

The Battle for Environmental Justice in Louisiana..... Government, Industry, and the People

Louisiana Advisory Committee to the
U.S. Commission on Civil Rights

September 1993

A report of the Louisiana Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This report will be considered by the Commission and its findings will be made public. The findings and recommendations of the Committee should not be attributed to the Commission but only to the Louisiana Advisory Committee.



UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C. 20425

OFFICE OF STAFF DIRECTOR

September 24, 1993

The Honorable Carol M. Browner
Administrator
Environmental Protection Agency
Room 1200 WT
401 M Street, S.W.
Washington, D.C. 20460

Dear Administrator Browner:

The Louisiana Advisory Committee to the U.S. Commission on Civil Rights, as part of its responsibility to advise the Commission on civil rights issues within the State, held a factfinding meeting in February 1992, in Baton Rouge, Louisiana. The purpose of that meeting was to gather information on environmental problems in selected black communities in Louisiana with particular emphasis on communities in southern Louisiana located in and around hazardous waste and industrial facilities. The enclosed report, The Battle for Environmental Justice in Louisiana... Government, Industry, and the People, is the published result of that meeting and other background research conducted by the Louisiana Advisory Committee.

The Advisory Committee takes note of the studies across the country that indicate that some industrial and hazardous waste facilities are located disproportionately in minority communities and that the residents may face hazards more so than the rest of the population. Based upon studies and reports from environmental groups, civil rights groups and government agencies, claims have been made that racial minorities are distinctly disadvantaged by many factors including discrimination, income, inadequate health care, low quality housing, limited access to government, and political empowerment. The Advisory Committee finds that black communities in the corridor between Baton Rouge and New Orleans are disproportionately impacted by the present State and local government system for permitting and expansion of hazardous waste and chemical facilities. These communities are most often located in rural and unincorporated areas, and residents are of low-socioeconomic status with limited political influence. Some residents of these communities complain that they are excluded from the local and State siting and permitting decisionmaking affecting their communities.

The information contained in this report does not rise to a finding of intentional discrimination in environmental decisionmaking by the State and local governments in Louisiana. However, there is evidence of environmental disparities between white and black populations as it relates to siting and permitting practices and a continued perception that minority communities are targeted and sanctioned for hazardous waste and industrial facilities.

Among numerous findings and recommendations of the report, the Advisory Committee finds that in the health science community at the State and Federal levels, there exists little evidence about environmental pollution exposures and its connection to health effects and the contributions of race, ethnicity or income. Nor is data routinely collected on health risks posed by multiple industrial facilities, cumulative effects, or different pathways of exposure. Some residents of communities affected by hazardous waste and industrial facilities complain that the health information delivered to the public is often incomplete and confusing, causing a general mistrust of government-sponsored studies. Some environmental and community-based groups recommend to residents to avoid such studies. The Advisory Committee concurs with and supports the U.S. Environmental Protection Agency's recommendation cited in the 1992 report, Environmental Equity Report: Reducing Risks for All Communities that:

EPA should establish and maintain information which provides an objective basis for assessment of risks by income and race, beginning with the development of a research and data collection plan. EPA should incorporate considerations of environmental equity into the risk assessment process. It should revise its risk assessment procedures to ensure, where practical and relevant, better characterization of risk across populations, communities, or geographic areas. These revisions could be useful in determining whether there are any population groups at disproportionately high risk.

Although significant reform in environmental laws and policymaking is underway by the U.S. Environmental Protection Agency to merge equity into environmental protection decisionmaking, enforcement authorities and procedures have not yet been established to implement and ensure that private, local, State and other Federal entities are in compliance with environmental equity policies. Moreover, final decisions have not yet been made on how equity measures will be coordinated with U.S. Environmental Protection Agency's civil rights enforcement efforts. Therefore, the Advisory Committee supports EPA's 1992 report recommendation that:

The U.S. Environmental Protection Agency should review and where appropriate, revise its permit, grant, monitoring and enforcement procedures to address high concentration of risk in racial minority communities.

In this effort we concur with the Louisiana Advisory Committee's recommendation that the U.S. Environmental Protection Agency should assess Louisiana's permit and siting practices at the State and local parish levels to ensure that decisions are free from inequities and discrimination. Further, strategies should be developed which will target environmental equity enforcement under the civil rights statutes and regulations administered by the U.S. Environmental Protection Agency; assess the process by which the U.S. Environmental Protection Agency enforces the environmental laws and how the agency's external civil rights compliance program will be implemented in conjunction with equity initiatives. Finally, the U.S. Environmental Protection Agency should monitor the communities of Alsen, Wallace, Forest Grove/Center Springs and Willow Springs, and other similarly situated communities to ensure that siting decisions in those communities are in compliance with EPA equity and civil rights standards.

On behalf of the Louisiana Advisory Committee, we ask that your office review the report, and if warranted, undertake a comprehensive civil rights review of the State's environmental policies and practices. We further ask that you advise us of your reaction to the report.

If more information is needed regarding this matter, we ask that your representative contact Melvin L. Jenkins, director of the Commission's Central Regional Office, Kansas City, Missouri at (816) 426-5253.

Thank you for your cooperation in this matter. I look forward to hearing from you soon.

Sincerely,

For the Commissioners



ARTHUR A. FLETCHER
Chairperson

Enclosure

The United States Commission on Civil Rights

The United States Commission on Civil Rights, first created by the Civil Rights Act of 1957, and reestablished by the United States Commission on Civil Rights Act of 1983, is an independent, bipartisan agency of the Federal Government. By the terms of the 1983 act, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, handicap, or national origin, or in the administration of justice: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

The State Advisory Committees

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 and section 6(c) of the United States Commission on Civil Rights Act of 1983. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference that the Commission may hold within the State.

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Letter of Transmittal

Louisiana Advisory Committee to the
U.S. Commission on Civil Rights

Members of the Commission

Arthur A. Fletcher, *Chairperson*
Charles Pei Wang, *Vice Chairperson*
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Bobby D. Doctor, *Acting Staff Director*

The Louisiana Advisory Committee submits this factfinding report, *The Battle for Environmental Justice in Louisiana.....Government, Industry, and the People*, to you pursuant to our responsibility to forward advice and recommendations to the Commission about matters that the Advisory Committee has studied. By a vote of 9 to 1, the Advisory Committee approved submission of this report to the Commissioners (see appendix A).

This report stems from a comprehensive review of environmental problems in predominately black communities in Louisiana. Across the country, studies document that the vast majority of hazardous waste sites and industrial facilities are located in and around racial minority communities, causing a disproportionate impact that is not similarly suffered by other segments of the population. In Louisiana, this concern is focused on siting and permitting practices of local and State government and industry, adverse health effects, and property buyouts of century-old communities.

The Advisory Committee and staff of the Central Regional Office held a factfinding meeting on February 19-20, 1992, in Baton Rouge, to gather information on the status of environmental problems in selected areas of the State. Areas of the State reviewed included the industrial corridor along the Mississippi River, extending from Baton Rouge down to the southeastern rim of New Orleans. Sometimes called "Cancer Alley," this area includes communities such as Revilletown, Sunrise, Morrisonville, Alsen, and Wallace. Other areas of the State reviewed are the communities of Forest Grove and Center Springs located in northern Louisiana and Willow Springs in southwest Louisiana. Over 30 persons appeared before the Advisory Committee to provide information and various points of view related to environmental equity and justice. Those invited to participate included State and Federal government officials, industry leaders, environmental and civil rights groups, elected officials, experts in the field of environmental science and individual citizens. Staff interviewed approximately 50 persons over a 6-month period to obtain necessary background information. Additional background investigations were also conducted following the factfinding meeting. Those persons who participated in the meeting were given an opportunity to comment on relevant sections of the report. Where appropriate, comments and corrections indicated by them have been incorporated into the final report.

The information presented in this report breaks new ground for the U.S. Commission on Civil Rights. This is the first time the Commission or its State Advisory Committees have undertaken a study to review environmental policies and practices and race discrimination. A transformation in thinking about environmental protection is underway. The environmental justice movement is the merger of some of America's greatest challenges: racism and poverty and the effort to preserve and improve the environment.

As with many other highly industrialized areas across the Nation, Louisiana is faced with balancing the competing demands of economic growth and jobs with maintaining a clean and safe environment where people live, work, and play. But this issue has now taken on a new perplexity, as the call for environmental justice for people of color becomes too loud to ignore. One of the most worrisome issues is the siting of hazardous and industrial facilities in and around racial minority communities and the subsequent alleged health effects and decline in their quality of life.

Since the factfinding meeting, efforts are now underway at the State and national levels, as well as by business and industry in Louisiana, to address environmental problems in minority communities. The Advisory Committee is hopeful that these initiatives will ameliorate the problems discussed in this report.

Among the numerous findings and recommendations referenced in this report, the Advisory Committee concludes that many black communities located along the industrial corridor between Baton Rouge and New Orleans are disproportionately impacted by the present State and local government system for permitting and expansion of hazardous waste and chemical facilities. Communities found to be affected include Revilletown, Sunrise, Morrisonville, Wallace, and Alsen. The Advisory Committee found that there are also some other black communities in other parts of the State that are similarly affected such as Forest Grove, Center Springs, and Willow Springs. These communities are most often located in rural and unincorporated areas, and residents are of low socioeconomic status with limited political influence. Some residents of these communities complain that they are excluded from the local and State siting and permitting decisionmaking affecting their communities. In spite of the disproportionate impact upon certain communities, the State and local governments have failed to establish regulations or safeguards to ensure such communities are reasonably protected from a high concentration of hazardous waste and industrial facilities and risks associated with living in and around such facilities. The Advisory Committee recommends that the Louisiana Department of Environmental Quality develop comprehensive State regulations to balance environmental costs and benefits along with the social economic and aesthetic values of the affected communities as called for by the Louisiana Supreme Court in the case *Save Ourselves v. Louisiana Environmental Control Commission* (IT decision). Local parishes should immediately take action to ensure that zoning decisions provide sufficient protection for affected communities.

The Advisory Committee further recommends that, similar to other States cited in this report, the State and local governments should adopt regulations specifying setback distances or buffer zones from residences, churches, and schools to ensure reasonable distances from industrial and hazardous waste facilities. Residents affected by a proposed facility or expansion of an existing facility should be provided sufficient notice prior to approval of such action.

The Advisory Committee recommends that the Secretary of the Department of Environmental Quality should immediately hold a hearing in response to House Bill 1160. The Advisory Committee recommends that during the next legislative session, to be convened in March 1994, the Louisiana State Legislature should consider enacting a bill to address nondiscrimination and equity in environmental decisionmaking. In

formulating such a bill, the State legislature should review a variety of sources including but not limited to local and State reports such as the proposed DEQ hearings as cited in House Bill 1160; national reports such as the U.S. Environmental Protection Agency, *Environmental Equity, Reducing Risks for All Communities*; the National Law Journal Report, *Unequal Protection*, and the information contained in this report, *The Battle for Environmental Justice in Louisiana..... Government, Industry, and the People*.

Although the Advisory Committee finds that the Department of Environmental Quality has recently made efforts to strengthen its outreach and education efforts to the public, the Advisory Committee urges that particular attention be placed on outreach and education efforts in black communities located along the Mississippi River Industrial Corridor and communities located in rural and unincorporated areas of the State.

The Advisory Committee finds that some black citizens and organizations view with skepticism and distrust some agencies in State government, including the Department of Environmental Quality. These views are held because of poor access to government and an ongoing perception that local and State governments discriminate against them in order to promote and sustain the interests of industry and business. Immediate steps should be taken to dispel this perception. These actions can be in the form of community task force meetings and reports.

The Advisory Committee finds that in the health science community at the State and Federal levels, there exists little evidence about environmental pollution exposures and its connection to health effects and the contributions of income, race, or ethnicity. In Louisiana worries about adverse health effects due to industrial pollution or hazardous waste sites have generated considerable anxiety for residents of the State and created an image of the State as an unhealthy place to live. In black communities particularly along the stretch of southern Louisiana along the Mississippi River, anxiety about health effects from chemical facilities is the reason for the area being dubbed "Cancer Alley" by some groups. Although no connection between toxic emissions and health risks have been clearly demonstrated, some studies and media reports have highlighted the potential for significant risks to these populations from toxic releases.

The Advisory Committee concurs with the U.S. Environmental Protection Agency's recommendation cited in the 1992 report, *Environmental Equity Report: Reducing Risks For All Communities* that:

EPA should establish and maintain information which provides an objective basis for assessment of risks by income and race, beginning with the development of a research and data collection plan. EPA should incorporate considerations of environmental equity into the risk assessment process. It should revise its risk assessment procedures to ensure, where practical and relevant, better characterization of risk across populations, communities or geographic areas. These revisions could be useful in determining whether there are any population groups at disproportionately high risk.

At the State level, Louisiana health officials should begin to develop a data base and risk assessment methodologies to answer questions about the distribution of pollution and exposure related to health on the basis of race, ethnicity, and income. New studies should consider an array of exposures that cause cancer. This should include a database to address other health ailments as well. Also, in the State's outreach and education efforts, steps should be taken to educate residents of affected communities about environmental health issues and to hopefully dispel distrust of health policy decisions.

