decisions are made, and special attention paid to the interests of the least powerful if the important questions about environmental fairness that have been raised are to be translated into meaningful action. We would look forward to being a constructive part of that process.

Thank you.

[The prepared statement of Mr. McDermott follows:]

PREPARED STATEMENT OF CHARLES J. MCDERMOTT, DIRECTOR, GOVERNMENT AFFAIRS, WASTE MANAGEMENT, INC.

Good afternoon, I am Chuck McDermott, Director of Government Affairs for Waste Management, Inc., the country's largest provider of comprehensive environmental services.

As Waste Management, Inc. looks at the issue of race and the environment, we see one problem as fundamental—one often lost in the emotion of this debate—and the problem is pollution. Environmental equity concerns the lives and health of real people as they are threatened by pollution. That pollution must have a source, but often in the discussion of environmental equity and environmental racism the focus is on some sources and not others. This has emotional appeal, but bears little or no resemblance to environmental risks, as best science understands them.

Waste Management's point of view is shaped by our experience collecting, treating and disposing of everything from commonplace household trash to the most toxic and hazardous materials created by American industry. We are also the nation's largest recycling company. We design and build air and water pollution control equipment. We design and build hazardous waste treatment plants, and provide the full range of environmental services.

Given our experience in environmental management and our familiarity with much of what has been written and researched in this area, we accept the premise that environmental assets and liabilities in this country are not evenly distributed among racial groups, ethnic minorities or economic groups.

To accurately evaluate this inequity, we must recognize a fundamental principle underlying America's system of environmental controls: we have established different pollution standards for activities which generate wastes and those devoted to managing wastes.

RISKS POSED BY HAZARDOUS WASTES

For waste generation, we have bargained for decades over the levels of emissions that are considered acceptable by-products of economic development.

For waste disposal facilities, in contrast, we essentially have set a zero emissions standard. This is a landable goal, but the zero emissions standard has not always been achieved. Waste management technologies more effective today than ten years ago, and they will be more effective ten years from now.

We believe the waste management system in this country protects human health and the environment as effectively as any industrialized nation in the world. The Resource Conservation and Recovery Act (RCRA) program regulating hazardous waste treatment and disposal facilities in this country is comprehensive and rigorous. This is not to say that the system is perfect, nor does it deny the inequities various environmental policies have created in this country. But it is absolutely clear that the relative risks to human health and the environment posed by RCRA permitted treatment and disposal facilities are better known and substantially lower than those attributable to many other commonplace industrial activities generating waste.

For example, EPA Region V issued a report in May 1991 ranking the relative risks posed by 26 different environmental problems ranging from ozone depletion and radon exposure to several common industrial activities and RCRA permitted facilities. Of the 26 problems studied, the EPA ranked the risk posed by RCRA permitted facilities as 26th out of 26, with 26 being the lowest.

Now this is not how the public perceives the relative risk posed by waste facilities. Moreover, public concern tended to focus on the subset of off-site commercial haz-

ardous waste disposal facilities. This is despite the fact that the entire commercial hazardous waste industry handles only 3% of the hazardous waste generated in this country. The other 97% is handled on-site by the entity that generates it.

There are obviously wide gaps between perceived risks and actual risks in this area, and quite frankly, the waste management industry shares the fault for that. We have not done a good job of communicating actual versus perceived risk. We have not adequately described the many improvements made in the design and construction of disposal facilities, and have let linger the mental image of the "old town dump." We have not educated the public about the dramatic changes that have taken place in the regulatory world over the past 20 years, transforming an industry from one of virtually no regulatory oversight to one of the most scrutinized activities known to man.

In the past two years, people of color, who have not historically been linked with environmental activism, have begun to question the fairness of environmental decision making. A great deal of that early inquiry was directed at the commercial waste disposal industry. The effect of that lingers, which may explain why when many parties interested in this topic want an "industry" point of view in this journal, they contact a corporation that manages wastes, not one that generates wastes. The impulse to focus on waste disposal practices is understandable; it is immediate, emotional, and symbolic. Recognizing the absence of good communication about evolving technologies and standards in the waste industry, we can see why people viewing this area for the first time might start there.

There is little evidence that emissions from waste facilities pose the greatest risk to the average minority community, however. This is not to suggest that waste facilities be ignored in this discussion. They should not. In so far as waste facilities *pollute*, their operation and location deserve scrutiny. But at the same time, the capacity for waste management facilities to isolate or destroy dangerous substances otherwise available to the public should be considered a tool in the environmental justice movement.

Waste is not going away. We need to fully avail ourselves of all that recycling and source reduction have to offer. Waste Management is active in both those fields, and we look forward to the day when some combination of these activities stems the increase in the volumes of waste we generate. Today, we generate more than one ton of hazardous waste for every man, woman and child in the United States every year. The numbers for solid waste are only slightly lower. But even if we were to cease generating all wastes today, the problem would be far from solved. EPA estimates that given current disposal capacity and disposal rates, disposal of the waste associated with past industrial activity would take 100 years! We cannot wish this problem away.

The impacts of unabated pollution from these past activities should not be underestimated. Take, for instance, the proliferation of lead in the environment, a topic which touches upon both the disproportionate impacts of pollution and the role that waste facilities can play in alleviating those impacts. A great deal is known about the health impairment caused by lead, and its impact on the poor and on minorities is devastating. In families earning less than \$6,000 a year, 68% of Black children suffer from lead poisoning, 36% of White. The impact is two to one, and both numbers are too high—the number for Black children staggeringly so. When you get to families earning over \$15,000 a year, the overall percentages drop, but the spread between Black and White goes to three to one: 38% of Black children suffer from high levels of lead versus 12% of White. Were there a comprehensive program to remove lead from housing stock and contaminated soils—which there is not—it would make obvious the need for technologically advanced disposal capacity. Aggressive action to reduce the amount of lead in the environment would rely upon properly permitted waste disposal facilities to contain and isolate the problem. In this way these facilities can play a positive role in the pursuit of greater environmental equity.

This is not happening at the moment. Waste Management recently was involved in a remediation contracted by EPA in Texas to remove lead-contaminated soils from a predominantly Black housing development in West Dallas. One of our landfills in Louisiana was the lowest bidder and was awarded the disposal contract. As the soils began to arrive at our landfill in Louisiana, which is located in a community which is predominantly White, local residents rose in opposition to wastes coming in from out-of-state. This could have been an opportunity for the environmental equity movement to bring health-and science-based arguments to bear against the parochial interests that commonly object to moving wastes between states. We would argue that leaden soils belong in a secure, permitted landfill, not beneath the feet of children who have no where else to play. Moreover, EPA should take the most reasonable bid, regardless of state boundaries, to assure that scarce clean-up

funds are preserved. No such support was forthcoming, but we are hopeful that open discussion will some day soon create coalitions between advocates and remedial service companies. We must work together to prevent the release of pollution, and permitted waste facilities can play a constructive role.

THE SITING PROCESS

Part of the stated purpose of this hearing is to explore whether there is a discriminatory pattern in the siting of waste management facilities. Even if waste facilities can play a role in reducing the impacts of pollution, it is legitimate to ask whether they are disproportionately located in minority neighborhoods.

Much of the discussion on the siting of waste facilities has been stimulated by the study commissioned by the Commission for Racial Justice (CRJ) of the United Church of Christ. That research has prompted important debate which is both positive and constructive. But if one were to read only the CRJ study, one would not understand the profound impact federal and state regulation has had on the commercial hazardous waste industry. If we want to redress disparate impacts in siting, we need to understand in some detail how it could have occurred.

When Congress passed RCRA in 1976, it directed EPA to develop standards for the siting, design, construction, operation and closure of hazardous waste facilities. EPA issued its first rules in 1980. Before that, there were no federal standards for the siting of these facilities.

EPA's first action in implementing the RCRA hazardous waste regulatory system in 1980 was to establish an "interim status" program which would provide an immediate baseline of protection until final permitting standards were developed. Under interim status, facilities which had already been handling hazardous wastes could continue to do so until receiving a permit. Several thousand facilities applied for and received interim status permits under this program. Today, there are roughly 160 facilities permitted to handle hazardous wastes. During this period only one "green field" or newly sited facility has navigated the entire permitting system.

So rather than there having been a proliferation of siting over the last decade or so, there has in fact been a winnowing down of facilities. Ownership in some cases has changed, but the site has not. Thus, while the CRJ study is useful in describing where the remaining RCRA facilities are located, it tells us nothing in terms of potential environmental impact about what differentiates active facilities from those that have been shut down. Nor does it tell us much about the demographic make-up of host communities *at the time of siting*, as opposed to the demographics years after those initial siting decisions were made. The CRJ study uses 1980 census information. Many sites began operations in the early '70's or before. Data from the 1970 census would give a much more accurate picture of what the community looked like when the siting decision was being made. To presume discriminatory intent, it is crucial that the demographic snapshot be taken as close to the time of siting as possible.

Independent of the issue of intent, Waste Management has wanted to know whether its facilities are predominately located in minority communities. In order to better understand the racial composition of the communities in which we operate, we examined the demographics around the approximately 130 waste disposal units in our solid waste, hazardous waste and waste-to-energy system. Using the same methodology employed in the CRJ study, i.e. 1980 census data and defining "community" as the five-digit postal zip code area in which the facility is located, it was determined that 76% of WNI's disposal facilities are located in communities with a White population equal to or greater than the host state average.

It is true that we have some facilities located in predominately minority communities. A few of them, in fact, are often held up as examples of discriminatory siting. One is our Emelle landfill, located in Sumter County, Alabama. As in most of rural Alabama, for generations the people of Sumter County have been predominantly Black and painfully poor. For some, those two factors alone are enough to explain why the town of Emelle in Sumter County is home to a disposal site for hazardous wastes. But the story of Emelle starts in 1974 when EPA conducted an audit of all the counties in the United States, looking for the most protective locations for hazardous waste land disposal facilities. EPA's auditors examined every county against a fixed set of criteria, placing a premium on remote locations with access to good transportation systems—be they rail, water or highway—with geologic conditions suitable for land disposal, and with climatic conditions that would naturally inhibit the amount of precipitation that would come in contact with the waste.

On EPA's final list of the ten most desirable counties, the only one east of the Mississippi was Sumter County, Alabama. It was sparsely populated, had good access to transportation, was relatively arid, and—most importantly—was located atop

the "Selma chalk formation," several hundred square miles of dense, natural chalk 700 feet deep. EPA concluded that this chalk formation provided an ideal barrier between any disposal activities and the nearest aquifer feeding a drinking water source, located 700 feet below. Another developer first obtained state permits for the site, and it was acquired by Waste Management's hazardous waste management subsidiary, Chemical Waste Management (CWM), in 1977. Since that time, CWM has invested millions of dollars in technology to make the landfill in Emelle one of the safest in the world.

When CWM acquired the site in 1977, Sumter County was struggling with illiteracy and infant mortality rates that were among the highest in the state, which made them among the highest in the nation. Over time, the landfill brought revenue into the county which has improved the schools, built the fire station and the town hall, improved health care delivery, provided employment and reversed the percentages on illiteracy and infant mortality. Three hundred people are currently employed at the CWM Emelle facility. Annual payroll is \$10 million, and 60 percent of the CWM employees live in Sumter County. In addition, state tax law requires that a portion of the tax on hazardous wastes received at Emelle be given to Sumter County, with a minimum annual guarantee of \$4.2 million to the county.

These are improvements in quality of life that all of us desire for all people, not matter what their race or income. But the value of reducing illiteracy and improving schools would be lost if it were at the expense of human health. Again, one of the underlying assumptions of environmental racism as it applies to the siting of waste facilities is that these activities threaten the health of the neighboring community. We are not here to claim that our facilities pose zero risk. They don't. But if we are to effectively improve the health and well being of the most disadvantaged among us, we must identify and resolve first those activities which pose the greatest risk. It's not sufficient to act on our emotions: we must act on the best, most credible information we can find.

While we acknowledge that it is our responsibility in the waste management industry to accurately communicate risk, it is not our responsibility alone. Every professional involved and outspoken in this area shares that responsibility, and failure to meet that responsibility can have results which are ultimately threatening to human health and the environment. The government has the critical burden of determining how risk can be assessed and ensuring that controllable environmental risks be minimized.

It is often overlooked that siting is to a large extent a local land use issue. It is legal, emotional, political, and sometimes irrational. More community involvement in the siting process would be a good thing, but that participation must be coupled with a clear, accurate discussion of risk. If the risks of hosting waste facilities are routinely exaggerated, it is likely that *only* the voiceless will play host to these necessary activities. The more reasonable the discussion, the greater the likelihood that a diverse mix of communities will determine that a well-managed landfill can be a positive complement to the area's residential and industrial land uses.

In our opinion, siting should be driven by environmental protection. Risk is a function of exposure, not simple proximity. The most advanced designs and technologies should be required, and sites should be selected based upon their effectiveness in limiting exposure. We should insist upon state-of-the-art, redundant safeguards at facilities located where mother nature provides a backup. Local land use authorities must recognize their role and responsibility in assuring that needed facilities can be sited in these locations.

Concern over siting is not always driven by a concern for environmental protection, however. Public concern can often be driven by economic considerations as well, most notably, the impact the siting decision may have on residential property values. Again, while the predictable emotional response is that the presence of a hazardous waste management facility will negatively affect property values, research on the issue often fails to support that conclusion and sometimes contradicts it. For instance, a study performed by the Public Interest Economics Foundation concluded "that the preponderance of evidence failed to show any relationship between land values and distance from the disposal site." *Benefits of Regulating Hazardous Waste Disposal: Land Values as an Estimator (Executive Summary)*, Office of Policy Analysis, U.S. EPA (June 1984). On a slightly different topic, even the study *Toxic Waste and Race in the United States*, by the United Church of Christ Commission for Racial Justice (CRJ) contradicted the perception that commercial waste disposal facilities are usually located in poor communities. The CRJ study found that communities hosting facilities were characterized by both mean household income and mean value of owner-occupied houses higher than the national average. Commission for Racial Justice, *Toxic Waste and Race in the United States: a National Report on the Racial and Socioeconomic Characteristics of Communities*

with *Hazardous Waste Sites*, p 41, Exhibit B-1 (New York, United Church of Christ 1987). This too is at odds with commonly held, and often repeated, assumptions about the location and impact of these facilities. Such perception can best be addressed by open, honest, and inclusive discussion of risks and benefits when siting options are being considered.

COMMUNITY INVOLVEMENT IN THE PERMITTING PROCESS

All new RCRA facilities now need a permit before construction and operation. For a myriad of reasons, including the risk communication mentioned above, community involvement is crucial to the siting and permitting process. RCRA requires community involvement (see 40 C.F.R. § 271.14(v-aa)) but leaves the details of implementation to the states. State programs necessarily differ. For a variety of reasons, no matter how well intentioned, these programs are not always successful in giving local communities a meaningful role in decision-making. A recent example involving this company may be illustrative.

We recently sought to build a hazardous waste incinerator adjacent to a landfill we operate in Kettleman City, California. The site is located in a portion of the San Joaquin Valley which is predominantly Hispanic. Although the state of California and EPA required incineration for 180,000 tons of hazardous waste in California in 1990, there is no commercial incineration capacity in a state which boasts the seventh largest economy in the world. Any toxic materials requiring commercial incineration must currently move out of state at considerable distance.

In order to provide incineration capacity at a price which keeps California's industries competitive, CWM proposed to build an incinerator adjacent to our landfill. In this way we could offer our customers economies of scale by sharing laboratory facilities and highly trained personnel.

Our landfill has been in operation for many years without opposition from the community, but our announcement of plans to construct an incinerator triggered lawsuits alleging that Kings County's decision to allow CWM to build an incinerator reflected racism. *El Pueblo Par el Aire y Agua Limpio v. County of Kings* (Sacramento Super Ct, No. 366045). See also *El Pueblo Para el Aire y Agua Limpio v. Chemical Waste Management, Inc.* (ED Cal, No. CV-F-91-578 OWW (CWM dismissed as party October 17, 1991) (related procedural matter regarding CEQA requirements). The courts have thus far refused to hear the allegations of racism, but as a case study, it is still interesting. Were we building an industrial park, no one would be talking about racism. Inherent in the lawsuit is the notion that the incinerator will have a negative impact. Since it is documented, in the study performed by the Commission for Racial Justice, for instance, that these activities have no negative impact on property values, the focus must be on health impacts.

The governmental permitting process has been created to address just this issue. It requires that an independent group assess the risk an incinerator would pose. The permit requires a study using a statistical model evaluating the health impacts on the "most exposed individual," a person who over his lifespan remains within a 10 mile radius of the facility 24 hours a day for the entire 20 year useful life of the incinerator. This study concluded that the number of additional cancer cases potentially attributed to the incinerator under highly conservative assumptions would be three in 100,000,000. In the United States, roughly 25% of the population contracts some form of cancer in their lifetime, which is 25,000,000 cases in 100,000,000. The health risk posed to the 1,200 residents of Kettleman City therefore could fairly be described as negligible. Unfortunately, it may be rendered moot by the fact that many residents of Kettleman City earn their living as farm workers and are routinely exposed to massive doses of pesticides and insecticides in the course of their daily work.

The state of California has a rigorous program for community participation in site selection. A "Kings County Local Assessment Committee" (LAsC) was created in March of 1988 and operated pursuant to the standards of what is commonly known as the Tanner Act (Health & S C Sections 25199-25199.14; Chapter 1504, Statutes of 1986). The statutory role of the LAsC is to advise the legislative bodies of local agencies (in this case the Kings County Planning Commission) as part of the process by which the local agencies decide whether to issue a land use permit for a commercial hazardous waste facility, and the conditions that should attach if the permit is issued. The members of the LAsC must include three representatives of the community at large, two representatives of environmental or public interest groups, and two representatives of affected business and industry. The LAsC may engage the services of a consultant—which they did in the Kettleman City case. The cost of the assessment is borne by the proponent—in this case, Chemical Waste Management.

The LAsC met regularly from its inception until it presented its report to the Kings County Planning Commission in September 1990. The report contained 37 items covering 57 specific issues which the LAsC had negotiated with CWM. Among other things, CWM agreed to:

- Provide waste reduction information to all incinerator customers and hold at least one waste reduction seminar for customers annually.

- Provide the local community with general information regarding hazardous waste, including source reduction and use of safe alternatives in the home.

- Hold annual town meetings to exchange information with the community regarding emergency response planning.

- Implement and maintain earthquake response measures.

- Provide free disposal of household hazardous wastes and agricultural wastes for community residents.

- Create a permanent Standing Community Facility Review Committee to replace the LAsC, should the facility be permitted.

- Provide computer monitoring equipment which would give real-time monitoring data to the air regulatory agency office.

- Provide an employee "hot line" for reporting facility problems directly to an on-site County inspector.

- Provide \$5/ton to a community development fund, in addition to the 10% gross receipts tax collected by the County pursuant to state law.

- Fund the development of a crop testing protocol to detect airborne contamination and conduct a crop testing program.

- Provide incineration services to all county businesses at a 10% discount.

- Provide on-site office space to a County inspector.

From one perspective, this process seems substantive, comprehensive and responsive to community concerns. From another perspective, it was a failure.

An LAsC member was intimately involved in the community participation aspects of the project, and nevertheless joined as a plaintiff in the suit that followed our announcement to build the incinerator. Although all but one of the complaints in the suit were directed at the State of California and Kings County and only one to CWM, the advocacy groups that encouraged the suit continue to portray it as a landmark effort to stop an insensitive corporate giant. The one complaint made against CWM was that this siting decision represented a pattern of discriminatory siting practices, the courts have thus far declined to hear the civil rights claim.

The primary thrust of the suit that continues is that the State and the County failed to execute their responsibility to involve the community by failing to provide notifications, documents, and translation services for the Spanish-speaking members of the community. Such responsibility clearly falls on the governmental entities involved, and they made the decision to conduct their affairs only in English. Although CWM voluntarily and at its own expense provided meeting notifications in Spanish, translated the Summary of the Environmental Impact Statement, and provided for Spanish language translators during the public hearings on the incinerator, this was considered insufficient.

The lesson to be learned from this experience is that while all parties agree that community involvement in the planning and approval process is a must and all acknowledge that the concerns of the residents of Kettleman City are sincere—as were CWM's efforts to address them through the LAsC and public hearing process—the process somehow broke down.

Certain aspects of the Kettleman case stand out. Despite the best intentions of the Tanner Act process, in this case it may have failed to provide sufficient inclusion for the people who felt most directly impacted by the plans to build an incinerator. Kings County has a population of 110,000, of which 34 are Hispanic. Kettleman City, the town nearest the facility, has a population of 1,200 which is almost entirely Hispanic. Of the five members of the County Board of Supervisors, none are Hispanic. Of the seven members of the LAsC, one was from Kettleman City. Of the \$7,000,000 CWM annually pays in taxes to the County, little of it is spent in Kettleman City; most is spent elsewhere in the County. Those most affected by the site must have better access to the process of understanding and receiving services afforded by the site.

This is why we hope for an ongoing dialogue—with the communities in which we operate, with law makers and regulators, and with advocates who care about this issue. The questions raised in the debate over environmental equity are important and fundamental. Environmental decision-makers have not been attentive to fairness in the social justice context. We must insure that the provision of environmental services and protection is more evenly distributed among all Americans.

But in order to do so, we must shift our focus to a broader understanding of the sources of pollution in our society and the populations it may impact. We must bet-

ter understand the effects of cumulative loadings, over time and via multiple media, of toxic emissions into individual geographic areas. The EPA has begun to acknowledge this, and recently Congress has begun to tackle the problem as well. Representative John Lewis and Vice President Al Gore last year introduced the Environmental Justice Act of 1992, which seeks to identify those communities, termed Environmental High Impact Areas, bearing the heaviest pollution burdens, and to ensure that these "hot spots" get rigorous regulatory oversight, technical assistance, and health assessments. We see this as a promising approach.

There must be an honest and fair discussion of risk, a re-examination of how decisions are made, and special attention paid to the interests of the least powerful if the important questions about environmental fairness that have been raised are to be translated into meaningful action. We look forward to being a constructive part of the discussion.

Mr. EDWARDS. Ms. Ferris, we have to get back to civil rights for a minute because that is what our jurisdiction is. Do you think there exists today a civil rights that could be exercised in force so that an African-American family would not be subjected to the discrimination with regard to pollution?

Ms. FERRIS. I think if we properly interpret civil rights laws such as title VI, that we will immediately begin to redress the discriminatory impact of pollution on people of color and the poor.

Mr. EDWARDS. Do you think that a community of people of color who are being discriminated against insofar as environmental pollution, there would be a right, a Federal right to go into court, to a Federal court and ask the judge to require the cleanup?

Ms. FERRIS. We think that in particular, one thing that needs to happen is enactment of a civil rights cause of action to propel the guarantee of equal protection from pollution. The Environmental Justice Act to which Reverend Chavis and Chuck have referred encompasses—or the version that will be reintroduced this year encompasses a civil rights cause of action to enable communities to begin to take their own actions to redress discriminatory pollution risks.

Mr. BULLARD. If I may add, this is what we are faced with right now. The first lawsuit that charged environmental discrimination was made in 1979, *Beane v. Southwestern Waste* in Houston, TX. I collected data for that particular lawsuit, and my wife was a lawyer.

I documented that from the 1920's up until 1978, the city of Houston had used basically two forms of disposing of its solid waste, landfill and incineration. I documented that during that period, 100 percent of all the city-owned landfills were located in predominantly black communities.

When I say predominantly black, that is like me saying I come from a predominantly black family. In most cases, they were all black communities, 100 percent, five out of five. Six out of the eight city-owned incinerators were located in predominantly black neighborhoods in Houston.

When the city got out of the landfilling business and turned it over to a private disposal company, three out of four of the privately owned waste disposal companies were located in predominantly black communities.

If you add up all the city-owned landfills and incinerators and privately owned disposal landfills, you come up with 83 percent of all of the waste disposal facilities in the city were located in pre-

dominantly black communities. Blacks only made up 20 percent of the population.

We established overwhelming statistical evidence of disproportionate impact, but we could not show intents. There have been a string of lawsuits that have challenged the disparate impact of siting on communities of color, and time and time again, the showing, the burden is on the plaintiffs to show that this was intentional.

We say the intent burden of proof should somehow be lessened and that the overwhelming statistical evidence, the pattern of history in siting, even in region 4 right now, 100 percent of all of the hazardous waste disposal capacity in EPA's region 4 are located in predominantly African-American communities. African-Americans only make up 20 percent of the population. That is disparate impact.

Now, there is something about African-American communities that Waste Management somehow has picked up on to make these communities more compatible for hazardous waste incinerators. Waste Management has five hazardous waste incinerators in operation on a development that was just closed. Five out of five are located in either African-American or Latino communities, in Illinois, Port Arthur, TX, Southside of Chicago. We say, What is it about African-American communities that make our communities so valuable for incineration? I mean, we haven't gotten an answer to that question yet.

Mr. EDWARDS. We are going to ask Mr. McDermott that right now.

Mr. MCDERMOTT. I appreciate the opportunity to respond. Let's talk about a couple of the facilities that Mr. Bullard has alluded to.

We do operate a hazardous waste landfill in Sumter County, AL, which is predominantly Afro-American. We did not choose that site because it is predominantly Afro-American. There is a history to the site there.

In 1974, the EPA conducted an audit of every county in the United States looking for the most suitable locations for land disposal facilities. And they had a list of criteria. They were looking for sparsely populated areas with access to good transportation that had suitable geology and hydrology to provide some natural environmental protection, and that were located near good transportation and had the proper climactic conditions to inhibit the creation of leachate and things that might escape the facility.

Of the top 10 counties identified of this audit, the only one east of the Mississippi was Sumter County, AL. It was selected because it was sparsely populated, had access to good transportation, but most importantly in this context, it sat atop what is the Selma chalk formation, which is 700 square miles of chalk 700 feet deep, which would provide an excellent natural barrier to any of the redundant safeguards you would put into a landfill.

In rural Alabama, the population there was extremely poor; there was no other industry in the area, and quite frankly, the revenues from that landfill have been the main economic development for the people who live there.

When we took over that site, which we did not initially permit but we purchased from the previous owner, the infant mortality rate in Sumter County was twice the national average. It was 122 deaths per 1,000 live births. Ten years later, which can be almost exclusively attributed to the revenue that came into the country from the waste disposal activities, the infant mortalities were cut in half. The illiteracy rates were cut in half.

The revenues coming into that community have built the town hall, have provided health care, have hooked people up to public sewage and water, and arguably have improved the quality of life. There is no evidence it has caused a health impact on the people living by the facility.

So I just think it is difficult to make a one-to-one comparison or a one-to-one association between the location of the facility and discriminatory intent.

Mr. EDWARDS. Mr. Jeffreys, you don't think this is much of a problem, right?

Mr. JEFFREYS. No, I am afraid that there might be actually a diversion of some important societal resources toward what is a very low priority problem. There certainly are cases of racism, there are environmental problems, but that doesn't mean that just finding an environmental problem indicates racism or that it can be addressed through civil rights legislation.

I would propose that you enforce private property rights and individual liberties for all Americans, and basically back the Federal Government out of it, empower those people to defend their own interests. In many cases, sites were invited in by the local community, whether it was black, white, Native-American. There are some cases where Native-American reservations are trying to get facilities onto their property but can't because they can't get it permitted.

In some cases, there are benefits to having the jobs that far outweigh the risks that may be created, if any are created. In terms of trying to state that across the country there is disparate impact, I would say yes, but as I indicated in my written testimony, often that is the result of the fact that low land values attract various forms of industry, various forms of waste disposal, and also poor people.

Mr. MCDERMOTT. Mr. Chairman, could I add something?

We feel that there is a problem. I disagree, in a way. And I think that the siting decision process can tend to favor more powerful communities over less powerful communities.

We think that there is an inequal distribution of environmental assets and liabilities between population and ethnic groups. But what we feel strongly about is that we have to make a differentiation. We can decry the impacts of lead on the poor and the minorities, but that lead, once you deal with it, has to go someplace. And as do a lot of the other toxic chemicals that are produced to make this table or the varnish that goes on top of it or to manufacture this microphone or anything else we accept as commonplace aspects of life in the United States. But we should demand the best, and we should demand they be distributed the most fairly.

Mr. BULLARD. May I just correct some misinformation?

As I said before, this is not just a poor, poverty thing. In Houston, the subject of the lawsuit in *Beane v. Southwestern Waste*—this is a community that had been there for a long time. People did not move next to the landfill because the landfill had not been built. It was not a poor community. Eighty-three percent owned their homes. This was a middle-class community. The landfill was put in this community not because the land was cheap, not because people were somehow seen as defenseless, as powerless; it was put there because these people were black.

And the whole idea of jobs—and Mr. Jeffreys would let us believe that the industrial revolution spawned the civil rights movement, and that is totally in error. If we look at—many of these industries that sit down in these communities, the very people who live next door oftentimes don't even have the jobs.

I would invite him to look at what happened in West Virginia. Union Carbide set down right in the middle of the community and would not hire the people who lived next door. Look at what is happening in Cancer Alley. In many cases, the industries that set down next door, they provide pollution but very few jobs.

We must correct the idea that we are talking about jobs versus the environment. In these cases, we are talking about public health.

Mr. EDWARDS. Are you saying the board of directors of whatever this company might be would sit down and say, "There are African-Americans living here, so let's put a dump there?"

Mr. BULLARD. What I am saying is whether it is intended or unintended, the effects are the same. Oftentimes these sites are located in—if you want to know where the rural, sparsely populated areas are in Alabama, you don't have to know what color the people are. You can look and tell, even if you are trying to pick a site that is rural, sparsely populated, and along a major freeway, because we get the freeways, we get the garbage dumps, we get the lead, we get multiple exposures.

When we talk about risks, and we must talk about risks, we have to talk about the problems with using fatality or probability of fatality and cancer. Let's talk about respiratory. Let's talk about developmental problems. Let's talk about neurotoxic effects. Let's talk about reproductive effects.

And in many cases, these types of threats are not factored into our so-called science of risk analysis. I think that is what we talked about in terms of equity. The cumulative, synergistic effects are not modeled into whether or not to locate a hazardous waste incinerator in a city that already has the largest hazardous waste landfill west of the Mississippi, located in a town of 1,200 farm workers, mostly, that are already exposed to pesticides on the job. So you are asking the community to be threatened with a triple whammy. Hazards on the job, hazards from spraying on the fields, and now another facility.