The Advisory Committee finds that although representatives of the Louisiana chemical industry have been involved in constructive dialogue on environmental equity

issues, there is still concern that all sectors of industry have not participated in a full and open discussion on environmental problems in racial minority communities and the problems associated with racial discrimination. The Advisory Committee recommends that industry conduct a reexamination of siting decisions and special attention should be paid to communities most affected by hazardous waste emitted by industries to translate environmental fairness into meaningful action. As a good faith effort, the Louisiana Chemical Association should expand on the Responsible Care Program initiatives to address environmental equity and affirm its commitment to nondiscrimination in the management of plant facilities.

Significant reform in environmental laws and structural reform in the U.S. Environmental Protection Agency's policymaking framework is being studied by the U.S. Environmental Protection Agency to promote equitable sharing of burdens and benefits of environmental protection. Although significant efforts are underway to merge equity into Federal policymaking, enforcement authorities and procedures have not yet been established to implement and ensure compliance with environmental equity policies by private, local, State, and Federal entities. Moreover, final decisions have not yet been made on how equity measures will be coordinated with U.S. Environmental Protection Agency's civil rights enforcement efforts. The Advisory Committee concurs with the U.S. Environmental Protection Agency's recommendation cited in the 1992 report, *Environmental Equity Report: Reducing Risk For All Communities*. The Advisory Committee particularly supports the report's recommendation that "The U.S. Environmental Protection Agency should review and where appropriate revise its permit, grant, monitoring and enforcement procedures to address high concentration of risk in racial minority communities."

In this effort, the U.S. Environmental Protection Agency should assess Louisiana's permit and siting practices at the State and local parish levels to ensure that decisions are free from inequities and discrimination. The U.S. Environmental Protection Agency should monitor the communities of Alsen, Wallace, Forest Grove, Center Springs, and Willow Springs to ensure that siting decisions in those communities are in compliance with EPA equity and civil rights standards. Strategies should be developed that will target environmental equity enforcement under the civil rights statutes and regulations administered by the U.S. Environmental Protection Agency, assess the process by which the U.S. Environmental Protection Agency enforces the environmental laws, and how the agency's external civil rights compliance program will be implemented in conjunction with equity initiatives.

Therefore, the Advisory Committee urges the Commission to suggest to the Administrator of the U.S. Environmental Protection Agency to undertake a comprehensive civil rights review of the State's policies and practices, particularly actions affecting black low-income residents located in rural incorporated areas of the State.

The Advisory Committee concurs with the U.S. Commission on Civil Rights that comprehensive executive oversight and direction by Federal agencies have been lacking in implementing civil rights policies due to inadequate monitoring and a commitment of resources to respond adequately to needs for enforcement of Federal civil rights laws, particularly Title VI enforcement. Therefore, the Advisory Committee calls upon the U.S. Commission on Civil Rights to monitor and report on the U.S. Environmental Protection Agency's and other relevant Federal agencies' ability to carry out their environmental civil rights responsibilities under Title VI. We urge the Commission to conduct a study during the 1993-94 fiscal year to identify the nature and extent of inequities in Federal enforcement of environmental laws on the basis of race.

The Advisory Committee urges the Commission to assist it in followup activities to this report.

Respectfully,

A handwritten signature in black ink, appearing to read 'R. Kutcher', with a long horizontal line extending to the right.

Robert A. Kutcher, *Chairperson*
Louisiana Advisory Committee

Louisiana Advisory Committee

Robert A. Kutcher, *Chairperson*
New Orleans

Jean Adams*
Gretna

Roberta Madden
Baton Rouge

John S. Baker
Baton Rouge

Sandra McDade*
Shreveport

Cecil J. Blache
Baton Rouge

William P. Quigley
New Orleans

Robert L. Ford
Baton Rouge

I. Kay Reiboldt*
Shreveport

Laurabeth Hicks
Baker

Rupert F. Richardson
Baton Rouge

Salvador G. Longoria
New Orleans

Charles H. Tubre
New Orleans

*No longer a member of the Advisory Committee

Acknowledgments

The Louisiana Advisory Committee wishes to thank the staff of the Commission's Central Regional Office for its help in the preparation of this report. The project was the principal assignment of Farella E. Robinson with support from Jo Ann Daniels. The report was prepared for publication by Gloria Hong Izumi. The project was carried out under the overall supervision of Melvin L. Jenkins, Director, Central Regional Office.

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1. Introduction

*I submit to you that a new consciousness has been gained along the lower Mississippi River, better known as Cancer Alley. But once again we are asked to prove what our eyes already see. Is it class or race? Do hazardous waste storage, disposal treatment policies and practices impact with greater frequency and intensity on minority communities? . . . The same factors that created disparities in income, housing, and education are determining disproportionate exposure to toxics by minority communities in Louisiana. . . .*¹

The information presented in this report breaks new ground for the U.S. Commission on Civil Rights. This is the first time the Commission or its State Advisory Committees have undertaken a study to review environmental policies and practices and race discrimination. A transformation in thinking about environmental protection is underway. The environmental movement's emphasis on nature, the wilderness, endangered species, and open spaces has moved to social justice issues. This expanded view of environmental protection has spawned a reassessment in thinking and action among government, industry, and environmental groups about the convergence of civil rights and environmental justice. This new movement is called the environmental justice movement, and the problem is defined as environmental racism. According to Dr. Benjamin Chavis, who coined the term 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.²

Some scholars and business interests on the other side of this debate view the issue as mainly a socioeconomic and property rights issue rather than racial discrimination:

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. . . . respect for contracts and private property will solve much of the apparent dilemma over racially disparate environmental results.³

1 Beverly Wright, director, Deep South Center for Environmental Justice, Xavier University of Louisiana, remarks, factfinding meeting before the Louisiana Advisory Committee to the U.S. Commission on Civil Rights, Baton Rouge, Feb. 19–20, 1992, vol. 1, p. 16 (hereafter cited as *Transcript*).

2 Benjamin F. Chavis, Jr., executive director, United Church of Christ Commission for Racial Justice, testimony before the U.S. House of Representatives, Judiciary Committee, Subcommittee on Civil and Constitutional Rights, "Environmental Racism," Washington, D.C., Mar. 3, 1993 (hereafter cited as Subcommittee on Civil and Constitutional Rights, U.S. House of Representatives).

3 Kent Jeffreys, director, Environmental Studies for the Competitive Enterprise Institute, testimony before the Subcommittee on Civil and Constitutional Rights, U.S. House of Representatives, Mar. 3, 1993.

As with many other highly industrialized areas across the Nation, Louisiana faces balancing the competing demands of economic growth and jobs with maintaining a clean and safe environment where people live, work, and play. But this issue has now taken on a new perplexity, as the call for environmental justice for people of color becomes too loud to ignore. One of the most worrisome issues is the siting of hazardous and some industrial facilities in and around racial minority communities and the subsequent health effects and decline in the quality of life.⁴

Through this report the Louisiana Advisory Committee hopes to raise further awareness of this problem; shed light on inequities adversely affecting black communities in Louisiana; and contribute to building, where possible, bridges of cooperation between government, industry, and the people. Thus, the Louisiana Advisory Committee, as the "eyes and ears" for the U.S. Commission on Civil Rights, now reports on the effect of environmental decisionmaking on selected black communities and the gains and losses, as government, industry, and the people move toward a new era of environmental protection and civil rights.

Demographics

The U.S. Bureau of the Census statistics for 1990 show Louisiana with a population count of 4,219,973. The racial characteristics of the State are 2,839,138 or 67.3 percent white; 1,299,281 or 30.8 percent black; 18,541 or 0.4 percent American Indian, Eskimo, or Aleutian; 41,099 or 1.0 percent Asian or Pacific Islander; and 93,044 or 2.2 percent Hispanic.⁵ The lower Mississippi industrial corridor spans approximately 80 miles along

the Mississippi River from Baton Rouge to New Orleans. The corridor contains portions of the following parishes: Ascension, East Baton Rouge, Iberville, Jefferson, Orleans, Plaquemines, St. Charles, St. James, Saint John the Baptist, and West Baton Rouge. Total population in the 10 parishes was 1,562,918 in 1990, 37 percent of the State's population. Forty-one percent of the population is racial minorities, compared to 33 percent in the State.⁶

Methodology

The Central Regional Office and members of the Louisiana Advisory Committee have monitored and conducted background investigations on this issue since April 1990 through interviews, media accounts, and briefing meetings with government and environmental groups knowledgeable about environmental problems in minority communities.

Staff interviewed approximately 50 persons over a 6-month period to obtain necessary background information. Then, on February 17-20, 1992, the Louisiana Advisory Committee conducted a 2-day factfinding meeting at Louisiana State University as the final data collection phase of the study. During this meeting 32 persons appeared before the Committee to provide information and differing points of view. Those invited to participate included government officials; industry, community, and environmental groups; legal experts; toxicologists; and social scientists with knowledge and responsibilities in areas relevant to environmental matters. Members of the public were invited to participate in an open session. Information contained in this report addresses the concept of environmental justice and race discrimination, legal

4 United Church of Christ, Commission for Racial Justice, *Toxic Wastes and Race in the United States: A National Report on the Racial and Socioeconomic Characteristics of Communities with Hazardous Waste Sites* (1987), pp. ix-x, (hereafter cited as *Toxic Wastes and Race*).

5 U.S. Department of Commerce, Bureau of the Census, News Release, June 12, 1991.

6 *Toxic Releases Inventory and Emissions Reductions 1987-1990 in the Lower Mississippi River Industrial Corridor*, U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics, May 14, 1993, pp. 16-17 (hereafter cited as *Toxic Releases in the Lower Mississippi River Industrial Corridor*).

strategies, government regulations and decisionmaking, industry decisionmaking, health effects, and case studies of selected communities facing environmental challenges.

This report also describes some findings and differing points of view cited in numerous reports and studies such as *Toxic Wastes and Race in the United States; Environmental Equity, Reducing Risk for All Communities; The Truth About Where You Live, An Atlas for Action on Toxins and Mortality; Dumping in Dixie, Race Class, and Environmental Quality; Environmental Racism: Reviewing the Evidence; St. Gabriel Miscarriage Investigation; Siting of Hazardous Waste Landfills and Their Correlation With Racial and Economic Status of Surrounding Communities; Cancer in Louisiana—Cancer Incidence in South Louisiana, 1983–1986; A Review of Cancer Epidemiology in Louisiana; Chemicals, Cancer and Risk Assessment; and Toxic Releases Inventory and Emission Reductions 1987–1990 in the Lower Mississippi River Industrial Corridor.* (See appendix J for citations.)

Definition of Terms

For the reader, it is important to define what terms such as environmental racism, equity, justice, and disproportionate impact denote in the environmental movement. In the literature some of these concepts are used interchangeably, causing some misunderstanding in describing the effects of environmental pollution in communities. Officials of the Equity Office of the U.S. Environmental Protection Agency (EPA) acknowledge that the terminology used to describe equitable

distribution of environmental benefits and costs is under debate and, therefore, is still subject to further clarification and refinement. Moreover, EPA has yet to distinguish between environmental equity and civil rights enforcement in federally assisted programs and how these two will be coordinated within EPA.⁷

“Environmental racism” refers to racial discrimination in environmental policymaking, the unequal enforcement of environmental regulations and laws, the deliberate targeting of communities of people of color for toxic waste facilities, and the official sanctioning of the life-threatening presence of poisons and pollutants in minority communities. It is also the history of excluding people of color from the leadership of the environmental movement.⁸

“Environmental equity” refers to the distribution and effects of environmental problems and the policies and processes to reduce differences in who bears environmental risks. In contrast to environmental racism, equity includes consideration of the disproportionate risk burden placed on any population group, as defined by gender, age, income, and race.⁹

“Environmental justice” is the attainment of environmental rights for all and the end of environmental racism. The goal is that no community is impacted by hazardous pollution.¹⁰

“Disproportionate impact” describes any policy, practice, or activity that by decision or circumstance has a differential impact on groups of people.¹¹

7 U.S. Environmental Protection Agency, *Environmental Equity, Reducing Risk for All Communities*, (June 1992), vol. 2, pp. 2–3 (hereafter cited as *Environmental Equity Report*); Clarice Gaylord, director, and Robert Knox, deputy director, Office of Environmental Equity, U.S. Environmental Protection Agency, interview, Mar. 2, 1993.

8 Benjamin Chavis, testimony before the Subcommittee on Civil and Constitutional Rights, U.S. House of Representatives, Mar. 3, 1993.

9 *Environmental Equity Report*, vol. 2, pp. 2–3.

10 *National Law Journal Report*, p. S-12.

11 Robert Bullard, “National Wildlife Enviro Action,” November 1991, p. 11.

2. Background and Setting

*Today in Louisiana more plants and largely black communities do share the same neighborhood. . . . but in no case have minority communities been targeted for the siting of chemical manufacturing plants in Louisiana. . . . so the relevant question is what are we doing to be better neighbors now? Partnerships are working in many areas, so it is important that we look at the work being done and the job that lies ahead.*¹

National Perspectives

In both separate and joint efforts, black, Hispanic, Asian, and American Indian groups are battling pollution hazards by arguing that their neighborhoods have become America's industrial dumping grounds. These groups and sympathetic whites have joined together under the banner of environmental justice.² Minority groups have developed into a new movement that is applying the language and strategies of the civil rights movement to counter environmental and health hazards in their communities as varied as toxic dumping and lead poisoning. A body of information that shows that minorities suffer the most from pollution and benefit the least from cleanup programs is transforming environmental politics. Many civil rights and traditional environmental organizations have reexamined their agendas and constituencies, and some are giving grassroots groups advice and support.³

The movement was triggered in 1982 by a national protest by the predominately black community in Warren County, North Carolina. The decision to locate a highly toxic PCB landfill there sparked a heated debate

regarding the site selection process for hazardous waste facilities. The location of such a health-threatening facility in a predominately black community, despite its scientific unsuitability, raised the question of how such decisions are made and "how many other racial and ethnic communities were similarly affected by hazardous wastes."⁴

Subsequent studies were conducted to assess the nature and extent of this problem. According to Benjamin Goldman, disproportionate shares of environmental contamination exist racially and economically. His study suggests that the racial and socioeconomic disparities in siting of commercial hazardous waste facilities uncovered by the United Church of Christ Commission for Racial Justice study, *Toxic Wastes and Race in the United States; A National Report on the Racial and Socioeconomic Characteristics of Communities with Hazardous Waste Sites*, also hold true for most other pollution and mortality factors as well. Mr. Goldman concludes that poor, black, Hispanic, and Native American communities are consistently hit more severely by pollution and death. In areas of the country that ranked the worst across all of the

1 Dan Borne, president, Louisiana Chemical Association, remarks, factfinding meeting before the Louisiana Advisory Committee to the U.S. Commission on Civil Rights, Baton Rouge, Feb. 19-20, 1992, vol. 2, p. 526 (hereafter cited as *Transcript*).

2 Roberto Suro, "Pollution-Weary Minorities Try Civil Rights Track," *New York Times*, Jan. 11, 1993, pp. A1, B7.

3 Ibid.

4 Kelly Colquette and Elizabeth Henry Robertson, "Environmental Racism: The Causes, Consequences, and Recommendations," *Tulane Environmental Law Journal*, 1991, vol. 5, pp. 157-58.

industrial toxic measures, minorities were more than twice the percentage of the population than the average for the rest of the country.⁵

Dr. Paul Mohai and Dr. Bunyon Bryant reviewed other studies to see if they showed a consistent pattern of environmental injustice based on race and socioeconomic factors. Their review also examined the distribution of commercial hazardous waste facilities in the Detroit metropolitan area. The authors concluded that both income and race are factors in the distribution of environmental hazards, but of the two factors, race appeared to have a more important relationship to environmental inequities.⁶

Although numerous studies have been done, several landmark national studies document this phenomenon. They include:

In 1983 the U.S. General Accounting Office (GAO) surveyed commercial hazardous waste landfills located in eight southeastern States. Four offsite hazardous waste landfills are located the region. The report, *Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities*, found that blacks constituted the majority of the population in three of the four communities where the commercial landfills are located. At least 26 percent of the population in all four communities have income below the poverty level and most of their population is black. The release of this report marked the first official recognition by the Federal Government of the

relationship between race and the siting of hazardous waste disposal.⁷

In 1987 the Commission for Racial Justice of the United Church of Christ (CRJ) released its study entitled *Toxic Waste and Race in the United States*. This study focused on the demographic patterns associated with commercial hazardous waste sites. Among the many findings that emerged from this study the following are most salient: (1) communities with commercial hazardous waste facilities were found to have twice the percentage of racial minorities as communities without such facilities; (2) communities with more than one facility or with the largest toxic waste dumps have three times as many people of color; (3) three of the five largest landfills with toxic waste in the country are in black and Hispanic communities; and (4) race was the single most significant predictor of where commercial toxic waste treatment, storage, and disposal occur nationwide. This study was the first national report to document comprehensively the presence of hazardous waste sites in racial and ethnic communities throughout the United States.⁸

In 1990, in the book *Dumping in Dixie, Race, Class, and Environmental Quality*, Dr. Robert Bullard explored the thesis that southern black communities, because of economic and political vulnerability, have been routinely targeted for the siting of noxious facilities and environmental hazards. He documents the efforts of blacks

5 Benjamin A. Goldman, *The Truth About Where You Live: An Atlas for Action on Toxins and Mortality* (New York: Random House, 1991) (hereafter cited as *The Truth About Where You Live*), pp. 282-83.

6 Paul Mohai and Bunyon Bryant, "Environmental Racism: Reviewing the Evidence," paper delivered at the University of Michigan Law School Symposium on Race, Poverty, and the Environment, Jan. 23, 1992.

7 U.S. General Accounting Office, "Siting of Hazardous Waste Landfills and Their Correlation With Racial and Economic Status of Surrounding Communities," 1983 (hereafter cited as *GAO Report*).

8 United Church of Christ, Commission for Racial Justice, *Toxic Wastes and Race in the United States: A National Report on the Racial and Socioeconomic Characteristics with Hazardous Waste Sites* (1987), pp. xiii, xiv (hereafter cited as *Toxic Wastes and Race*).

fighting such sitings in Houston and Dallas, Texas; Emelle, Alabama; Institute, West Virginia; and Alsen, Louisiana.⁹

In 1990 the EPA responded to environmental inequities raised by a body of social scientists and civil rights leaders called the Michigan coalition. Through the ensuing dialogue, the EPA Environmental Equity Workshop was established within the agency to assess evidence that racial minority and low-income communities bear a higher environmental risk than the general population. The work of EPA through the Equity Workshop resulted in the 1992 report *Environmental Equity, Reducing Risk for All Communities*. Some of the pertinent findings cited are: (1) there are differences between racial groups in terms of disease and death rates, but there are limited data to link environmental exposures to these differences and there are limited data on environmental health effects by race and income; (2) racial minority and low-income populations experience higher than average exposures to selected air pollutants, hazardous waste facilities, contaminated fish, and agricultural pesticides in the workplace; (3) environmental and health data are not routinely collected and analyzed by income and race; (4) although risk assessment and management procedures are not in themselves biased against certain income or racial groups, these procedures can be improved to better take into account equity considerations. Overall, the findings suggest that minority communities experience greater than average

exposure to some environmental pollution, such as lead, air pollutants, toxic waste, and tainted fish, but race is not as significant as poverty in determining which communities face the highest risk.¹⁰

The *National Law Journal* conducted a study in 1992 on EPA's enforcement efforts, indicating glaring inequities between white and racial minority communities. The report concluded that there is a racial divide in the way EPA 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. According to the report, unequal protection often occurs whether the minority community is wealthy or poor, therefore, concluding that race is the main predictor of how well environmental laws are enforced.¹¹

In part due to the *National Law Journal* findings, the Enforcement Management Council of EPA is reviewing the *National Law Journal's* findings to determine their validity and recommend changes, if necessary, to the agency's enforcement policies and procedures. The Council's report will be completed in the summer of 1993.¹²

On the other side of the debate are views that discount the concept of environmental racism. Mr. Kent Jeffreys of the Competitive Enterprise Institute testified before the Committee on the Judiciary, Subcommittee on Civil and Constitutional Rights, U.S. House of Representatives, that socioeconomic factors

9 Robert Bullard, *Dumping in Dixie, Race, Class, and Environmental Quality* (Colorado: Westview Press, 1990), pp. 45-78.

10 U.S. Environmental Protection Agency, *Environmental Equity, Reducing Risks for All Communities*. vol. 1, pp. 2-3, 6, 11; Michael Weisskopf, "Minorities' Pollution Risk is Debated," *Washington Post*, Jan. 16, 1992, p. A25.

11 *National Law Journal Report*, p. S-2.

12 See Clarice Gaylord, director, Office of Environmental Equity, letter to Bobby Doctor, Acting Staff Director, USCCR, re: Responses by the Environmental Protection Agency to Questions by the U.S. Commission on Civil Rights on Environmental Equity and Civil Rights Enforcement, Apr. 13, 1993 (hereafter cited as Responses by EPA to USCCR Questions).

and cheap land values where racial minorities largely live contribute most to the environmental problems suffered by racial minorities. He stated:

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. . . . 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 D.C. last year, not a single person died because of groundwater contamination from a hazardous waste site. Environmental issues must be placed in perspective. . . .¹³

Mr. Jeffreys concludes that respect for contracts and private property and less Federal legislation will solve much of the dilemma over racially disparate environmental results.¹⁴

Kyle McSlarrow, an environmental lawyer and a witness at the same hearing, stated that the poverty and political powerlessness of these communities should not be excluded as causes. He said:

Some argue that race alone determines these outcomes, not income. This oversimplifies a much

more complex issue, nor is it clear that race as 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. . . . 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.¹⁵

As a solution Mr. McSlarrow supports stronger property rights laws and State laws that subject siting decisions to an environmental risk analysis.¹⁶

Although most in industry concur that racial minorities reside disproportionately in and around industrial and hazardous waste facilities, a concerted national dialogue by industry about this issue is absent. However, there are exceptions. Corporations such as Waste Management Incorporated (WMI) have taken a public stand. Charles McDermott of WMI stated that racial minorities and the poor do bear a disproportionate share of the burden associated with pollution.¹⁷ He said even some WMI sites have been held up as examples of discriminatory siting practices. In response to these charges, WMI examined this situation using the same methodology as in the Commission for Racial Justice study, and determined that 76 percent of WMI’s disposal facilities are located in communities with a white population equal to or greater than the host State average.¹⁸ Moreover, he stated, there is little evidence that emissions from waste facilities pose the greatest risk to

13 Kent Jeffreys, testimony before the Subcommittee on Civil and Constitutional Rights, U.S. House of Representatives, Mar. 3, 1993.

14 Ibid.

15 Kyle McSlarrow, environmental attorney, testimony before the Subcommittee on Civil and Constitutional Rights, U.S. House of Representatives, Mar. 4, 1993.

16 Ibid.

17 Charles McDermott, *Transcript*, vol. 2, pp. 667, 676.

18 Charles McDermott, testimony before the Subcommittee in Civil and Constitutional Rights, U.S. House of Representatives, Mar. 3, 1993.

the average minority community. Mr. McDermott suggested that companies must do a better job of communicating to communities about perceived risks versus actual risks, explaining the many advancements in pollution prevention.¹⁹

At the national level, the U.S. Chemical Manufacturers Association has taken the lead in launching an environmental initiative called Responsible Care. This program is a mandatory pledge from all industry members to improve and ensure the responsible management of chemicals. It is an effort to tie environmental responsibility into business practices. The U.S. Chemical Manufacturers Association describes the 10 principles outlined in the program as an environmental bill of rights for all people. The Louisiana Chemical Association (LCA) supports this initiative and has made it a part of its program to improve performance.²⁰ (See appendix G)

Although many other environmental efforts by industry and business have occurred and are occurring throughout the country, there is still concern that industry has not participated in a full and open discussion on environmental equity issues.²¹ As stated by Mr. McDermott:

There must be an honest and fair discussion of risk, a reexamination 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. . . .²²

A new presidential council appointed by President Clinton aimed at enhancing

economic growth while protecting the environment, may provide an opportunity for industry to take part in a meaningful discussion on environmental equity. This council, which includes a number of chemical companies, was brought together in an effort to bring together interested parties who had not come together to exchange ideas before. It is hoped that among the many issues to be addressed by the council, that the allegations of environmental racism along the Mississippi River industrial corridor will be looked at.²³

The Setting in Louisiana

On June 1, 1990, the Louisiana Advisory Committee voted to conduct a factfinding study on environmental issues in black communities. This study was undertaken based on reports of the disproportionate impact of hazardous and/or industrial pollution and the siting of hazardous and industrial facilities in poor black communities, particularly in the area in and around the lower Mississippi River between Baton Rouge and New Orleans referred to by some as the industrial corridor and by others as "Cancer Alley."²⁴

Since the initiation of the Advisory Committee's study, EPA's Office of Pollution Prevention and Toxics has also prepared a report on toxic air emissions in the lower Mississippi River industrial corridor. The report concludes that many of the facilities emitting large amounts of chemicals are in areas with predominately minority populations. Moreover, populations within 2 miles of facilities releasing 90 percent of total industrial

19 Ibid.

20 Robert D. Kennedy, "Corporate Priorities Driven by Environmental Concerns," *Birmingham News*, Aug. 24, 1991, p. B1; Dan Borne, *Transcript*, vol. 2, p. 527, see app. G.

21 Charles McDermott, *Transcript*, vol. 1, p. 42.

22 Charles McDermott, testimony before the Subcommittee on Civil and Constitutional Rights, U.S. House of Representatives, Mar. 3, 1993.