There has to be some model to talk about sharing the burden and sharing the cost, since all of us produce garbage, all of us produce waste, all of us use certain products. It just so happens only a few of us have to suffer the consequences when it is disposed of.

Mr. EDWARDS. You got fined on that, didn't you, Mr. McDermott, your company, in Kettleman City?

Mr. MCDERMOTT. We were part of a lawsuit brought against the State of California, Kings County, CA, and Chemical Waste Management, that is right. And the one count in the case against us was that our attempts to put an incinerator there represented a pattern of discriminatory intent.

Now, the courts have declared they will not rule on that particular count because the permit hasn't been granted in that case. But in the case of Kettleman, Mr. Chairman, the State of California, if it were a sovereign nation, would be the seventh largest economy in the world. Any hazardous waste—and in 1990, there were 180,000 tons which by State law of hazardous waste could only be treated with incineration—went out of State.

As Congress is well aware, there is great controversy about the interstate movements of waste. We felt that programs the State of California would benefit from having some of its own capacity. So we sought to put an incinerator there.

We sought to put it next to a hazardous waste landfill we have there because it met certain criteria we had in terms of geology, and it wasn't near a hydrologic fault, wasn't near a geologic fault. It has a facility there which would allow us to provide these services to California industries at a price to help keep them competitive.

We are the only Nation that requires these kinds of rigorous treatment for our industrial waste. We are the only Nation in the world. And we are not disputing that that is not as it should be. But so in trying to achieve some economies of scale by being able to use some of the same personnel, same laboratories, et cetera, we sought to put the incinerator there. And we did not feel that the risk-assessment methodologies could be debated. Performed by the county, they showed that the incinerator would be safe. So we felt we were not negatively impacting the local community.

Mr. HYDE. I just have one question, and I would ask this of Mr. McDermott.

Waste Management is a very major operation. I mean your company. Is there any research going on in the industry about waste disposal, how to better deal with these things?

Mr. MCDERMOTT. Yes, there is. We put out an RFP about 2 years ago for a study on the demographics on waste disposal facilities to try to pick up where the Commission for Racial Justice study left off and go back and look at 1960's census data, 1970's census data, 1980's census data, because many of these facilities began their operations in the 1960's or 1970's, so a demographic snapshot taken in 1980 only shows us what the community looks like then. And we should know what these communities look like as close to the day they open their gates as possible.

So the University of Massachusetts, Amherst School of Public Health, is performing this study right now, the results of which will be ready I guess in August or something.

Mr. HYDE. I am more interested in the scientific research about how to dispose of poison that economic growth generates, and it is there, I guess, the conservation of energy or some principle says

you can never get rid of it. Maybe we zap it out into outer space, I don't know.

Is the industry and is the Government—I am asking you as a person in the field—doing anything to advance research on how we can dispose of this?

Mr. MCDERMOTT. We would like to think that within our industry we are on the leading edge of new technologies that provide greater source reduction, meaning less pollution at the point of manufacture, greater opportunities for recycling hazardous and nonhazardous materials so they can be beneficially used, and coming up with other processes, you don't have to use disposal or incineration. So yes, we are involved in that.

Other industries, other companies in our industry are involved in that. The private sector plays a certain role, the Government plays a lesser role. But those are ongoing all the time.

Mr. HYDE. Are you spending a sufficient amount of resources to do this? Are you serious about it?

Mr. MCDERMOTT. We see it as the wave of the future. Six years ago we were not in the recycling business. Today we are the largest recycling company in the world.

We think we know more about the recycling of plastics, glass, aluminum, paper, than anybody in relation to the country or the world. We are doing the same thing in the hazardous waste area. And we were—I don't have the numbers in front of me, Mr. Hyde, but I would bet we are spending more than any individual company on this kind of research.

Mr. EDWARDS. Are you being hired by companies or local governments to clean up some of these sites?

Mr. MCDERMOTT. Yes, sir, we are. If a tanker truck filled with gasoline flips coming off of 495, we are one of the companies on the list to call to clean those things up.

When they finally got around to cleaning up lead-contaminated soils in West Dallas, a problem that had been identified in 1969, we ended up getting the contract to take the lead and dispose of it. But it has to go somewhere. It has to go to, in this case, a landfill. And we try to build the best.

We have monitoring, 24 hours a day, 365 days a year, and we try to provide the highest quality technology that is available at any given time, and that technology does continually improve. It will be better 10 years from now than it is today. But it has to go somewhere.

Mr. HYDE. Mr. Jeffreys.

Mr. JEFFREYS. I would be happy to debate the relative risks of the various factors, whether blood levels are going up or going down after we have essentially eliminated lead gasoline in America, and various other questions.

But I would like to get back on the civil rights issue, because about 2 or 3 years ago when I bought Mr. Bullard's book and we had an exchange there, he agreed with me that the property rights of poor people were not well respected, and many times they were the targets of eminent domain proceedings to create these sites. If they, in fact, had just compensation as required under the Constitution for all Americans, and if they had the ability to enjoin polluters as under the common law we used to have the right in

America until the Federal Government preempted many of those rights, they would be better empowered and in a better position to know what is best for them.

So in terms of a solution coming from a civil rights perspective, I would say you can look primarily toward the same property rights all Americans think they enjoy and find a way to give those people back the rights and liberties that they probably expected that we already had.

Mr. HYDE. I found it very interesting that an energy tax that is sought to be imposed as part of the President's tax program is touted as an environmental gesture or something to improve the environment. And yet I see that oil is going to be taxed much higher than coal. And I am trying to figure that out. And then it dawns on me who the senior Senator of West Virginia is.

Thank you.

Mr. EDWARDS. We have to have plenty of fuel for that new FBI out there.

Mr. HYDE. CIA, too. We will be out there before long.

Mr. EDWARDS. In most civil rights laws, it is impossible to prove intent. Sometimes the problem was started a long time ago by a city council that is no longer there, for example, gerrymandering for discriminatory purposes. So usually the effects test is used in civil rights cases. Obviously, when we listen to the testimony of Ms. Johnson about Chicago we recognize how there different tests would affect the outcome of a suit as this outrage happened a long time ago—their land got polluted so badly that it is unsafe for people to live in it now.

We are a civil rights subcommittee, and we try to be an action committee. We try to resolve things in the civil rights area, and have had pretty good luck at doing it.

I will ask both Mr. Bullard and Ms. Ferris, what do you think the Judiciary Committee, the civil rights instrument in Congress, ought to do about this?

Ms. FERRIS. Well, my testimony focused on two principal recommendations that I think the committee could implement. The first is to convene an interagency coordinating council to begin to examine and evaluate new methods for redressing disproportionate impact. That coordinating council should obviously include the Department of Justice as the chief enforcement arm of the Federal Government.

Second, I recommend an assessment of the Environmental Justice Act and the civil rights cause of action that will be embodied in that legislation once it is introduced. That Federal cause of action would eliminate the need to apply an intent test to proving discriminatory impact or discrimination.

Mr. BULLARD. I think environmental discrimination must be made illegal. I think just as housing discrimination, employment discrimination, were somehow at one point in time considered aberrations or just something that was part of doing business, I think we must make this type of practice illegal.

I think we must also basically address the fact that until we look at what is going on in local land-use planning, housing discrimination, residential patterns, et cetera, and seeing how all these things tie together, I don't think there will be a Federal solution until we

start to address the fact that in many cases, States generally have to come up with sites in dealing with permits.

I think the Federal Government must address the fact of inequities that exist at the State, and then the Federal Government signing on to those inequities.

The whole notion of disparate impact and statistical weight needs to be somehow dealt with. And the whole notion of intent somehow needs to be thrown out.

Mr. EDWARDS. Mr. Jeffreys, how would you propose to clean these sites up? They are there, apparently, and they are causing a lot of damage.

Mr. JEFFREYS. In many cases I don't think I would try and clean them up, because, for example, if we look at the asbestos abatement program, remediation of asbestos recreated risk where none existed before. In many of the lead removal—Waste Management has a very strong interest in the most expensive cleanup technologies available because they're going to get the money to do it.

In terms of benefits to minority communities, if they were given a choice between more educational funds, more health care clinics, tutorials, any number of possible benefits from a given disbursement of either Federal or State resources, I think cleaning up or digging up dirt and incinerating it or moving it would be a very low priority.

Where there is actual exposure, where there is actual risk, I think something should be done and done immediately. In terms of going back to a site on the Southside of Chicago that has been polluted since 1863, as we heard this morning, I think you will be creating far more risks by stirring it up.

I understand there is an interest in preserving communities, but where we go in and just assume there is a risk without any kind of scientific evidence for most of these landfill type sites, then I think you are going to cause more problems.

In terms of intense air pollution, we find that actually Congress permitted most of those to continue by grandfathering and by the way they designed the Clean Air Act.

So we find the political jockeying will continue in the future. I don't think Congress is going to come up with an adequate solution in the immediate future.

We have spent over a trillion dollars on environmental cleanup and remediation and compliance with regulations over the last 20 years, and today we are claiming that the problem is worse than ever before. So I think Congress has a very tough task ahead of it, but if you assume that you can, for example, repeal some sort of Jim Crow environmental regulations or laws, they just don't exist. So you are going to have to come up with a solution that is based on the individual impact rather than some sort of group-based impact, and deal with it as it really exists.

Mr. EDWARDS. Counsel, do you have any questions?

Ms. BARNES. Mr. Jeffreys, one problem that we have noticed in the civil rights area is that when you have to go to individual sites and face individual problems one by one, that it takes a long time. You have to fight through the courts, you have to fight through the system continually for a long period of time, when in fact you can

recognize, as Dr. Bullard has mentioned, as Ms. Johnson has mentioned, that you have these nationwide problems.

The statistics that GAO, that the United Church of Christ have pointed out, indicate that we have those kinds of nationwide problems.

Mr. JEFFREYS. In terms of racially disparate impact, or in terms of pollution?

Ms. BARNES. In terms of racially disparate impact. For example, on the Southside of Chicago, Ms. Johnson spoke today about some of the problems that have been going on for decades, but she also, in our conversations and across the Nation, has spoken about problems that are still occurring, problems that she and the five other people in her organization that are constantly working on these issues have to combat.

And you are saying, if I understand your testimony correctly, that we in terms of the Government are putting too much money into this problem when we have other problems to combat, but you are also saying that these communities have to be empowered to deal with these problems.

How would you suggest that when we have statistics that bear out the fact that we have disparate impact, when we have people like Ms. Johnson who are having to educate their communities and themselves as to these problems, there communities they empower themselves without the help of the Government and without using the resources of the Government as they face these problems one by one?

Mr. JEFFREYS. Because personally I wouldn't think the role of the Federal Government is to determine whether or not there is a disparate impact. I would go in and say an individual who is being subjected to pollution, unnecessary risks or unreasonable risks, has a right to defend themselves, whether they are white or African-American or any other minority or majority. So the question that you are attempting to address is one that you probably will never be able to solve through civil rights legislation.

One reason many communities fight strongly against the siting of any sort of industrial facility, whether it is polluting or non-polluting, is because they know that one will attract another over time. So if you go back to 20, 30 or 40 years ago when the South began to industrialize, I think, yes, you can probably say there were some racially motivated interest in keeping the high land values where the community leaders on the white side of the community lived and putting the industrial base somewhere else. And I am from Mississippi.

Racism exists. Congress has not succeeded in stamping it out. They never will. But if you give the individual the power to fight back, and I think that is where the focus should be, the Constitution empowers these people and Congress can move forward with that.

Primarily you are talking about a question of property rights and individual liberty in the sense of being free from this pollution. I don't think that a mere civil rights law will help.

Ms. BARNES. That is interesting. We often hear the same kinds of arguments when we talk about voting rights, fair housing, equal employment.

Mr. JEFFREYS. No, I don't think it is actually related. We are talking about physical impact, health impacts here. When you get down to the question of aesthetics, everyone would like to live in Potomac, MD, but that is not possible.

The question of whether or not Congress can deal with it from a civil rights perspective I think is an open question, and I think there are some cases where clearly racism has played a role. But we try and generalize that to any sort of pollution is equated, as Mr. Hyde did, with poisoning, and that is simply not the case, because if that is the definition, we must shut down all activities.

Ms. BARNES. I don't think we are saying that all of these cases of pollution are poisoning. I think we all admit that we create waste. But when we are talking about babies with birth defects, babies born without a head, babies and children who die within the first 2 years of living, then I think—and we are looking at situations where these facilities are consistently placed in Latino, African-American, Asian-American communities, then I think you have to admit there is a problem there.

Mr. JEFFREYS. I think there is a problem with the statistics as well. I wouldn't challenge most of the statistics, but in particular cases such as the one that was in the National Law Journal, and I cited it in my written testimony, Staten Island was indicated as one of the areas where a minority community was basically discriminated against in the form of an environmental fine levied against Procter & Gamble. But Staten Island is 85 percent white and it actually is the site of the largest landfill in the world, which receives a lot of its waste and solid waste and other forms of waste from the other boroughs of New York which have much higher minority populations. So that was not cited as an example of reverse discrimination or whatever. It was just ignored.

Depending on how you determine what the local community is, whether it is a discrete neighborhood, whether it is a county, whether it is the regional population base, I see an effort being made to describe everything as environmental racism. I don't think that is the case.

I think that there are a lot of just, rational reasons beyond that where if you have an industrial area you are going to put more industrial and waste-related type activities in that area. People who do not have access to public transportation or do not have their own car are going to want to live close by in an attempt to get jobs. There are historical reasons for many of these situations.

And so to address it from a civil rights perspective I think will frustrate a lot of people. To address it from an individual liberty perspective and to say, look, you have rights to defend yourself, we are going to look at it from a scientific perspective, and as Congress, the members of this subcommittee are not limited to this particular issue, there are other priorities, and as the Nation attempts to shift those priorities over the next few years, I think environmental issues are going to rise somewhere up from where they have been. But I don't think they should supersede many of the other high priorities, because you will get much bigger returns in terms of benefits to the individuals through other programs.

And I think, again, in terms of some of the other civil rights issues that have been raised, there are real questions there, but I

don't think most of the environmental issues, in terms of the nationwide question, rise to that level.

Ms. BARNES. Ms. Ferris, you looked as though you had something you wanted to say to address that.

Ms. FERRIS. I was very curious about the remark about individual versus the collective, because in my interpretation of civil rights or application of civil rights laws, it is the individual who is strengthened to redress an individual remedy or devise a remedy to address a collective impact. So I don't understand the distinction between individual versus collective that you were emphasizing.

Mr. JEFFREYS. I mean, for example, in much of the recent attempts to rectify past discrimination, we simply declare, well, we can't go back and help those people so we are going to declare anyone in a similar class will be benefited by the future program. And that is not based on the individual impact.

So to use—I would still assume that in the future if you apply civil rights strategies to environmental issues, you are going to probably end up wasting tremendous amounts of resources toward those communities, minority or otherwise, which are already politically astute and know how to manipulate the system.

If you are going to examine it, continue to examine it not with the environmental elite attitudes we hold here in Washington, but with the real-world concerns of people who have to raise a family, that sometimes means probably looking at different priorities.

Mr. EDWARDS. The same people who are discriminated against environmentally are also discriminated against in education and housing, and transportation.

Mr. JEFFREYS. So focus on those. Because you will find that if you deal with those, those people will then have enough of an education to rationally assess these risks, to be aware of them, to work into the political system to a greater degree so they can get better representation.

And to focus on the environmental issues, certainly Congress will not focus on them to the exclusion of other issues, but I worry that if you try this strategy of declaring any sort of disparate impact to be evidence of discrimination, you are going to waste a lot of resources when—for example, Superfund is not benefiting the American public. Superfund is a disaster. Even EPA admits that. They are not cleaning up sites, they are not addressing the high priority health risk.

Yet, much of the information I have looked at in terms of evidence of racially disparate environmental impact is based on solid waste and waste management type landfills. Those are very low health risks.

There are very high health risks in America today, in D.C., for example. And we know that if you don't have a job, that has a tremendous impact on your health. So to say, for example, trying to create jobs in a particular community, inviting a facility into a poor or poverty-stricken county or a particular community within an urban area is not evidence—I don't think you should declare it to be evidence of racism if it in fact gives jobs to people so that they can better their condition, their overall condition.

Mr. EDWARDS. Counsel.

Ms. HAZEEM. I am not an expert in environmental law. This subcommittee does not generally deal with that issue. But it seemed to me that the situation that Ms. Johnson's community was going through in Chicago was some sort of breakdown of the protection of environmental law.

My understanding was that people did not have to live in those types of circumstances—that we have laws to protect people regardless of their race from living under those circumstances. And I know that the EPA and Ms. Johnson aren't there to answer this question, but I just wondered if, briefly, each of the people here wanted to address themselves to that problem.

Mr. BULLARD. This is what we have today, and first we have to operate from the assumption that institutional racism is not something of the past. Even though the historical pattern of land use and industrial policies were perpetuated 50 years ago, 20 years ago, 30 years ago, we still have cases after cases of parish supervisors, board of supervisors rezoning black communities from residential to industrial to make way for plastics plants in Wallace, LA.

We have cases in West Dallas, for example, where a lead smelter operated for 50 years without having a use permit. The city allowed that facility to contaminate the kids with lead.

We know about the dangers of lead. We have all the studies. Some communities get protected while others get studies while others get left off the map altogether.

So even though we have some laws on the books designed to protect some communities, if we look at the way society is stratified, it is stratified on class lines, racial lines, color lines and gender lines. And there are some communities more equal than others. And it just so happens the Southside of Chicago, East L.A., South Central L.A., before the uprising in the spring in L.A., the dirtiest ZIP Code in the State of California using EPA's toxic release data, the dirtiest ZIP Code happened to be 90058, which is in the heart of South Central L.A. Ninety-eight percent people of color, Latinos and African-Americans.

So let's be for real and talk about institutional racism exists in housing, education, employment. Why should we not believe that it exists in environmental protection?

Ms. HAZEEM. What I would like is to focus is on that particular situation in Chicago. You are saying some communities are protected and others aren't. Is the community in Chicago unprotected? Are there laws in place now that would prevent what is going on there from happening and people just aren't enforcing them?

Mr. BULLARD. Before Waste Management went in there there were other facilities in there. We can't just pick on Waste Management. We are talking about an area that is literally a haven for industrial facilities. And once you again get one, you attract another. It has become a magnet.

And we have a lot of sacrifice zones, industrial-environmental sacrifice zones. So the local land use basically dictates what goes on. And if an area is residential, mixed use, industrial, what can happen is that variances can be awarded routinely, zoning variances, to allow other uses to come in. And you find the industrial encroachment occurring over and over again.

It is not because the people don't protest the variances that are given. People go down to the city and protest all along. Again, it is a matter of how racism operates: Who gets the freeway through their living room, who gets the shopping mall, who gets the best schools? All of this we are talking about is basically amenities versus disamenities.

Ms. HAZEEM. I am not trying to judge the wisdom of putting labels on different activities. I am trying to understand what is going on in Hazel Johnson's community. Are we seeing a cumulative effect? Is each individual company complying with the law, but the cumulative effect is having an adverse impact? Are people complying with the environmental laws that are currently in effect?

Mr. BULLARD. Right now there is nothing illegal about saturating a specific area. *Rice v. Che*, a lawsuit filed in Kings County in 1981. The Federal judge basically decided that, sure, the black community has borne a disproportionate burden, but there is nothing illegal. So in perpetuity, the county can locate landfills in black communities and still be legal. There is nothing illegal about.

And what we are saying is that there is something unjust, unfair, and we know that slavery at one point in time was legal, and we say that slavery was unjust, unfair. We want to have environmental racism, environmental discrimination, to become illegal.

Mr. EDWARDS. This has all been very helpful. This is a new subject to us. We are going to have to do some heavy thinking and have some more information from experts like you. So the subcommittee is grateful to all of the witnesses. Three lights are on up on the clock, so we are going to have to adjourn at this time.

Thank you again very much.

[Whereupon, at 11:45 a.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

ENVIRONMENTAL JUSTICE

THURSDAY, MARCH 4, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2237, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Don Edwards, Craig A. Washington, Jerrold Nadler, and Henry J. Hyde.

Also present: Melody Barnes, assistant counsel; and Kathryn Hazen, minority counsel.

Mr. EDWARDS. The subcommittee will come to order. I am sorry that we are beginning late, but it was unavoidable.

Today we are continuing our hearings on environmental justice. Yesterday's discussion was both moving and educational. The perspectives we will hear today illustrate that different communities and different racial groups are affected in distinct ways by environmental hazards.

Our witnesses today include representatives from the Southwest, the Asian-American community, the Native-American communities. We will also learn about the relative impact of race and income on the distribution of environmental hazards.

I welcome the panels and look forward to your testimony. We are subject to certain time restraints and so at 5 minutes the red light will go on and you can then sort of wind down your remarks. We have some problems with time today. Your full statements, all of which are excellent, will be made a part of the record.

Will you please raise your right hand.

[The witnesses were sworn.]

Mr. EDWARDS. Welcome.

Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman. I have an opening statement which I ask unanimous consent to insert in the record.

Mr. EDWARDS. Without objection.

[The opening statement of Mr. Hyde follows:]

OPENING STATEMENT OF
HON. HENRY J. HYDE
HEARING ON "ENVIRONMENTAL JUSTICE"
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
March 4, 1993

As we begin our second day of hearings on the issue of environmental justice, there are several points which we should keep in mind.

There is a tendency to assume that any facility in a community, whether it be a factory or a landfill, is bad because it will create adverse health effects. This assumption is not always borne out by the facts. As one of the witnesses testified yesterday, a year after the landfill was opened in Sumpter County, Alabama, the infant mortality rate was cut in half. The health of the community was improving rather than deteriorating.

At the same time, we need to recognize the cumulative effect that industries and other facilities operating within a concentrated area may have on the local residents. Each separate facility may be legally operating in accordance with its various permits. There is no mechanism under current law, however, by which we recognize the cumulative effect and possible adverse

health consequences of all of these industries operating together within a particular area. This situation should probably be remedied, although it is likely outside of the jurisdiction of this Subcommittee.

We should also examine the root causes of the race and income disparities which have been brought to our attention. Do current Federal environmental laws protect or harm racial minorities and low-income citizens? Do zoning laws unfairly push industrial facilities toward low-income and minority communities? Do citizen-lawsuits to enforce environmental laws empower wealthier communities at the expense of the less wealthy and less organized? All of these issues and many more must be carefully explored if we are going to get to the bottom of this very serious problem.

I want to thank each of the witnesses for taking the time to testify before us today.

Thank you, Mr. Chairman.

Mr. HYDE. The panel this morning consists of Paul Mohai; he is an assistant professor in the School of Natural Resources and Environment at the University of Michigan. With his colleague, Bunyan Bryant, he has researched the relative impact of race and income on the incidence of environmental hazards. Since 1990 he has participated in a series of meetings with the Environmental Protection Agency to formulate a policy to address environmental injustice.

Dr. Bonner Cohen is editor of EPA Watch, a twice-monthly review of environmental issues pending in Congress, the EPA and other Federal agencies. Kyle McSlarrow is a member of the law firm, Hunton & Williams, administrative law group, and its environmental team. Previously, Mr. McSlarrow was Assistant Special Counsel to the Secretary of Defense and Assistant to the General Counsel of the Army.

Mr. EDWARDS. Thank you, Mr. Hyde.

Professor Mohai, you may proceed.

STATEMENT OF PAUL MOHAI, PH.D., ASSISTANT PROFESSOR, SCHOOL OF NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF SOCIOLOGY, UNIVERSITY OF MICHIGAN, ANN ARBOR, MI

Mr. MOHAI. Thank you very much, Mr. Chairman and members of the committee.

I have been working as Mr. Hyde mentioned with my colleague, Prof. Bunyan Bryant, at the University of Michigan on this issue for some time now. We have done a number of things we feel have made an impact in terms of raising visibility on this issue. One was organizing the Michigan Conference on Race and the Incidence of Environmental Hazards in January 1990 which led EPA to form an internal work group to investigate the issue and to draft a set of recommendations which they issued last July. We participated in meetings with EPA to review those recommendations and to continue discussions on developing a policy there.

Another contribution we feel that we have made is that we have tried very hard to investigate and uncover much of the objective and systematic evidence pertaining to environmental injustices. Professor Bryant and I were very influenced by the 1987 United Church of Christ report which is the national study dealing with the distribution of hazardous waste sites in the country.

We were struck by the significance and clarity of those findings, particularly by the finding that race tended to be the best predictor of the incidence of commercial hazardous waste facilities, and a better predictor than socioeconomic factors and other variables. That led us to wonder whether other studies like it existed and whether the weight of the evidence pointed in the same direction.

We did an exhaustive search of this and conducted a study of our own in the Detroit metropolitan area dealing with the distribution of hazardous waste facilities there. We found 15 studies that have been done in the last two decades which provide objective and systematic evidence on this issue; and with our Detroit area study, therefore, there are 16 to our knowledge out there.

We found from our careful review of these studies that the evidence is very clear, very consistent. It points to the exact same direction as the United Church of Christ study. We found that vir-

tually all the studies that analyzed distribution of environmental hazards by income were inequitable by income. We found that all but one which analyzed distribution of environmental hazards by race found the environmental hazard under investigation to be inequitably distributed by race.

Given the United Church of Christ's finding about the special importance of race and also because the question keeps being raised about whether race has an added effect in the distribution of environmental hazards, we also looked to see whether these studies provided any answers to whether, in fact, race or income were more important in the distribution of these hazards; and we found that—for six out of nine studies which provide both race and income information, we found—and where it is possible to assess whether race or income are more important, we found that for six out of nine studies, race indeed turned out to be the better predictor of the two variables.

So our conclusion based on this review and based on our own Detroit area study is that the objective and systematic evidence is there, it is very clear, very persuasive, points to a consistent pattern and very much confirms the United Church of Christ study. We believe that, contrary to some of the debate whether race plays a role in this or not, our study likewise confirms that race does indeed.

Currently, there are no public policies to deal with environmental justice issues. I believe that solutions will come from many different places. I see a lot of potential for certain public policies, including collecting data on incidence of environmental hazards by income and race on a routine basis, so inequities in the distribution of environmental quality can be monitored over time. I believe also that an important public policy would be to require environmental equity impact assessments every time a new rule is being proposed by EPA and other agencies similar to the environmental impact statement requirement of NEPA.

I think we take that a step further by making it a criterion for adoption of new rules if we find that inequities are aggravated by new rules.

Thank you very much.

[The prepared statement of Mr. Mohai follows:]

ENVIRONMENTAL INJUSTICE: WEIGHING THE EVIDENCE

Paul Mohai, Ph.D.
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(Testimony presented to the House Subcommittee on Civil
and Constitutional Rights, March 4, 1993)

Abstract

A review of studies conducted in the past two decades demonstrates unequivocal evidence of the prevalence of environmental inequities based on socioeconomic and racial factors. Of the two factors, race appears to have both an independent and more important relationship with the distribution of environmental hazards than income. Data from the Detroit metropolitan area provide further evidence of these outcomes.

A prevailing assumption in this country has been that pollution is a problem faced equally by everyone in society. However, that assumption has become increasingly challenged as greater attention to the issues of environmental injustice has been given by the media, social scientists, legal scholars, and policy makers.

A major event which helped to focus national attention on issues of environmental injustice occurred in 1982 when state officials decided to locate a poly-chlorinated biphenyl (PCB) landfill near a predominantly black community in Warren County, North Carolina. Protests very similar to those of the civil rights movement of the 1960s resulted. The controversy prompted Congressman Walter E. Fauntroy, a participant in the protests and one of over 500 people arrested, to request an investigation by the U.S. General Accounting Office (GAO) of the socioeconomic and racial composition of the communities surrounding the four major hazardous waste landfills in the South. The GAO study (1983) found that 3 of the 4 major hazardous waste landfills were located in communities that were predominantly black and living disproportionately below the poverty line. The findings of the GAO report, plus the earlier Warren County events, prompted the United Church of Christ's Commission for Racial Justice, also a participant in the 1982 protests, to conduct a nation-wide study of the distribution of hazardous waste sites to determine whether the pattern of disproportionate location of

commercial hazardous waste facilities in minority communities fit the pattern found in the South. It found that it did.

Specifically, the United Church of Christ study found that the proportion of residents who are minorities in communities that have a commercial hazardous waste facility is about double the proportion of minorities in communities without such facilities. Where two or more such facilities are located, the proportion of residents who are minorities is more than triple. In addition, using multivariate statistical techniques, this study found that race is the single best predictor of where commercial hazardous waste facilities are located, even when other socioeconomic characteristics of communities, such as average household income and average value of homes, are taken into account.

The United Church of Christ report concluded that it is "virtually impossible" that the nation's commercial hazardous waste facilities are distributed disproportionately in minority communities merely by chance, and that underlying factors related to race, therefore, in all likelihood play a role in the location of these facilities. Among others these include: 1) the availability of cheap land, often located in minority communities and neighborhoods; 2) the lack of local opposition to the facility, often resulting from minorities' lack of organization and political resources as well as their need for jobs, and 3) the lack of mobility of minorities resulting from poverty and housing discrimination that traps them in neighborhoods where hazardous waste facilities are located. The United Church of Christ report noted that these mechanisms and resulting inequitable outcomes represent institutionalized forms of racism.

The striking findings of the United Church of Christ study prompted my colleague, Professor Bunyan Bryant, and me to investigate whether other studies exist which have used systematic data to examine the social distribution of pollution and to determine whether the evidence from these studies, taken together, demonstrates a consistent pattern of environmental injustice based on socioeconomic and racial factors (see the attached paper, "Environmental Racism: Reviewing the Evidence"). As a part of this effort, we also conducted a study of our own to examine inequities in the distribution of commercial hazardous waste facilities in the Detroit metropolitan area. In order to uncover more information and focus greater attention on this issue, we also convened the Michigan Conference on Race and the

Incidence of Environmental Hazards held at the University of Michigan's School of Natural Resources and Environment in January 1990 where scholars from around the country working in this area presented and discussed their ideas and latest findings. An important outcome of the Michigan Conference was a meeting on September 13, 1990, with EPA Administrator William Reilly and a representative group of Conference participants. The contacts and ensuing discussions led Administrator Reilly to form an internal agency workgroup to investigate the problem of environmental injustice and to begin drafting a policy statement on this issue. These and other events and subsequent debates over the EPA's efforts, including its report on Environmental Equity released in July 1992, have sparked considerable public dialogue about the issues of environmental injustice.