23 Mark Schleifstein, "Council May Study Louisiana Environmental Issues," *The Times-Picayune*, June 15, 1993, p. B1.

24 Louisiana Advisory Committee Project Proposal, "Environmental Equity," June 1991.

corridor releases feature a higher proportion of minorities than the State average.²⁵

Louisiana is one of the largest U.S. producers of oil and natural gas and home of an enormous petrochemical industry. It has a national first place ranking for total toxic discharges into the air, water, and land, immediately raising concerns about environmental protection. With the exception of Texas and New Jersey, Louisiana is home to more chemical companies than any other State in the United States.²⁶ According to the 1991 EPA nationwide Toxic Release Inventory, Louisiana reported the largest toxic releases and transfers of chemicals into the environment (air, water, land) of any State, 459 million pounds of chemical releases or 13.5 percent of the national total.²⁷ The chemical industry contributes 89 percent of the total releases and transfers in Louisiana and 80.4 percent of the State's total air releases. Although Louisiana's emissions have dropped almost 50 percent over 5 years, further reductions are needed. For example, Louisiana decreased its discharge of toxic air pollutants by 30 percent over a 4-year period, but still has to reduce it another 20 percent by 1996 to comply with the State's air toxics law.²⁸ Louisiana ranked first in the Nation in total chemical releases, first in water releases, second in underground injection releases, and sixth for total air releases.²⁹

Almost two-thirds, or 64.8 percent, of the State's voters are dissatisfied with the quality

of Louisiana's environment.³⁰ Although the emissions affect everyone, the impact of industrial development appears to fall disproportionately on predominately black areas of Louisiana. This development is visible between Baton Rouge and New Orleans where smokestacks and pipelines of oil refineries and petrochemical plants are situated close by predominately black and often poor communities such as Alsen, St. Gabriel/Carville, Geismar, Mount Airy, Morrisonville, and Willow Springs. Many black residents in towns such as Revilletown have been bought out by Georgia Gulf; Good Hope was uprooted by a refinery in St. Charles; Morrisonville was relocated by Dow; and Sunrise was bought out by Placid Refining Company. Recently, residents of the St. Gabriel/Carville area have voiced strong opposition to the proposed location of the Supplemental Fuel Inc. (SFI) hazardous waste processing plant in a predominately black area. Allegations of environmental racism have been made and the NAACP have been asked to help oppose the proposed site. The Louisiana House of Representatives, the Police Jury of Ascension and Iberville Parish have all passed resolutions opposing the SFI facility.³¹

Another factor affecting the quality of life for these communities is the unknown health risks. Residents of these communities now believe many of their health problems, such as cancer, respiratory ailments, central nervous disorders, birth defects, and spontaneous

25 "Toxic Releases Inventory and Emissions Reductions 1987-1990 in the Lower Mississippi Industrial Corridor," U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics, May 14, 1993 (hereafter cited, "Toxic Releases in the Lower Mississippi River Industrial Corridor").

26 James O'Byrne and Mark Schleifstein, "The Chemical Industry's Toxic Toll," *The Times-Picayune*, Feb. 17, 1991, pp. A1, A15.

27 U.S. Environmental Protection Agency, *The 1991 Toxic Release Inventory National Report* (May 1993), p. 3.

28 Bob Anderson, "LA Leads U.S. in Toxic Discharges," *The Advocate*, May 26, 1993, p. B1.

29 "Toxic Releases in the Lower Mississippi River Industrial Corridor."

30 Jack Wardlow, "Louisiana Environment Not So Hot, Most Voters Say In Poll," *The Times-Picayune*, Apr. 3, 1993, p. B1.

31 Bob Warren and Stephen Casmier, "The Poor Begins to Draw Battle Lines," *The Times-Picayune*, Feb. 20, 1991, p. A14; Carol Moormon, "Residents Protest Waste Processing Plant," *The Advocate*, July 9, 1993, p. A2.

abortions, are directly related to their exposure to industrial contamination.³² However, studies conducted on causes of suspected health effects do not show that industrial pollution exposures are the cause of these ailments.³³

Industries adamantly reject the notion that race is or has been a factor in facility siting. Plant selection, they say, is based on availability of natural resources, land, and transportation needs.³⁴ Louisiana Chemical Association officials report that companies are reducing chemical waste and are taking proactive steps to work with communities to solve problems and be good neighbors. LCA President Dan Borne stated:

In the past, the chemical industry has not adequately addressed its neighbors' anxieties, fears, and complaints. At times, we have not always reached far enough beyond our fence lines to provide information and extend a hand of help and opportunity. . . . Industry thought it was enough to provide jobs, pay taxes, and obey environmental laws and regulations. . . . Today a cultural change is taking place in the chemical industry, and it is a change for the better. . . .³⁵

Industry officials stated that emission reductions have come about through new waste reduction and minimization techniques. The chemical industries noted that they are committed to further reduction. LCA companies hope to achieve an overall 50 percent reduction in air toxics by 1996.³⁶

According to the 1991 toxic release inventory, 10 parishes with the largest amount of releases and transfers are: Jefferson, St. James, Ascension, Calcasieu, East Baton Rouge, St. Charles, St. Mary, Iberville, Caddo, and Quachita. Sixty percent of these parishes are located along the Mississippi River industrial corridor.³⁷ The top 10 emitters for total releases/transfers in 1991 were: American Cyanamid, Jefferson Parish; Agrico Chemical Faustina, St. James Parish; Agrico Chemical, St. James Parish; Arcadian Corp., Ascension Parish; BASF Corp., Ascension Parish; Citgo Petroleum Corp., Calcasieu Parish; CF Industries, Ascension Parish; Uniroyal Chemical Co., Ascension Parish; Rubicon, Inc., Ascension Parish; Dow Chemical Company, Iberville Parish.³⁸ At least 38 major chemical companies and 112 industrial sites are located in the industrial corridor. Discharges are calculated upwards to 400 million pounds of waste into the environment each year. At last count, there are approximately 800 suspected and confirmed hazardous waste sites in Louisiana and 12 Superfund sites.³⁹

Coupled with this industrial pollution and toxic waste, a 1991-92 study by the Institute of Southern Studies on the environmental health of individual States showed that Louisiana ranked 48th in effectiveness of its environmental policies and 45th for general health quality of its citizenry.⁴⁰ Dr. Paul Templet, former director of the Louisiana Department of Environmental Quality (DEQ),

32 Joel Nitzkin, *Transcript*, vol. 1, pp. 248, 251, 253, 256; James O'Byrne and Mark Scheifstein, "Invisible Poisons: No One is Sure About Effects on Our Health," *The Times-Picayune*, Feb. 18, 1991, pp. A1, A7.

33 *Ibid.*

34 Dan Borne, *Transcript*, vol. 2, pp. 518-709.

35 *Ibid.*, pp. 520-21.

36 *Ibid.*, p. 527.

37 "Louisiana Toxic Release Inventory, 1991," December 1992, pp. 21-22.

38 *Ibid.*, p. 50.

39 William Arp and Valerie Jones, "Survey and Analysis of Environmental Concerns Within African-American Communities," Center for Energy and Environmental Studies, Southern University, Nov. 16, 1992, p. 3; Tammy Guillotte, "Hazardous Waste Sites Targeted by DEQ, EPA," *Louisiana Environmentalist*, March-April 1993, p. 11.

40 Bob Hall and Mary Lee Kerr, Institute for Southern Studies, *The 1991-92 Green Index: A State-by-State Guide to*

admitted, "The State is at the bottom in regulations and at the top in toxic discharges."⁴¹

Despite its responsibility for attacking some of the worst environmental problems in the Nation, DEQ has been underfunded and criticized for ineffective enforcement efforts. Under the leadership of former Governor Roemer and DEQ head Paul Templet, from 1988 to 1991, the department was revitalized through increased funding, staff, and enforcement activities. As described by Dan Borne, "DEQ grew from a sleepy observer to an active participant."⁴²

The current DEQ administration is viewed with a skepticism by environmental groups because of alleged close ties with industry. DEQ is accused of holding closed meetings and failing to provide pertinent information to citizens about health concerns and the status of the State's environment. Although DEQ was able to develop into an effective and credible department under the former administration, some are concerned that these gains will be lost under the current administration.⁴³

Most recently, a DEQ official criticized EPA for releasing the "Toxic Releases in the Lower Mississippi Industrial Corridor" report, which concluded that chemical facilities are located most often near black populations along the Mississippi River between Baton Rouge and New Orleans. The DEQ official feared that the report would place a negative connotation on the State and emotionalize the issue in the local and national press. The official

suggested to EPA to be "extremely cautious in publishing information regarding environmental equity and specific geographic regions," specifically, the lower Mississippi corridor.⁴⁴

The Economy

To get a better sense of environmental problems in Louisiana, one must understand the economic base on which the State depends and from which it benefits. Louisiana is the Nation's third largest producer of chemical products.

The chemical industry is among the biggest sources of earnings in the State's manufacturing sector and produces more products for export than any other manufacturing industry. The chemical industry is also the largest single employer in the Louisiana manufacturing sector. Eighty-seven percent of chemical industry jobs are located in the corridor between Baton Rouge and New Orleans, and in Lake Charles.⁴⁵ The chemical industry employed 29,200 persons in 1990. For each job in the chemical industry, economists estimate eight more jobs are created in the economy.⁴⁶ On the other hand, the industry benefits from industrial property tax exemptions worth millions of dollars each year. According to the Louisiana Department of Economic Development, as of June 10, 1993, eligible industries throughout the State were exempted from approximately \$12,315,110,207 in taxes. Of this

the Nation's Environmental Health (Island Press: Durham, N.C., 1991).

41 James O'Byrne and Mark Schleifstein, "Regulators Struggle to Keep Up," *The Times-Picayune*, Feb. 17, 1991, p. A18.

42 Ibid.

43 Mary Lee Orr, executive director, Louisiana Environmental Network, *Transcript*, vol. 1, p. 360; "Secrecy Clouds DEQ Reputation," *The Advocate*, Feb. 22, 1992, p. B6.

44 See Gary Johnson, memorandum to Jenny Henderson-LaBar, Louisiana Department of Environmental Quality, "Review of Toxic Release Inventory, Lower Mississippi Industrial Corridor," Nov. 18, 1992.

45 Loren C. Scott, "The Chemical Industry in Louisiana," presented to the Louisiana Chemical Association (January 1991), p. i.

46 Ibid.

total, the chemical industry's share was \$5,240,590,084.⁴⁷ The oil and gas industry is directly responsible for 26 percent of the revenue received by the State and employs 6.1 percent of the State's total work force. More than 13 percent of the wages earned in Louisiana come from the oil and gas industry.⁴⁸

South Louisiana and the Mississippi River Industrial Corridor

The most heavily industrialized area of Louisiana is along the southern lower reaches of the Mississippi River stretching from Baton Rouge to New Orleans. South Louisiana includes 35 of the State's 64 parishes and approximately 72 percent of the population of 3.2 million. Racial and ethnic minorities comprise 1,067,327 or 35 percent of the population, of whom 86 percent are black. (See table 1.)⁴⁹ In 1988 the lower Mississippi River industrial corridor area contained 81 toxic releasing facilities, almost a third of all facilities in the State.⁵⁰

Another area of extensive industrialization is along the Calcasieu River in Lake Charles. The Calcasieu area has at least 27 facilities that release toxic waste into the environment. Sprinkled among the chemical plants are some of the Nation's largest oil refineries such as Exxon in Baton Rouge, Citgo Petroleum in Calcasieu Parish, American Cyanamid in Jefferson Parish, and BASF Corporation in Ascension Parish, to name a few.⁵¹ An inves-

tigation by the *Baton-Rouge Advocate* showed that black communities in south Louisiana are more likely located next to heavy industries that pollute. However, the study concluded that economic status was more of a common denominator than race.⁵²

Dan Borne, president of the Louisiana Chemical Association, stated:

Plants and largely black communities do share the same neighborhoods, but it is not because industries have made a decision to discriminate against blacks. . . . Many LCA companies built on old plantation sites where the surrounding community probably was, and may still be, predominately black. Some facilities were built in rural areas that had no communities around them until years later. In some cases, the surrounding community had been mostly white, then changed over time.⁵³

Dr. Beverly Wright, sociologist, Xavier University, noted:

For a very long time minority and poor communities have been the prime targets for nondesirable but necessary byproducts of an industrial society. These neighborhoods are seen as the paths of least resistance, making them more likely candidates for bridge or highway buyouts, toxic and solid waste landfills, and incinerators for chemical plant locations.⁵⁴

Dr. Paul Templet, an environmental professor at Louisiana State University and former secretary of DEQ, stated: "While pollution may be colorblind in that it affects everyone negatively, there are indications that

47 Steven Windham, Louisiana Department of Economic Development, memorandum to Farella Robinson, USCCR, June 10, 1993.

48 Louisiana Mid-Continent Oil and Gas Association, "Louisiana Oil and Gas Facts" (September 1991), p. 3.

49 Vivien W. Chen et al., "Cancer in South Louisiana," *Journal of the Louisiana State Medical Society* (April 1992), pp. 149-50.

50 *The 1988 Toxic Release Inventory National Report* (September 1990), p. 3.

51 Louisiana Toxic Release Inventory, 1990.

52 Bob Anderson, "Plant Sites: Is Racism An Issue?" *The Advocate*, May 13, 1992, p. A1, A5.

53 *Ibid.*, p. A5.

54 Beverly Wright, *Transcript*, p. 18.

Table 1

Racial/Ethnic Composition of South Louisiana by Parish

Region	Parishes Covered		Population
New Orleans	Jefferson, Orleans and St. Bernard		1,011,875
Baton Rouge	Ascension, Assumption, E. Baton Rouge, E. Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, Tangipahoa, W. Baton Rouge and W. Feliciana		732,315
Southeast LA	LaFourche, Plaquemines, St. Charles, St. James, St. John, St. Tammany, Terrebonne and Washington		499,422
Lafayette	Acadia, Evangeline, Iberia, Lafayette, St. Landry, St. Martin, St. Mary and Vermillion		554,665
Lake Charles	Allen, Beauregard, Calcasieu, Cameron and Jefferson Davis		259,425

Parish	Total	White	Black	Hispanic	Other Race
Ascension	58,214	44,480	13,268	923	466
Acadia	55,882	45,532	10,179	372	171
Allen	21,226	16,308	4,496	671	422
Assumption	22,753	15,273	7,349	292	131
Beauregard	30,083	25,242	4,489	417	352
Calcasieu	168,134	128,181	38,445	1,847	1,508
E. Baton Rouge	380,105	240,614	132,328	5,761	7,163
E. Feliciana	19,211	10,022	9,083	186	106
Evangeline	33,274	24,405	8,701	270	168
Iberia	68,297	46,940	20,154	1,320	1,203
Iberville	31,049	16,519	14,385	598	145
Jefferson	448,306	351,170	79,042	26,611	18,094
Jefferson Davis	30,722	24,721	5,836	201	165
Lafayette	164,762	125,340	36,846	2,613	2,576
LaFourche	85,860	72,371	10,703	1,249	2,786
Livingston	70,526	66,269	3,920	642	337
Orleans	496,938	173,554	307,728	17,238	15,656
Plaquemines	25,575	18,522	5,944	590	1,109
St. Bernard	66,631	62,199	3,111	4,183	1,321
St. Helena	9,874	4,725	5,127	46	22
St. James	20,879	10,484	10,357	107	38
St. John Baptist	39,996	25,039	14,419	954	538
St. Martin	43,978	28,806	14,532	502	640
St. Mary	58,086	37,688	18,337	1,128	2,061
St. Tammany	144,508	126,806	15,917	3,170	1,785
Tangipahoa	85,709	60,601	24,527	951	581
Terrebonne	96,982	75,082	16,032	1,376	5,868
Washington	43,185	29,669	13,376	239	140
W. Baton Rouge	19,419	12,329	6,993	206	97
W. Feliciana	12,915	5,672	7,149	203	94
Cameron	9,260	8,685	503	143	72
Pointe Coupee	22,540	13,196	9,275	166	69
St. Charles	42,437	31,638	10,253	1,070	546
St. Landry	80,331	47,532	32,392	639	407
Vermillion	50,055	42,237	6,956	592	862

Source: Louisiana Department of Economic Development, 1990 Census and Population Characteristics

minorities may bear a larger burden of the total risk.⁵⁵

Darryl Malek-Wiley of the Gulf Coast Tenants Association said: "What it generally boils down to is the politically powerless communities are the ones most dumped on. Often the targeted communities are minorities."⁵⁶

Theresa Roberts, an environmentalist from Ascension Parish, observed: "Race plays a large part, but politics and the economic situation of the community also are factors."⁵⁷

As these viewpoints indicate, positions differ on why black communities are more directly exposed to industrial pollution. Some say race, some say politics, or economics, or both. LCA and officials of DEQ argue that decisions on where sites are located are not based on racial considerations but are determined by various factors related to geography and sound business criteria that match the manufacturing and service needs of the industry.⁵⁸

A survey conducted in 1989 by the Environmental Social Science Research Institute at the University of New Orleans showed that 75 percent of black respondents in Louisiana are very concerned about the environment

compared to 59 percent of the white respondents.⁵⁹ This is evident by formation of environmental groups with large black memberships such as the Gulf Coast Tenants Association, Ascension Parish Residents Against Toxic Pollution, Victims of a Toxic Environment, North Baton Rouge Environmental Association, Citizens Against Nuclear Trash, and the River Area Planning Group.

Efforts are underway to study and document suspected environmental problems in black communities impacted by industrial development. Dr. William Arp of Louisiana State University received funding from DEQ to conduct a study on environmental equity that included a review of the industrial corridor between Baton Rouge and New Orleans. The study will focus on attitudes and perspectives of black residents and industry located in this area.⁶⁰ Dr. Beverly Wright, a sociologist at Xavier University, is conducting a study on community voluntary involvement purchases (buyout and relocation).⁶¹ Additional environmental equity initiatives are being pursued by DEQ in the form of a health study to examine adverse health effects in selected areas of south Louisiana.⁶²

55 Paul Templet, *Transcript*, p. 111.

56 Anderson, "Plant Sites: Is Racism An Issue?", *The Advocate*, p. A5.

57 Ibid.

58 William Kucharski, deputy secretary of DEQ, *Transcript*, pp. 226-46; Dan Borne, president, LCA, *Transcript*, p. 522.

59 Shirley Laska, "Louisiana Environment Attitudes," The Environmental Institute, University of New Orleans, 1989.

60 Arp and Jones, "Survey and Analysis of Environmental Concerns Within African-American Communities."

61 Beverly Wright, telephone interview, Nov. 10, 1992.

62 See William Kucharski, deputy secretary of DEQ, letter to Farella Robinson, civil rights analyst, USCCR, Oct. 28, 1992.

3. A Mandate for Change—Moving Toward Environmental Justice

*The tradition of working for social justice that has been carried on for centuries in this country is emerging in a new and vibrant form. Like the strong backbeat of an uplifting song, a powerful new foundation is emerging for a national and international movement rooted in the issue of environmental justice.*¹

Environmental Justice and Civil Rights

The civil rights movement of the 1960s and the call to environmental activism of the 1970s have since emerged as areas of concern on the local and global level. The interrelationship between these two social movements has given rise to a social issue of the 1990s: the impact of environmental racism on people of color in America.²

In the 1960s and the 1970s the cry for a better environment rang throughout the Nation. Yet, as the environmental movement gained strength, its participants were relatively few and racially homogeneous. Members of the traditional environmental movement generally did not include blacks and other minorities. Instead, these groups were struggling for social, economic, and political justice through the civil rights movement. Blacks and other minorities, such as Native Americans, Hispanic Americans, and Asian Americans, did not embark together on a struggle against environmental problems

adversely affecting their own communities until the early 1980s.

Although the movement was not fully unified until the 1980s, the struggle by minorities to address environmental problems had really begun as early as the 1960s.³ This struggle grew out of some early conflicts such as the urban riots of the 1960s in which the Kerner Commission documented inadequate garbage and sanitation services as problems contributing to the residents' feelings of depreciation. The 1967 riot at the predominately black Texas Southern University in Houston was precipitated by demonstrations protesting the death of an 8-year-old who drowned at a city-owned garbage dump. In 1968 Martin Luther King, Jr., was brought to Memphis to resolve social injustices related to environmental conditions and worker safety for mostly black sanitation workers. In 1979 the first lawsuit that alleged environmental discrimination was filed by black residents in Houston (*Bean v. Southwestern Waste*). The first national protest against environmental racism occurred in 1983 over the siting of a PCB landfill in the mostly black Warren County, North Carolina.

1 Michael Guerrero, Southwest Organizing Project, paper presented at the National People of Color Environmental Leadership Summit, Oct. 26, 1991, p. 29.

2 Walter Willard, conference on "Challenging Race Discrimination in Environmental Law and Policymaking," paper presented at Tulane Law School, Dec. 3, 1992, p. 1.

3 Kelley Colquette and Elizabeth Robertson, "Environmental Racism: The Causes, Consequences, and Commendation," *Tulane Environmental Law Journal*, 1991, vol. 5, p. 154 (hereafter cited as Colquette and Robertson).

This demonstration marked the first time individuals were jailed for protesting a hazardous waste facility.⁴

In 1985, because of concerns about hazardous waste located on Indian lands, the Council of Energy Resource Tribes was commissioned by EPA to survey potential hazardous waste located on/or near Indian lands. The survey revealed that as many as 1,200 hazardous waste generators or other waste activity sites were located on or near the 25 Indian reservations selected for the survey. Finally, in 1989 a citizens' group called Mothers of East Los Angeles (MELA) organized nearly 1,000 Hispanics to protest the construction of a \$29 million incinerator that would burn 125,000 pounds of toxic wastes per day. MELA then joined forces with a black group, Concerned Citizens of South-Central Los Angeles (CCSCLA), and Chinese residents to stop the construction of another waste incinerator.⁵

Minority groups are now fighting for environmental protection much in the same way as they fought for equal protection in education, employment, and housing. The struggle for environmental protection and environmental has become interwoven with the civil rights movement. This struggle is premised upon the claim that the right to live in an unpolluted environment belongs to all citizens. This approach to environmental issues affords the opportunity to address employment, community and urban development, energy and defense policy, public health, and self-determination.⁶ This transformation in thinking has played a role in the redefinition of environmental issues and built an environmental justice movement in the United States.

In October 1991, the First National People of Color Environmental Leadership Summit

convened in Washington, D.C., to address this question. Nationally, for the first time a multiracial summit, including whites, came together to establish a unified agenda for environmental justice.⁷ The following 17 guiding principles for merging civil rights and environmental activism were adopted:

1. Environmental justice affirms the sacredness of Mother Earth, ecological unity and the interdependence of all species, and the right to be free from ecological destruction.
2. Environmental justice demands that public policy be based on mutual respect and justice for all peoples, free from any form of discrimination or bias.
3. Environmental justice mandates the right to ethical, balanced and responsible uses of land and renewable resources in the interest of a sustainable planet for humans and other living things.
4. Environmental justice calls for universal protection from nuclear testing and the extraction, production and disposal of toxic/hazardous wastes and poisons that threaten the fundamental right to clean air, land, water, and food.
5. Environmental justice affirms the fundamental right to political, economic, cultural and environmental self-determination of all peoples.
6. Environmental justice demands the cessation of the production of all toxins, hazardous wastes, and radioactive materials, and that all past and current producers be held strictly accountable to the people for detoxification and the containment at the point of production.
7. Environmental justice demands the right to participate as equal partners at every level of

4 United Church of Christ Commission for Racial Justice, collection of papers presented at the National People of Color Environmental Summit, Washington, D.C., Oct. 24-27, 1991, p. 1.

5 Colquette and Robertson, pp. 180-81, 191.

6 United Church of Christ Commission for Racial Justice, collection of papers presented at the National People of Color Environmental Summit, Washington, D.C., Oct. 24-27, 1991, p. 11.

7 Ibid., p. 9.

decisionmaking including needs assessment, planning, implementation, enforcement and evaluation.

8. Environmental justice affirms the right of all workers to a safe and healthy work environment, without being forced to choose between an unsafe livelihood and unemployment. It also affirms the right of those who work at home to be free from environmental hazards.
9. Environmental justice protects the right of victims of environmental injustice to receive full compensation and reparations for damages as well as quality health care.
10. Environmental justice considers governmental acts of environmental injustice a violation of international law, the Universal Declaration on Human Rights, and the United Nations Convention on Genocide.
11. Environmental justice must recognize a special legal and natural relationship of Native Peoples to the U.S. government through treaties, agreements, compacts, and covenants affirming sovereignty and self-determination.
12. Environmental justice affirms the need for urban and rural ecological policies to clean up and rebuild our cities and rural areas in balance with nature, honoring the cultural integrity of all our communities, and providing fair access for all to the full range of resources.
13. Environmental justice calls for the strict enforcement of principles of informed consent, and a halt to the testing of experimental reproductive and medical procedures and vaccinations on people of color.
14. Environmental justice opposes the destructive operations of multi-national corporations.

15. Environmental justice opposes military occupation, repression and exploitation of lands, peoples and cultures, and other life forms.

16. Environmental justice calls for the education of present and future generations which emphasizes social and environmental issues, based on our experience and an appreciation of our diverse cultural perspectives.

17. Environmental justice requires that we, as individuals, make personal and consumer choices to consume as little of Mother Earth's resources and to produce as little waste as possible; and make the conscious decision to challenge and reprioritize our lifestyles to insure the health of the natural world for present and future generations.⁸

From the above principles, leaders in the people of color movement have coined terms to describe decisionmaking policies and practices, historical barriers, and actions and inactions that adversely affect minority communities.

Racism applied in the context of environmental concerns, decisions, and issues is aptly described as "environmental racism."⁹

"Environmental equity," the equal distribution of costs and benefits is the byproduct of a social consciousness that brings together tenets of the civil rights movement of the 1960s and the present-day call to environmental activism.¹⁰ Although different in meaning, the term "environmental racism" is often linked to the notion of "environmental equity." Leaders in the movement are quick to point out that the use of "equity" does not deal with the real issue of racism. According to Dr. Benjamin Chavis, "equal distribution of pollution is not the solution. We want it out of

8 Ibid.

9 Benjamin F. Chavis, testimony before the U.S. House of Representatives, Judiciary Committee, Subcommittee on Civil and Constitutional Rights, "Environmental Racism," Washington, D.C., Mar. 3, 1993 (hereafter cited as Subcommittee on Civil and Constitutional Rights, U.S. House of Representatives).

10 Willard, "Challenging Race Discrimination in Environmental Law and Policymaking," p. 1.

everybody's community, environmental justice for all."¹¹ Environmental equity is a broader and more generally defined term that does not yet have a meaning agreed upon by all parties to the debate.¹²

EPA defines environmental equity as the distribution and effects of environmental problems and the policies and processes to reduce differences in who bears environmental risks.¹³ EPA argues that the use of environmental equity is a better measure of disparities because it most readily lends itself to scientific risk analysis, thus allowing the agency to act on inequities based on scientific data. Furthermore, environmental equity, in contrast to environmental racism, includes the disproportionate risk burden placed on population groups by race, gender, age, location, occupation, and income.¹⁴ Environmental equity also reflects a fundamental shift the agency is undergoing, from a fragmented, statute-by-statute system of environmental protection, to an integrated, risk-based method that focuses on communities suffering the greatest burden from pollution sources.¹⁵ Left unanswered are the questions of how best to distribute the societal costs of environmental pollution.