A question often raised about inequities in the distribution of environmental hazards is whether observed racial biases are simply a function of poverty. That is, rather than race per se, is it not poverty that affects the distribution of environmental hazards? And are not minorities disproportionately impacted simply because they are disproportionately poor?¹ Classical economic theory would predict that poverty plays a role. Because of limited income and wealth, poor people do not have the financial means to buy out of polluted neighborhoods and into environmentally more desirable ones. Also, land values tend to be cheaper in poor neighborhoods and are thus attractive to polluting industries that seek to reduce the costs of doing business. However, housing discrimination further restricts the mobility of minorities.² Also, as sociologists Robert Bullard and Beverly Wright have argued, because noxious sites are unwanted (the "NIMBY" syndrome) and because industries tend to take the path of least resistance, communities with little political clout are often targeted for such facilities. These communities tend to be where residents are unaware of the policy decisions affecting them

¹ One has to ask why minorities are disproportionately poor in the first place, however. Job and educational discrimination contribute to the low pay and hence poor living conditions of minorities. Thus, one way or another the factor of race ultimately cannot be avoided.

² That housing discrimination is no insignificant influence on mobility was demonstrated in an ambitious national study by Denton and Massey (1988). Using U.S. Census Bureau data, they found that the degree of segregation found in black communities was not appreciably reduced by controlling for the income, education, and occupational status levels of the communities. This finding led Denton and Massey to conclude that race rather than income was the limiting factor on the mobility of blacks: "Clearly, black segregation in U.S. metropolitan areas cannot easily be attributed to socioeconomic differences from whites" (p. 805).

and are unorganized and lack resources for taking political action. such resources include time, money, contacts, knowledge of the political system, and others. Minority communities are at a disadvantage not only in terms of availability of resources but also because of underrepresentation on governing bodies when location decisions are made. Underrepresentation translates into limited access to policy makers and lack of advocates for minority interests.

Taken together, these factors suggest that race has an additional impact on the distribution of environmental hazards, independent of income. A second major objective of our investigation, therefore, was to assess the relative influence of income and race on the distribution of pollution. We did so by examining the results of those empirical studies which have analyzed the distribution of environmental hazards by both income and race. To our knowledge, this is the first time such a review and assessment has been undertaken. We also assessed the relative importance of the relationship of income and race in the distribution of commercial hazardous waste facilities in our Detroit area study.

The Evidence

Table 1 summarizes the key information from 15 studies that we found in our review which provide objective and systematic evidence about the social distribution of environmental hazards. It also summarizes information from our Detroit area study. (Details are given in the attached paper.) A number of interesting and important facts emerge from an examination of this Table. First, an inspection of the publication dates of these studies reveals that information about environmental inequities has been available for some time. Rather than being a recent discovery, documentation of environmental injustices stretches back two decades. In fact, information about inequities in the distribution of environmental hazards was first published in 1971 in the annual report of the Council on Environmental Quality. This was only one year after the U.S. Environmental Protection Agency was created, one year after the National Environmental Policy Act was passed, and only one year after the first Earth Day was held - an event viewed by many as a major turning point in public awareness about environmental issues. Evidently, it has taken some time for public awareness to catch up to the issues of environmental injustice.

Table 1. Studies Providing Systematic Empirical Evidence Regarding the Burden of Environmental Hazards by Income and Race

Study	Hazard	Focus of Study	Distribution Inequitable by Income?	Distribution Inequitable by Race?	Income or Race More Important?
CEQ (1971)	Air Poll.	Urban Area	Yes	NA	NA ^a
Freeman (1972)	Air Poll.	Urban Areas	Yes	Yes	Race
Harrison (1975)	Air Poll.	Urban Areas Nation	Yes No	NA NA	NA NA
Kruvant (1975)	Air Poll.	Urban Area	Yes	Yes	Income
Zupan (1975)	Air Poll.	Urban Area	Yes	NA	NA
Burch (1976)	Air Poll.	Urban Area	Yes	No	Income
Berry et al. (1977)	Air Poll.	Urban Areas	Yes	Yes	NA
	Solid Waste	Urban Areas	Yes	Yes	NA
	Noise	Urban Areas	Yes	Yes	NA
	Pesticide Poisoning	Urban Areas	Yes	Yes	NA
	Rat Bite Risk	Urban Areas	Yes	Yes	NA
Handy (1977)	Air Poll.	Urban Area	Yes	NA	NA
Asch & Seneca (1978)	Air Poll.	Urban Areas	Yes	Yes	Income
Gianessi et al. (1979)	Air Poll.	Nation	No	Yes	Race
Bullard (1983)	Solid Waste	Urban Area	NA	Yes	NA
U.S. GAO (1983)	Haz. Waste	Southern Region	Yes	Yes	NA
United Church of Christ (1987)	Haz. Waste	Nation	Yes	Yes	Race
Gelobter (1987; 1992)	Air Poll.	Urban Areas	Yes	Yes	Race
		Nation	No	Yes	Race
Mohai & Bryant (1992)	Haz. Waste	Urban Area	Yes	Yes	Race
West et al (1992)	Toxic Fish Consumption	State	No	Yes	Race

^a Not Applicable

It is also worth noting that most of the studies that have been conducted in this period have focused on the distribution of air pollution. Clearly, systematic studies of the social distribution of other types of environmental hazards, such as water pollution, pesticide exposure, asbestos exposure, and other hazards are needed. Also worth noting is that these studies vary considerably in terms of their scope - i.e., some studies have focused on single urban areas, such as New York or Houston, others have focused on a collection of urban areas, while still others have been national in scope. This observation is important in that it reveals that the pattern of findings is not simply an artifact of the samples used (regardless of the scope of the analyses or methodologies employed), the findings point to a consistent pattern.

It is clear from examining the results in Table 1 that regardless of the environmental hazard and regardless of the scope of the study, in nearly every case the distribution of pollution has been found to be inequitable by income. And with only one exception, the distribution of pollution has been found to be inequitable by race. Where the distribution of pollution has been analyzed by both income and race (and where it is possible to weigh the relative importance of each), in most cases (6 out of 9) race has been found to be more strongly related to the incidence of pollution than has income. Noteworthy also is the fact that all 3 studies which have been national in scope and which have provided both income and race information have found race to be more importantly related to the distribution of environmental hazards than income.

Taken together, the findings from these 16 studies indicate clear and unequivocal class and racial biases in the distribution of environmental hazards. And important to the debate of whether the racial biases are primarily a function of poverty, the results also appear to support the argument that race has an additional effect on the distribution of environmental hazards independent of class. Indeed, the racial biases found in these studies have tended to be greater than class biases.

Conclusions

Knowing whether race or class is more importantly related to the distribution of environmental hazards ultimately may be less relevant than understanding the conditions

associated with race and class that appear to consistently, if not inevitably, lead to inequitable exposure to such hazards. Of paramount importance is understanding how these conditions can be addressed and how inequities in the distribution of environmental quality can be remedied. No public policies currently exist which require monitoring equity in the distribution of environmental quality. Hence, policy makers have little knowledge about what the equity consequences are of the programs designed to control pollution in this country. Are some groups receiving fewer environmental and health remedies than others from existing programs? Have the risks to some actually increased as a result? If the social, economic, and political disadvantages faced by the poor and minorities that lead to environmental inequities are unlikely to be compensated any time soon, then it is clear that proactive government policies will be needed to address this issue. In the future, inequities in the distribution of environmental hazards will need to be monitored, existing policies and programs adjusted; and new programs designed in which enhancing environmental equity is a criterion for adoption.

A quarter of a century ago, the Kerner Commission warned that: "To continue present policies is to make permanent the division of our country into two societies: one largely Negro and poor, located in the central cities, the other predominantly white and affluent, located in the suburbs and in outlying areas." At the time that that warning was made, the EPA had not yet been created nor the nation's major environmental legislation yet passed. The terms "environmental racism" and "environmental justice" were unheard of. Results of our study and those of others indicate current environmental policies have allowed for separate societies differing in the quality of their respective environments. To know that these inequities exist but to do nothing about them is to perpetuate separate societies and will continue to leave the poor, blacks, and other minorities vulnerable to current and future environmental policy decisions.

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Environmental Racism: Reviewing the Evidence

Paul Mohai and Bunyan Bryant

The United Church of Christ's (1987) report on the distribution of hazardous waste sites in this country has been very influential in raising public awareness about the disproportionate burden of pollution on minorities. This study is important because of its national scope and because of its strong and unequivocal findings regarding the distribution of commercial hazardous waste facilities. It found that the proportion of residents who are minorities in communities that have a commercial hazardous waste facility is about double the proportion of minorities in communities without such facilities. Where two or more such facilities are located, the proportion of residents who are minorities is more than triple. This study further demonstrated that race is the single best predictor of where commercial hazardous waste facilities are located, even when other socioeconomic characteristics of communities, such as average household income and average value of homes, are taken into account.

The United Church of Christ report concluded that it is "virtually impossible" that the nation's commercial hazardous waste facilities are distributed disproportionately in minority communities merely by chance, and that underlying factors related to race, therefore, in all likelihood play a role in the location of these facilities. Among others these factors include: 1) the availability of cheap land, often located in minority communities and neighborhoods (Asch and Seneca, 1978;

Drs. Mohai and Bryant were Co-Principal Investigators of the University of Michigan's 1990 Detroit Area Study. They were also Co-Organizers of the University of Michigan School of Natural Resources' Conference on Race and the Incidence of Environmental Hazards held January 1990 in Ann Arbor, Michigan. Both Drs. Mohai and Bryant served on the National Advisory Committee of the First National People of Color Environmental Leadership Summit held October 1991 in Washington, D.C.

We would like to acknowledge the Detroit Area Study Executive Committee, the Department of Sociology, the School of Natural Resources, the Office of Minority Affairs, and the Office of Minority Research Development of the Rackham School of Graduate Studies at the University of Michigan for their generous support of the 1990 Detroit Area Study. We also wish to thank the Natural Resources and Sociology graduate students at the University of Michigan who contributed to various phases of the project. Special thanks and gratitude are owed to Dr. Karl Landis, former Director of the Detroit Area Study.

Paul Mohai & Bunyan Bryant

Bullard and Wright, 1987; United Church of Christ, 1987); 2) the lack of local opposition to the facility, often resulting from minorities' lack of organization and political resources as well as their need for jobs (Bullard and Wright, 1987; United Church of Christ, 1987); and 3) the lack of mobility of minorities resulting from poverty and housing discrimination that traps them in neighborhoods where hazardous waste facilities are located (Bullard and Wright, 1987; United Church of Christ, 1987). The United Church of Christ report noted that these mechanisms and resulting inequitable outcomes represent institutionalized forms of racism. When the report was released, Dr. Benjamin F. Chavis, Jr., termed the racial biases in the location of commercial hazardous waste facilities as "environmental racism" (Lee, 1992).

The striking findings and the scope of the United Church of Christ study suggest that environmental racism is not confined to hazardous waste alone. A major objective of our investigation was, therefore, to document the existence of other studies which have used systematic data to examine the social distribution of pollution and to determine whether the evidence from these studies, taken together, demonstrates a consistent pattern of environmental racism.

A question that is often raised is whether the racial bias in the distribution of environmental hazards is simply a function of poverty (see, for example, Weisskopf, 1992). That is, rather than race per se, is it not poverty that affects the distribution of environmental hazards? And are not minorities disproportionately impacted simply because they are disproportionately poor?¹ Classical economic theory would predict that poverty plays a role (see Asch and Seneca, 1978, and Freeman, 1972). Because of limited income and wealth, poor people do not have the financial means to buy out of polluted neighborhoods and into environmentally more desirable ones. Also, land values tend to be cheaper in poor neighborhoods and are thus attractive to polluting industries that seek to reduce the costs of doing business (United Church of Christ, 1987). However, housing discrimination further restricts the mobility of minorities (Denton and Massey, 1988; Feagin and Feagin, 1978).² Also, because noxious sites are unwanted (the "NIMBY" syndrome) and because industries tend to take the path of least resistance, communities with little political clout are often targeted for such facilities (Bullard and Wright, 1987). These communities tend to be where residents are unaware of the policy decisions affecting them and are unorganized and lack resources for taking political action; such resources include time, money, contacts, knowledge of the political system, and others (Bullard, 1990; Mohai, 1985, 1990). Minority communities are at a disadvantage not only in terms of availability of resources but also because of underrepresentation on governing bodies when location decisions are made (Bullard, 1983). Underrepresentation translates into limited access to policy makers and lack of advocates for minority interests.

Taken together, these factors suggest that race has an additional impact on the distribution of environmental hazards, independent of income. A second major objective of our study, therefore, was to assess the relative influence of income and

Environmental Racism: Reviewing the Evidence

race on the distribution of pollution. We did so by examining the results of those empirical studies which have analyzed the distribution of environmental hazards by both income and race. To our knowledge, this is the first time such a review and assessment has been undertaken. We also provide new evidence from a multivariate analysis of the distribution of commercial hazardous waste facilities in the Detroit metropolitan area.

**Environmental Racism:
Evidence from Existing Studies**

Table 1 contains a summary of 15 studies which provide systematic information about the social distribution of environmental hazards. In assessing the distribution of these hazards by income, the typical approach has been to correlate the average or median household or family income of the community (usually approximated by U.S. Census tracts or zip code areas) with the degree of exposure to the hazard. In assessing the distribution of environmental hazards by race, the minority percentage of the community has been typically employed. For example, after matching the location of air quality monitoring sites with U.S. Census tracts, Asch and Seneca (1978) correlated the median family incomes and minority percentages of the Census tracts with the mean annual air pollution levels of the tracts. Likewise, the United Church of Christ (1987) matched the location of commercial hazardous waste facilities with zip code areas, and correlated the mean household income, minority percentage, and other characteristics of these areas with the presence of one or more commercial hazardous waste facilities.

A number of interesting and important facts emerge from an examination of Table 1. First, an inspection of the publication dates of these studies reveals that information about environmental inequity has been available for some time. Rather than being a recent discovery, documentation of environmental injustices stretches back two decades, almost to Earth Day - an event viewed by many as a major turning point in public awareness about environmental issues (Davies and Davies, 1975; Fessler, 1990). Evidently, it has taken some time for public awareness to catch up to the issues of environmental injustice.

It is also interesting to note that most of the studies that have been conducted in this period have focused on the distribution of air pollution. Clearly, systematic studies of the social distribution of other types of environmental hazards, such as water pollution, pesticide exposure, asbestos exposure, and other hazards are needed. Also worth noting is that these studies vary considerably in terms of their scope—i.e., some studies have focused on single urban areas, such as Washington, DC, or Houston, others have focused on a collection of urban areas, while still others have been national in scope. This observation is important in that it reveals that the pattern of findings is not simply an artifact of the samples used. Irregardless of the scope of the analyses, the findings point to a consistent pattern.

TABLE 1 Studies Providing Systematic Empirical Evidence
Regarding the Burden of Environmental Hazards by Income and Race

Study	Hazard	Focus of Study	Distri- bution Inequi- table by Income?	Distri- bution Inequi- table by Race?	Income or Race More Import- tant?
CEQ (1971)	Air Poll.	Urban Area	Yes	NA*	NA
Freeman (1972)	Air Poll.	Urban Areas	Yes	Yes	Race
Harrison (1975)	Air Poll.	Urban Areas	Yes	NA	NA
	Air Poll.	Nation	No	NA	NA
Krivan (1975)	Air Poll.	Urban Area	Yes	Yes	Income
Zupan (1975)	Air Poll.	Urban Area	Yes	NA	NA
Burch (1976)	Air Poll.	Urban Area	Yes	No	Income
Berry et al. (1977)	Air Poll.	Urban Areas	Yes	Yes	NA
	Solid Waste	Urban Areas	Yes	Yes	NA
	Noise	Urban Areas	Yes	Yes	NA
	Pesticide				
	Poisoning	Urban Areas	Yes	Yes	NA
Handy (1977)	Rat Bite Risk	Urban Areas	Yes	Yes	NA
	Air Poll.	Urban Area	Yes	NA	NA
Asch & Seneca (1978)	Air Poll.	Urban Areas	Yes	Yes	Income
Gianessi et al. (1979)	Air Poll.	Nation	No	Yes	Race
Bullard (1983)	Solid Waste	Urban Area	NA	Yes	NA
U.S. GAO (1983)	Haz. Waste	Southern Region	Yes	Yes	NA
United Church of Christ (1987)	Haz. Waste	Nation	Yes	Yes	Race
Gelobter (1987; 1992)	Air Poll.	Urban Areas	Yes	Yes	Race
	Air Poll.	Nation	No	Yes	Race
West et al. (1992)	Toxic Fish Consumption	State	No	Yes	Race

* NA = not applicable.

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It is clear from examining the results in Table 1 that, regardless of the environmental hazard and regardless of the scope of the study, in nearly every case the distribution of pollution has been found to be inequitable by income. And with only one exception, the distribution of pollution has been found to be inequitable by race. Where the distribution of pollution has been analyzed by both income and race (and where it was possible to weigh the relative importance of each), in most cases race has been found to be more strongly related to the incidence of pollution.

The United Church of Christ (1987), Freeman (1972), Gelobter (1987, 1992), Gianessi, Peskin, and Wolff (1979), and West, Fly, Larkin, and Marans (1992) all found that race was more strongly related than class to the distribution of the environmental hazard under investigation. As mentioned previously, from a multivariate statistical analysis of nation-wide data, the United Church of Christ found that the percentage of minority residents within a community (defined by zip code areas) was the single best predictor of where commercial hazardous waste facilities are located in the country—more so than other socioeconomic variables such as mean household income and mean value of owner-occupied homes.

Using an air pollution exposure index, Freeman (1972) found that low-income groups in three urban areas (Kansas City, St. Louis, and Washington, DC) were more greatly exposed to total suspended particulates and sulfates than upper-income groups. However, racial differences were found to be even more pronounced as minorities in each of the cities were found to be exposed to higher levels of both pollutants than the lowest income group examined (the "under \$3,000" group).

Likewise using pollution exposure indices (one for total suspended particulates and another for combined concentrations of total suspended particulates, sulfates, sulfur dioxide, nitrogen oxides, ozone, and carbon monoxide), Gelobter (1987, 1992) found similar results. However, unlike Freeman's study Gelobter's was national in scope. He conducted his analyses in two parts, one focused on the U.S. as a whole, incorporating both rural and urban areas, and a second focused on just urban areas. He found that over a 15 year period (from 1970 to 1984) minorities were consistently exposed to significantly more air pollution than whites. This finding was the same whether the analysis was focused on just the urban areas or on the country as a whole. Inequities in the distribution of air pollution by income were less clear. At the national level, exposure to total suspended particulates was found to be somewhat greater for upper income groups than for lower income groups (a probable result of the fact that both income and pollution tend to be simultaneously higher in urban areas than in rural ones). Within urban areas, however, exposure was found to be greater for those in the lower income categories, although differences by income categories tended to be small. When exposure to combined concentrations of air pollutants was examined, similar patterns were found, although this time lower income groups were found to be more greatly exposed at both national and urban levels of analyses. Nevertheless, as in Freeman's study, racial biases in

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exposure to pollution tended to be more stark; as in the earlier study, in all cases minorities were found to be more greatly exposed to pollution than the lowest income group examined ("under \$3,000").

Gianessi, Peskin, and Wolff's (1979) study is the only other to have attempted a national level analysis of the distribution of air pollution by income and race. However, unlike Gelobter's study, rather than measuring exposure to physical concentrations of air pollution directly, they estimated dollar damage suffered from exposure to air pollution. Also, their estimates were based on EPA data taken for a single time period. Nevertheless, their results are very similar to Gelobter's. Like Gelobter, they found that air pollution damage is distributed progressively (i.e., upper rather than lower income groups suffer more damage) when the analysis is conducted at the national level (as before, this outcome is the probable result of incomes and pollution tending to be simultaneously higher in the more urbanized rather than rural areas of the country). However, when racial differences were examined, the inequities were found to be clear and striking: minorities were much more likely to suffer greater damage from air pollution than whites at all income levels.

Finally, West, Fly, Larkin, and Marans (1992) found from a state-wide survey of licensed fishermen in Michigan that on average minority fishermen and their families are likely to consume more fish (21.7 grams/person/day) than white fishermen and their families (17.9 grams/person/day). The purpose of their study was to assess the potential risk to these groups of ingesting toxic fish. Michigan's Rule 1057, which is designed to regulate the amount of discharge of toxic chemicals into state waters, is based on the assumption that the average consumption of fish in the state is 6.5 grams/person/day (West et al., 1992). Although minority fishermen and their families were found to consume more fish than white fishermen and their families, clearly both groups appear to be at risk based on this standard. Interestingly, West et al. did not find a significant relationship between income and the amount of fish consumed in either their bivariate analysis of income with consumption nor in their multivariate analysis where the simultaneous relationship of income and race with consumption was examined.

Only in three of the eight studies where it was possible to weigh the relative importance of both race and income was income found to be more strongly related to the distribution of environmental hazards. In one of these studies, Krivant (1975) superimposed Census tract data in the Washington, DC, area with air pollution zones. Using this method, he found that there tended to be a tighter fit between areas of high air pollution and high concentrations of the poor than there were between areas of high air pollution concentrations and blacks. Using a similar technique, Burch (1976) found that while there was a significant relationship between areas of high air pollution and high concentrations of the poor in the New Haven, CT, area, there was no significant relationship between concentrations of air pollution and blacks. Finally, Asch and Seneca (1978) found that the correlations of the "nonwhite"

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percentages of Census tracts in Chicago, Cleveland, and Nashville with the mean annual levels of various air pollutants tended to be weaker than the correlations of the median family incomes of the Census tracts with pollutant levels; using cities within 23 states (rather than Census tracts within the 3 cities mentioned above) as the units of analysis, Asch and Seneca obtained similar results.

Although two additional studies found the distribution of environmental hazards to be inequitable by both income and race, it was not possible to assess conclusively which, if either, variable was more strongly related because of the methodological approaches employed in these studies. These include Berry et al.'s study (1977) of the distribution of air pollution, pesticide poisoning, noise, solid waste, and rat bite risks in 13 of the nation's major urban areas, and the U.S. General Accounting Office's study (1983) of the distribution of four major hazardous waste landfills located in the South.

In summary, review of the 15 studies which have examined the distribution of environmental hazards by income and race indicates both a class and racial bias. Furthermore, that the racial bias is not simply a function of poverty alone also appears to be born out by the data. All but one of the 11 studies which have examined the distribution of environmental hazards by race have found a significant bias. In addition, in five of the eight studies where it was possible to assess the relative importance of race with income, racial biases have been found to be more significant. Noteworthy also is the fact that all three studies which have been national in scope and which have provided both income and race information have found race to be more importantly related to the distribution of environmental hazards than income. Taken together, these findings thus appear to support the assertion of those who have argued that race has an additional effect on the distribution of environmental hazards that is independent of class.

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Evidence from the Detroit Area Study

In order to provide greater clarity to the issue of environmental equity, we provide additional evidence from an analysis of the distribution of commercial hazardous waste facilities in the Detroit area. In so doing, special attention is given to the effects of race. A detailed multivariate statistical analysis is conducted in order to determine whether race has a relationship with the location of commercial hazardous waste facilities that is independent of income. The multivariate analysis is also used to weigh the relative strength of the relationship of race and income with the distribution of sites. There are only two other studies which have applied multivariate statistical techniques to assess the relative effects of race and income on exposure to environmental hazards: the United Church of Christ (1987) and West et al. (1992) studies. Both found race not only to have an independent relationship

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with the hazard but also found it to be more strongly related to the hazard than income.

Data used for this study are taken from the University of Michigan's 1990 Detroit Area Study (Mohai and Bryant, 1989). Information was obtained from face-to-face interviews of residents 18 years or older in Macomb, Oakland, and Wayne Counties, Michigan (the 3 counties surrounding the city of Detroit). Respondents were identified from households which were selected with equal probability using a stratified two-stage area probability sampling design. Because of the objectives of the study, an additional oversample was drawn of households within 1.5 miles of an existing or proposed commercial hazardous waste treatment or storage facility. Information about the location of the facilities in the Detroit area was obtained from the Michigan Department of Natural Resources. These included 14 existing facilities and two proposed.³

Kish (1949) selection tables were used to randomly select one respondent from the eligible persons in each of the households in the base (households not within 1.5 miles of a facility) and supplemental studies. Five hundred four and 289 interviews, respectively, in the two samples were conducted resulting in an overall study response rate of 69%.

For all analyses, cases were weighted by the number of eligible persons in the household. In those analyses where the oversample and base samples were pooled, cases were additionally weighted by a household sampling weight which compensates for the unequal probability of selection between the two samples.

Information about race and household income was obtained for all 793 respondents. The unweighted numbers of whites, blacks, and other nonwhites in the sample were 575, 180, and 38, respectively. For purposes of the analyses the 218 blacks and other nonwhites were combined into the category "minority."

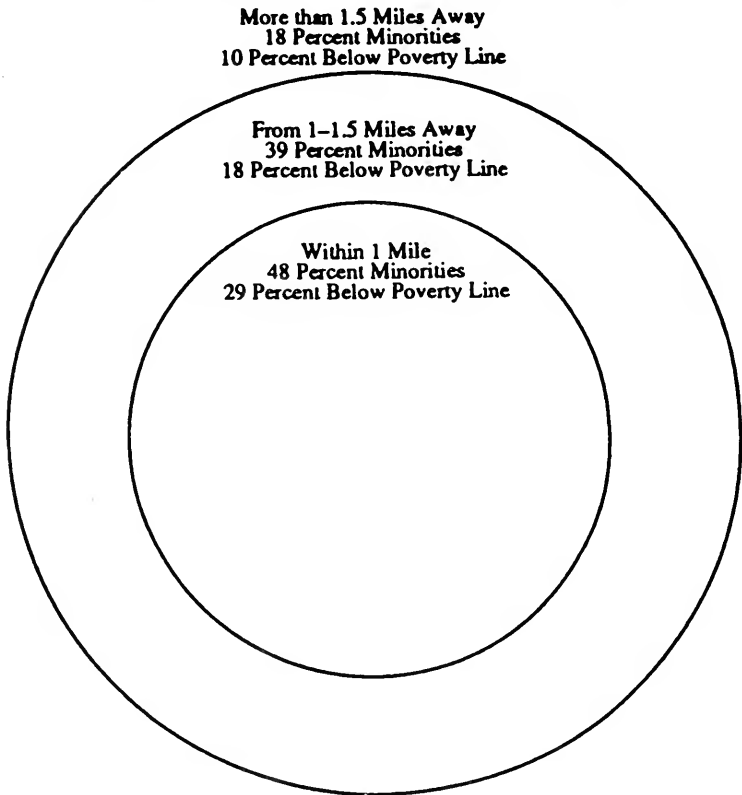
The precise locations of the commercial hazardous waste facilities and the 289 respondents in the oversample were mapped. The distances between these respondents and one of the 16 facilities was measured to the nearest 0.1 mile.

Although our main objective was to assess racial biases in the distribution of commercial hazardous waste facilities within the three counties surrounding the city of Detroit, from a cursory analysis we observed a rather striking racial bias in the distribution of these facilities at the state level as well. Although there are 21 commercial hazardous waste facilities in the state of Michigan, 16 (76 percent) of them are located in the three-county area. And of these 16, half (the two facilities that are proposed are included here) are located in the city of Detroit, proper. This is significant as U.S. Census Bureau data for the state of Michigan and demographic data collected from our Detroit area study indicate that the minority percentages for the state, three-county area, and city are 16 percent, 21 percent, and 76 percent, respectively. Thus, commercial hazardous waste facilities in the state are clearly located disproportionately where minorities are most heavily concentrated.

Our next step was to conduct a detailed analysis of the distribution of

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FIGURE 1 Percent of Detroit Area Residents Living Near a Commercial Hazardous Waste Facility Who Are Members of a Minority Group or Who Live Below the Poverty Line



commercial hazardous waste facilities within the three-county metropolitan area, giving special attention to the relative effects of income and race. Using the demographic and socioeconomic information from the 504 residents in our base sample (those in the Detroit area who live more than 1.5 miles away from a commercial hazardous waste facility), we computed the percent who are minority residents as well as the percent who are living below the poverty line.⁴ We did likewise with the oversample of 289 residents living within 1.5 miles of a facility. However, we further divided this latter sample into those living strictly within 1 mile and those living between 1 mile and 1.5 miles of a facility.

The diagram in Figure 1 indicates the percent of minorities and the percent of

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people living below the poverty line within fixed distances of a commercial hazardous waste facility. The percentages indicate a clear bias. Of those people living more than 1.5 miles from a commercial hazardous waste facility only 18 percent are minority residents. Of those people living within 1.5 miles but more than 1 mile away, 39 percent are minority. And of those residents living within 1 mile from the center of a facility, 48 percent are minority. A similar pattern exists when the percentage of people living below the poverty line are examined (see Figure 1). Chi-square tests indicate that these patterns are statistically significant at the .0000 level (see Table 2).

Analysis of our data indicates that only about four percent of the total population in the three-county area lives within one mile of a commercial hazardous waste facility. Broken down by racial groups, three percent of all whites and 11 percent of all minorities live within a mile of such a facility. Although these are small proportions for both groups, the biases are nevertheless clear. As the ratio of the two percentages indicate, if you are living in the three-county area of Detroit and are a minority resident, your chance of living within a mile of a hazardous waste facility is about four times greater than if you are white.

We wanted to determine whether the above results were a function of the disproportionate number of hazardous waste facilities in the city of Detroit (the city contains 50 percent of the 16 commercial hazardous waste facilities in the three-county area but only about 20 percent of its population), or whether the same patterns exist both inside and outside the city. Thus, we repeated the above analysis: 1) once for the city of Detroit alone and 2) again for the suburban area (i.e., the three-county area outside Detroit). The percentages in Table 2 indicate that the biases persist whether the city or the suburban area is examined by itself, although in the case of the City of Detroit the differences do not attain statistical significance. Although the suburban area contains very few minorities (the percentages of minority residents for Macomb, Oakland, and suburban Wayne Counties are seven percent, nine percent, and five percent, respectively, and eight percent as a whole), it is there where the racial biases in the distribution of facilities are most pronounced (Table 2). Although generally the hazardous waste facilities are also disproportionately located in areas with high concentrations of people living below the poverty line, patterns are less clear when suburban areas and the city of Detroit are examined separately. In both the city and the suburban areas, the proportion of people who live below the poverty line is higher among people residing within a mile of a commercial hazardous waste facility than it is among those residing more than 1.5 miles away. However, in Detroit, the smallest concentrations of people living below the poverty line are in the neighborhoods that are between one and 1.5 miles from a facility; in the suburbs, neighborhoods that are between 1 and 1.5 miles from a facility have the highest concentrations (Table 2).