Race and the Development of Environmental Law and Policy

Leaders in the environmental justice movement say that there is a functional link between racism, poverty, and powerlessness and the chemical industry's assault on the environment.¹⁶ Because there is information that racial composition of a community may be a variable to explain the presence of a hazardous and industrial waste site in a community, some persons have begun to develop legal strategies to prove racial discrimination. This legal attack on environmental problems is now couched in a civil rights context. In this approach, disparate enforcement of environmental policies and regulations would now be treated much like housing, education, and employment discrimination.¹⁷

There exist limitations in the use of civil rights or constitutional arguments, under existing law, in eliminating what some consider a well-documented correlation between race and siting decisions.

While some civil rights claims only have an intent standard for liability, others, such as Title VII employment cases, also allow an "effects" standard. To meet the intent standard, the challenged conduct must be proven to be motivated by discriminatory intent. To

11 Marcia Coyle and Marianne Levelle, "Unequal Protection, The Racial Divide in Environmental Law," *National Law Journal* (Sept. 21, 1992), p. S-12 (hereafter cited as *National Law Journal Report*); Benjamin Chavis, presentation at Tulane Law School, "Challenging Race Discrimination in Environmental Law and Policymaking," Dec. 3, 1992.

12 Clarice Gaylord, director, Office of Environmental Equity, letter to Bobby Doctor, Acting Staff Director, USCCR, re: Responses by the Environmental Protection Agency to Questions by the U.S. Commission on Civil Rights on environmental equity and civil enforcement, Apr. 13, 1993 (hereafter cited as Responses by EPA to USCCR Questions).

13 U.S. Environmental Protection Agency, *Environmental Equity, Reducing Risks for All Communities*, pp. 2-3; Response by EPA to USCCR Questions, Apr. 13, 1993.

14 Ibid.

15 Ibid.

16 Wendy Brown, remarks, factfinding meeting before the Louisiana Advisory Committee to the U.S. Commission on Civil Rights, Baton Rouge, Feb. 19-20, 1992, vol. 1, p. 46 (hereafter cited as *Transcript*).

17 Colquette and Robertson, p. 154.

meet the effects standard, the challenged conduct must be shown to have a discriminatory or disparate impact on a protected group. The intent requirement can be harder to prove.¹⁸ Nathalie Walker of the Sierra Legal Defense Fund explains:

the equal protection clause of the 14th amendment and section 1983 of the Civil Rights Act are fraught with all kinds of problems. To be successful in bringing a claim under these laws, minority residents have to prove, for example, that a decision to site the plant in their community was motivated by purposeful racial discrimination. . . . It forces minority residents to produce evidence of intentional racial discrimination when they have the least access to such evidence. And if they are going to get any, it will be in the context of probably complicated and protracted litigation. . . .¹⁹

However, the "effects standard" when offered to the courts has been consistently rejected.²⁰

Between 1978 and 1990, several lawsuits were filed challenging the placement of hazardous waste sites in communities of color. Generally speaking, these suits have attempted to prove environmental racism using extensive research to show the direct correlation between race and the location of hazardous waste sites.²¹

Plaintiffs have challenged corporate and governmental disregard for the adverse impact of environmental abuse that falls disproportionately on people of color; the failure of local, State, and Federal agencies to involve community representatives in the decision-making process; and the failure to inform

residents of the potential harm that would befall them if hazardous wastes came into their community.²²

A well-known case challenging corporate and government decisions is *Bean v. Southwestern Waste Management Corporation*.²³ The Federal district court indicated that the plaintiffs' complaint of a violation of their constitutional rights, if proven, constitutes irreparable injury. The plaintiffs testified that they were told a shopping mall or a steel mill was being constructed, not a solid waste facility. Once the plaintiffs became aware that a solid waste facility was being built, they signed petitions and raised funds to oppose the facility. The plaintiffs contended that the Texas Department of Health had followed a pattern of racial discrimination in the siting of solid waste facilities. The court recognized the validity of the claims brought by the plaintiffs but found the statistical evidence insufficient to establish intentional race discrimination.²⁴

Another significant case was *East-Bibb Twiggs Neighborhood Association v. Macon Bibb Planning Zoning Commission*.²⁵ The court found no proof of discriminatory intent behind placement of a landfill in a black community in Georgia. The court considered whether there was an equal protection violation in the granting of a conditional use permit for the operation of a sanitary landfill in the property owners' neighborhood. In analyzing the equal protection claim, the court stated, "the residents had to prove that the actions resulted in a disproportionate racial impact

18 See Kirsten Levingston, letter to Farella Robinson, USCCR, Jan. 28, 1993.

19 Nathalie Walker, *Transcript*, vol. 1, p. 93.

20 Wendy Brown, paper presented at the National People of Color Environmental Leadership Summit, p. 33.

21 Wendy Brown, *Transcript*, vol. 1, p. 47.

22 Ibid.

23 482 F.Supp. 673 (S.D. Tex. 1979), *aff'd mem.*, 782 F.2d 1038 (5th Cir. 1986) (motion for temporary restraining order denied).

24 482 F.Supp. 673 (S.D. Tex. 1979) *aff'd mem.*, 782 F.2d. 1038 (5th Cir. 1986).

25 896 F.2d. 1264 (11th Cir. 1990).

and that the Commission acted with a discriminatory intent or purpose."²⁶

As can be seen from the discussion above, legal challenges have been brought based on the Constitution and statutes. Several constitutional theories have been used. First, it has been argued that corporate entities, with government approval, have denied procedural due process to parties challenging the siting of industrial or hazardous waste by failing to follow the hearing requirements that are usually prescribed by government statutes or regulations. Second, plaintiffs have argued that their substantive due process rights have been violated when sites have been approved without regard to public health safety, morality, or general welfare. The courts have yet to uphold a challenge based on these constitutional claims.²⁷

Washington v. Davis,²⁸ and *Village of Arlington Heights v. Metropolitan Housing Development Corporation*,²⁹ both U.S. Supreme Court cases, established that plaintiffs cannot rely on the disparate impact of a government action on a racial group to mount a successful civil rights claim; they must also prove that a racially discriminatory purpose motivated the government action or decision.³⁰ In the *Village of Arlington Heights* case, the Supreme Court suggested five relevant factors to use as evidentiary sources: (1) the impact of the official action and whether it bears more heavily on one race than another; (2) the historical background of the

decision, especially if it "reveals a series of official actions taken for invidious purposes"; (3) the sequence of events preceding the decision; (4) any departures, substantive or procedural, from the normal decisionmaking process; and (5) the legislative or administrative history, specifically contemporary statements, minutes of meetings, or reports.³¹

Litigation over the pattern and practice of siting hazardous waste and petrochemical facilities in communities of color has not yet produced a single decision recognizing race as a factor presents a serious challenge.³² According to Professor Wendy Brown of Tulane Law School:

The key to proving environmental racism lies in making clear the relationship between discriminatory policy and decisionmaking on environmental questions and other social injustices that have resulted from similar discrimination. This evidence, coupled with proof of intent to discriminate in the siting of the particular landfill or dumpsite, is crucial to overcoming the obstacles created by the courts in equal protection and due process litigation.³³

As the discussion on equitable environmental protection expands, the issues are now couched in terms of how civil rights and equity efforts can be merged. Efforts are underway by Federal policymakers to institutionalize equity into environmental policies.³⁴ As EPA grapples with assuring environmental equity,

26 Ibid.

27 Wendy Brown, paper presented at the National People of Color Environmental Summit, Oct. 26, 1992, p. 32.

28 426 U.S. 229 (1976).

29 429 U.S. 252 (1977).

30 Ibid.; see also Sa-ad El-Amin, paper presented at Tulane Law School, "Challenging Race Discrimination in Environmental Law and Policymaking," Dec. 3, 1992.

31 Ibid.

32 Wendy Brown, paper presented at the National People of Color Environmental Summit, Oct. 26, 1992, p. 32.

33 Ibid.

34 Clarice Gaylord and Robert Knox, Office of Environmental Equity, EPA interview, Mar. 2, 1993 (hereafter cited as Gaylord and Knox interview).

practical and technical barriers to civil rights enforcement remain. As it stands now, there are no enforcement authorities to ensure compliance with equity initiatives by private, local, State, or Federal agencies.³⁵ EPA is developing strategies to target environmental equity enforcement under the statutes it administers, and to integrate equity issues with Title VI of the 1964 Civil Rights Act enforcement efforts.³⁶ One area that is being explored is to expand preaward and postaward compliance reviews of States receiving Federal financial assistance for various environmental programs under delegation agreements with EPA. These reviews could have a positive effect by addressing the impact on minority communities or the way the States conduct their environmental programs.³⁷ The other alternative is to reintroduce a stronger Environmental Justice Act to Congress. The Environmental Justice Act, S.2806 and H.R. 5326 sponsored by Congressman John Lewis and then-Senator Albert Gore, Jr. was introduced on June 4, 1992 to the 102nd Congress. The bill ensured nondiscrimination in environmental, health, and safety laws. The bill was reintroduced by Congressman Lewis as H.R. 2105 on May 12, 1993, and referred to Committee. It is now awaiting action by the Committee.³⁸

During the 1993 Earth Day Celebration, President William Clinton asked EPA and the Department of Justice (DOJ) to begin an interagency review of Federal, State, and local regulations and enforcement that affect communities of color and low-income communities with the goal of formulating an aggressive investigation of the inequalities in exposure to environmental hazards. As part of this evaluation, DOJ and EPA, in coordination with the Department of Housing and Urban Development and the Department of Labor, will identify examples of communities in which the distributional inequalities of environmental decisionmaking have adversely affected minority and low-income populations. This process will be the basis for Federal legislative and enforcement reforms, if necessary.³⁹

Louisiana's Constitution gives the State broad authority to consider socioeconomic impacts and equity concerns, particularly in the area of permitting and siting practices, but little effort has been made to use this authority to assure fairness under environmental laws.⁴⁰ Nor has a legal challenge been brought to the permitting and siting practices in Louisiana. Unless State legislation to redress environmental injustice is adopted, lawsuits are inevitable.

35 Ibid.

36 Response by EPA to USCCR Questions, Apr. 13, 1993.

37 Ibid.

38 Congressman John Lewis Office, telephone interview, Aug. 16, 1993; Melanie Barnes, assistant to Congressman Don Edwards, interview, Mar. 1, 1993.

39 U.S. President William Clinton, "1993 Earth Day Address" (speech delivered at the Earth Day Celebration, Washington, D.C., Apr. 21, 1993).

40 Nathalie Walker, *Transcript*, vol. 1, pp. 97-98.

4. Links of Environmental Regulations with Equity and Civil Rights

*One of the key challenges that all of us face in this movement is making the government accountable to this large sector of the population. Often, our own elected officials and the agencies they empower are the ones on the opposing side. This indicates a lack of sensitivity and awareness by government officials to their constituency, as well as a fundamentally different social agenda from this constituency.*¹

Existing civil rights laws do not make it easy to use the courts to remedy alleged environmental inequities. Although EPA is responsible for ensuring nondiscrimination on the basis of race under Title VI, the agency's civil rights compliance program has not yet been merged with its environmental equity initiatives to ensure fairness and nondiscrimination in its programs and activities.²

EPA has set in motion a process to review Federal environmental laws to determine ways in which equity enforcement requirements can be strengthened. As each statute comes up for reauthorization, it will be evaluated to enhance equity requirements.³

State officials in Louisiana have also begun to study equity issues, but there are no State environmental laws that are specifically designed to enhance equity and nondiscrimination in its program and activities.⁴

Some persons surmise that enactment of Federal and State legislation may be a more promising way to ameliorate the situation.⁵ Some Federal and Louisiana environmental laws may lend themselves to equity-based results or to merge with civil rights regulations. Although not an exhaustive review, the following analysis is a starting point for identifying the regulations that may have implications for preventing and correcting alleged inequities.

Federal Environmental Laws

Clean Air Act

The Clean Air Act⁶ is Congress' response to deteriorating air quality due to the growth in American industry, population, and automobile use. The act is designed to protect human health and the environment by controlling air pollution through reducing individual pollutants at their sources. First enacted in 1955,

1 Ellie Goodwin and Peggy Saika, paper presented at the National People of Color Environmental Summit, Oct. 25, 1991, p. 26.

2 Response by EPA to USCCR Questions, Apr. 13, 1993; Clarice Gaylord and Robert Knox, interview, Mar. 2, 1993.

3 Gaylord and Knox interview, Mar. 2, 1993.

4 William Kucharski, deputy secretary, DEQ, remarks, factfinding meeting before the Louisiana Advisory Committee to the U.S. Commission on Civil Rights, Baton Rouge, Feb. 19-20, 1992, vol. 1, pp. 228-43 (hereafter cited as *Transcript*).

5 Wendy Brown, *Transcript*, vol. 1, pp. 51-52.

6 Codified as 42 U.S.C. §7401 *et seq.*

the Clean Air Act was amended in 1990 and is under review for changes by the Clinton administration.⁷

In March 1993, EPA's Office of Air and Radiation incorporated environmental equity considerations into its rulemaking process by holding hearings in Louisiana where a concentration of organic chemical plants emits large amounts of air pollutants. This effort brought together EPA and industry and community groups to discuss their concerns about emissions.⁸

EPA has identified several areas in the 1990 amendments that, if strengthened, will address equity issues affecting minority and low-income populations.⁹ Some areas of the act that can be used to increase equity considerations are:

- The central planning mechanism for attaining national ambient air quality standards will be the State Implementation Plans (SIPS). The SIPS could contain simple tracking mechanisms for evaluating their effect in minority and low-income populations relative to white and higher income populations.