A major objective of our study was to examine the relative strength of the relationship of race and income on the distribution of commercial hazardous waste

**TABLE 2 Percent of Detroit Area Residents Living
Within Fixed Distances of a Commercial Hazardous Waste Facility
Who Are Members of a Minority Group or Living Below the Poverty Line**

All Three-County Area Residents			Above Poverty Line	Below Poverty Line
	White	Minority	Line	Line
> 1.5 miles away	82	18	90	10
1-1.5 miles away	61	39	82	18
< 1 mile away	52	48	71	29
	Chi-square=26.6328 d.f.=2 P=.0000		Chi-square=56.6610 d.f.=2 P=.0000	
City of Detroit Residents			Above Poverty Line	Below Poverty Line
	White	Minority	Line	Line
> 1.5 miles away	25	76	66	34
1-1.5 miles away	21	79	85	15
< 1 mile away	20	80	48	52
	Chi-square=0.4651 d.f.=2 P=.7925		Chi-square=11.3457 d.f.=2 P=.0034	
Suburban Residents			Above Poverty Line	Below Poverty Line
	White	Minority	Line	Line
> 1.5 miles away	93	7	95	5
1-1.5 miles away	88	12	80	20
< 1 mile away	82	18	89	11
	Chi-square=7.3690 d.f.=2 P=.0251		Chi-square=16.8079 d.f.=2 P=.0002	

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facilities in the Detroit area. In order to accomplish this objective, we used multiple linear regression analysis. We tested to see whether race (coded as 1=white and 0=minority) and income (measured in dollars) each had an independent relationship with the distance of residents to a commercial hazardous waste facility. And if so, which had the stronger relationship. We conducted the analysis in two ways. In the first analysis, the dependent variable used to measure distance to a site was an ordinal number which indicated the general proximity of the respondent to the site. Here, 1=within 1 mile, 2=between 1 mile and 1.5 miles, and 3=more than 1.5 miles away. In this analysis, all 793 respondents were included (and appropriately weighted to correct for the varying probability of selection into the study). In the second analysis, the precise distance of the respondent to the center of a facility (measured to the nearest 0.1 mile) was used as the dependent variable. In this latter analysis, only data from the 289 respondents in the oversample were used since precise distances to the commercial hazardous waste facilities were measured only for this group. As Table 3 indicates, either approach yields similar results. The relationship between race and the location of commercial hazardous waste facilities in the Detroit area is independent of income in each of the analyses. And, important to the thesis of this paper, it is race which is the best predictor. In fact, in the second analysis, the relationship between the location of sites and income is no longer statistically significant.

Conclusions

Review of 15 existing studies plus results of our Detroit area study provide clear and unequivocal evidence that income and racial biases in the distribution of environmental hazards exist. Our findings also appear to support the claims of those who have argued that race is more importantly related to the distribution of these hazards than income. Ultimately, knowing which is more important may be less relevant, however, than understanding the conditions associated with race and class that appear to consistently, if not inevitably, lead to inequitable exposure to environmental hazards and in understanding how these conditions can be addressed and how inequities in the distribution of environmental quality can be remedied.

Currently, there are no public policies in place which require monitoring equity in the distribution of environmental quality. Hence, policy makers have little knowledge about what the equity consequences are of the programs designed to control pollution in this country. Are some groups receiving fewer environmental and health remedies than others from existing programs? Have the risks to some actually increased as a result? If the social, economic, and political disadvantages faced by the poor and minorities that lead to environmental inequities are unlikely to be compensated any time soon, then it is clear that proactive government policies will be needed to address this issue. In the future, inequities in the distribution of environmental hazards will need to be monitored; existing policies and programs

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TABLE 3 Results of Multiple Linear Regression Analyses of Race and Income with Distance to a Commercial Hazardous Waste Facility

Where dependent variable (distance of resident to facility) is 1=within 1 mile, 2=between 1 and 1.5 miles, and 3=more than 1.5 miles away (includes entire sample of 793 respondents).

	Beta
Race	.22***
Income	.08*
R ²	.07
Adj. R ²	.06
F	23.5760***

Where dependent variable (distance of resident to facility) is measured to nearest 0.1 mile (includes oversample only of 289 respondents).

	Beta
Race	.22**
Income	-.10
R ²	.04
Adj. R ²	.04
F	5.1133**

* P<.05 ** P<.01 ***P<.001

adjusted; and new programs designed in which enhancing environmental equity is a criterion for adoption.

A quarter of a century ago, the Kerner Commission (United States Government, 1968) warned that: "To continue present policies is to make permanent the division of our country into two societies: one largely Negro and poor, located in the central cities, the other predominantly white and affluent, located in the suburbs and in outlying areas." At the time that that warning was made, the EPA had not yet been created nor the nation's major environmental legislation yet passed. The terms

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"environmental racism" and "environmental justice" were unheard of. Results of our study and those of others indicate current environmental policies have allowed for separate societies differing in the quality of their respective environments. To know that these inequities exist but to do nothing about them is to perpetuate separate societies and will continue to leave the poor, blacks, and other minorities vulnerable to current and future environmental policy decisions.

Notes

1. One has to ask why minorities are disproportionately poor in the first place, however. Obviously, the answer is related to job and educational discrimination which contributes to the low pay and hence poor living conditions of minorities. Thus, the factor of race ultimately cannot be avoided.

2. That housing discrimination is no insignificant influence on mobility was demonstrated in an ambitious national study by Denton and Massey (1988). Using U.S. Census Bureau data, they found that the degree of segregation found in black communities was not appreciably reduced by controlling for the income, education, and occupational status levels of the communities. This finding led Denton and Massey to conclude that race rather than income was the limiting factor on the mobility of blacks. "Clearly, black segregation in U.S. metropolitan areas cannot easily be attributed to socioeconomic differences from whites" (p. 805).

3. The survey population for this special supplemental study includes all households who live within a 1.5 mile radial zone of the 16 designated commercial hazardous waste facilities (14 existing and two proposed). From this survey population a two-stage equal probability sample of households was selected. The distribution of sampled households in the 16 zones which comprise the survey population is proportional to the total number of households which reside in each zone. Zones surrounding commercial hazardous waste facilities which have low population densities are expected to have smaller numbers of sampled households than zones with higher household densities. Although all households in the survey population had an equal chance of selection for the study, densities in several of the 16 commercial hazardous waste facility zones are sufficiently low that no sample observations were in fact selected. However, as inference from the sample is to the entire population of people living in all 16 zones, the sample selected is representative of the entire population of residents living within 1.5 miles of these 16 commercial hazardous waste facility zones.

4. The U.S. Census Bureau definition was used here.

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Chapter 13:

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Mr. EDWARDS. Dr. Cohen.

STATEMENT OF DR. BONNER R. COHEN, EDITOR, EPA WATCH

Dr. COHEN. Thank you, Mr. Chairman. Our subject this morning, environmental justice, is an intriguing one. We have been asked to determine whether or not, or the extent to which minorities are adversely exposed and disproportionately exposed to our Nation's worst pollutants. The preliminary evidence gathered thus far would seem to indicate that. In any event, this subject requires much more study.

In carrying out that study, I would suggest that we broaden the scope of our inquiry to include the question, to what extent do our environmental laws and regulations inordinately burden the very people whom they are supposed to protect from those pollutants? In other words, I would submit to you that many of our environmental laws and regulations are inherently regressive. Let me explain, citing a few examples.

Unfunded Federal environmental mandates, I believe we know what this is. Beginning in the 1970's, EPA began imposing environmental mandates on communities across the country. In the initial phase of that, those mandates were accompanied by funds which covered some of the costs of improving local environmental infrastructure. However, during the 1980's, particularly during the second half of the 1980's, no such funding was forthcoming. The result has been that communities across the country now find themselves faced with having to implement unfunded Federal environmental mandates without having the funds to do so.

According to the National League of Cities, for every \$10 of federally mandated environmental regulations there is \$1 available at the local level to implement those mandates. That money must come from somewhere. It cannot come from the Federal Government.

It can come from local governments by means of raising taxes, by means of raising utility charges. Failure to do so exposes local elected officials not only to fines of \$5,000 a day, but failure to comply could also lead to imprisonment on the part of local firms.

Needless to say, the money must come from somewhere. In many cases it comes from prenatal care, schools, infrastructure, other social programs. I don't think it takes too much imagination to see that those most adversely affected by this system are those who financially are least capable of carrying those burdens.

If, as a result of an unfunded environmental mandate, someone finds that his or her utility bill for water goes up 80 percent over 2 years, which has happened in many communities across the country, far beyond the cost-of-living quota, you can imagine what someone living on a fixed income is exposed to.

I would only suggest that Congress, which is facing many bills now dealing with unfunded environmental mandates, take into account the effect those mandates have on those people living in communities in the United States least capable of carrying the financial burdens of those mandates.

Another subject which I think deserves attention is the quality of science at EPA. Last March the EPA Science Advisory Board issued a study called Safeguarding the Future: Critical Science, Crit-

ical Decision. The Science Advisory Board was asked to evaluate the qualities of science at the EPA.

Those findings were devastating; I quote from them. Among other things, the EPA's own Science Advisory Board found that EPA often does not evaluate the scientific impact of its regulations, and that the interpretation and use of science is uneven and haphazard across programs and issues at EPA. It further charged the EPA with carrying out studies without the benefit of peer review and quality assurance.

Ladies and gentlemen, there are over 9,000 Federal environmental regulations on the books affecting the lives of every man, woman, and child, every business, industry, and community in this country. If, as the EPA's Science Advisory Board has determined, science is on shaky ground, we need to take a close look at the qualities of that science.

Again, those members of our society who find themselves on the bottom rung of the economic ladder are those least capable of dealing with the consequences of our mandates.

There are things that Congress can do to alleviate this situation. Reform Superfund. Much has been said about the plight of communities located near Superfund sites. Unless and until we undertake a thorough reforming of Superfund, those communities are going to continue to be exposed to the inordinate amount of time it takes to clean up Superfund sites, not only to deal with Superfund's much-maligned liability system, but pay close attention to the remedy selection process for Superfund which wastes inordinate amounts of money.

Second, you have it in your power to see to it that the EPA carries out the reforms put forward in safeguarding the future with respect to quality of science. I would suggest that you should make it a prerequisite that the EPA improve the quality of its science before the Agency is elevated to Cabinet level status. That initiative will not come from the Agency itself. It must come from outside.

In my remarks is a quote from Senator Moynihan who recently said, "I suspect that our environmental decisions are based more on feelings than on facts." We need to incorporate facts into our environmental regulatory system. Otherwise, we will be confronted year after year with the kinds of problems that we are looking at now.

Thank you.

Mr. EDWARDS. I don't think you will get argument from either Mr. Hyde or me on the Federal Government's habit of putting a mandate on States without supporting the mandate with sufficient Federal funds to pay for it. Certainly, we represent—each of us represents 600,000 people back home, and we don't like it any more than you do, regardless of how worthy the object might be.

[The prepared statement of Dr. Cohen follows:]

PREPARED STATEMENT OF DR. BONNER R. COHEN, EDITOR, EPA WATCH

Thank you Mr. Chairman. Our subject today is an intriguing one: Are our nation's minorities disproportionately exposed to pollutants? If so, why is this, and what can be done to rectify this situation?

Preliminary evidence gathered thus far does indicate that minorities, as well as economically disadvantaged whites, do bear the brunt of some of our nation's most dangerous pollutants. At the very least, the matter deserves further study. In doing

so, however, I would suggest that we broaden the scope of our inquiry to include the extent to which the very environmental laws and regulations designed to protect us from such pollutants result in those at the bottom rung of the economic ladder also carrying a disproportionate burden of the costs of our environmental regulatory system. Let me illustrate this with a few examples.

Unfunded Federal Environmental Mandates: Over the past several years, our nation's communities, large and small alike, have been inundated with environmental mandates emanating from the EPA which, for the most part, are accompanied by no Federal funding. This has forced financially strapped local community leaders to come up with the money themselves or face stiff fines and possibly imprisonment. Because the money to pay for such mandates must come from somewhere, communities have found it necessary to take funds from pre-natal care, schools, hospitals, and other social services. While all citizens suffer from such practices, the economically disadvantaged, particularly those living on fixed incomes facing skyrocketing utility bills, are hit the hardest.

Congress must come to grips with unfunded Federal environmental mandates. Our nation's cities have enough problems without being drained by dubious mandates which threaten to deplete the already dwindling resources of so many of our local governments.

Science at the EPA: Last March, the EPA's Science Advisory Board (SAB) released a study, *Safeguarding the Future: Credible Science, Credible Decisions*, which should be mandatory reading for all Congressional staffers handling environmental issues. The SAB was charged with evaluating the quality of science at the EPA. Their findings were devastating. Among other things, the EPA's own Science Advisory Board found that, "EPA often does not evaluate the scientific impact of its regulations" and that the "interpretation and use of science is uneven and haphazard across programs and issues at EPA." It further charged the EPA with carrying out studies "without the benefit of peer review and quality assurance."

Ladies and gentlemen, there are over 9,000 Federal environmental regulations now in effect in the United States. Yet, according to the SAB, the EPA's science is on "shaky ground." Environmental regulations affect the lives of every man, woman, and child as well as every business, industry, school, and community in this country. We simply cannot afford to have our environmental laws based on such low-quality science. Again, our poorest citizens are those most susceptible to the EPA's bad science. The EPA must improve its science, and Congress must see to it that it does so.

RECOMMENDATIONS

1.) Reform Superfund. Superfund is our most expensive and wasteful environmental program. Between 80 and 90 percent of the cost of Superfund goes to litigation. Someone other than lawyers should benefit from our efforts to clean up the nation's worst toxic waste sites. This means that Congress must reform Superfund liability and address the equally important problem of the remedy selection process. Much has been made about the plight of low-income communities located near Superfund sites. We cannot begin to alleviate their predicament unless and until we reform Superfund.

2.) Relieve local communities from the burden of unfunded federal environmental mandates. Community leaders across the country are demanding a say in Federal environmental mandates that affect their livelihoods. Local community involvement in Federal decision-making process would go along way toward easing fears and lessening burdens. In considering amendments to the Clean Air Act, the Clean Drinking Water Act, and other environmental statutes, make allowances for site-specific differences when dealing with environmental problems. Stop treating South Dakota the same way we treat South Florida.

3.) Make substantial and far-reaching improvements in the way the EPA conducts its science a prerequisite for the agency's elevation to cabinet-level status. Mere lip service on the part of the agency, of which there has been an abundance over the years, will not do. A firm and demonstrated commitment to sound, peer-reviewed science must be demanded of the agency. Only in this way, can society, and particularly the economically disadvantaged, be spared the consequences of misguided decisions based on unsound science. "Truth be told," Senator Danial Patrick Moynihan recently stated, "I suspect that environmental decisions are based more on feelings than on facts."

Mr. EDWARDS. Mr. McSlarrow.

**STATEMENT OF KYLE E. McSLARROW, ENVIRONMENTAL
ATTORNEY, HUNTON & WILLIAMS**

Mr. McSLARROW. Good morning, Mr. Chairman and distinguished members of the committee. I am an environmental attorney. My practice is primarily Superfund and hazardous waste laws generally. So I would like to pick up where Dr. Cohen left off and focus on Superfund and its impacts on certain communities in our country.

Many companies own sites which no longer conduct active operations. They would like to sell the land, but cannot because the costs associated with meeting today's stringent cleanup standards far outweigh any economic value of the land. Often those cleanup standards do not reflect the likely land use but require that a cleanup take into consideration the remote possibility that an industrial park might become a residential neighborhood.

There are many small businesses that would like to buy such property, but cannot because of the risk of potential environmental liabilities. Indeed, just the cost of an environmental investigation may exceed the value of the opportunity presented. Often, if purchasers are willing, they cannot obtain the necessary credit because lenders are unwilling to assume the risk of potentially catastrophic Superfund liability.

The credit crunch hits those on the lower rungs of the economy the hardest. The threat of liability also deters cities from taking over and redeveloping abandoned property. The result is that these properties, mainly urban, sit idle and unproductive. Added to the lost opportunity of more jobs is the further erosion of the tax base. Instead of urban renewal, we have urban abandonment. Much of the solution will be found at the local and State level, but part of the solution is Federal.

I don't pretend for a moment that urban renewal will be achieved simply by amending Superfund. It is likely the fundamental change will flow from other policies regarding crime, education, and housing. However, environmental laws do have an impact, and if we can make a change for the better, we should do so.

The second major impact of environmental law can be seen in recent controversies surrounding the siting of hazardous and solid waste landfills and treatment facilities that incinerate waste. Even as our supply of waste and our demand for safe disposal methods increases, our hazardous and solid waste laws make such activities increasingly costly. The costs associated with building and operating a landfill can be more than many small communities can bear. The economies of scale therefore drive the solution toward ever larger landfills.

Certainly, other things being equal, cheaper land with available labor has always and will continue to exert an attraction on industry. Together with public opposition that is likely to be generated wherever such a facility is proposed, all of these factors add up to an incentive for private waste management firms to seek relatively rural locations or communities with economic ills that might welcome the activity as an economic investment.

More problematic, however, are the claims that pollution practices of this Nation and enforcement of environmental laws are racist. The phrase "environmental racism" is in my view an unfortu-

nate one. It obscures a definite set of problems that we as a society should confront.

As I see it, what it is about is neither limited to the environment or racism. It is about poverty and political power. The big-picture solution is economic empowerment, not Federal legislation.

Focusing on the environmental issues more narrowly, the approach should be fairly straightforward to keep risks within acceptable levels. It must be obvious to us all that in this country race and income are too often closely related. It is difficult to disaggregate these factors when determining causes, but focusing on causes is not irrelevant. These types of distinctions make all the difference in how we should craft a solution.

Let me first say that I believe the case for disproportionate impacts in terms of health and environmental risks on lower-income Americans deserves attention. There are therefore any number of steps that may be taken to address the equitable minimization of risk to all Americans. By contrast, I don't believe that the case has been made that environmental protection laws have been enforced inequitably. I disagree, moreover, with the largely self-defeating attempt to pin the causes on race to the exclusion of other factors.

It is not my intention to minimize the problems we are addressing here. Rather, we should be clear in our mind what the causes are before we propose solutions.

The study most frequently cited in support of the racism argument was done by the United Church of Christ. But even that report suggested that the percentages of Americans of different ethnicity living near toxic waste sites are roughly equal. The 1992 report of the EPA Work Group on Environmental Equity found the disproportionate exposure of risk related to income and race, but with the exception of lead poisoning in children, the EPA group concluded that it was not possible to relate environmental and health risks to one factor alone.

Let me close by saying that if what we are really trying to establish are solutions to these problems, I think that our time would be better spent focusing on risk rather than causes. I think the valuable lesson that we have learned with these studies is that there is an inequity in how communities face risk, and that we probably need to shift our attention to the idea of cumulative risk to a community, and therefore we need to focus on those State and local remedies that would, as Dr. Mohai suggested, use environmental impact statements, use land-use plans in such a way that they can focus on those risks.

I would counsel against Federal legislation that tries to accomplish the same object.

Thank you, Mr. Chairman.

[The prepared statement of Mr. McSlarrow follows:]

PREPARED STATEMENT OF KYLE E. MCSLARROW, ENVIRONMENTAL ATTORNEY,
HUNTON & WILLIAMS

My name is Kyle McSlarrow, and I am an environmental attorney with the Washington, D.C. office of Hunton & Williams. I am here in my personal capacity and not as a representative of my law firm or any other organization, and therefore the views I express are mine alone.

ENVIRONMENTAL JUSTICE

The topic of environmental justice is a broad one, and is often mixed with discussions of what is called environmental racism or equity. My focus here will be primarily on the impact of environmental laws on minorities, but I will also address these other interrelated issues. Since I am most familiar with the Superfund law and solid and hazardous waste issues generally, the following discussion will primarily address our topic in that context.

At the outset, we need to identify the problem or problems. And then we need to address whether a federal response is required. There are probably three sets of interrelated problems we must address. First, we need to better understand the impact of environmental laws on minorities. Second, we must confront claims that relate to the disproportionate exposure of minority communities to past and current pollution, particularly with respect to the siting of unpopular facilities such as landfills or incinerators. Third, we must confront the serious charge that the benefits of environmental protection laws, as implemented and enforced by the government, accrue disproportionately to white and affluent communities.

1. Urban Renewal or Urban Abandonment?

First, let me say that there is a nexus between environmental issues and minorities, but it is not one that is often highlighted. Simply put, the costs of environmental protection, aside from their direct contribution to unemployment, have a disproportionate impact on our ability to create jobs, and do so in precisely those communities with a significant proportion of minorities who are unemployed or at risk of losing their jobs.

I will focus on merely one aspect of this point, and that is that the development of environmental laws has had a profound and negative effect on urban renewal. Since I am most familiar with the Superfund cleanup law, and related state and federal rules, I would like to discuss for a moment some of their unforeseen effects.

Many companies own sites which no longer conduct active operations. They would like to sell the land, but cannot because the costs associated with meeting today's stringent cleanup standards far outweigh any economic value of the land. Often, those cleanup standards do not reflect the likely land use, but require that a cleanup take into consideration the remote possibility that an industrial park might become a residential neighborhood. New Jersey, for example, effectively prevents any transfer of property from taking place until that property is cleaned up and obtains all necessary approvals.

Second, there are many small businesses that would like to buy property but cannot because of the risk of potential environmental liabilities associated with property that previously had an industrial use. Indeed, just the cost of an environmental investigation may exceed the value of the opportunity. And often, if purchasers are willing, they cannot obtain the necessary credit because lenders are unwilling to assume the risk of potentially catastrophic Superfund liability. The credit crunch hits those on the lower rungs of the economy the hardest. The threat of liability also deters cities from taking over and redeveloping abandoned property.

The result is that these properties sit idle and unproductive. Added to the lost opportunity of more jobs is the further erosion of the tax base. Instead of urban renewal, we have urban abandonment. Take, for example, Newark. If the price of rebuilding in Newark is to create a pristine environment, no one is coming back. And, based on its proximity to New York, it should be fairly valuable land. While there are undoubtedly many other factors at work, this is a perverse effect and should get more notice from policymakers.

Much of the solution will be found at the local and state level. The well-known example of Wichita, Kansas, is instructive. After discovering groundwater and soil contamination that threatened to "redline" the entire downtown sector because of Superfund liability concerns, the city and business leaders crafted an ambitious settlement that allowed needed investment and lending to proceed in order to revitalize the downtown.

But, because many of the problems described above are federal in origin, part of the solution rests with the federal government. I have focused here on primarily Superfund, but it is not difficult to imagine the cumulative effect of the costs of environmental laws across the board. What is wanting is a greater appreciation that those costs, however meritorious the goal, impose disproportionately greater burdens on those economically at risk. Added to the fact that urban industrial areas pose some of the greatest environmental challenges, this means that minority communities probably bear the greatest burden.

I don't pretend for a moment that urban renewal will be achieved simply by amending Superfund. Indeed it is likely that fundamental change will flow from

other policies regarding crime, education, and housing. However, environmental laws do have an impact and if we can make a change for the better, we should do so.

Specifically, the Superfund law and laws like it should be amended so that truly innocent parties—those that purchase property after site contamination or creditors—can enter the marketplace with more confidence. At a minimum, we should craft exemptions for renewal in blighted areas, and establish cleanup standards that recognize the industrial character of a particular site. And while laws that condition the transfer of property on cleanup to pristine conditions seem like good policy at first blush, we should reconsider whether the actual result has been to leave property idle and still contaminated.

II. Environmental Equity

The second major impact of environmental law can be seen in recent controversies surrounding the siting of hazardous and solid waste landfills, and treatment facilities that incinerate waste. I will not attempt to catalogue the numerous sites that have been the subject of controversy, except to note that in general when private parties are the moving force behind opening such facilities, the site location will probably be in a remote area where land prices are low.

Even as our supply of waste and our demand for safe disposal methods increases, our hazardous and solid waste laws make such activities increasingly costly. The costs associated with building and operating a landfill can be more than many small communities can bear. The economies of scale drive the solution toward ever larger landfills. Certainly, other things being equal, cheaper land with available labor has always and will continue to exert an attraction on industry. Together with public opposition that is likely to be generated wherever such a facility is proposed, all of these factors add up to an incentive for private waste management firms to seek relatively rural locations or communities with economic ills that might welcome the activity as an economic investment. The ongoing controversy in East Liverpool, Ohio, regarding a hazardous waste incinerator reflects these tensions very clearly.

More problematic, however, are the claims that pollution practices of this nation and the enforcement of environmental laws are "racist." The phrase "environmental racism" is an unfortunate one, and obscures a definite set of problems that we as a society should confront. As I see it, what this is really about is neither limited to the environment nor racism; it is about poverty and political power. And the solution is economic empowerment, not federal legislation. Focusing on the environmental issues, the approach should be fairly straightforward: to keep risks within acceptable levels.

The problem as it posed by some is very simple: a disproportionate share of the burdens of industrialization, in particular pollution, have fallen on minorities; and attempts to remedy those burdens are actually carried out in such a way that minorities are left behind. Carried one step further, some argue that race alone determines these outcomes, not income.

This oversimplifies a much more complex issue; nor is it clear that race is opposed to income levels or political power is the most relevant factor. It must be obvious to us all that in this country race and income are too often closely related. It is difficult to disaggregate these factors when determining causes. But focusing on causes is not irrelevant. Far from being merely an exercise in semantics, these types of distinctions make all the difference in how we should approach a solution.

Let me first say that I believe that the case for disproportionate impacts—in terms of health and environmental risks—on lower income Americans deserves attention. There are therefore any number of steps that may be taken to address the equitable minimization of risks to all Americans. By contrast, I do not believe that the case has been made that environmental protection laws have been enforced inequitably. I disagree, moreover, with the (largely self-defeating) attempt to pin the causes on race to the exclusion of other factors.

As a general matter, minorities are disproportionately represented at the bottom of the economic ladder in this country. If the set of problems we are addressing are those associated with poverty one can readily concede that those who are economically—and thus politically—powerless are likely to get the short end of the stick across the board, not just when it comes to pollution.

Thus, it is not my intention to minimize the problems we are addressing here; rather, we should be clear in our mind what the causes are before we propose solutions. Do racial factors obtrude into environmental decisions made by private parties and the government? No one could say with any confidence that they do not. But do they on a scale that requires a federal response? One must conclude that this case has not been made. The study most frequently cited in support for the racism argument was done by the United Church of Christ (UCC) in 1987. But even the

UCC report itself suggests that the percentages of Americans of different ethnicity living near toxic waste sites are roughly equal. The 1992 Report of the EPA Workgroup on Environmental Equity found a disproportionate exposure of risk related to income and race. But with the exception of lead poisoning in children, the EPA Workgroup concluded that it was not possible to relate environmental and health risks to one factor alone.

The National Law Journal, more recently, has argued in a widely-cited series of articles that its studies showed that benefits of environmental enforcement were disproportionately distributed to "white" communities; and that the disparity was explained based on "race alone, not income." These "findings" are dubious at best. The information gathered tends to support the conclusion that economic factors are the most relevant. And the very examples offered provide support—surely unintended—for the proposition that a federal response would be the wrong solution.

The major flaw in the National Law Journal's approach undermines the rest of the conclusions. After comparing "white" to "minority population areas" page after page, it comes as a bit of a surprise to find that the difference between the two is that a "white community" turns out to be as much as 84% white. Whereas the relationship of income to the conclusions is straightforward, the focus on race "alone" is strained.

Even aside from these basic flaws, the conclusion that penalties levied by the government for violations of environmental laws are lower in minority communities would be baffling if it were not income related. Penalties are based on the economic benefit of noncompliance. That economic benefit will be the function both of the area in which the facility is located and the costs of pollution control equipment. And here it is relevant that 86% of the penalties studied were agreed upon by the violator and the government in a consent decree. The key question is whether the penalties deter the conduct in question. One cannot tell from this type of superficial analysis. Comparing penalties for different income areas, without more, is as valid as comparing wage rates.

The methodology also reflects a lack of understanding of how the enforcement process works. Did the analysis throw out anomalously low or high penalties, given the decentralized nature of these types of decisions? Did the analysis take into account "clusters" of violations in a given area and the impact on local enforcement resources? Did the analysis take into account the fact that many enforcement cases are settled with low or no penalties in exchange for significant capital expenditures? One simply cannot tell, but it seems unlikely.

Ultimately, the attempt to find a single "cause" will be fruitless. Statistics have proven unhelpful. And argument by anecdote is often misleading. Those who point to a landfill with an overwhelming minority population nearby, will be countered by those who point to Staten Island with an overwhelmingly white population, and so on. There is enough information to suggest that we need to better ensure that risks are minimized in a more equitable manner. Let's deal with that. If the facts and anecdotes show anything, it is the interrelationship of income with political power. And that distinction matters.

One of the unexamined assumptions in the background of this debate is that landfills and incinerators are unsafe. It seems to me that this should be the subject of greater scrutiny. Federal and state laws impose extremely onerous and conservative constraints to prevent the very problem that is assumed to exist. Thus, the health and environmental risks are likely to be low. If they are not, then we are focusing on the wrong thing; if health risks are really too high, then such facilities should not be placed anywhere. It is surely not unreasonable for a community to oppose the siting of a facility that truly poses a risk. But before we can reach the equity argument, there should be a much more thorough understanding and debate about the actual risks involved.

III. Economic Empowerment and Local Control

Economic development is the key to environmental success. And economic empowerment is the key to a fairer distribution of the benefits and burdens of a complex industrialized society. But aside from the case where federal laws impose unequal cost, the solution to the types of problems discussed today is decidedly not more federal power, nor a new federal cause of action. The examples discussed above reflect the limits of federal solutions on local problems. To the extent that disparities occur among communities, those disparities will likely occur whenever the decisionmaker is removed from the community. What is called for is a return of these types of decisions to the community or at least to the closest level of government to the problem.