- The section that is designed to reduce the risks of accidental releases of toxic air pollutants gives EPA new authority to issue administrative orders to abate substantial and imminent threats to health and welfare. The section will also provide tools to address risks to communities located near hazardous commercial facilities.

- The permitting provision may provide EPA the opportunity to object to any permit on the basis of other requirements of the act that are related to increased environmental risks associated with exposed communities.

- Published air quality criteria and control techniques can be expanded to include information on known or anticipated adverse effects based on socioeconomic factors.

- Provisions involving health or risk assessments and setting of health-based standards could address potential risk inequities. Research could address the questions of whether racial minority or low-income populations have higher hazardous air pollutant residual risks. Studies analyzing the effect of air pollutants on different populations could be included in such criteria documents.¹⁰

Safe Drinking Water Act

The Safe Drinking Water Act, is the basis for protecting public drinking water systems from harmful contaminants.¹¹

In a limited way, the EPA Office of Water's drinking water program considers the distribution of risk and high risk populations by examining exposures from all sources and to the most exposed and sensitive individuals. However, statutory authority affects the degree to which EPA programs, as opposed to State and local programs, may address equity concerns.¹²

7 Congressional Research Service, Library of Congress, "Summaries of Environmental Laws Administered by the Environmental Protection Agency," Mar. 14, 1991, p. 3 (hereafter cited as "Summaries of Federal Environmental Laws"); Gaylord and Knox interview, Mar. 2, 1993.

8 Response by EPA to USCCR Questions, Apr. 13, 1993.

9 U.S. Environmental Protection Agency, *Environmental Equity, Reducing Risk for All Communities*, vol. 2, p. 26 (hereafter cited as *Environmental Equity Report*).

10 *Ibid.*, pp. 22-26.

11 42 U.S.C. §§300f-300j-24, as amended (1988).

12 *Environmental Equity Report*, p. 16.

Solid Waste Disposal/Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act (RCRA) of 1976¹³ establishes the Federal program regulating solid and hazardous waste management. The act authorizes EPA to set standards for facilities that generate or manage hazardous waste, and establishes a permit program for hazardous waste treatment, storage, and disposal facilities.¹⁴ The statutes set deadlines for permit issuance, prohibited the land disposal of many types of hazardous waste, required the use of specific technologies at land disposal facilities, and established a program regulating underground storage tanks.¹⁵ Many of the equity concerns in minority communities are covered under RCRA.

Some of the problems associated with equity in this area are siting and permitting of waste facilities.¹⁶ The siting decision is complex. On one hand, as a result of the "not in my backyard" syndrome, facilities may tend to be located in communities less able to protest. On the other hand, there are examples of communities seeking waste sites or industrial facilities to increase the tax base and create jobs. One of the major problems that hinders EPA's ability to respond to reports of inequitable siting practices is EPA's limited authority to control local land-use decisions. The siting of waste facilities is controlled primarily by State and local governments. Attempts by the Federal Government to control local land uses have often been met with extreme opposition.

EPA's role in permitting comes after the site has been chosen and principally involves review of technical considerations.¹⁷

To address this and other issues, RCRA's equity requirements could be strengthened by:

- Providing enhanced leadership to States to correct siting problems; and exercising increased oversight in siting and permitting.¹⁸

- Increasing EPA's role by doing case-by-case analyses of the risks waste facilities pose to the health of communities in which they are to be located. Such analysis would add the risks posed by a new facility to the risks posed by polluting facilities already located in the community to ensure that risk remains below an acceptable threshold. Another alternative would be to characterize the health of community members at the time of siting to ensure that new threats are not added to the health of a population already subject to pollution.¹⁹

- Making equity awareness a part of the training of permit writers and involving communities more actively in the solid and hazardous waste facility permitting process. This can be accomplished by making technical assistance grants available to hire outside experts to explain risks associated with the siting of a proposed facility.²⁰

- Requiring that RCRA facilities receiving Superfund hazardous wastes should always be in compliance with subtitle C (hazardous waste) regulations.²¹

13 42 U.S.C. §§6901-6991k (1988).

14 "Summaries of Federal Environmental Laws," p. 53.

15 Ibid.

16 *Environmental Equity Report*, p. 18.

17 Ibid., pp. 18-21.

18 Ibid.

19 Ibid.

20 Ibid.

21 Ibid.

In an effort to address equity issues within RCRA's regulatory framework, EPA staff proposed standards for the location of new and newly expanding hazardous waste treatment, storage, and disposal facilities (TSDFs).²² The revised standards were proposed in response to recommendations in the EPA *Environmental Equity Report* and data suggesting disproportionate pollution burdens on minority or low-income communities. The proposed standards addressed proximity, and related risks, and expanded the scope of the existing facility standards to (1) ban siting in sensitive locations; (2) allow sitings in sensitive areas only if the owner or operator took measures to demonstrate that the units would be safely sited and operated; and (3) establish groundwater buffer zone standards.²³

According to EPA officials, the proposed location standards were sent to the Office of Management and Budget in the summer of 1992 but were returned for reconsideration. EPA is reviewing options on this matter for further action.²⁴

Comprehensive Environmental Response, Compensation, and Liability Act or Superfund

The Superfund hazardous substance clean-up program was created by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. It was enlarged and

reauthorized by the Superfund Amendments and Reauthorization Act of 1986.²⁵ Superfund establishes a fee-maintained fund to clean up abandoned hazardous waste sites.²⁶ The act also requires States to participate in any cleanup action within their borders and the States may either cooperate with EPA or take the lead on cleanup projects.²⁷ Under this act, the Agency for Toxic Substances and Disease Registry (ATSDR) was created to carry out health assessments on all sites listed on the nationwide inventory of hazardous waste sites. Individuals or physicians may also petition for health assessments of releases into a community.²⁸

The Superfund program, unlike other EPA programs, has policies in place that will lend themselves to addressing equity concerns. Under the Superfund program, EPA already devotes considerable resources to risk communication and outreach efforts to help communities hire outside experts to describe the risks posed by Superfund sites in their communities, and the translation of bulletins and notices into non-English languages. However, EPA indicated that these risk communication and outreach efforts should be evaluated to determine their effectiveness and to ascertain if the programs in fact reach into poor and racial minority communities.²⁹ EPA has other initiatives underway to consider equity

22 See Ellen Brown, memorandum to Bob Knox, "Proposed Standards for the Location of Hazardous Waste Treatment, Storage, and Disposal Facilities," Aug. 18, 1992, *Environmental Equity Report*, p. 1. Sensitive areas or locations are defined as areas with greater potential for release of hazardous waste or hazardous constituents; areas with significantly greater risk of harming human health and environment in the event of a release; and/or areas that are significantly more difficult to effectively characterize and remediate in the event of a release. Among the sensitive location identified are people and/or communities surrounded by multiple sources of pollution.

23 Ibid.

24 Gaylord and Knox, Office of Environmental Equity, EPA, interview, Mar. 2, 1993; Responses by EPA to USCCR Questions, Apr. 13, 1993.

25 42 U.S.C. §9601 (1988).

26 "Summaries of Environmental Laws," p. 61.

27 42 U.S.C. §§9620-21 (1988).

28 Ibid., pp. 61, 65.

29 *Environmental Equity Report*, p. 19.

concerns. It has begun a Superfund equity study to identify populations living near individual or multiple Superfund sites.³⁰

EPA officials suggested that the Agency for Toxic Substances and Disease Registry receive additional funding to gather epidemiological data and study aggregate risk in heavily industrialized areas of the country. In this effort, ATSDR is using EPA's Geographic Information System to assess whether minorities are at a greater health risk than non-minorities living in the same proximity to Superfund sites. EPA recognizes that the poor and racial minority communities are rarely involved in agency rulemaking and believes this is partly due to their inability to use agency resources and to petition ATSDR to perform health surveys.³¹

Poor participation may also be due to widespread distrust and dissatisfaction with ATSDR health assessments. A report by the General Accounting Office called the Superfund health assessments incomplete and of questionable value.³² The Environmental Health Network and National Toxic Campaign Fund described ATSDR studies as being deliberately inconclusive: "Instead of ensuring a margin of safety and recommending measures to end public exposure to toxins ATSDR and the Centers for Disease Control

have routinely funded and conducted studies of effects of toxic pollution in public health which are inconclusive by design."³³

A health study on miscarriages in St. Gabriel, Louisiana, drew similar criticism.³⁴ Community groups who have had first-hand experience with ATSDR health studies recommend that health assessments be avoided. In spite of a minority health initiative established by ATSDR, these perceptions persist.³⁵

The Emergency Planning and Community Right to Know Act

Title III, The Emergency Planning and Community Right-to-Know Act (EPCRA), was passed as Title III of the Superfund Amendments and Reauthorization Act of 1986.³⁶ The act is based on the premise that citizens have a "right to know" about hazardous and toxic chemicals in their communities. It has two main purposes: to encourage planning for response to chemical accidents and to provide the public and the government information about possible chemical hazards in their communities. The law requires States to establish State Emergency Response Commissions and Local Emergency Planning Committees to collect detailed information from local manufacturers.³⁷ The law specifies that the EPA must compile these reports into an annual inventory of releases called the Toxic Release Inventory (TRI) and make the inventory available

30 See Henry L. Longest, memorandum to Superfund Branch Chiefs, "Superfund Environmental and Equity Initiative," Feb. 16, 1993.

31 *Environmental Equity Report*, p. 19; Responses by EPA to USCCR Questions, Apr. 13, 1993.

32 General Accounting Office, *Superfund Public Health Assessments: Incomplete and Questionable Value* (1991).

33 Environmental Health Network and National Toxic Campaign Fund, 1992, p. i.

34 Tulane University, School of Public Health and Tropical Medicine, *St. Gabriel Miscarriage Investigation East Bank of Iberville Parish, Louisiana*, Sept. 27, 1989.

35 "St. Gabriel Study Rigged Against Community," *Louisiana Environmental Action Network News*, p. 6; Robert Kuehn, Paper presented at the Conference, "Challenging Race Discrimination in Environmental Law and Policymaking," p. 4.

36 "The Toxic Release Inventory, Executive Summary," EPA, June 1989.

37 *Ibid.*

to the public in a computerized database. The first year of data collection under TRI began in 1987.³⁸

EPA has identified several aspects of EPCRA that have implications for equity issues. Availability of information to racial minority and low-income groups was identified as a major problem. Under EPCRA, most groups have equal access to the technical risk information if it is requested. However, the existence of this information is not widely known, except by interested industry representatives, environmental professionals, and other researchers.³⁹ EPA cites barriers such as language, metropolitan proximity, and educational level bias. Very little of the formal EPCRA and EPA-wide public relations output is presented in non-English languages, possibly contributing to low participation by Hispanic and other linguistic minorities in EPA rule-making hearings or other large-scale public meetings.⁴⁰ In terms of metropolitan proximity, rural populations have relatively less access to information or assistance because all EPA offices and government libraries are in major cities.⁴¹ Educational level bias was identified as a problem because environmental issues and information are inherently technical and sometimes complex. Persons with limited education in these technical areas are not in a position to identify and make use of the data that is broadly included in EPCRA information. Access to computers is also required to make use of some of the EPA's risk data.⁴²

EPA officials report that they are now expanding their communication strategy. The agency is encouraging the publication of all appropriate public notices, fact sheets, etc., in multiple languages. All regional, State, and local officials are being encouraged to provide interpreters at public meetings where sites are located near non-English-speaking populations. Plans are now underway to distribute environmental equity materials and hold seminars on community rights with church, community, and civil rights organizations.⁴³

National Environmental Policy Act

The National Environmental Policy Act (NEPA) was enacted on January 1, 1970. The act requires EPA to review environmental impact statements (EISs) for major Federal actions significantly affecting the quality of the human environment. Draft EISs must be the subject of public hearings before final EISs are prepared; final EISs must precede final agency action.⁴⁴ Many States have comparable laws affecting State and local environmental actions.⁴⁵

There are significant equity requirements that could be covered under NEPA. NEPA is perhaps the only Federal environmental law that touches tangentially on community concerns. Therefore, aspects of NEPA could address permitting and siting practices.⁴⁶ The NEPA regulations require that an EIS address significant secondary impacts. Moreover, an EIS must fulfill two purposes to comply with NEPA:

38 Ibid.

39 42 U.S.C. §§9620-21 (1988); see also, *Environmental Equity Report*, vol. 2, p. 44.

40 Ibid., pp. 44-45.

41 Ibid.

42 Ibid.

43 Response by EPA to USCCR Questions, Apr. 13, 1993.

44 42 U.S.C. §§4321-47 (1988).

45 Sharon Carr Harrington, paper presented at Tulane Law School, "Challenging Race Discrimination in Environmental Law and Policymaking," Dec. 3, 1992, p. 7.