Some might argue that, as to siting hazardous waste facilities, keeping the siting decision at the states level (currently the practice in most states) would ensure that

needed sites go someplace; one merely needs to ensure the process is equitable. That would be a good step. However, much of the authority for cleanup of (closed or abandoned) Superfund sites currently rests with the federal government. There is probably a case to be made that more of the decisions on targeting the worst sites should be placed in state or local hands. In any event, what is required is less federal control of the waste practices of this nation; or at least more flexibility in allowing less costly alternatives to develop at the state and local level.

The relationship between socioeconomic status and the state of the environment is a close one. This relationship can be seen when comparing less developed nations and advanced developed countries. There is a consistent and marked trajectory reflecting a path on which a newly developing (and poor) country suffers from environmental degradation during the initial stages of industrialization until it reaches a point where the nation's wealth is such that it is willing (and able) to allocate increasing resources to protect health and the environment without sacrificing development. The key question on the international environmental scene today—as seen recently during the Rio Earth Summit—is whether more developed nations have the right to impose the costs of environmental protection on those countries which are still struggling through development. Brought closer to home, we must grapple with the uncomfortable domestic parallel: that what is environmental protection to many is lack of economic opportunity to others.

It is difficult to argue with the proposition that political power has a fairly close connection to levels of income. Particularly at the local level, one has only to reflect on the decisions made every day on where to site prisons or drug rehabilitation centers, as well as the local water treatment plant, to recognize that better off communities tend also to be better organized. My home—Arlington, Virginia—takes pride in the environmental fight against Interstate 66 and the federal government, the cost and length of which would have been too much for other communities. If there is a problem here, it is that local zoning laws and the whole panoply of federal laws that affect property have eroded property rights, thus allowing all levels of government to place the costs of a "public good" on those who are relatively powerless to prevent this from happening, who can expect no thanks, and certainly no compensation. This is elitism, and it occurs oftener than we like to admit. Thus, Congress has seen fit to exempt itself from many of the regulatory rules applied to everyone else, and federal agencies which have had significant environmental problems have been largely immune from effective oversight until quite recently.

On the other hand, one would expect that activities such as prisons, landfills and the like, would exert no attraction except to those who view them as filling an economic need. Over time this has certainly occurred with regard to industrial sites, whether rural or urban, and it is often disingenuous to remark on the preponderance of lower income levels in these areas. The common law has for two hundred years distinguished the situation—known as "coming to a nuisance"—where people move into areas dominated by industrial uses that gradually acquire the flavor of a residential area.

Southeast Chicago, often cited as a premier example of environmental racism, is also a classic example of what was one of the nation's great steel manufacturing centers becoming the site of a subsequent housing boom. The southeast Chicago issue is exacerbated by the fact that it is an example of de facto segregation through the construction of public housing in areas that were previously industrial not residential. And, of course, the community may not even be a poor one. Just over the Potomac, in Fairfax, Virginia, the community of Mantua has had to grapple with leakage from a petroleum tank farm that today looks oddly placed.

The important point here is that it would be more productive to distinguish older sites from new siting proposals. We cannot undo past harms; but we can prevent new ones. I believe that the best way to achieve this is to focus on cumulative risk to a community. Fashioning the right policy for today is rarely helped by lawsuits based on very subjective, to say nothing of controversial, claims. Scientific evaluation of environmental and health risks, by comparison, offers a relatively objective and dispassionate method of decision that goes a long way toward eliminating the types of inequities that exist today.

CONCLUSION

There is an obligation, of course, to ensure the protection of all Americans from health and environmental risks. But unless we are willing to accept a much greater intrusion by the federal government into land use decisions, the most we can do is buttress the political give and take at the state level with the ability to sue in court for intentional acts based on race. Thus, the Equal Protection Clause of the 14th Amendment offers protection when proof of discriminatory intent is available. If

such proof is lacking, the solution is not to replace an analysis of disparate impact from which to infer such intent with a reliance on such impact alone.

A better solution would be for states to enact laws that subject siting decisions to an environmental analysis that takes into account cumulative risks, and expressly require that other alternatives be analyzed. Beyond that, we should strengthen property rights; when the rights of individuals are weakened, the likelihood of discrimination—of whatever type—is much enhanced.

Mr. EDWARDS. Dr. Mohai, I believe the other two witnesses would disagree with you on your theme that race is connected in a major way with the discrimination that exists when people have to live in these contaminated areas. I believe that the other two witnesses would say that there are other factors of importance, and whether race was involved or not, the same people would—because of income, lack of income, education, jobs, lifestyle, et cetera—very poor people, disadvantaged people, people who have not had an equal chance in life that many of us have had are going to live in places like that.

What is your proof that race is involved?

Mr. MOHAI. First of all, I would like to say that what I am arguing is not that race is the single determinant. I agree that income-related factors do play a role.

What I am saying is that race plays a independent and added role to that, and I have to, with all due respect, correct the previous speaker about the United Church of Christ findings. It looked at both the distribution of abandoned hazardous waste sites and commercial hazardous waste facilities; and the statistical analysis conducted was on the commercial hazardous waste facilities, and their results, in my view, were very clear.

The areas where there was at least one hazardous waste facility—the proportion of the people living in those areas that were people of color was twice that of communities without any facilities; and then for those areas where there were two or more, the proportion that were people of color was more than three times as great. If we look at the distribution of those commercial hazardous waste facilities, I think the results were very clear.

As to the EPA report, I reviewed that report on the request of the EPA, along with other people who were asked to review the report. My opinion is that that report did not do a thorough and not nearly an adequate job in terms of reviewing the data that were out there. I would not trust any conclusions on that report based on conclusions that race or income don't play a role. I don't think that that report reviewed the evidence carefully, because I know that I have; and the facts are in the paper that I have submitted to the committee.

I am saying that race plays a role because the evidence, these published studies which provide the analysis by both income and race, have found race to be—I mentioned, six out of nine found race to be a better predictor. Three of those studies were national in scope, including the United Church of Christ study. All three national studies found race to be a better predictor. One has to ask why. I can't believe that it was simply an accident that this occurred.

When one thinks about the social and political and economic conditions facing poor people and people of color, it begins to make sense why race would play a role. One of the problems in terms of

why I believe this problem exists is because of differences in people's mobility in terms of being able to move away from a polluted area. People who are poor don't have the financial means to do so. People of color have an added constraint, housing discrimination, which further limits their options as to where they can move.

Another factor that I believe plays a role is related to what we are familiar with, and that is the NIMBY syndrome, not in my backyard. We do have hazardous wastes and other unwanted land uses, and we can't make them disappear off the face of the earth, so they have to wind up somewhere. It tends to wind up in communities with the least political clout. These happen to be poor communities and communities of color.

Why is political clout low in these communities? People with few resources don't have the means by which they can organize, by which they can get information about decisions that are affecting them.

I think race plays a role because African-Americans and other people of color are underrepresented in government and on corporate boards which make decisions affecting location decisions. The evidence and economic political and social conditions dynamics, I believe, are clear in my mind, as to why they would play a role.

Mr. EDWARDS. Do you think that distressing and unfair situation, which we all admit is taking place in our country, the rather shocking inequities and inequality that some of the groups live through, can be addressed through Federal enactment or enforcement of civil rights laws?

Mr. MOHAI. Yes. Let me say that I see solutions to the problem coming from a lot of different places, so I don't propose that there will be one comprehensive and final solution to the problem.

I definitely see a very significant potential in Federal legislation. We don't have any of that sort today, as you know. It is clear in my mind that if we had requirements which would monitor the distribution of environmental quality in this country—both speakers here mentioned the inadequacies in data and information; I certainly agree with them along those lines. If you look at the studies that I have reviewed, only one was a government-sponsored study. The rest have been done either at universities or by private groups, such as the United Church of Christ. This has not been done by EPA.

Data are not being collected in a systematic way. We could have a requirement to make that be done and do an impact assessment to see what the impact of new rules would be. I propose that we use the criterion that either inequities or injustices be improved or not be made worse as a criterion for adoption. We have a model in NEPA with the environmental impact statement.

Another action that could be taken in terms of legislation is to provide for an environmental justice advisory board to the EPA which could guide and monitor the progress of EPA in terms of addressing the problem. So I clearly see potential here.

Mr. EDWARDS. Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman. I have my own view on a subject that may well be deemed irrelevant or nongermane to this.

The problem of abortion is something I have been interested in for years and I don't try to interject it in everything that comes

along, but I cannot avoid the irony of commenting that zeroing in on people because of their color, because of their status—environmentally zeroing in on them is, of course, reprehensible and ought to be resisted by everybody, including the Government if indeed that happens. I am not sure that that is true.

I think how many times I have taken a train ride with somebody, and they look out of the window and say, this is a dumpy town. I say, no, it goes through the poorer sections of town because that is where the land is cheap and where the railroad built. So you can't judge a town by what you see out the window of your railroad car.

Nonetheless, I can't avoid the thought that there were a couple of movements in this country and in the world to get rid of unsuitable people. It ain't the people who put reclamation dumps in place—although it might be, and we are exploring that—and you are making that a scientific study. But the population control people—not all, but at the back there is what I would call the dirty little secret of getting rid of the unsuitable—there are too many people, and we need more flora and more fauna and less people. They are the ultimate pollutants.

The abortion movement, there are lots of people who believe in the autonomy, the sovereignty of the woman, *uber alles*, but there are others saying there are too many poor people, too many people of color, too many handicapped people. Get rid of the unfit. If you read Margaret Sanger's, the writer who founded the predecessor organization of Planned Parenthood, it is appalling—breeding up, getting the most suitable people, Hitler's idea of having the pure Aryan race.

I can't escape the parallel of trying to get rid of people who are unsuitable whether it is through the environmental degradation or whether it is through surgery, surgery that I dare not use its name. That is a statement that—I don't call for comment by anybody, but I couldn't avoid making that.

The Superfund law disparately impacts on minority areas because those areas have more preexisting pollution which must be cleaned up. The high cost of cleaning up sites prevents development and job creation and contributes to urban decay. So the question is how can we lessen the disparate impact in the inner cities and at the same time provide for needed development and job creation?

I guess, unfortunately, with industrial production, waste is inevitable. I once was a village attorney in a village in Cook County, IL, and we had a famous black scientist, Percy Julian, who had invented a formula that made the chickens reproduce—it was a wonderful thing. But what he did was discharge chemical effluents into the sewers, and in a synergistic effect with other industrial chemicals, we had an explosion. He was very upset that his operation had contributed to this, and wanted to know if we wanted him to just close up and move out. We wanted him there, we wanted the jobs there.

So with jobs sometimes goes pollution, and government has to kind of, through zoning laws and through enforcement of environmental laws, strike a balance somewhere between the necessary

economic development and having a decent place to work and to live in. So that is our job.

So I don't know if that is a question or not, but anybody who wants to comment on how we can lessen the disparate impact between the inner cities and the need to develop economically and create jobs, I would be happy to hear it.

Dr. COHEN. You addressed the question of the inordinate amount of money that is spent trying to clean up Superfund sites. Thanks to advances in Superfund site cleanup technology, that need not be nearly as expensive as it now is.

Putting aside the problems with Superfund litigation, the liability system which I think everyone agrees is a horror show, according to your colleague, Congressman Synar of Oklahoma, there is a Superfund site in Oklahoma which has 242 law firms involved. Everyone is suing everyone because no one wants to be stuck with the burden. Let's put that aside. I think that is the record, but given time I am sure we will top that.

Look at the process by which we, according to the law, must clean up Superfund sites. Most Superfund contractors will tell you that cleaning up 90 percent of a Superfund site is a relatively inexpensive endeavor. The real expense comes in trying to clean up the last 10 percent of Superfund sites. In fact, the average is that 90 percent of the money that Superfund contractors and contractors spend cleaning up a Superfund site will go to cleaning up the last 10 percent. Frequently that is an effort to go back and recreate a pristine state of nature that in all likelihood never existed to begin with.

Some weeks ago Judge Stephen Breyer, Chief Judge at the court of appeals in Boston, MA, addressed a seminar in which I was a participant. He told of a case that came before him. The Superfund site was located in New Hampshire, and he had to decide whether or not an additional \$9.7 million was to be spent on cleaning up a Superfund site. EPA wanted that site cleaned up because one of its people pointed out that after all, children could go into the Superfund site and eat the dirt.

The Superfund site involved was not in a school yard, it wasn't on a community playground; it was in the middle of a swamp. Children do a lot of silly things—some people would say it is a way of preparing for adulthood, when you do even more silly things—but not many children that I know go out and eat dirt and make the effort to go into a swamp and eat the dirt there.

I am suggesting that we need to take a long, hard look at the Superfund remedy selection process.

Superfund is up for reauthorization. It must be reauthorized by the end of 1994. We can save a tremendous amount of money and cut down the ridiculous amount of time it takes to clean up a Superfund site by addressing not only Superfund liability, but also look at the ways in which we clean up our Superfund sites. We are wasting a large amount of money that could be used elsewhere.

Mr. HYDE. That is a good comment. We will think about that when we consider that reauthorization.

Mr. MOHAI. Your point about the impact on jobs as a result of environmental protection and regulation, as far as I have been able to uncover, I have not seen much really good data pertaining to job

loss as a result of environmental regulations. In fact, from what little data that are out there, there seems to be more of a case that there is a lot of job creation potential when you look at the thousands of jobs created as a result of funding construction of wastewater treatment plants and the jobs created in terms of manufacturing and installing—

Mr. HYDE. Professor, the Alaskan pipeline was a classic example of where environmental groups just raised all kinds of heck about that. It was going to damage the caribou, as I recall. The results were, more caribou flourished because they huddled up to the pipeline.

We have the spotted owl controversy. I am surprised there isn't data where the environmentalists prevail and jobs are foregone especially with the Endangered Species Act. Haven't dams been stopped because snail darters—I may have my species wrong, but you mean there is no correlation between the two?

Mr. MOHAI. I don't think there has been an effort to collect good data to analyze that. I couldn't comment on some of the examples that you mentioned, like the Alaska pipeline, because I haven't studied that.

If we look at the issue of disproportionate exposure and burden of pollution, one of the questions that comes to my mind, when jobs versus the environment comes up as a tradeoff or a potential tradeoff is that the issue of whether we are really proposing to have a policy where we keep the clean industries for white communities and neighborhoods and reserve the polluting industries for communities of color, that is a question that comes to my mind; and I think we should think about whether that is the kind of public policy that we want.

I think if we are aware that these inequities occur, we can debate the causes, but if we know these inequities occur and they are likely to continue if we don't take some proactive measures, then I wonder what that speaks of us in terms of our sensitivities about some of these issues?

Mr. EDWARDS. Thank you very much, witnesses. You were all very helpful and we are grateful that you came today. Thank you.

Mr. EDWARDS. Will the second panel please take their seats?

We welcome the panel. Will you please raise your right hands? [The witnesses were sworn.]

Mr. EDWARDS. Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

The Reverend R.T. Conley is director of the Dallas Area Southern Organizing Committee for Economic and Social Justice. He formed the West Dallas Concerned Citizens for Cleaning Up Pollution and the New Start Program for children in his community. Reverend Conley also works with the Texas Network for Environmental Justice.

Since the 1950's, the Reverend Conley has been concerned about the high rate of sickness in his neighborhood. West Dallas is plagued by 70 polluting industries and a 50-year history of lead poisoning.

Pam Tau Lee is a labor health educator with the Labor Occupational Health Program at the University of California, Berkeley. She also works with the Asian Pacific Environmental Network, the

National Toxics Campaign Fund and the Southwest Network for Environmental and Economic Justice.

For the past 22 years, Ms. Tau Lee has promoted the health concerns of workers in the Asian-Pacific community.

Susana Almanza is co-chair of the Southwest Network for Environmental and Economic Justice and a founding member of the Texas network. Ms. Almanza chairs People Organized in Defense of Earth and Its Resources. PODER is a grassroots organization in Austin, TX, where they have recently succeeded in stopping the placement of a gasoline tank farm in a residential area.

Ms. Almanza works at the Texas Center for Policy Studies, a nonprofit organization that offers research, technical assistance and policy development services on a variety of environmental issues.

Tom Goldtooth is the environmental coordinator for the Red Lake Band of Chippewa in Minnesota. He is also a national officer of the Indigenous Environmental Network, where he is working to develop an environmental infrastructure including codes and regulations for a network of tribes and grassroots communities across the United States.

Mr. EDWARDS. Reverend Conley, you may proceed.

STATEMENT OF REV. R.T. CONLEY, DIRECTOR, DALLAS AREA SOUTHERN ORGANIZING COMMITTEE FOR ECONOMIC AND SOCIAL JUSTICE, DALLAS, TX

Reverend CONLEY. Mr. Chairman and distinguished guests, I am glad to be here.

Mr. EDWARDS. Without objection, your full testimony will be made a part of the record.

Reverend CONLEY. I am glad to be here because for so many years I have tried to present our case to the Government, to the cities, and I am here for one reason. I am pleading for justice.

West Dallas—in 1969, it was brought to the attention of Dallas, TX—I won't go through all of that because I prepared a history. At that time when we brought the problem to the city it was ignored, it wasn't a problem in West Dallas with the land. It continued, and kids in that area were suffering, parents were suffering, losing kids. And arms, legs, aches, heart trouble—and I am not blaming all that on lead. But that was the thing confronting us in 1969. We brought it to the city's attention.

I can assure you that this was not done just because they needed somewhere to put the waste, because it could have been stopped in 1969 when I brought it to their attention.

In 1993, today, when I left, coming here, I got a letter from the EPA which made a statement that they found 365 more contaminated sites in this one area. That is a long time from 1969 to now.

I hear the statements made here. You know, I deal with the community and we are dealing with lives. If the jobs are there and the people are not able to do them, the jobs don't help the community; I think we need to focus in more on some kind of help, a policy or something for areas that are contaminated with these conditions, the sickness that has been caused in the area, rather than just looking and talking about what it is going to cost.

We have been—one thing happened in West Dallas in the project. I hear them talking about race and I hear them saying it is not racist. In the area I live in, it is white, black and Spanish.

Back in 1966, 1963, somewhere along in there, the city moved the whites out of the project that is next door to the lead smelter and moved blacks in. Tuesday morning before I came here, I went and talked to a gentleman that lived in the project and asked him. He don't know why they moved them. He said they moved them in 2 or 3 weeks, told them they had to move out. They know then that it was a problem with the lead.

To this day, I cannot get a record on my family from any hospital. You can't find them. The only clinic that has helped in West Dallas was helped in my church in 1986. And the city of Dallas made an agreement, they—I am skipping because I don't want the light—I can't look at the time, so you have to stop me—they said that if you could prove that it is a problem in West Dallas—now this is from 1969 to 1985-86—if you can prove it, we will set up a clinic in your church.

I asked for physicals. I didn't want no blood tests. We look at the blood tests, certainly, at the time the blood went to the bones, so I wasn't interested in the blood tests. I wanted the health analyzed.

In that survey, the city agreed with me that they would give me the data on the program that we had put in the church. After—we were going to do it for 6 months. After 6 months, they told me, Reverend Conley, we can't stop. We haven't seen anything like this. Only time we have seen this many people sick is on the border of Mexico. So we are going to have to continue.

They continued on for a year in my church. To this day, the city of Dallas won't give me the results of that program.

I want to say this in closing. If there is any way possible that something can be achieved out of me coming here and trying to represent West Dallas because of the lead smelter and because of the contamination—young kids are still getting sick, being contaminated with lead. I heard the gentleman say I don't know any kids that eat dirt. I doubt if he knows anybody that lives in a \$35 home, lives in a community where there is no cement, where you live for 35 years with no water, and drinking water out of barrels with lead in the barrels. So I can understand that because he hasn't been there, he hasn't experienced that.

But I want to tell you that such things happen today in this country. Just before I come here, just before I left, coming from Dallas, they said it is cleaned up. EPA cleaned up, been cleaning up for the last couple of years.

I asked Tuesday night, how much are you leaving in the ground after you moved the lead? You are going three inches. How much are you taking out? What is being left? He said well, I tell you Mr. Conley, what is being left is, below 500 is being left. We got to figure, 4,000 parts to a million was left in one cleanup area. Another one, 570 in another area that had been cleaned up. We are talking about the Government's money.

I asked them, what are we doing, playing games? Do we have that kind of money to waste? I said, why couldn't you go down another 6 or 7 inches and get it all out? But I couldn't get the answer.

If there is any way possible, I am looking for help for the problem we have. Kids are dying and I am looking for justice.

Mr. EDWARDS. Mr. Hyde just spoke to me and we are going to consider taking a very hard look at that situation down there, and we are very grateful for your description of it. Thank you very much, Reverend Conley.

[The prepared statement of Reverend Conley follows:]

PREPARED STATEMENT OF REV. R.T. CONLEY, DIRECTOR, DALLAS AREA SOUTHERN ORGANIZING COMMITTEE FOR ECONOMIC AND SOCIAL JUSTICE

WEST DALLAS

1. Preface to Interview with Reverend R.T. Conley

West Dallas residents are facing the irreversible health effects of lead poisoning among their family, friends, and co-workers.

The RSR lead smelter and its remains sit adjacent to a grade school and across the street from public housing apartments. The neighborhood is 95% African American and Latino. The smelter began operations in 1929. In the early 1980s, at the insistence of a residents organization, the City of Dallas and then Attorney General Jim Mattox brought a lawsuit against the RSR for contamination. Simultaneously, some residents brought a separate law suit for personal damages against RSR. The plant was closed in 1984, and the court ordered RSR to pay for a \$3.8 million cleanup of the area. Ironically, since 1981, SR had been trying to arrange a cleanup of areas where the soil had more than 1000 parts per million of lead. At that time, EPA discouraged RSR from carrying out a cleanup and refused to sign a consent agreement with the company.

The 1984 court ordered cleanup included spot removal of contaminated soil containing lead concentrations greater than 1000 parts per million (ppm) and in areas where it could be demonstrated that high levels of lead were causing lead poisoning. Even at the time, however, there was evidence indicating that the use of the 1000 parts per million ratio as a guide for lead contamination was way too high. Today the EPA defines contaminated soil as having lead concentrations of 500 parts per million though there is evidence to show that contamination occurs at much lower levels. The use of the 1000 parts per million level back in 1984 resulted in large areas of the West Dallas community not being cleaned up. Moreover, this first clean up did not address the presence or removal of the lead slag and battery pieces that had been distributed in gravel and open spaces throughout the neighborhood.

Furthermore, no one tested for lead levels inside the homes of this West Dallas community. In court testimony, EPA regional officials said that they did not have the responsibility or authority to test for or clean up lead from inside homes. At the time of that statement, however, there were many sites throughout the country where EPA had both tested and conducted lead cleanup within homes.

During the first cleanup residents continued to be anxious that there were high levels of lead in their blood. In 1985, at the urging of some of the residents, the city sent blood samples to the National Center for Disease Control. The CDC confirmed that lead levels were too high and monitoring and testing needed to continue. The CDC sent their report to the City, the EPA, the Attorney General, the District Judge, who heard the first court case, and to all the attorneys representing clients in private litigation against RSR. The report was virtually ignored by everyone except, of course, the residents. In 1986, the City of Dallas declared the cleanup a success.

But in 1987, with continued pressure from the West Dallas community, the city did some further lead testing in the area and found same "hot spots." At least 21 children who were in the vicinity of the "hot spots" were taken to Parkland Hospital for painful chelation therapy, which helps to clean lead from the body. There was never any public disclosure of the hot spot, nor of the chelation therapy given to the 21 children. (In 1984 the Center for Disease Control determined that lead poisoning occurred in a child when there is 25 micrograms of lead per deciliter of blood (25 ug/dl). But today new warning levels advocate action at between 10 to 15 ug/dl.)

Essentially, from 1987 until 1990 neither the city, EPA, nor any other public agency took comprehensive actions to remedy the effects of lead poisoning on conceivably 20,000 residents of the West Dallas community.

In 1991, Reverend R.T. Conley and the West Dallas Coalition of Environmental Justice brought a class action suit in Federal Court against EPA. The class action

suit does not ask for personal injury damages, but it asks for 1) an adequate environmental clean-up of the West Dallas neighborhood, 2) halting of future pollution and 3) proper testing, monitoring and medical treatment of affected residents as well as (4) social programs such as job training.

At the same time that this suit resides in federal court, the RSR corporation continues to operate a battery crushing and lead fabrication products across the street from its former lead smelter. It is legally permitted to emit 500 lbs of lead every year. And a mile from the RSR plant is another lead products operation that has been continually cited and fined by the City of Dallas for violating the city's environmental laws.

Meanwhile, Dallas city planners dream of revitalizing the West Dallas area by working with the private and public sector to make it a mixed-use neighborhood. The cement of the dream seems to be the acquisition of \$83 million grant from the federal Housing and Urban Development Agency to modernize the existing West Dallas public housing project and to build additional units to increase the capacity from the current 900 families to a total of 2000 occupants.

And today EPA is considering whether West Dallas should be ranked as a Superfund site.

The above is the chronological story of West Dallas, but what follows are not only more facts, but the heart of the story told from the point of view of Reverend R.T. Conley.

Reverend R.T. Conley, Pastor of the New Waverly Baptist Church, is struggling with the effects of lead contamination on their families and their community. The 63 year old Reverend Conley grew up catty-corner to the RSR lead smelter, and raised six children there. He leads a congregation in the smelter's shadow. With the arrival of his grandchildren, Reverend Conley today has been fighting for the lives of three generations in a kafkaesque battle that would be the undoing of most mortals. This man's remarkable character is most reflected in his stubborn demand for what is right even while knowing that his own health—and the health of his children and friends—has been irreversibly damaged by poisons that have devastated his community.

The following is a transcript from interviews with Reverend Conley which took place in Houston and in West Dallas in March and April of 1992.

[for side bar: "Lead's specific neurotoxic effects include impairments to IQ level, short term memory, and reaction time; it also impairs the ability to concentrate. In the human body, lead is a potent poison that can affect individuals in any age group. To a lesser degree, storage also occurs in the kidneys and the brain. ... Lead's persistence in the body is unequalled by virtually any other toxin. Many public health experts now believe that lead presents a 'continuum of toxicity,' in which the slightest exposure contributes to an adverse result somewhere in the body." (pg 1-2 Legacy of Lead: America's Continuing Epidemic of Childhood Lead Poisoning. EDF, March, 1990.) "Treatment for lead poisoning is a partial cure at best. It is expensive, does not remove all the lead in the body and cannot undo neurological damage." pg 34 From EDF, March, 1990

2. Interview

It started in 1969. The lead plant had been there operating probably since the 1930's, something like that. In 1969, I noticed from my house something coming out of the plant's stack. I had to go to work at 3:00 in the morning and I got up and smoke was coming out of the stack. It was like fog. Then I noticed when I got to work the paint was coming off my car, and it was spotted all around. So I said something is wrong. I went back home that evening and I noticed on the side of my house—I lived in a white, wooden-frame house—the paint on the house had melted like, you know, it had just run down like it had melted. At the time I didn't know what it was, but I went checking in the neighborhood and come to find out that a lot of cars were spotted. So I went up to the lead plant the next day and told them that there was something coming out of that stack that was getting on the people's cars and they need to do something about it. They told me they would check it out but they didn't know what it could be. And that's when it started.

After two weeks I didn't hear anything so I went back to the plant because it was still doing it and the guy told me, "No, that's coming from the freeway, it's not coming from here." And that's when I started going around and checking the garages and the old cars that were parked in the lots. Well, one side of the car would be just eaten up and one side wasn't ... actually we—at the time I was saying it was the lead but just this year come to find out what they were doing. They were melting those batteries and there was acid, see, getting in the air and coming out and that's what was taking the color off the homes, you know, and off the cars. And—but anyway that's what happened ... they recycled batteries. They used to take the

batteries—all the batteries and break them up. They used to separate them years ago. They would take and separate them and melt them down and that's where they'd get the lead from, recycling batteries. Recycling would carry all this pollution in the air. If you were working in a lead plant, they checked your blood and if your lead level was too high they had to lay you off so many days.

They did that in 1938. We have records from the plant showing that it was dangerous . . . but not as bad as it really is. But these men working in these places—they had to get them out of it. We got a lot of guys working in these lead plants that are in bad shape—no good at all now. Lead doesn't leave your body, it settles in your bones. I imagine it was 50 years, see, and they didn't ever tell anybody. Now let me back up. Before I found out what had happened, I had six kids and we lived on the same property with the lead plant . . .

During this time we didn't know about the lead, but they knew. I had a boy—one of my boys was born and one side of his hair wouldn't grow. I had one girl at the age of 19, she had to wear a colostomy bag on the side, had cancer, colon cancer. I had one girl at the age of 23 . . . she had to have a complete hysterectomy. And I have another boy that has a blood disease—he can't produce certain cells in his body so he has to take pills, one every other day I think it is. All of this come down during the time we were living there and the tragedy is, there were hundreds of kids like mine . . . Well, we would take our kids from West Dallas to this clinic and it would be hundreds of kids. You couldn't get in there. Kids broke out with sores, their gums would bleed, blood run out the corner of their mouth, legs would hurt. (When I was young we'd play ball and we'd have to prop kids legs up on boxes after they played for so long from their bones hurting.) But it's just all kinds of different things, people dying, just dying for no reason at all, violent tempers, fights.

The sad part is that the City knew it, the State knew it, and they were sending the plant letters—fining them. E.P.A. wasn't in existence then. But the City knew. You know what I'm saying? . . . even the doctor wouldn't tell the community. That's the worst part. Be fair when it comes to life. You can cheat me when it comes to my money, but when it comes to dealing with a person about their life . . . If you can't trust a doctor—now a politician you know you can't trust, but a doctor has to tell you can trust him. You'd go to Freeman Clinic, you'd go to Parkland, and you sat down and you asked them what's wrong. Well, your kid have impetigo which means that kids were getting into something that's not clean. I said, what do you mean? My wife has been working for white folks for 30 years and she donates two days a week at Scottish Right Hospital, cleaning and just volunteering her time. So, now when you tell me the reason why they are getting these diseases and breaking out in sores, that it's because of not being clean or they're hearing the wrong thing, I say it just doesn't add up—then I was arguing. Now this was before I came to find out about the lead. Now I'm telling you about the history of my family. The doctors would tell you: "No, that's what it is. All you can do is treat them and you put this on them." The kid's skin would look like alligator skin. It would be like alligator skin. Some parts of the skin would be real dark and one side would be real light and just you name it—all kinds.

This was back in about '50, '55 . . . when there wasn't any regulation about how they pollute. They dumped that stuff out there. Even when I was young, not a kid, when I was 19, they would come from the lead plant and dump this stuff in people's yards, in the driveway. See, we didn't have streets, we didn't have water, wasn't any water out there. We didn't have sewerage; we would get water out of barrels to have your bath, you know. The pollution was steady and folks didn't know. . . . we had gardens out here and folks were eating it. And the City—we checked back—come to find out the City knew it back in '67, they knew all of this.

Okay, when they came in with the [federal housing] project, I'm going to skip some, because when they came in with the project I want to show you how the conspiracy [works]—that we're so racist to the extent that a human being is not a human being. But I want to show you what happened. See we had one of the best relationships in West Dallas for white, Spanish, and blacks, and they built a project. We all were raised up out there together and played football together, baseball, we had a baseball team. So they built the projects and they put the white rednecks near the lead plant, right in the heart of the contamination. They put the blacks way back on the far end off of Hamilton. They put the Spanish back down about Singleton . . . at this time. And after I brought out about this contamination there was something going on with the problem and I didn't have no idea that the lead we had in our yards, our yards were being contaminated. And I even asked the City to come out and check the side of my house and see these homes because the stuff was, you know, still coming out in the car and some low-rent homes. I think this would have to be around about, well about '70, have to be around about '70 or '71.

So they move all the whites out, they move blacks into this contaminated area and continually said it wasn't a problem.

Okay. I went around the neighborhood and got a petition together, not knowing it was a lead problem, but I knew it was something coming out of the plant. I didn't know about lead contamination or, you know, what it does to your body or how it effects you. All I knew was that a lot of folks were sick in the community. People would die for no reason, just die for no reason. A lot of people had mental problems. On my street alone it was five people that had mental problems, five. And every home you go in, somebody was sick. They had something wrong. And you go to the doctor: and they say, well, you're eating too much pork. Man, what you saying, pork going to cause everything?

So anyway when we brought this into the forefront with the petition finally folks went to talking about the medical problems . . . my petition said we wanted to bring to the attention of the lead plant that they are putting something—letting something out of the stack that is affecting our homes. I wasn't discussing the medical problems . . . 'cause I didn't think the problems with my kids that I had back in them days was caused from the lead plant. So really we were addressing what it was doing to our homes and the cars . . . I didn't know it was acid because at that time we thought it was lead. It was so strong during the time when they were melting, you sat down to eat and you had to close your window; it was like you were eating on a penny, but there was that acid. It's just come out really—the effect of acid and lead and arsenic. That's what they found in there, a lot of arsenic, lead, and chromium and something else. It's supposed to be seven [chemicals] out there that they are finding in the streets.

So it's been like a conspiracy and after we got together and pointed it out—this was the first time that they said it was medical problems. And they told us the effect of lead, the medical problems may be from the lead: the kids' nose bleeding and the gums bleeding

It came out because I was talking about the kids being sick. Five boys and my son with a blood problem in his class. He was in high school—and that was kind of unusual, you know. For five kids in one class . . . and the City set up a—well, actually a doctor—a white doctor that worked at Princeton High School. After I kept on, he told me that my son was awful sick—the problem, you know, he had with his blood. But he the doctors wouldn't say it was caused from the lead. But he said, “well, now, Mr. Conley,”—I wasn't a minister then—he said, “you got a problem out here in west Dallas.” He said “I have told the City they need to put in more clinics out here because there's a lot of sick folk here” and that's when they first started up a clinic at the schools this was about in the '70s.

They came in with the testing kits, and they opened up a special school for, I think, it was 18 kids that they took . . . someplace else and tested them. They never did tell us about no lead. He [the doctor] didn't even know they were testing for lead. They were testing for lead because they couldn't produce certain cells in their body. Two of the boys died from this. And this doctor raised so much—he was so concerned about it that he resigned because he couldn't get the support of the school to really get into it.

So that's when I began organizing trying to get some more input and actually we really got the opportunity with a white guy named John Fullinwider. John was the one and Tillie Baylor who really got out there. Now, I got in it, I was in it, but I had stepped back. Actually who brought it to the forefront was John. John, Tillie Baylor, and Pat Spears got in behind it and started to working it for more information about the health problem . . . they [the school clinics] started testing for lead. We're in the '80s now. And they ended up with a lot of kids with high lead and adults too. And when they done the test, come to find out how many kids were damaged and how many were sick. That's why they won that lawsuit. We went to court—Concerned Citizens of West Dallas.

Yeah, we got the plant closed up. They closed up the smelting after the lawsuits. It's been right at \$5 million to clean up the lots. Could you believe that? They went three inches on top of the ground—biggest rip off ever could happen to any community, now they went three inches taking the soil off the top, saying that this would solve the problem and everything. Once you do that, everything will be all right. So the community went along with it . . . They did five blocks in each direction around the plant. . . . It was one mile. The company paid for it . . . wasn't nobody sued but the lead smith . . . \$27 million come in, for damages. But it's just a small amount, a small group people that got paid. They put the escrows up for the kids, you know, they got so much a month when they get 30, 32, 35 years, they can get it all. That's the way they got it. It was a hundred families. All that didn't go to the families, I just give you an overall of what the cost, including what the lawyer got . . . each family gets \$85,000 or something like that, and one gets \$65,000. But

they really just botched the whole thing up . . . They was suppose to come in and move all the contaminated soil, taking it, putting it in the dump site like they're doing now. They came in and got my grandfather, got a bunch of Mexicans gave them some shovels and a pickup truck. Now, in the projects they had some big trucks doing the job. . . they took the dirt and took it around the river around Bernell Drive and dumped it on a lot. Do you know what I'm saying? Dumped it on a lot—so that was a good cleanup at that time, they would have thought.

And then in '85 these people was calling me and saying: Reverend Conley, my kid is sick and I don't know what it is; nose bleeds, headaches, and gums, the same problems. So I get together and called a neighborhood meeting. Everyone knows there's still a lead problem in West Dallas then they don't want to talk about it. And I kept pushing it. I said, "No, they're wrong." So I called this meeting. I had 1100 people at this meeting. . . in '85. And people were bringing their kids saying my kids are sick and this—and so I went to the City and they agreed to do a study.

So they did a health study. . . They did that for six months. After they checked, the nurse—off the record—said "Reverend Conley, I've never seen nothing like it; it's a disgrace that people have been living in these conditions." These kids are all coming up with high lead. They don't know where it comes from, so they say: "Well, probably what it is, they're eating paint off a window." Now ain't that stupid? Off the window sill that's where it's coming from. I get the city council here and I say: Man, do you think we are that crazy? We are going to sit and let our kids eat paint off a window sill. They said, "well, kids will do that." I said, your kid do it? "Well, no." My wife and mine wouldn't either. I said no it ain't, it's something else that's causing it. I said the cleanup wasn't done right. And they all said next year we will start fighting. We've been having a check, come to find out sure enough, a lot of kids are sick just as bad. And they start doing some more testing. "Nah, we can't find no lead, ain't no lead around here. No where, ain't no lead." So, I got the news media, called a meeting, got the news media and said look I've been out here 50 some odd years, I was a kid here. They hauled this stuff down the street, put it in our driveway. See, before we were talking about it coming out the stacks, it hadn't ever been brought out that they built a [housing] project on top of lead. See all that waste, from the battery, the battery chip—highly contaminated—but we had never thought about it until I—just after they say there wasn't no lead, I said wait a minute. Suppose that there were battery chips dumped in the community and lead slag dumped in the community, is that contaminated? Oh, yeah, they said, but that's not the lead plant that you are talking about coming out of the stack. I said no I'm talking about it being dumped in our yard—that's what I told them.

For 40 something years they've been dumping it in this area and that's when we brought out about the lead slag in the yard . . . so that shows you the first study didn't even check it for the first time. And after I brought that out and they started checking and went around. They said, "well we found some battery chips in some yards." So I met with the—with the city council and the guy from Washington . . . it wasn't E.P.A. Somebody else, I don't know, he might have been from the E.P.A. But anyway, I presented slag for the first time and they were saying huh, there ain't no problem with slag. A doctor went with me and he said, "Reverend Conley you got a dangerous thing here." He said "do you know when you pick up that slag in your hand, you're contaminated with lead." I guess the way it gets into your skin is that easy. And I showed him tons, tons of it, miles of it, what we use to play in as kids. See, it is all around. Slag, he couldn't believe it.

Now, I want to show you how the City did. In the early 1990s, I met with the city council, I mean the mayor, and one of the officials over the district. They said there wasn't any problem with the slag; it wasn't in the community. So I got the news media and I carried them out here and showed them all these [slag] sights. See, Ya'll follow me. I got in the car and showed them where the battery chips were. I showed them the park that was built up off of battery chips and slag. I carried them to the [housing] projects where they dumped the slag. I just took them to different spots and showed them where it was dumped throughout the community. And they came back after running tests, and said, "You right, you sure are right." So see, that's what happened. Well, the city couldn't get away from that. They got a problem. So they went all around and filled about—I imagine about ten or fifteen dump sights with tons of slag. They said the size of two Cowboy Stadiums were filled with the contaminated slag. I ain't talking about the battery chip. And they said, "Oh well, that's all right, it's not too bad." I mean we got two Cowboy Stadiums full.

Right now there are two lawsuits going. I filed for a class action suit, so the whole community would have an opportunity to come in and be checked by a specialist, not just for high lead, but for health . . . a suit to get a health study, not a suit

for removal money, or for bodily injury, but for health. I'm interested in putting some clinics out here for the young folks and senior citizens. The only way we're going to solve this is that we—we in the community—are going to have to keep pushing on them. They're either going to have to move us out and I don't see that in the cards. The Lord is going to get them. I tell them all the time—your day is coming, buddy, for what you're doing to people in West Dallas like you've been doing all these years. The Lord is going to bring it to your remembrance. God is going to catch up with you. You might get rich, you might make money, but you are going to face what you've done. You can't mess with people like this and knowing and holding office and let them live in these conditions and not try to correct it and that goes for the hospital, the city of Dallas, to government, and Austin. You're not dealing with motors in a car, you are dealing with lives and once you are contaminated with lead, you are contaminated for life.

Mr. EDWARDS. Ms. Lee.

STATEMENT OF PAMELA TAU LEE, LABOR HEALTH EDUCATOR, OCCUPATIONAL HEALTH PROGRAM, UNIVERSITY OF CALIFORNIA, BERKELEY

Ms. LEE. Thank you for the opportunity to address the committee today. I am from the San Francisco Bay area and I have been to the Alviso Superfund site where there is an asbestos levee that circles the Latino community, and the gentlemen may need to visit there, because I was there and I watched the children playing on this Superfund site and we were rights across the street from a school that was in session.

Today I would like to talk about the issue as it relates to Asian-Pacific Americans. Environmental justice, for me, means the right for everybody to live, work and play in a safe and healthy environment. I believe that we need to look toward reducing our reliance on toxics and how to bring the methods of toxic use reduction to make it accessible to our communities.

The testimony I have titled "Misleading Assumptions and Environmental Injustice: The Case of Asians and Pacific Islanders." I believe that Asians are one of the most misunderstood groups in the United States, and I feel one possible explanation is the model minority that has blinded society to the social and economic problems that exist in our communities.

In 1991, 2,000 Asian and Alaskan native workers were specifically excluded from the Federal Civil Rights Act. This policy of exclusion has plagued us ever since we were brought here to first build the railroads in the 1800's. Hate crimes against Asians have reached an all-time high, and for that reason, I would like to submit for the record the 1992 report from the U.S. Commission on Civil Rights on Asians, as well as a copy of "Race, Poverty and Environment," which deals with the issue of Asians and Pacific Americans.

Mr. EDWARDS. That will be made a part of the record.

[Information retained in subcommittee files]

Ms. LEE. But absent from the report from the Commission on Civil Rights are issues of the environment, and I have attempted to identify these in the testimony, although more study needs to be conducted.

In my testimony I refer to examples of Asians living on or next to uncontrolled toxic sites—and these are middle-class Asian communities—high rates of contaminated fish consumption, land use

issues, pollution in inner cities, poisoning at the workplace, in the factories and in the fields.

Although I am not as familiar with the issues of what is going on in the Pacific islands, I felt it important to refer to the poisoning that is going on in Hawaii and the Marshall Islands and other Pacific islands due to military bomb testing and toxic dumping there. In the native islands, it should be noted that Hawaiians don't have the same sovereignty over their land as Native-Americans; and as a result, their sacred lands are being destroyed.

Today I want to talk about a site in California called the Laotian Gardens. In 1987, there was a Laotian family living in Richmond, and they discovered that they were being poisoned by toxics. A nurse went to visit this family and noticed that their house was next to an abandoned factory designated as a Superfund site. Along the fence that separated the house from the factory, she noticed there was a hole where, on the other side the family was growing their vegetables to eat. A sign on the fence had a warning posting the dangers. However, the sign was printed in English.

The test that was conducted to monitor the children and the other families, people in the family, noted that the children had very high levels of lead in their blood. On the other hand, when they tested for the fathers, they found 50 micrograms per deciliter of lead in their blood, which is very dangerous. It turned out that these men were not only being poisoned by the lead-saturated house they were living in—they had to be moved out—but that they were also being poisoned at the radiator shop where they worked. They worked with lead fumes when they soldered the radiators, and the dust that is in the factories.

The previous speakers talked about economics. Besides the issue of housing discrimination, race is one of the major reasons why economics is such a crucial issue facing our communities. Dr. Robinson in a study noted that workers of color with the same education as compared to white workers were 37 to 52 percent more likely to be trapped into the most hazardous and dangerous jobs, which are low paying, with very little opportunity for advancement.

Getting back to the issue of lead, for example, where people work, live and play, it further illustrates the need for coordinated interagency cooperation between the EPA, OSHA, NIOSH, HUD, with the Judiciary Committee playing an oversight role.

I feel that, for us, standards and regulations are just mere words on a piece of paper. They don't mean anything in reality. Agencies need to function in a way that is accessible to our people and that there is enforcement.

Finally, I want to state that I feel that for Asians, the policy of exclusion really has to be reversed to a policy of inclusion, and that it is a long time overdue; Asians need to be involved in policy decisions that directly affect them. Thank you very much.

Mr. EDWARDS. Thank you for excellent testimony.

[The prepared statement of Ms. Lee follows:]

PREPARED STATEMENT OF PAMELA TAU LEE, LABOR HEALTH EDUCATOR, OCCUPATIONAL HEALTH PROGRAM, UNIVERSITY OF CALIFORNIA, BERKELEY

Misleading Assumptions and Environmental Racism:

The Case of Asians and Pacific Islanders

In the last decade there has been growing evidence that environmental degradation does not impact everyone equally. This phenomenon is called "environmental racism" because persons and communities of color are the most frequently and severely affected. For example, a 1983 report issued by the U.S. General Accounting Office documents some such inequalities, related to the siting of hazardous waste landfills in the South.¹

While a number of published studies cite the effects of environmental racism on the African-American, Latino, and Native American communities, very little has been written regarding Asian and Pacific Islander communities in the U.S.

One possible explanation could be the "model minority" myth, which has blinded society to the realities that Asians and Pacific Islanders face in the U.S. This myth stereotypes most Asians-Americans as having "made it" and achieved success. A related myth is that Asians are all "alike" in culture, language, and physical appearance.² Other stereotypes view Asians in a whole range of self-contradictory ways: they are seen as inscrutable, as industrious, or as dangerous hordes. They are called "Japs," "Chinks," or "Gooks." In other words, they are considered sub-human. As a result of these myths and stereotypes, Asian-American history has been marked by pain, neglect, oppression, and exclusion.

EXCLUSION AND PREJUDICE

Despite the more positive images of Asian-Americans as a "model" minority, exclusion manifests itself in almost every facet of our lives - past and present. For example, beginning with the racist Immigration Exclusion Laws, which restricted immigration in the 19th century, Asians

were unjustly made scapegoats whenever economic conditions began to decline. A visit to almost any Chinatown or Manilatown will find elderly bachelors in rooming houses, often without hot water, living out their final years in loneliness because they were forbidden by the American judicial system to marry or bring over a wife. In California, these American workers take pride in calling themselves "Long time Californ." Some friends of mine were shocked to find that the deed to their house contains language forbidding owners to sell homes to Chinese. They are both Chinese. Insurance companies as late as 1970 advised their agents not to sell auto insurance to Chinese. They said that Chinese clients would not be able to testify in English in the event they had to go to court.

While many people would like to think that this era of official discrimination is now behind us, the U.S. government just two years ago allowed a group of Asians and Alaskan natives to be excluded from protection under the 1991 federal Civil Rights Act. In 1974, 2,000 Asian and Alaskan native workers filed suit against Alaska's Wards Cove Company for discrimination. The suit charged that the workers "were subjected to various forms of racial prejudice by the all-white management of Wards Cove...Most notably, we worked in racially segregated jobs, were housed in racially segregated bunkhouses, and were fed in racially segregated mess halls." When the case reached the Supreme Court, Justice John Paul Stevens wrote that "the segregation of housing and dining facilities and the stratification of jobs along racial and ethnic lines bear an unsettling resemblance to aspects of a plantation economy." But in a last-minute amendment to the 1991 Civil Rights Act, Alaska's two senators successfully proposed that the still-pending Wards Cove case be exempted from the provisions of the new bill. The law now specifically excludes these 2,000 Asian and Alaska native cannery workers from Civil Rights Act protection and allows Wards Cove to continue its discriminatory practices.³

There is more evidence that discrimination continues today. Hate crimes against Asians have reached an all-time high. These incidents are sometimes encouraged by public officials.

For example, a prominent public official recently told a group of ammunition workers "You should adopt a new logo of a mushroom cloud with a message, 'Made by lazy Americans; tested in Japan.'" This racist scapegoating of Asians is obviously an easier alternative to addressing the real issues: runaway shops, unemployment, and violence.⁴

Ending exclusion, prejudice, and discrimination against Asians is long overdue. Arthur A. Fletcher, writing for the U.S. Commission on Civil Rights in a letter to former President Bush, wrote that "Asian-Americans face serious civil rights problems that touch both U.S. and foreign-born Asian-Americans, and exist at all social and economic levels and in virtually all walks of life."⁵

The Commission outlined 40 recommendations for action to be taken by Congress and the President as a beginning solution to civil rights problems facing Asian-Americans. Absent from these recommendations, however are issues of environmental justice. I will attempt to identify some of these issues, although a thorough study has yet to be conducted.

ASIANS AND ENVIRONMENTAL JUSTICE

Charles Lee, in his study "Toxic Waste and Race in the U.S.," found that 50 percent of all Native Americans and Asian families live in areas with uncontrolled toxic sites.⁶ One such site is in Westminster, in Orange County, California. Last year the California Department of Health Services concluded that one of the housing developments is contaminated with oil refinery waste materials dumped in the 1950s. Back yards are covered with a tar-like substance which seeps out from the ground. Many of the Vietnamese homeowners living in this development grow their own vegetables. They were advised not to eat them unless they were grown in containers well above ground level. The State of California and the EPA are still trying to figure out what to do. In the meantime, these families try to control their exposure by not going into their yards, not wearing their shoes into the house, and taking a number of other measures.

Asians Pacific Islanders, and African Americans eat more contaminated fish than other

groups. In San Francisco Bay, mercury pollution has reached dangerous levels. An organization called the Southbay Anglers for Environmental Rights surveyed 300 local Korean, Vietnamese, Filipino, and Latino fishermen with limited English reading skills. They found that most were unaware that striped bass, croakers, perch, shark, and sturgeon could contain chemical pollution and cause long term illness.⁷ The Southbay Anglers are now pushing for multilingual warning signs, and fish and game handbooks translated into other languages.

Demographics indicate that Asians and Pacific Islanders have settled primarily on the West Coast and nationwide in large cities such as New York, Boston, Houston, Chicago, and Seattle.⁸ While many Chinese, Filipinos, Vietnamese, Cambodians, Koreans, and Laotians work on farms, the majority live in cities. They live in overcrowded apartments or public housing in low-rent neighborhoods. Since most of this housing was built before 1950, many families are exposed to toxic lead paint. These neighborhoods also have heavy automobile traffic, causing both pollution and accidents involving seniors and children. Neighborhoods lack open space for recreation. In addition, Asians have high rates of tuberculosis fostered by long work days; dark, crowded, and cold living space; and poor diet. Sadly, their suicide rate also exceeds that of other communities.

Zoning laws allow high-risk businesses using toxics to locate next to schools and housing in many Asian communities. Most of these are small businesses which are virtually unregulated. In the Southeast Asian community in San Francisco, a dozen autobody shops and just as many dry cleaners dot the neighborhood. Chemicals used in autobody work include glycol ethers which are solvents known to cause miscarriages and birth defects. Perchloroethylene, (perc) used in dry cleaning, is known to cause permanent damage to the central nervous system. "Perc" is a hazardous solvent; exposure to children in and around these establishments should be avoided. All these chemicals need adequate ventilation to protect workers and other people who come into the shops. Unfortunately, adequate ventilation is often beyond the financial capabilities of these

small minority business owners. They locate in the area because the rent is affordable. But for the residents, these businesses pollute the air, cause noise, and spread unpleasant odors.

In 1987, a Laotian family living in Richmond, California discovered they were being poisoned by toxics. An alert public health nurse visited the family and noticed that their rented house was next to an abandoned factory designated as a Superfund site. Along the fence that separated the house from the factory, she spotted a hole leading to the family's vegetable garden on the factory side. On the factory wall a sign was posted warning of toxic dangers present in the soil. However, this sign was only printed in English.

A test indicated that the children had blood lead levels of 25 micrograms per deciliter. On the other hand, the blood results for the men in the family showed lead levels of more than 80 micrograms per deciliter, dangerous levels by today's standards. It turned out that the men were not only poisoned by the lead at home, but they were also being poisoned at the auto radiator repair shop where they worked. Lead fumes are produced when workers solder radiators, and lead dust is created when radiators are cleaned.

ASIANS ON THE JOB

Dr. Wendell Bruner, Director of Public Health of California's Contra Costa County, points to the Richmond example as a good reason for to investigate both work and home environments. Environmental justice issues are manifested clearly in the workplace as well as in the neighborhoods.

President Clinton has stated that he wants his Administration to "look like America." What does America really look like? For example, references to the "American" worker will generally evoke images of the male, white, blue collar worker; but the majority of Asian and Pacific Islanders are workers. It is crucial to understand that the American working class has always been very diverse. Policy makers need to remember that American workers also include Laotian autobody workers, Korean electronics assembly line workers, Filipino hotel workers, the Chinese

garment workers, to name a few. Exploration into the working conditions of this population will reveal high unemployment, and evidence that Asian workers earn less than other workers. As a whole, Asian workers are generally denied access to their workplace rights, including the right to a safe and healthy work environment.

In a recent paper, Dr. James Robinson⁹ found that, on the average, black workers are 37 to 52 percent more likely to sustain a serious job-related accident or illness than white workers. In another paper, Davis and Rowland¹⁰ noted that statistics for Latino, Asian, and Native American workers are incomplete, but the same can probably be said for hazards on their jobs as well. All these researchers trace the problem to the fact that workers of color usually have access to only the dirtiest and most dangerous jobs. Most likely these are in small businesses, and non-union.

The rate of occupational illness for electronics assembly workers, who are predominantly Asian and Latina women, is three times higher than for workers in other manufacturing industries. A 1992 study conducted by the University of California at Davis suggested that glycol ethers used in electronic manufacturing cause miscarriages. Evidence of the link between glycol ethers and reproductive problems was known ten years earlier, but was not widely publicized. Most workers were unaware of it. In the meantime, thousands of women in electronics worked with glycol ethers without adequate information about the risks involved, and without proper protection. Hundreds of women experienced miscarriages and other symptoms including headaches, chemical sensitivity, and vaginal bleeding.¹¹

In agriculture, information on the risk of pesticide exposure and proper handling of these chemicals is communicated inadequately to most Spanish-speaking workers. But in Stockton, California, Spanish-speaking farmworkers are now educated via a traveling Spanish language educational drama troupe, and educational materials available in Spanish. For Asian farmworkers, mainly Cambodian and Vietnamese refugees, there is no information at all. There

are many obstacles. For example, information printed in Vietnamese will not be understood by Cambodian or other Asian workers. But most Southeast Asians and other Asian immigrants enroll in English As A Second Language (ESL) courses to improve their chance to find decent work. ESL classes may provide a common denominator and be one avenue for educating workers about chemicals on their jobs, and about their rights.

Native Hawaiians have no sovereignty rights over their land as do Native Americans on the Mainland. Military toxics, bombing tests, tourism, and geothermal development are destroying the beauty of these islands, including Native sacred lands. A National Native Sovereignty rights movement has been established with a constitution that recognizes the "right and responsibility of Native people to protect their land base and ensure water quality."¹²

Military weapons testing and toxic dumping continue to occur on other Pacific Islands, such as the Marshall Islands. Native Islanders have been moved off Bikini because of the radiation contamination from weapons testing. For the last 50 years they have been trying to squeeze out a living on the small, crowded Ebeye Island. They live in rundown wood shacks without running water. This community longs to return to their homeland where the fish and coconut were once plentiful, but they are unable to because of the radioactive poisoning. Each year they are given a physical examination to monitor their health.¹³

In the past, when communities tackled issues such as tuberculosis, lead contaminated housing, or toxics in the workplace, these issues were treated in separate categories such as health, housing, and labor. Today, because of studies like "Toxic Waste and Race in the U.S.," there is a way to understand and unify these separate struggles. The movement for a society free of racial discrimination must be linked to the movement for a safe and healthy society.

As awareness of environmental justice issues increases, so does the need to involve Asians and Pacific Islanders. Past trends of exclusion must be replaced by inclusion. First, Asians and Pacific Islanders need to be included in matters of public policy, especially when the

policies that are being addressed directly affect them.¹⁴ Access to information and health care must be provided in a way that is effective, as well as culturally and language sensitive. Second, standards, regulations, and other protective measures can't just remain words on a piece of paper, but have to be enforced. To address the issues of environmental justice effectively, there must be interagency coordination within government. For example, to eliminate the risks of lead in communities of color, the EPA, Department of Health Services, HUD, and OSHA should coordinate their efforts and make their policies consistent. Third, more research needs to be conducted which includes the active participation from Asian communities. Educational outreach should be initiated into such communities; it must be culturally appropriate and can empower Asians and Pacific Islanders in creating safe, healthy environments in both their neighborhoods and their workplaces. Finally, environmental policy and educational outreach should look towards economic sustainability and job creation within the Asian and Pacific communities as crucial steps toward creating healthy and sustainable neighborhoods.

Submitted by,

Pam Tau Lee, Labor Coordinator, Labor Occupational Health Program, UC Berkeley, Steering Committee, Asian Pacific Environmental Network, Board Member, National Toxic Campaign Fund, Southwest Network Training Institute Task Force.

United States Population by Race and Ethnicity For 1990 and 1980

Race/Ethnicity	Total United States Population		1980 to 1990 Number Increase	Percent Increase	Percent Total U.S. Population	
	1990	1980			1990	1980
Non-Hispanic White	188,128,296	180,602,838	7,525,458	4.2%	75.6%	79.7%
African American	29,986,060	26,482,349	3,503,711	13.2%	12.1%	11.7%
Native American Indian, Eskimo, Aleut	1,959,234	1,534,336	424,898	27.7%	0.8%	0.7%
Asian and Pacific Islander American	7,273,662	3,726,940	3,547,222	95.2%	2.9%	1.6%
Chinese	1,645,472	812,178	833,294	102.6%	0.7%	0.4%
Filipino	1,406,770	781,894	624,876	79.9%	0.6%	0.3%
Japanese	847,562	716,331	131,231	18.3%	0.3%	0.3%
Asian Indian	815,447	387,223	428,224	110.6%	0.3%	0.2%
Korean	798,849	357,393	441,456	123.5%	0.3%	0.2%
Vietnamese	614,547	245,025	369,522	150.8%	0.2%	0.1%
Hawaiian	211,014	172,346	38,668	22.4%	0.1%	0.1%
Laotian	149,014	47,883	101,331	212.5%	0.1%	0.0%
Cambodian	147,411	16,044	131,367	816.8%	0.1%	0.0%
Thai	91,275	45,279	45,996	101.6%	0.0%	0.0%
Hmong	90,082	5,204	84,878	1631.0%	0.0%	0.0%
Guamanian	62,964	39,520	23,444	59.3%	0.0%	0.0%
Samoaian	49,345	30,695	18,650	60.8%	0.0%	0.0%
Tongan	17,606	6,226	11,380	182.8%	0.0%	0.0%
Other Asian & Pacific Islander	326,304	63,399	262,905	414.7%	0.1%	0.0%
Hispanic*	21,113,528	13,935,827	7,177,701	51.5%	8.5%	6.2%
Non-Hispanic Other Race	249,093	264,015	(14,922)	-5.7%	0.1%	0.1%
TOTAL U.S. POPULATION	248,709,873	226,545,805	22,164,068	9.8%	100.0%	100.0%

* "Hispanic" includes those of "White" and "Other" races; Hispanic Origin does not include those of the other three races as it is negligible.

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3. "Anti-bias bill hurts Asians," Oakland Tribune, William Wong, November 20, 1991.
4. Philanthropic Giving to Asian Americans and Pacific Islanders, Invisible and in Need, December 1992.
5. Report of the U.S. Commission on Civil Rights, Civil Rights Issues Facing Asian Americans in the 1990s, February, 1992.
6. Toxic Wastes and Race in the U.S.: A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites, Commission for Racial Justice, United Church of Christ, New York, NY, 1986.
7. "Multilingual Warnings Sought as Fishing Peril," San Francisco Chronicle, L.A. Chung, February 20, 1993.
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11. Transcript, Inter-denominational hearings on toxics in minority communities, Catholic Center, Albuquerque, NM, September 30, 1989.
12. "Historical and Cultural Perspectives on Native Hawaiian Environmental Justice," Mililani Trask, Race, Poverty and the Environment, Spring, 1992.
13. Robin Cannon, Concerned Citizens of South Central Los Angeles, Pacific Ecumenical visit to Ebeye, Marshall Islands, September, 1992, interview.
14. Asian Pacific American Public Policy Institute, The State of Asian Pacific America, February, 1993.

Mr. EDWARDS. Ms. Almanza.

STATEMENT OF SUSANA R. ALMANZA, CO-CHAIR, SOUTHWEST NETWORK FOR ENVIRONMENTAL AND ECONOMIC JUSTICE

Ms. ALMANZA. Mr. Chairman, committee members and staff, I am pleased to have this opportunity to come before this subcommittee today. I will submit my testimony for the record and give a briefer oral testimony.

Environmental racism is racial discrimination in environmental policymaking and the enforcement of regulations and laws: the deliberate targeting of people of color communities for toxic waste facilities, the official sanctioning of a life-threatening presence of poisons and pollutants in our communities and the history of excluding people of color from the leadership of the environmental movement.

Environmental racism is finally emerging as an issue recognized by mainstream environmental, civil rights, labor and governmental organizations. Increasingly, the consequences of economic policies and their impact on the social, environmental and physical well-being of communities of color—African-American, Latino, Asian-American, and Native-American—have become an issue of life and death.

Race, poverty and the environment are increasingly recognized as interlocking issues. The military, industry, agribusiness, and government at all levels are major polluters in poor communities. The harmful social, economic and cultural effects include loss of resources such as clean water, land and air. The ultimate effect from pollution is loss of life.

For indigenous peoples, contamination of traditional holy sites leads to the loss of cultural and religious expression and freedom. Workplace hazards and environmental degradation impacts severely on human health, on the job and in the community.

The National Law Journal found in a comprehensive analysis of every U.S. environmental lawsuit from 1985 through 1991 that penalties against pollution law violators in minority areas are lower than those imposed for violations in largely white areas, and that the Government takes longer to address hazards in minority communities.

The Federal Government policies of dealing with polluters during the past decade have contributed to the racial imbalance. People-of-color communities are victims of polluters, then the Government, and finally the legal system.

In 1987 the United Church of Christ Commission for Racial Justice authorized a report to comprehensively analyze the demographics of communities with commercial hazardous waste facilities and uncontrolled toxic waste sites. Among the findings of this landmark study, "Toxic Waste and Race in the United States," were the following:

Race proved a significant variable in association with the location of commercial hazardous waste facilities. Three of the largest commercial hazardous waste landfills in the United States were located in predominantly African-American or Latino communities. Three out of every five African-Americans and Latinos live in communities with uncontrolled toxic waste sites, and approximately

half of all Asian-Pacific islanders and Native-Americans live in communities with toxic waste sites.

I will list a few communities: In Albuquerque, NM, hundreds of women workers now suffer from several forms of cancer and are dying due to years of exposure to solvents in an Albuquerque General Telephone & Electronics plant. Over 40 children of women who unknowingly used dangerous chemicals at the General Telephone & Electronics Lenkurt plant were born with birth defects.

In Tucson, AZ, a Latino community, 85 percent, 30 square miles have been designated a Superfund site, where 47,000 people have been contaminated by drinking contaminated water. The water was contaminated by one of this country's major defense contractors, Hughes Tool Co. For over 30 years, the residents bathed in and drank this water. It wasn't until 1983 that EPA declared this a Superfund site.

In McFarland, CA, tumors, blood disorders, birth defects and intestinal problems were found in almost every household in Marta's neighborhood, which has been designated the McFarland Cancer Cluster in McFarland, CA, a farm worker community.

"We are the most bombed nation in the world," William Rosse, Sr., proclaims about the Western Shoshone Nation. The military exploded more than 700 nuclear bombs since 1951, including 100 above-ground blasts that were allowed until 1963.

The United States-Mexico border area has become plagued by environmental pollution and public health problems related to the booming maquiladora industry on the Mexico side of the border. Babies have been born without brains and with neuro defects.

We must have a commitment to civil and human rights, and with the understanding that environmental justice issues in low-income, working-class communities of color are issues of racial and social justice. Discrimination with the environmental realm must be enforced through Federal civil rights laws.

I think that several of the gentlemen that testified before us have a lot to learn, that this is something that has been plaguing—this is a history. For thousands of years my ancestors lived in this country and you could go to the rivers and drink the water and live in harmony with the natural resources and the elements. We have to look at what 500 years has now become, where waters are polluted, where children are dying, where people cannot breathe clean air. Those are the things that we have to look at. Money has to become secondary.

They talk about the cost. How can you value human life? The value of human life is more important when you look at contamination and health care, the millions of dollars that it costs to treat cancer.

EPA in its study says 140,000 people are going to come down with cancer each year. Look at the health cost and look at the costs of doing away with a lot of useless research and not using a lot of toxic chemicals.

Thank you.

Mr. EDWARDS. Thank you.

[The prepared statement of Ms. Almanza follows:]

PREPARED STATEMENT OF SUSANA R. ALMANZA, CO-CHAIR, SOUTHWEST NETWORK FOR ENVIRONMENTAL AND ECONOMIC JUSTICE

Introduction

My name is Susana R. Almanza and I am representing the Southwest Network for Environmental and Economic Justice. The Southwest Network for Environmental and Economic Justice is a multiracial, multicultural organization of community based grassroots organizations and activists from throughout the southwest confronting issues of environmental and economic racism.

Mission Statement

The Southwest Network for Environmental and Economic Justice (SNEFJ) formed to bring together activists and grassroots organizations of people of color from across the Southwest Network recognizes the direct link between economic and environmental issues. As People of color, the southwest Network recognizes that the demand for a safe, clean environment and workplace can only be achieved by building a multiracial, multicultural and international movement that promotes environmental and economic justice. Furthermore, sustainable economic development alternatives must be defined by the communities most impacted by these policies. The Southwest Network affirms that the struggle for indigenous tribal sovereignty, social economic and environmental justice must acknowledge our spirituality and our holistic oneness with our Mother Earth.

Summary

Mr. Chairman, Committee Members, and staff. I am pleased to have the opportunity to come before this Subcommittee today. I will submit my testimony for the record and give a much briefer oral testimony.

'Environmental racism is racial discrimination in environmental policy making and the enforcement of regulation and laws, the deliberate targeting of people of color communities for toxic waste facilities, the official sanctioning of a life threatening presence of poisons and pollutants in our communities, and the history of excluding people of color from the leadership of the environmental movement.

Environmental Racism is finally emerging as an issue recognized by mainstream environmental, civil rights, labor and governmental organizations. Increasingly, the consequences of economic policies and their impact on the social, environmental and physical well being of communities of color, African American, Latino, Asian American and Native American, has become an issue of life and death.

Race, poverty and the environment are increasingly recognized as interlocking issues. The United Church of Christ Commission for Racial Justice¹ has documented that low-income communities and especially people of color are inordinately impacted by toxic pollution. Children, the elderly and women-especially women of color-are paying the highest price from pollution as a result of increased work and health problems and economic devastation.

The military, industry, agribusiness and government at all levels are major polluters in poor communities. The harmful social, economic and cultural effects include loss of resources such as clean water, land and air. The ultimate effect from pollution is loss of life. For indigenous peoples, contamination of traditional holy sites leads to the loss of cultural and religious expression and freedom. Workplace hazards and environmental degradation impact severely on human health, on the job and in the community.

¹ Proceedings: The First National People of Color Environmental Leadership Summit, 1992, p. 2.

² Commission for Racial Justice United Church of Christ, Toxic Waste and Race in the United States: A National Report on the Racial and SocioEconomic Characteristics of Communities with Hazardous Waste Sites, 1987.

The National Law Journal (NLJ) found in a comprehensive analysis of every U.S. environmental lawsuit from 1985 through 1991, that penalties against pollution law violators in minority areas are lower than those imposed for violations in largely white areas. In an analysis of every residential toxic waste site in the 12-year-old Superfund program, the NLJ also discovered that the government takes longer to address hazards in minority communities, and it accepts solutions less stringent than those recommended by the scientific community.

The investigation found that a racial imbalance occurs whether the community is wealthy or poor. The National Law Journal's investigation examined how the federal government's policies of dealing with polluters during the past decade have contributed to the racial imbalance. People of color communities are victims by polluters, then the government, and finally the legal system.

In 1987 the United Church of Christ's Commission for Racial Justice authorized a report to comprehensively analyze the demographics of communities with commercial hazardous waste facilities and uncontrolled toxic waste sites. Among the findings of this landmark study, Toxic Waste and Race in the United States, were the following:

- *Race proved to be the most significant variable in association with the location of commercial hazardous waste facilities.
- *Three of the largest commercial hazardous waste landfills in the U.S. were located in predominately African American or Latino communities.
- *Three out of every five African American and Latinos live in communities with uncontrolled toxic waste sites.
- *Approximately half of all Asian/Pacific Islanders and Native Americans live in communities with toxic waste sites.

In a preliminary report by the Texas Center for Policy Studies for the Texas Network For Environmental and Economic Justice, Toxics In Texas & Their Impact on Communities of Color, it was documented that communities of color in Texas are being impacted by polluting facilities and industries.

These urgent issues affecting communities of color in the southwest region and through out the United States must finally be forcefully addressed.

We must have a commitment to civil rights and human rights and with the understanding, that environmental justice issues in low-income, working-class communities of color, are issues of racial and social justice. Discrimination within the environmental realm must be enforced through federal civil rights laws.

¹ The National Law Journal, "Unequal Protection: The Racial Divide in Environmental Law", 9/21/1992.

¹ Texas Network For Environmental & Economic Justice and the Texas Center for Policy Studies: Toxics In Texas & Their Impact on Communities of Color, August 1992.

Impacted Communities

the following are cases of communities of people of color impacted by environmental racism and toxics hazards in the Southwest:

*Virginia Candelaria testified before the Inter-Denominational Hearings on Toxics in Minority Communities conducted in Albuquerque, New Mexico in September, 1989¹. Ms. Candelaria testified that she and hundreds of other women workers are now suffering from several forms of cancer and are dying due to years of exposure to solvents in an Albuquerque General Telephone and Electronics (GTE) plant. Over 40 children of women who unknowingly used dangerous chemicals at the General Telephone Electronics Lenkurt plant were born with birth defects. Many weigh only 20 to 22 pounds at 5 years of age. During the resolution of a lawsuit brought by 465 plaintiffs against GTE, the poisonous section of the plant where Mrs. Candelaria had worked was moved to Juarez, Mexico. Employees there were paid extremely low wages for the same work in similar conditions.

*Residents of Espanola, New Mexico spoke of how Latino public school employees in their district were forced to clean up asbestos in local school buildings without adequate protection. No concern was shown by the district regarding the impact of the asbestos on school children or the workers removing this dangerous material. An elderly maintenance man who was exposed was told by his supervisor that he did not need to worry about it because he was "not going to live 20 more years anyway."

*In California, the mostly Latino East Los Angeles and Kettleman City have come under siege from companies trying to site hazardous waste incinerators. Kettleman City, a rural farmworker community of perhaps 1,500 residents, of which 95 percent are Latino, already has a hazardous waste landfill.

*Rose Marie Augustine is the President of Tucsonians for a Clean Environment in Tucson, Arizona. Her community is 85 percent Latino. In Tucson, 30 square miles have been designated Superfund, where 47,000 people have been contaminated by drinking contaminated water. The water was contaminated by one of this country's major defense contractors, Hughes Tool Company. For over 30 years the residents bathed and drank the water. The trichloroethylene or TCE problem was officially discovered in 1981, when Hughes and the U.S. Air Force found levels as high as 27,000 parts per billion at the Air Force site, which Hughes operates. TCE has been used as a degreaser by Hughes and other military contractors since the 1950s and was dumped, along with other chemicals, into unlined pits on the base. Eventually, the substance was washed down into the

¹ See Interdenominational Hearings on Toxics in Minority Communities Testimonies, (Unpublished transcripts) SouthWest Organizing Project, 1990.

underground aquifer, where EPA estimates it contaminated the water supply of about 47,000 people. In 1983 the EPA came in and designated Tucson a Superfund site. Residents have suffered with diseases such as lupus, cancer, rare forms of muscular dystrophy, and birth defects. Many residents and children have died due to contamination.

*Marta Salinas, Founder of Help Save the Children of McFarland, California, organized to expose the deadly legacy of pesticides used by agribusiness. The illnesses affecting her two young daughters paralleled those of her neighbors. Tumors, blood disorders, birth defects and intestinal problems were found in almost every household in Marta's neighborhood, which has been designated the McFarland Cancer Cluster in McFarland, California, a farmworker community. In nearby Earlimart, California the children are being afflicted with cancer at 1200 times the expected rate. Three year old Jimmy Caudillo of Earlimart died from leukemia. His mother blames pesticides, "We are surrounded by fields, we work in them, and the pesticides are harming our families."

*"We are the most bombed nation in the world," William Rosse, Sr. proclaims at the many environmental gatherings he attends. The Western Shoshone Nation whose land in Nevada was taken by the government to build the Nevada Test Site. The military has exploded more than 700 nuclear bombs since 1951 including 100 above-ground blasts that were allowed until 1963. Although the Treaty of Ruby Valley never ceded lands to the U.S, providing only permission for settlers to pass through Shoshone land, the federal government ignored the treaty and took more than 800,000 acres for weapons testing.

*The Havasupai Tribe have fought a uranium mine on the site where they say the world is reborn, every five years. during that time tribal members have spoken out at innumerable public meetings, travelled to many of the United States, argued in courtrooms, environmental protection hearings, and lobbied the U.S. Congress. So far, the tribe has not discovered a means to stop the Canyon Uranium Mine owned by Energy Fuels Nuclear of Denver, Colorado from extracting uranium from their sacred land. The U.S. Government, the Forest Service and several uranium mining companies do not recognize either the claim or the belief that land can be sacred. The Havasupai Tribe is also concerned over protecting the groundwater beneath the mine site.

*The U.S.-Mexico border area has become plagued by environmental pollution and public health problems related to the booming maquiladora industry on the Mexico side of the border. In the Brownsville area, for example, there is an outbreak of anencephalic births. Babies have been born without brains and with neurotube defects. The rate of anencephaly in this part of the state is three times the national average. According to Gregoria Rodriguez, Research Project Director at the Brownsville Community Clinic, "When we start putting people second to industry and inexpensive

jobs, problems such as anencephaly will not only increase but will expand into other health and social problems."

*The Carver Terrace community in Texarkana, Texas is an African American community that was built in 1968 on top of a toxic chemical waste dump left by a wood treating facility. The soil and ground water are contaminated with creosote, a carcinogenic chemical used in wood preserving. Shortly after residents moved in, the problems began. When it rained, chemicals bubbled to the surface: strong odors fouled the air; skin rashes, nosebleeds and more serious health problems confronted adults and children; and pets died. Patsy Oliver, Carver Terrace resident and co-chair of the Texas Network for Environmental and Economic Justice, and many of her neighbors have been living at Carver Terrace since the 1960s. The Environmental Protection Agency declared Carver Terrace a Superfund site in 1986. For the past six years Patsy has been part of the fight to make certain that she, her family and the other residents of the subdivision are equitably relocated from this poisonous spot on which they once built their homes, their church and their dreams. The residents did not receive funds until 1992 to relocate.

*For over 35 years residents have been exposed to toxic chemicals coming from fuel storage tank facilities ("tank farm") in east Austin, Texas. The tank farm, belonging to Mobil, Texaco, Chevron, Coastal States, Citgo and Exxon, is located in the predominantly Latino and African American neighborhood. Millions of gallons of petroleum products are stored at the tank farm. These facilities emit such chemicals as benzene (a known cancer causing chemical), toluene, xylene and other pollutants. The residents have complained about chronic headaches, rashes, nosebleeds, watery eyes, respiratory problems and other ailments. The residents were concerned about a possible explosion that could occur if there were a fire or gas leak. Contaminated groundwater and soil have been confirmed by the Texas Water Commission. Due to the contamination on-site and off-site, the Travis Central Appraisal District, depreciated the value of more than 600 homes surrounding these facilities by as much as 50 percent or more. Significantly, due to the public pressure by the community and the continuing investigation by Travis County Attorney Ken Oden, the six companies have agreed to relocate their facilities.

*West Dallas residents, a community of African Americans and Latinos, have lived with pollution for decades. Though now closed, the RSR smelter operated since the 1920s depositing layer upon layer of hazardous lead contaminated particles. In 1982 came the discovery that the soil, air and people in West Dallas had been severely contaminated with lead. Today the area contains more learning centers (slow learning has been listed as a side effect of lead poisoning) than any other community in Dallas, as well as residents who have suffered amputations and respiratory disorders.

Concerned Citizens for Community Development in Rosenberg, Texas, along the Gulf Coast area, have been active addressing the environmental and public health problems related to a currently operating 95 acre landfill and a closed 85 acre landfill adjacent to their community. The county dump which is managed by Laidlaw Waste Systems, Inc. is the repository of Fort Bend and other area counties' solid waste. Concerned Citizens, led by Alice and Zeke Flores, are fighting the county's attempts to expand the landfill which is located next to "Little Mexico," the city's predominantly Mexican American community. Residents in the area have complained of rats and foul odors emanating from the dump. Further, Little Mexico residents have complained of nausea, dizziness, headaches and earaches. Residents have also raised concerns about the possibility of explosions due to seeping methane gas. A lawsuit against the county and Laidlaw, based on loss of property value, nuisance, mental anguish and trespass, has been filed. According to Alice Flores, the community wants the dump closed. "Revoke the permit," she says emphatically, "close it down!"

Health RisksThe Health Risks in the Microelectronics Industry

The microelectronics industry is composed of three broad groups: (1) semi-conductor companies that manufacture integrated circuits, (2) electronic capacitor companies that manufacture capacitors, resistors and condensers and (3) electronic tube companies that produce cathode ray tubes. Many substances are used during the production of semiconductor chips and the assembly of electronic components. The major hazards are solvents, alkalis, and metals, basic material of many production operations including electroplating, etching, stripping, soldering and desoldering. Many chemicals not only cause the irritation or burns in the skin or epithelial cells of respiratory or gastrointestinal tract, but also have long term effect on blood, liver and other organs and some may cause cancer and reproductive difficulties. Gases, vapors and radiation cause health problems too.

New data confirms that the U.S. electronics manufacturing workforce remains sharply stratified, with white men in positions of power and high income, and women and non-whites holding down the low-level positions, such as operatives—that is, semi-skilled production workers. When high-tech comes to a community, it doesn't bring in good jobs for the people already living there. It imports highly trained workers and provides low-pay, low-status employment to the residents. People of color are working in the high risk health areas of the microelectronics industry.

The Health Risk for Farmworkers

The United States uses about one billion tons of pesticides each year, of which 80 percent is used in agriculture. Pesticides are absorbed into the human body through the skin, via the lungs, and by mouth. Pesticide poisoning has both acute and chronic health effects. While the acute effects are well known, the chronic effects are not, which makes them possibly even more dangerous as signs of poisoning may not show up until it is too late. The acute effects of pesticide poisoning include inflammation of the eyes and skin, and respiratory tract infection. The chronic effects include certain cancers in both adults and children, birth defects, chronic fatigue and headaches, and liver and kidney disorders.

¹ Geiser, K.: Health hazards in the microelectronics industry. International Journal of Health Services 1986, 16:105-120

² Lenny Siegel, Pacific Studies Center, 9/92: Analysis of High-Tech Employment Patterns in Eight Leading U.S. High-Tech Centers-1990.

³ The Panos Institute: We Speak For Ourselves; Social Justice Race And Environment 12/90.

Most farm work is done by people of color, including such groups as Latinos, African Americans, Haitians, Jamaicans, Filipinos, Vietnamese and Laotians. Farmworkers and their families cannot avoid exposure to these toxic chemicals. Pesticides are on the crops they cultivate and harvest, in the soil, in the air, in the water, even in the fog. Farmworkers live in homes or camps surrounded by the fields which are heavily and repeatedly sprayed with pesticides. Under current laws and regulations, farmworkers are not protected from pesticides, nor are they covered by federal laws that protect other workers.

Health Risk in the Inner-City

The United States Environmental Protection Agency's (EPA) 1987 Toxics Release Inventory (TRI) reveals that air emissions are the largest and most pervasive category of on-site toxic releases to the environment, with some 2.6 billion pounds reported in 1987. According to EPA, 140,000 of the people alive today in the U.S. will get cancer during their lifetime from toxic air emissions. The number is probably higher because EPA has not yet evaluated many industries and businesses that release toxics and secondary pollutants formed when chemicals mix in the atmosphere. Toxic pollution causes cancer, birth and developmental defects, neurological damage, and other serious health effects. According to the U.S. EPA, toxic emissions cause 1,500 to 3,000 cancer cases each year.

In the \$1-million, five-year study commissioned by the National Institute for Chemical Studies (NICS; Charleston, WV) and funded by the Environmental Protection Agency, proximity to chemical plants that emit volatile organic compounds (VOCs) was linked to higher incidence of asthma, acute eye irritation, shortness of breath, and chronic cough.

As we look in our own backyard within the inner city, we see power plants, refineries, landfills, gasoline storage tanks and many other polluting facilities and industries. People in cities are exposed to almost every form of pollution known to humankind. A battle less often characterized as environmental that takes place every day in people of color communities is the battle over land use. The quality of open space within the inner city is being violated by land use discrimination.

¹ Toxic Communications & Assistance Project: Toxiccollegian Vol. 1 #2, 1992.

² ChemicalWeek 4/22/92: NICS report links VOCs to respiratory problems.

Health Risk of Native Americans

In recent years, in Nevada, with the development of ore extraction methods that utilize cyanide and other toxic chemicals, a new gold mining boom has occurred within Newah Sogo Bea borders. Huge open ponds containing thousands of gallons of deadly chemicals are commonplace around the mines.

The Departments of Energy and Defense are also perpetrators of "scorched river" tactics. Since 1963, nearly 700 nuclear weapons and "devices" have been exploded underground in southern Newah homelands, within the U.S. Nuclear Test Site. No agreement, formal or informal, exists that gives the U.S. permission to detonate nuclear weapons or devices within Western Shoshone lands.

Navajo teenagers have organ cancer seventeen times the national average. Uranium spills from mining activities on Navajo land have contaminated their ground and surface water, air and soil. The Havasupal of the Grand Canyon have been resisting the permitting of United Nuclear by the U.S. Forester General to mine uranium on their sacred lands.

* The Panos Institute: We Speak for Ourselves; Social Justice Race and Environment 12/90.

U.S. Environmental Protection Agency's Impact on Communities of Color

Government regulatory agencies such as the U.S. Environmental Protection Agency (EPA) have ignored and in some cases aggravated environmental problems impacting poor communities.

Since the inception of the EPA, we have requested its assistance in alleviating the disproportionate impacts from which we suffer. Our requests-our pleas for help-have fallen on deaf ears. Moreover, the EPA pursues policies which have been detrimental to us and to poor communities. The following are a few examples of lack of accountability on the part of the EPA:

*Despite the fact that for years it was known that lead poisoning inordinately impacts inter-city youth-primarily youth of color-no action was taken by the EPA until studies confirmed that suburban children were impacted by lower levels of the same poison. Prior to the EPA's finally taking action on this issue in 1984, the agency went so far as to side with oil refiners when they attempted in court to roll back restrictions on the lead content of gasoline. In its ruling against the refiners, the court, to its credit, stated that the restrictions already in place were not strong enough.

*In 1982 a top Agency administrator halted an EPA lawsuit against Dixie Snelter in south Dallas after it was determined that a settlement would hinder efforts of the Reagan Administration to limit restrictions on gasoline lead content. The permanent severe disablement of African American and Latino children in the area has been widely attributed to lead emissions from the facility. The EPA went on to instruct affected residents to grow grass (in order to deep dust levels down) and to simply stay indoors.

*In 1982, the EPA fought against civil rights organizations in Warren County, North Carolina who contested the disposal of PCB-contaminated road surface soil near local African American communities (as opposed to a location near a predominantly middle class section of Charlotte). This disposal served to destroy land values in the nearby communities. The EPA went beyond merely failing to address the racist nature of the siting of the landfill-it actually argued in court that, even if such sites are in communities of color, it is not in the statutes to be taken under consideration.

*From 1979 until today the EPA has consistently sandbagged farmworkers, farmworker communities and the general public by failing to develop comprehensive pesticide regulations. The EPA claims that it has inadequate information regarding the health and environmental impact of pesticide spraying. But, the agency has never requested funding for adequate epidemiological studies which would provide it with such information. EPA has been promising these regulations to the public for over twelve years. Meanwhile,

EPA has only five staff persons working on pesticide issues (we would argue that 500 are needed) compared with 52 working to protect predominantly middle-class single family homeowners from radon contamination. Finally, EPA has capitulated to agribusiness in the course of developing the regulations. By placing enforcement authority at the state level (often state agricultural agencies controlled by growers), the new regulations may not be enforced at all.

*Despite a staff recommendation in 1988 to ban parathion from use as a pesticide, the EPA sat on the issue through that election year, and is only now taking steps to end parathion use. Meanwhile, four farmworkers have allegedly died from exposure to the chemical.

*In Kettleman City, California, EPA has just approved a permit to expand the Chem Waste Management (CWM) hazardous waste landfill. This toxic dump is the largest such facility in the western United States, and is located in a Latino farmworker community. No hearing was held in the community on the permit proposal. The Agency has also encouraged CWM to pursue a hazardous waste incinerator application in Kettleman, over the strenuous objections of the community, which has been systematically excluded from real participation in the permitting process.

*Mexican and Mexican American communities along the Mexico-U.S. border have been burdened by pollution from maquiladora and agricultural sources for many years. The growth of communities caused by the development of the maquiladoras over the past twenty-five years has not been accompanied by basic infrastructural development in many areas, leading to Third World health conditions and high rates of gastrointestinal and other diseases. Petrochemical, microelectronic and other industries carry with them the potential for catastrophic accidents in nearby communities, in addition to ongoing workplace hazards. In spite of this, it was only when the Bush Administration began to push for a free trade agreement with Mexico that EPA did anything to study and address the poisoning of communities in the border region.

*EPA has taken it upon itself to lobby for U.S. government financial subsidy of so-called "debt for nature swaps". These are exchanges where Third World countries sign over lands to conservation groups in exchange for creditor agreements to erase a portion of that country's debt. In other cases the debt is purchased at reduced rates; the creditors can then write it off. This action by the Agency legitimizes the Third World "debt" and furthers the continued expropriation of resources from Third World countries to the United States. "Debt for Nature" erodes the basic sovereignty rights of people in these countries, especially those of indigenous peoples living on land involved in the "swaps." The "swaps" turn conservation groups into creditors to people of color abroad. They further help to let off the hook those U.S. financial institutions which created the "debt" in the first place and which continue to profit from it; in some cases banks are prime

beneficiaries in these "swaps."

*To its credit, the EPA's Superfund Program seeks to involve those affected by contamination in the clean-up process through public hearings, technical assistance funding and the promotion of local community organizations. However, the program assumes that affected communities have access to the lawyers and other professionals needed to effectively implement the program. Moreover, the Superfund Program often requires state and local matching funds, which can be used against communities of color.

*When it was determined that residents of the predominantly white Times Beach and Love Canal communities were walking on low levels of dioxins which were contaminating the soil (with corresponding cancer risks ranging from one in one million to one in one billion), the EPA moved quickly to buy out these communities and relocate residents. However, when so-called "subsistence populations downstream" in many places are poisoned by eating local fish contaminated with high levels of dioxins from nearby bleached paper mills (with unheard of cancer risks of two in ten), the EPA response has been simply "Don't eat the fish."

*The McFarland, California cancer cluster is an area where farmworker families live in a federally-funded housing tract built right on top of a highly contaminated site previously used as a pesticide dump. Despite this, the EPA has taken no steps to relocate residents from the area. In fact, the Agency has failed to release results of tests made over one year ago to residents of the affected area.

*EPA's denial of standing for the Yakima Tribe to be a party to the Hanford, Washington, federal facility compliance agreement is one example of the failure and inconsistency of EPA's "infrastructure" approach. Although EPA policies state that tribes should be treated like States, the Agency has consistently excluded the Yakimas from negotiations on the extremely contaminated Hanford site, even though the site is on land ceded by the Yakimas, the Yakima's still retain rights on the site, and the Yakima reservation is adjacent to the site.

We are calling on the Environmental Protection Agency to carry out its obligation to treat us equally, as provided by law, and to be accountable those communities most directly affected by toxic poisoning.

We call on the agency to live up to its mandate. The EPA must not only identify polluters and sources of pollution, but must enforce regulations and take action so that life-threatening contamination is cleaned up. Those responsible must pay the bill rather than the taxpaying general public.

We call on the EPA to use the U.S. Department of Justice to take criminal action against polluters so that they may be held responsible and accountable.

Mr. EDWARDS. Mr. Goldtooth.

STATEMENT OF TOM GOLDTOOTH, ENVIRONMENTAL DIRECTOR, RED LAKE BAND OF CHIPPEWA INDIANS, AND NATIONAL COUNCIL OFFICER, INDIGENOUS ENVIRONMENTAL NETWORK

Mr. GOLDTOOTH. Good morning, Mr. Chairman and members of the subcommittee.

I would like to stress in my testimony here that I am an employee of the Red Lake Band of Chippewa Indians in northern Minnesota that has always exercised its sovereign status, and many of our leaders have come to the Hill to provide testimony. In addition to a review of my expertise, I am also a member of the State of Minnesota Solid Waste Advisory Council.

Twenty-two years ago this country initiated environmental laws and authorized the U.S. EPA to delegate its authority to the State governments. During those 22 years, many States have been able to develop environmental infrastructures that protect the health of their citizens and the ecosystems within their territory. However, during most of these years Indian tribal governments have been left out of this Federal initiative, leaving over 56 million acres of Indian land without basic environmental programs.

Without tribal environmental programs in place, the protection of our lands and people is jeopardized. During the past couple years there is evidence that there is a disproportionate presence of toxic facilities and pollutants within people-of-color communities. Indian people living on tribal land are not excluded from these findings.

For example, Navajo teenagers in Arizona have organ cancer 17 times the national average. Uranium spills from mining activities on Navajo land have contaminated their water, air and soil.

The Havasupai of the Grand Canyon bear the same kind of contamination in their area and are trying to resist the permitting of United Nuclear Corp. by the U.S. Forest Service to mine uranium on their sacred lands.

In upper New York State the St. Regis Mohawk are trying to seek cleanup of industrial contamination of the St. Lawrence River. For over 30 years, the Mohawks have been trying to protect their waters, land and air from PCB's and other toxics. Mohawk women are experiencing breast milk contamination.

At Point Hope, AK, it was discovered that during the 1960's the USGS secretly buried radioactive soil, which included more than 43 pounds of nuclear material from a test blast in Nevada. There have been above-average cancer rates detected in the Point Hope residents.

Toxic mercury contaminated fish within the Great Lakes regional area disproportionately affect Indian people that subsist on fish. Mercury pollution is coming from the industries, coal-fired power plants and garbage incinerators. Traditional ecological economies and lifestyles of our people are endangered, very often displacing our people to urban areas, resulting in social impacts.

On the Soboba Mission Indian Reservation in California, school-children are stricken with unhealing open sores caused by lead poisoning.

The Klickitat and the Cascade Indians, residing in their traditional villages located along the Columbia River in Oregon and Washington State, are being impacted by contamination from the Hanford Nuclear Storage Facility and pesticide runoff from agricultural activities.

Over 50 Indian communities have been approached by private waste industries seeking the signing of mega-acre landfills, incinerators and sludge pits within Indian territories.

Sixteen tribes are lined up for \$100,000 grants from the U.S. Nuclear Waste Negotiator Office to store nuclear waste on Indian lands.

This is environmental racism. Environmental racism is racial discrimination in environmental policymaking and the enforcement of regulations and laws.

Civil rights must include freedom from pollution. Race and poverty and the environment are interconnected issues. Because of poverty on most Indian reservations, economic ventures with private waste companies on the surface appear to be very promising, but are destructive to our environment and the health of our people. However, with the lack of environmental regulations, tribal reservations do not have the infrastructure to effectively manage these initiatives, maintain our own permitting and regulatory standards, or exercise our tribal enforcement rights.

At Red Lake we value the quality of the water. If you look at the map of Minnesota, we have one of the cleanest inland lakes in this country. To the Anishinabe Ojibwe, water is life. We are very concerned about maintaining the quality of the upper and lower Red Lake, the groundwater and all tributaries.

We have three landfills that we are trying to close. The Indian Health Service and the Bureau of Indian Affairs initially approved the siting of these landfills. In accordance with the new Federal municipal landfill regulations, Red Lake has to stop receiving solid waste at these three facilities on October 9, 1993, because they do not meet the new landfill regulations which require liners, leakage collection systems and daily maintenance.

In closing, last year Red Lake was very lucky to receive a solid waste management grant from the EPA. As a result of this program, Red Lake has developed a very innovative solid waste program. However, there are no moneys to implement this program either from EPA, BIA, HUD let alone our tribe.

I have discovered that we have a situation in Red Lake and throughout Indian country that congressional appropriations or Federal programs for closure and implementation of solid wastes facilities is lacking. There is no data that cites the specific number of uncontrolled open dump landfills in Indian country. Depending on hydrogeological conditions of each Indian reservation, these open dumps have a tendency to leach contaminants into the groundwater.

With no local environmental infrastructure to collect and dispose of our solid wastes, no Federal support, and no permitting and regulatory structure in place, our tribal governments may be facing critical dilemmas this coming October 9, 1993.

In the months to come, I suspect private waste companies will be more aggressively pursuing commercial solid and hazardous

waste ventures on Indian lands. We need immediate dollars to develop our own solid waste programs and to implement environmental protection programs to protect our lands, water and air resources.

Given the recent promulgation of regulations reaffirming the rights of tribes to manage and regulate our own environmental programs, it cannot be assumed that tribes possess adequate infrastructures. To manage environmental programs, the majority of tribes have no base level of environmental protection. It is documented that the tribes continue to be discriminated against by lack of development and maintenance of environmental infrastructure programs.

While disproportionate environmental impacts should be investigated for all groups at risk, Indians have a unique cultural and legal claim in U.S. history and cannot be treated as simply one among other ethnic or socioeconomic groups. We are distinct, sovereign governments recognized through Congress and many Federal legislations.

Tribes today must overcome more than the average number of barriers in our attempts to exercise our inherent rights, the most significant barrier being environmental racism. Realistically, no meaningful change will occur until the United States provides tribes the necessary resources which will allow tribes to regulate and control our territories.

Thank you.

Mr. EDWARDS. Thank you very much, Mr. Goldtooth; and thanks to all members of the panel for very helpful testimony.

[The prepared statement of Mr. Goldtooth follows:]

PREPARED STATEMENT OF TOM GOLDTOOTH, ENVIRONMENTAL DIRECTOR, RED LAKE BAND OF CHIPPEWA INDIANS, AND NATIONAL COUNCIL OFFICER, INDIGENOUS ENVIRONMENTAL NETWORK

Good morning, Mr. Chairman and members of the Subcommittee.

I am Tom Goldtooth, Environmental Director employed with the Band of Chippewa Indians, a federally recognized tribal nation located in northern Minnesota. I am also a National Council Officer with the Indigenous Environmental Network, a national Indian grassroots environmental organization, and it is through this organization that we work closely with other people of color within the environmental justice movement. I am a member of the State of Minnesota Solid Waste Advisory Council and the Solid Waste Officer with the Red Lake Nation. I am here to share with you a brief summary of environmental injustice issues affecting Indian tribal reservations and as example, specific concerns with the Red Lake Nation.

Twenty-two years ago this country initiated environmental laws and authorized the U.S. Environmental Protection Agency (EPA) to delegate its authority to the State governments. During these twenty-two years, many States have been able to develop environmental infrastructures that protect the health of its citizens and the ecosystems within their territories.

However, during most of these years, Indian Tribal governments have been left out of this federal initiative, leaving over 56 million acres of Indian lands without basic environmental programs. Without tribal environmental programs in place, the protection of our lands and people is jeopardized.

During the past couple years evidence has been shown that there is a disproportionate presence of toxic facilities and pollutants within people of color communities. Indian people living on tribal lands are not excluded from these findings. For example:

Navajo teenagers in Arizona have organ cancer 17 times the national average. Uranium spills from mining activities on Navajo land have contaminated their water, air, and soil.

The Havasupai of the Grand Canyon bear the same kind of contamination in their area and are trying to resist the permitting of United Nuclear Corp. by the U.S. Forest Service to mine uranium on their sacred lands.

In upper New York state, the St. Regis Mohawk are trying to seek cleanup of industrial contamination of the St. Lawrence River. For over 30 years the Mohawks have been trying to protect their waters, land, and air from PCBs, and other toxics. Mohawk women are experiencing breast milk contamination.

At Point Hope, Alaska, the Inuit recently discovered that during the 1960's the U.S. Geological Survey secretly buried radioactive soil, which included more than 43 pounds of nuclear material from a test blast in Nevada. There have been above-average cancer rates detected in the Point Hope residents.

Toxic mercury contaminated fish within the Great Lakes regional area disproportionately affect Indian people that subsist on fish. Mercury pollution is coming from the industries, coal-fired power plants and garbage incinerators. Traditional ecological economies and lifestyles are endangered, very often displacing our people to urban areas resulting in social impacts.

On the Soboba Mission Indian reservation in California, school children are stricken with unhealing open sores caused by lead poisoning.

The Klickitat and Cascade Indians residing in their traditional villages located along the Columbia River in Oregon and Washington State, are being impacted by contamination from Hanford Nuclear storage facility and pesticide runoff of agriculture activities.

Over 50 Indian communities have been approached by private waste industry seeking the citing of mega-acre landfills, incinerators and sludge pits within Indian lands.

16 Tribes are lined up for \$100,000 grants from the U.S. Nuclear Waste Negotiator to store nuclear waste on Indian lands.

This is environmental racism. Environmental racism is racial discrimination in environmental policy making and the enforcement of regulations and laws, the deliberate targeting of people of color communities for toxic waste facilities, the official sanctioning of a life threatening presence of poisons and pollutants in our communities, and the history of excluding people of color from the leadership of environment initiatives.

Civil rights must include freedom from pollution. Race and poverty and the environment are interconnected issues. Because of poverty on most Indian reservations, economic ventures with private waste companies on the surface, appear to be very promising. However, with the lack of environmental regulations, tribal reservations do not have the infrastructure to effectively manage these initiatives, maintain our own permitting and regulatory standards, or exercise tribal enforcement.

At Red Lake, we value the quality of the water. If you look at the map of Minnesota we have one of the cleanest in-land lakes in this country. To the Anishinabe Ojibwe, water is life. We are very concerned about maintaining the quality of the upper and lower Red Lake, the groundwater and all tributaries. We have three landfills that we are trying to close. The Indian Health Service (IHS) and the Bureau of Indian Affairs (BIA) initially approved the citing of these landfills. In accordance with the new Federal Municipal Landfill regulations, Red Lake has to stop receiving solid waste at these three facilities on October 9, 1993, because they do not meet the new landfill regulations which require liners, leakage collection systems and daily maintenance.

Last year, Red Lake was very lucky to receive a Solid Waste Management Planning grant from the EPA. As a result of this program Red Lake has developed a very innovative Solid Waste Program. However, there are no moneys to implement this program, either from EPA, BIA, HUD, let alone the Red Lake Tribe.

I have discovered that we have a situation in Red Lake and throughout Indian country that congressional appropriations or Federal Programs for closure and implementation of Solid Waste Facilities is lacking. There is no data that cites the specific number of uncontrolled open dump landfills in Indian country. Depending on Hydrogeological conditions of each Indian reservation, these open dumps have a potential to leach contaminants into the groundwater. With no local environment infrastructure to collect and dispose of our solid waste, no Federal support, and no permitting and regulatory structure in place, our Tribal Governments may be facing critical dilemmas this coming October 9, 1993. In the months to come, I suspect private waste companies will be more aggressively pursuing commercial solid and hazardous waste ventures on Indian lands. We need immediate dollars to develop our solid waste programs and implement environmental protection programs to protect our land, water and air resources.

Given the recent promulgation of regulations reaffirming the rights of Tribes to manage and regulate our own environmental programs, it cannot be assumed that

Tribes possess adequate infrastructures. To manage environmental programs the majority of Tribes have no base level of environmental protection. It is documented that the Tribes continue to be discriminated against by lack of development and maintenance of environmental infrastructuring programs.

While disproportionate environmental impacts should be investigated for all groups at risk, Indians have a unique cultural and legal claim in U.S. History, and cannot be treated as simply one among many ethnic or socioeconomic groups. Tribes today must overcome more than the average number of barriers in our attempts to exercise our inherent right, the most significant barrier, being environmental racism. Realistically, no meaningful change will occur until the U.S. provides Tribes the necessary resources which will allow the Tribes to regulate and control our territories.

Thank you,

Mr. EDWARDS. The gentleman from Texas, Mr. Washington, do you have any questions?

Mr. WASHINGTON. Thank you, Mr. Chairman. I wanted to ask Ms. Almanza, in particular, a related question.

Being from Texas, I am concerned about not only what we already have, but as it relates to the North American Free Trade Agreement. It seems to me that there is great potential—not taking anything away from the economic benefits for all of North America, which I think are appropriate—but I think as you or Ms. Lee pointed out, sometimes you can't look at economic benefits. That cannot be a fair exchange for polluting the environment.

I have been greatly concerned—I continue to be greatly concerned about the efficacy of this agreement with respect to the treatment of the environment, the protection. Not to denigrate our neighbor to the south, but we have to be realistic. I think they would be the first to admit that the mechanism in their country for a system of laws, regulatory agencies, and the general concept of enforcement in protecting the environment is not what it should be for their protection; and by no means does it compare to what we have.

You demonstrated that we have problems with the concept of the laws and enforcement mechanisms in this country. So my question is, one, do you think that without very strong and rigid enforcement mechanisms in the Free Trade Agreement or the side agreements—which I think can and will be negotiated between now and the time that the agreement is finally approved by the Congress—we import our problems to members and other countries and create problems for them, which is—from a humanitarian point of view—ought not to happen.

From an economic point of view, the air that blows in Mexico when the wind blows from the south comes to the United States. You demonstrated in your testimony that the groundwater obviously knows no boundaries. The boundary between the United States and Mexico is an imaginary line.

So if you accept those things as being true, shouldn't we be awfully careful about chapter and verse and what we provide, because we may provide some economic benefits for people but we may be giving them a lot more in terms of environmental detriment. Do you have those kinds of reservations?

Ms. ALMANZA. Because I have family in Mexico and on this side of the border, that touches me, seeing what the companies have done to canals. They are like sludge. You could throw rocks in there and they wouldn't sink. You see dead animals. I have talked

to people where the water rises above the canals and their skin is peeling. I have seen the U.S. Government, with a chemical company, selling the residue of toxic waste to the Mexican Government and paving the streets with toxic waste and people walking on this. I see a lot of destruction on both sides.

I have been looking at the emergency response team on the United States side of the border. How would they respond if there was a catastrophe on the Mexican side of the border? If there was a gas to escape, going to this side of the U.S. border, how could they respond? Response time, there is none. People are not skilled and don't have the technique and equipment to fight such a hazard. We need to look at that.

Looking at a lot of enforcements along the border, the United States doesn't enforce its own laws. How do we expect the Mexican Government to enforce their own laws and how can the United States look at that? It should not be slave wages, because that is just another slavery mentality. We are in the 1990's, but we are enslaving the people. The people are in giant cemented rooms with no windows, working with hazardous chemicals—women ages 13 to 23, the most susceptible to reproductive problems. There are no OSHA laws there or protective clothing or anything else.

I see that impact. What is that going to do to human rights? Why is it people of color are the ones burdened? Why are we back to the slavery era? If you are going to pay somebody \$35 a week for doing a job you would have to pay somebody \$200 a week to do, is it really fair trade? No.

Is it really that we care about the environment? The waste is not coming back to the United States like it is supposed to. We have to remember that if you think dumping it into the river on the Mexican side of the border is not going to affect people in the United States, people should have a second look at the map and see where the water goes and how that affects us. What goes around comes around, as they say.

Mr. WASHINGTON. Would it be fair to say that I am not the only person from Texas who opposes the Free Trade Agreement?

Ms. ALMANZA. I do.

Mr. EDWARDS. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you. A question for Mr. Goldtooth.

You stated at the conclusion of your statement that realistically no meaningful change will occur until the United States provides tribes the necessary resources which will allow the tribes to regulate and control our territories. You talked about how reports recommended various steps but there are no funds to implement those steps.

Has anyone communicated to the administration that perhaps some of this ought to be included in the stimulus package and in the long-term investment package? Because it seems to me that this kind of investment in the environment would be more sensible from a economic point of view than some of the things we have seen in that package.

Mr. GOLDTOOTH. I know that there has been a lot of testimony in the area of how natural resources are developed within Indian territories, but not many discussions that focus on environmental impacts of those developments.

You know, we have a situation for 500 years here that a lot of our natural resources have been depleted. We look at the past 22 some years, when there is an effort to adjust environmental issues within the States, and it is not surprising to a lot of our people that tribal governments were excluded. With regulatory authority within the original environmental laws that were drafted, tribes were not included. It has just been within recent years, as these issues were being addressed, that those acts were amended to include tribes at State proceedings.

We don't think it is surprising that there hasn't been initiatives from Congress to protect Indian territory, especially when you consider 75 percent of uranium is on Indian lands, when you consider a lot of the water in the Western States, a significant amount of water that tribes have as part of inherent rights, mining issues, gold, oil, coal, the Arctic wildlife refuge area is within the Nation; and any development within that area will impact native people.

The energy policy of the Government has had negative impact on native people and has relocated native people, such as the Cree with the James Bay hydroelectric project. That is what we are concerned about.

Mr. NADLER. You said that you need immediate dollars to develop our solid waste programs and to implement environmental protection programs to protect our air, land and water sources. Are there proposed projects which could be funded if the funds could be obtained?

Mr. GOLDTOOTH. Yes. All the tribes have been working on initiatives to address these issues with very limited funding. We have a situation where EPA is operating a 1993 budget of \$9 billion. However, there is an EPA Indian policy developed in 1984 that was very good, but it has never been implemented because there have not been moneys to support it.

In '93, tribes have available \$10 million, one-tenth of 1 percent of the EPA budget. You are talking of 500 Indian communities, roughly, throughout this country—district communities, quasi-sovereign, some exercising full sovereignty, the majority that don't have environmental protection programs. Regulatory authority is still being defined; enforcement rights are still being defined. There are a lot of loopholes.

We are looking at at least 1 percent of the EPA budget to begin to start addressing these issues. We don't have access to the EPA dollars that flow to States, and that leaves us in a very vulnerable and critical situation.

Mr. NADLER. Thank you.

Mr. EDWARDS. Mr. Washington.

Mr. WASHINGTON. Thank you, Mr. Chairman.

Mr. Goldtooth, following up a bit on Mr. Nadler's question, if the Congress could provide the funding through the initiative that is presently being debated around here, that is currently being debated—as you know, President Clinton has put forward a plan of economic development which he has defined as being necessary to rebuild infrastructure in this country, not just a make-work, create-jobs like the WPA or anything like that during the Depression; but as I understand the plan, he feels that significant economic stimulus to get our economy moving again can be developed around pro-

grams that we need, and the most often used examples are highway programs and bridges that need to be built and repaired and things of that nature.

I think what my friend from New York is saying is, why couldn't we make the water and sewer treatment plants that you have addressed in your testimony as being needed, the environmental protection items, a part of that infrastructure development and do several things, not only enhance our ability to protect the environment, the water and air and the soil on Native-American soil, but create jobs—not only for Native-Americans but for others who could work in that environment—rebuild that economy as a part of the overall economy, which accomplishes, it seems to me, the dual purpose that the President has suggested, that we lift ourselves not by our bootstraps, because in my view that is metaphysically impossible. But by helping each other, by developing a program where one is needed—you have demonstrated a great need in the area. Either have you or can you, with our help, come up with a grant proposal so you can demonstrate that you will be able to effectively use this money?

What I think the gentleman from New York is saying is that we would be willing to stand up on the floor and fight for the inclusion of funds for this purpose. We want you to meet us part of the way, so when we get the money, you can assure us that the money will be well spent and you can identify projects so we can point not only to examples of where the land has been trashed but show how the money can be used to reinvigorate the soil and the land to build the environmental resources you need to build wastewater and other treatment plants.

What I am asking you is, will you take back the idea and think about it? If you think it is viable, get back in touch with the gentleman from New York, and I promise you, we can get talk going around here, because we still have time to get funds diverted from other programs that are probably just as worthwhile. But this makes a statement on where we are going collectively that I think needs to be made at this time.

Will you do that?

Mr. GOLDTOOTH. Yes.

Mr. WASHINGTON. Thank you. That was a leading question.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Washington.

Ms. Lee.

Ms. LEE. Mr. Washington asked a question about economic development, and I wanted to bring to the committee's attention that the Asian-Pacific Environmental Network has been working on a model, a couple of issues of various community organizations and this issue of economic development.

Most of our people live in housing built before 1950. We have been developing a model where the cleanup, job creation—we are working to get lead monitoring of the youth. Once you find the source of where the people are being poisoned and you track it back to their homes, what do you do then? We are not going to make them homeless.

We have to have a program that can retrofit where they live and, through that, create jobs. I foresee cleaning jobs coming down the

pipeline, and I want to make sure that these jobs are available to communities of color and that they be included and that they become skilled in these areas and can earn a decent livelihood.

The other model is, for example, drycleaning. We have Korean drycleaners and the Clean Air Act is going to impact their livelihood. We are looking toward ways in which retrofitting can be made available to them so that they will not lose their ability to have a business.

Mr. EDWARDS. We have had 2 days of hearings from very knowledgeable witnesses—12, 15, 16 witnesses—who have certainly made a case that people of color, minorities, are getting the worst of the deal in this country where we are supposed to have some kind of equality insofar as the environment is concerned. And it has resulted in terrible disadvantages to some good Americans, a lot of them. But also the same groups are disadvantaged in many other areas too, in housing and in jobs.

But you witnesses believe that there is a civil right here to be enforced, too, I understand. You either believe that one already exists or that one should be written into the Federal law.

Would anybody like to comment on that?

Ms. ALMANZA. One of the things is that the EPA has used the argument that, because it is regulating chemicals, civil rights are inapplicable to the Agency program. That is one of the things we would like to see changed.

We think the EPA should be put into Cabinet status and have the right to enforce antidiscrimination. It has been documented scientifically and through the people actually living in the communities that discrimination exists through the environmental area, that that does exist; but often you cannot use that tool under the civil rights laws. We feel that that should be a way to enforce—if discrimination has happened through siting of facilities in communities of color that should be able to be under the civil rights.

Mr. NADLER. From what I am hearing, there is both the civil rights question of continuing violation of civil rights by siting hazardous waste or nuclear wastes or whatever in areas of communities of color, in Native-American areas; and a separate—which obviously ought to be remedied separately, situation of remedying what has already been done.

If something was placed in the ground 20 years ago and is going to be radioactive with a half-life of several more years, you can't just say that 20 years is gone. If the waters are polluted, you have to clean them up.

I want to express what the gentleman from Texas and I talked about a few moments ago, that not only for the problems on Native-American lands, but other places, we have a new administration that has a short-term stimulus program and a long-term program of investment in infrastructure, then environmental cleanup is infrastructure.

Infrastructure is not simply building highways. Environmental cleanup of whatever nature is infrastructure, and some of us would do whatever we could to assist getting funding for cleanup efforts in these areas if the people there wanted it, if you would present us with plans or with requests for cleanup or for rehabilitation, whatever you want to call it. If we could show that funds would

be well used and why they were necessary, then we could fight for that.

I want you to take that back with you for due consideration.

Reverend CONLEY. Mr. Chairman, I might say something.

Mr. EDWARDS. Mr. Conley.

Reverend CONLEY. In Dallas, often the civil rights problem, the way we were violated, started during a time when we couldn't vote. So we had a problem getting the information to the officials and have them recognize the problems that we were having there. Our civil rights continue to be violated because even in 1986 it made a difference if you were black or white.

When they clean up for the white people, they move them out, put them in a hotel. Today they are cleaning up with kids sitting on the porch, parents sitting on the porch. In my front yard, they are cleaning up and they are driving 5 or 6 trucks every 30 minutes right by my door. They didn't move anybody out.

When we are talking about rights, the city of Dallas, I think has a policy that should assure every citizen to help the environment. We don't have that right. They didn't give that right. We don't have a healthy environment. We have been trying since 1969, and we haven't had it yet. If you are an American citizen, you shouldn't have to sit on your front porch. If an area is polluted, if it is contaminated with lead—lead messes up your mind—you shouldn't have to sit while they are digging in your front yard.

Mr. EDWARDS. I agree. As a matter of fact I think all of you have given us a lot to think about. We thank you very much for very helpful testimony.

The subcommittee is adjourned.

[Whereupon, at 11:40 a.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

A P P E N D I X

STATEMENT OF HON. CYNTHIA A. MCKINNEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

CYNTHIA A. MCKINNEY
11TH DISTRICT GEORGIA

Congress of the United States

House of Representatives

Washington, DC 20515-1011

March 4, 1993

Statement of Congresswoman Cynthia A. McKinney

Thank you Mr. Chairman for holding this very important hearing on Environmental Racism.

Environmental racism has been a problem for many years. From lead poisoning and air pollution to residential hazardous waste sites. Community health is seriously being affected.

The environmental rights movement had its origin in the Civil Rights movement of the 1960's. The first event to focus national attention on environmental justice occurred in 1982, when officials chose a site in predominately African American Warren county, North Carolina for a PCB landfill.

The call for environmental justice comes from many different communities and concerns more than the citing of waste dumps. It concerns an entire quality of life that is being threatened as a result of intrusions into poor, southern neighborhoods of color.

The following are examples of how environmental racism impacts people in different communities.

Quitman county finds itself the latest of an Atlanta company that sought first to build in South Fulton County, the state's largest medical waste incinerator. The project is one of many in Georgia and still more across the southeast, that critics say show a recent pattern of locating waste incinerators and dumps in rural poor, black communities. Many companies use the prospect of new jobs and economic development as a selling point for locating hazardous factories or incinerators in poor communities. Many residents think that this is not the kind of community development they want for their communities, because they fear pollution, health hazards and environmental destruction.

Further, another location is Hancock County, Georgia where the citizens

successfully beat back an attempt to build according to the Atlanta Constitution a 900-acre landfill that would have made Hancock County the final resting place for garbage from as far away as New Jersey.

The latest location is Waynesboro, Georgia, Burke county, where a lead battery recycling plant is proposed. Lead battery recycling is nothing more than a "lead smelting processing plant" which leaves leftover SLAG, which has to be hauled away to another poor black community based landfill. Is this yet another blatant attempt to dump on poor black neighborhoods? Is this another example of Environmental Racism?

An area resident whose home is near the site in Burke county said "our subdivision is totally black, nearly everyone on Quaker Road is black".. If you are black, southern and live in a rural area, you are more likely to have a hazardous waste site near your neighborhood.

In September 1992, The National Law Journal reported that white communities see faster action, better results and stiffer penalties against polluters from the EPA than areas where African Americans, Latinos and others live.

Georgia Black Elected Officials endorsed the intent of the Environmental Justice bill proposed by State Representative Bob Holmes. The Atlanta Journal Constitution also cited Environmental Racism in an article titled "Who gets dumped on"?

Mr. Chairman I look forward to working with you on this very important issue in the eleventh district. I hope that we can clean up our communities and keep them clean.

CYNTHIA A. MCKINNEY
11TH DISTRICT GEORGIA

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DEPARTMENT OPERATIONS AND NUTRITION
ENVIRONMENT, CREDIT AND RURAL
DEVELOPMENT
FOREIGN AGRICULTURE AND HUNGER

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March 19, 1993

Statement of Congresswoman Cynthia A. McKinney

Thank you, Mr. Chairman for accepting this testimony on Environmental Racism.

In my remarks of March 4, 1993, I spoke of specific examples of environmental racism in my district, the 11th District of Georgia. I spoke of a lead smelter targeted for a black community in Burke County, Georgia, of two proposals which were defeated by citizen protest in majority African American Hancock County, and of a medical waste incinerator once targeted for South Fulton County, which is now targeted for Quitman County, another African American community in the district of my esteemed colleague, Congressman Sanford Bishop.

I want to be clear there are many more examples of environmental racism in Georgia. There are many more examples of environmental racism throughout the Southeast, such as Pensacola, Florida, Columbia, Mississippi and Cancer Alley in Louisiana. There are many more examples in communities throughout the United States, such as Kettleman City, California and Twirling Mountain near Farmington, New Mexico.

On February 22, 1993, the Atlanta Constitution reported on nine specific examples of environmentally harmful projects aimed at communities of color in Georgia. (I am including this article as an attachment to my remarks. Two of these -- Taylor County and Hancock County -- were projects which were successfully defeated by organized citizen action. Five others -- Laurens County, Quitman County, Troup County, Burke County and Barrow County -- are ongoing proposed sitings in communities of color. The neighbors in these communities are rising up to oppose these facilities, and they need help.

These and other proposals provide clear evidence that environmental racism presently occurs in siting decisions. Despite growing attention to this racism, polluters continue to target communities of color for their dirtiest operations.

There is also clear evidence that environmental racism is not new. It has happened or years in places such as the 30318 zip code of Atlanta and the Newton community of Gainesville, Georgia.

In "Atlanta, Georgia 30318" African American families live across the street from the City of Atlanta's Gun Club Road landfill, where methane gas seeps up out of their lawns and toxic landfill run-off oozes into the nearby creek. But this landfill is only one of many waste sites, chemical companies, bulk materials transfer stations and other industries which have polluted this African American community for decades.

The Newton community of Gainesville, Georgia has a high concentration of polluting industries. Cancer and respiratory illness are abnormally high in this majority African American portion of Hall County. Hall County has a total African American population of less than 10%.

Mr. Chairman, in my previous testimony, I cited the National Law Journal study published in September, 1992. This study documented a much slower clean-up rate and much more lenient fines against companies guilty of polluting in communities of color than in white communities. Just last month, we got a specific example in Georgia.

Four weeks ago, after six years of negotiations, the State of Georgia gave five steel mills an additional five years to clean up a toxic heap of furnace fly ash in an African American community in Tifton, Georgia. The ash had been illegally dumped in a densely populated, African American neighborhood -- one block from a middle school -- throughout the 1980's by the SoGreen Company, a company no longer in business.

This dump is one block away from the middle school's gym and playground. While African American children go to school and play within a block of this toxic mound, the state entered into a consent decree with five steel mills which collectively had saved millions of dollars in disposal costs by shipping their fly ash to this site. The EPD held foremost in its deliberations the financial concerns of the steel mills, and took them at their word that the cost of clean-up would be a burden to them. The state failed to consult the affected community and ignored the health concerns of the African American families living around the dump.

There are communities in this country -- such as in Pensacola, Florida and Columbia, Mississippi -- where African American families live above or very near toxic waste sites so dangerous that attempts to dig down to reach the waste cause the people to get sick. These communities need to be offered a fair price for the loss of their homes.

THE SOLUTION

The question quickly becomes, "What should be our response as a society to environmental racism?" Particularly, "What should be the response of the U.S. Congress?"

Let me begin to answer these questions by stating what is NOT the answer. The answer is NOT to spread pollution "equitably" into white communities - assuming that could be done. People of color are not trying to pit race against race in a fight to dump on one another.

Instead, people of color are sounding the alarm that we must treat each community with justice. That dirty, polluting facilities do not belong in anyone's backyard. Not African American backyards, not Latin American backyards, not Native American backyards and not European American backyards.

Nor is the solution to ship our pollution to Mexico or any other country in the name of free trade.

The immediate response of this Congress should be to require the EPA to remedy its slower enforcement and clean-up actions, and to reverse its laxer fines and punishments in communities of color.

This Congress should also require polluting companies and state and local governments to do a health impact analysis and a socio-economic impact analysis for all proposed waste facilities and major pollution sources. These analyses should take into account the deterrent effect that polluting development has on providing other, cleaner, development. They should also consider alternatives to the polluting activities, and disclose the socio-economic profile of the communities where the company creates its white collar office jobs. People of color should not have to choose between life-threatening development or no development at all.

And this Congress should determine that the right to breathe clean air and drink clean water is a fundamental civil right deserving protection under the law.

As we begin to treat each community with justice, there will in fact be no place to put the waste and pollution which industry presently generates. What will happen, then, is that pollution will have to be cleaned up at the source.

Industries must not be allowed to place products into commerce and then leave the responsibility for disposal to the consumer or government. cradle-to-grave product design will ensure that products are made of materials which are not destructive of the environment and that once they serve their purpose, they are either re-usable or recyclable. Those that aren't are not properly designed.

The federal government must end all direct and indirect subsidies for pollution, and instead tax pollution to reflect its true cost to society and produce incentives to reduce the pollution.

Mr. Chairman, I would like to conclude by stating that the call to Environmental Justice is a visionary, community-centered call to let democracy prevail over the tyranny of callous polluters, a call to let citizens determine their own health and well-being.

Thank-you.

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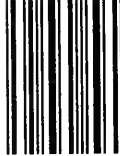


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