46 Ibid.

(1) provide decisionmakers with an environmental disclosure sufficiently detailed to aid in the substantive decision whether to proceed with the project in light of its environmental consequences, and

(2) make available to the public information on the proposed project's environmental impact and encourage public participation in the development of that information.⁴⁷

In other words, the EIS must adequately inform both the decisionmakers and the public of the environmental effects for the project to be evaluated. A literal reading of NEPA indicates that an EIS must address all significant impacts, social and economic, as well as physical and environmental. For instance, the description of the environment of the area that will be affected by the project must be detailed enough to provide an understanding of the effects of the project and the various alternatives.⁴⁸ A review of NEPA and its implementing regulations should be conducted to determine how these procedural requirements can be strengthened to address equity issues in a substantive way.⁴⁹

Environmental groups have complained of EPA's failure to enforce civil rights measures because of a 1971 policy decision withholding application of civil rights laws to environmental programs and activities.⁵⁰ EPA investigated this allegation and found no legal precedent or internal policies prohibiting the application of civil rights laws and programs to address environmental equity issues. EPA has enforcement authority and procedures in place to ensure nondiscrimination in its programs and activities. EPA's Office for Civil Rights is responsible for enforcing Title VI of the Civil Rights Act of 1964 as well as provisions of the environmental laws specifically prohibiting discriminatory actions. The

agency's various civil rights regulations have also required applicants for EPA assistance to submit assurances that they will comply with applicable civil rights statutes. Although EPA is still examining ways in which equity initiatives can be better integrated with Title VI enforcement, complaints of discrimination can be filed with the Office for Civil Rights or telephoned to the Office of Environmental Equity's hotline.⁵¹

Louisiana Laws

The following State statutes form the legal basis for most of the environmental protection in Louisiana:

Louisiana Environmental Quality Act—The public welfare requires clean air and water resources, etc. La. Rev. Stat. Ann. §§2001-04 (1989 and 1992 Supp).

Louisiana Air Control Law—Air pollution jeopardizes the health and welfare of Louisiana citizens. Air purity is of vital concern. La. Rev. Stat. Ann. §§2051-60 (1989 and 1992 Supp).

Louisiana Water Control Law—The protection of the State's water resources is of vital concern to Louisiana citizens. La. Rev. Stat. Ann. §§2071-88 (1989 and 1992 Supp).

Mississippi River Interstate Pollution Phase-Out Compact—The serious pollution of the Mississippi River constitutes a menace to the health and welfare of the people living in the areas along the river. La. Rev. Stat. Ann. §§2091-93 (1989).

47 Ibid.

48 Ibid.

49 Robert Kuehn, *Transcript*, vol. 1, p. 74.

50 *Environmental Equity Report*, vol. 2, p. 77.

51 Responses by EPA to USCCR Questions, Apr. 13, 1993; Hotline number is 1-800-962-6215.

Louisiana Nuclear Energy and Radiation Control Law—The law seeks to ensure the safety and welfare of the people against the harmful effects of radiation. La. Rev. Stat. Ann. §§2101-19 (1989 and 1992 Supp).

Louisiana Solid Waste Management and Resource Recovery Law—The safety and welfare of Louisiana's people requires adequate protection against inefficient and unreasonable disposal practices. La. Rev. Stat. Ann. §§2151-58 (1989 and 1992 Supp).

Louisiana Hazardous Waste Control Law—Production of natural and synthetic substances often produces byproducts which constitute substantial threats to the health and safety of Louisiana citizens. La. Rev. Stat. Ann. §§2171-220 (1989 and 1992 Supp).

Louisiana Inactive and Abandoned Hazardous Waste Site Law—Hazardous wastes in inactive or abandoned pits, ponds, lagoons, landfills, or other pollution sources pose a present and future hazard to the public health, safety, and welfare. La. Rev. Stat. Ann. §§2221-20 (1989 and 1992 Supp).⁵²

Natural Resources, Louisiana Administrative Code—Contains rules and regulations pertinent to protection of the State's environment, as affected by the conservation of materials, water and other natural resources. LAC 43, Volume 17.⁵³

Minerals, Oil, and Gas—The Department of Natural Resources has the authority to regulate the use and waste of minerals, oil, and gas. Generally, 30 La. Rev. Stat. Ann. Subtit. I (West 1989 and 1993 Supp).⁵⁴

Recently DEQ has developed a statewide solid waste management plan and has promulgated regulations governing the construction and operation of solid waste landfills to include industrial waste.⁵⁵ However, there is no information to indicate that these regulations or the laws referenced above have been reviewed or modified by DEQ or DNR to address environmental equity concerns.

In January 1992, after the election of Governor Edwin Edwards, DEQ established a transition team comprised of industry, government officials, and community/environmental groups to assess the operations of DEQ. A compilation of findings and recommendations was made that included environmental equity initiatives.⁵⁶ Some of these suggested initiatives were:

1. Comprehensive and balanced siting regulations need to be developed to manage and control the location of new landfills, incinerators, and hazardous waste facilities to protect public health and sensitive environmental areas.

2. When establishing standards for the operations of hazardous waste sites, the Solid and Hazardous Waste Division and the Secretary of DEQ should consider the IT decision handed down by the Louisiana Supreme Court and heavily consider the socioeconomic impact in making a decision.

⁵² Sharon Harrington, "Challenging Race Discrimination in Environmental Law and Policymaking," paper presented at Tulane Law School, Dec. 3, 1992, p. 10.

⁵³ See James H. Welsh, director, Injection and Mining Division, Department of Natural Resources, letter to Farella Robinson, U.S. Commission on Civil Rights, "Laws and Regulations Concerning Oil and Gas Drilling and Production."

⁵⁴ Ibid.

⁵⁵ Kai Midboe, "Editorials on DEQ Distort Facts," *The Advocate*, July 7, 1993, p. B3.

⁵⁶ Department of Environmental Quality, Report of the Louisiana Department of Environmental Quality Transition Team, Jan. 17, 1992.

3. The impact of environmental policy on people of color and the poor has not been previously considered by the Inactive and Abandoned Sites Division and the Enforcement and Legal Services Division. Environmental fairness should be studied by each Division in cooperation with grassroots organizations.
4. Existing community relations procedures have not been fully utilized and information has not been effectively provided to interested parties. A departmental advisory group should be formed composed of members of the DEQ transition team, regulated community, environmental organizations, and the general public. Committees with balanced representation from the regulated and the environmental community should be set up to aid in the development of regulations and continuation of outreach/education/technical assistance to citizens and industry.
5. The Solid and Hazardous Waste Division needs to consider increasing minimum siting distances and buffer zones.
6. The Solid and Hazardous Waste Division needs to develop risk-based decisions for better understanding of situations causing major impacts to man and environment.
7. Staffing should be reviewed. People of color, women, and other minorities must continue to have an equal opportunity for advancement at all levels of the agency.
8. Establish creative mechanisms to recruit and retain minorities.
9. Environmental fairness should be studied by each division in cooperation with grassroots organizations that are raising environmental equity issues.⁵⁷

If implemented, the above recommendations could be a starting point for DEQ to strengthen environmental equity efforts in the State. The State has also initiated an environmental equity study with Louisiana State University to aid in environmental policy development.⁵⁸

State officials have the opportunity to address equity through the IT decision. In 1984 in *Save Ourselves v. Louisiana Environmental Central Commission*, the Louisiana Supreme Court handed down a ruling on the permit application from the IT Corporation for a proposed hazardous waste disposal facility that had a direct impact on permit applications.⁵⁹ The court stated that the Louisiana Environmental Control Commission and the DNR had a constitutional responsibility, under its Constitution, to act as public trustees for protecting the State's natural resources and environment.⁶⁰ According to the court, the State's "constitutional standard requires environmental protection 'insofar as possible and consistent with the health, safety, and welfare of the people.'" . . . This is a rule of reasonableness which requires . . . a balancing process in which the environmental costs and benefits must be given full and careful consideration along with economic, social, and other factors.⁶¹

DEQ must consider alternative projects, alternate sites, or mitigation measures, and qualify the environmental costs and weigh them against the social and economic benefits of the project. The following questions must be asked:

Have the potential and adverse environment effects of the proposed facility been avoided to the maximum extent possible?

57 Ibid., pp. 18, 42, 44, 45, 62.

58 "Toxic Releases in the Lower Mississippi River Industrial Corridor," p. 25.

59 *Save Ourselves v. Louisiana Environmental Control Commission*, 452, So. 2d 1152, 1157 (La. 1984).

60 La. Rev. Stat. Ann. Const. art. IX, 81. (West 1977).

61 Ibid. at 1157-58.

Does a cost benefit analysis of the environmental impact costs balanced against the social and economic benefits of the proposed facility demonstrate that the social and economic benefits outweigh the environmental costs?

Are there alternative projects, sites and mitigating measures which would offer more protection to the environment than the proposed project and location without unduly curtailing nonenvironmental benefits?⁶²

The IT decision is a strong precedent, but the State has never drafted comprehensive regulations to guide decisionmakers in implementing it.⁶³ According to Dr. Robert Kuehn of the Tulane Environmental Law Clinic, State government has failed to implement the IT decision to the maximum extent possible to ensure that the above factors are taken into account.⁶⁴ Some environmental experts believe that this ruling, if fully implemented, could affect the application of local and State environmental laws to ensure fair and balanced permitting and siting practices.⁶⁵

To address equity concerns adequately, William Fontenot contended that the State must expand its outreach and education efforts to reach those communities most affected by hazardous and industrial pollution.⁶⁶ Recently, DEQ established outreach and public information initiatives to reach and assist citizens. On February 11, 1993, DEQ created an Office of the Ombudsman to

act as a nonregulatory liaison between citizens, DEQ, other State and Federal agencies, and industry.⁶⁷ In spite of this effort, there are already complaints about the office's effectiveness in providing information and ability to respond to and work with citizen grievances in an unbiased way. Specific complaints include the staff's lack of knowledge and inability to respond effectively to the needs of diverse groups.⁶⁸ The office must operate in a climate where the DEQ is not perceived as solely concerned with the interests of industry. These perceptions are fueled by comments made by State officials indicating that they have joined forces with industry to make sure the environmental permitting process does not hinder economic development.⁶⁹

In response to these and other environmental equity concerns, DEQ plans to hire a person to investigate concerns related to environmental racism. This project will be funded through a \$40,000 grant from EPA.⁷⁰

An environmental newsletter published by DEQ was recently reinstated as a magazine called *Louisiana Environmentalist*. Although the new magazine was intended to reach a larger audience than the former DEQ newsletter, its circulation may be limited, since the public will be charged a fee for the magazine.⁷¹

Another avenue that citizens may use to access government is through the State Attorney General's Citizen Access Unit. Until this year, for 15 years, the Citizen Access Unit has been the only State agency set up as a conduit

62 Louisiana Department of Environmental Quality, *Environmental Advocate*, vol. VIII, no. 10 (October 1990), pp. 1-3.

63 Ibid.

64 Robert Kuehn, *Transcript*, vol. 1, pp. 74-75.

65 Ibid.; Paul Templet, *Transcript*, vol. 1, pp. 121-22.

66 William Fontenot, *Transcript*, vol. 1, pp. 200-24.

67 James Friloux, DEQ Ombudsman, telephone interview, May 11, 1993.

68 William Fontenot, telephone interview, June 7, 1993; Robert Wiygal, Sierra Club Legal Defense Fund, telephone interview, May 6, 1993; Mary Tutwiler, telephone interview, May 26, 1993.

69 Cyndy Falgout, "Environment Gives Industry in LA Boost," *The Advocate*, Apr. 8, 1993, p. D2.

70 Bob Anderson, "DEQ Probe Possible Pollution—Racial Link," *The Advocate*, July 13, 1993, p. B1.

71 See Kucharski, letter to to Farella Robinson, USCCR, May 7, 1993; see Kai Midboe, letter to Subscriber, May 17, 1993.

for complaints and assistance on environmental issues.⁷² At this time, the Ombudsman Office and the Citizen Access Unit work independently. There is no known interagency

coordination between DEQ and the attorney general's office to formulate consistent and effective policies on environmental outreach efforts.⁷³

72 William Fontenot, *Transcript*, vol. 1, p. 200.

73 James Friloux, DEQ Ombudsman, telephone interview, May 11, 1993.

5. Environmental Pollution and Health Effects in Minority Communities

*Little evidence exists linking the differences in disease and death rates to environmental factors; and for the diseases identified as environmentally induced, little evidence exists identifying the contributions of class, race or ethnicity. . . . The United States is the only western country with a high standard of living whose government does not collect mortality statistics by class indicators, such as income, education, and occupation. . . . Cancer provides a prime example of a disease scientists have studied intensively, yet about which the combined contribution of race, ethnicity, and environment remain unclear. . . . understanding why these differences exist awaits further research. . . .*¹

Thousands of industrial chemicals are known to be potentially hazardous to human health, but less than 2 percent have been fully assessed for their toxic effects. Even without complete information on toxicity, it has been known that these chemicals have other hazardous properties; they can explode, react, ignite, and corrode.² Industries use large quantities of these chemicals in their production processes, eventually having to treat, store, and dispose of 550 million tons of hazardous wastes each year. Some environmental experts have contended that factories annually spew another 3 million tons of toxic chemicals directly into the air, water, and land, almost a quarter of which are chemicals suspected of causing birth defects and 8 percent of which are suspected of causing cancer.³

Toxicology is the science explaining adverse effects and the fate of chemicals in biological systems. Toxicology research is central to at least six Federal public health agencies in the U.S. Department of Health and Human Services. They are the National Cancer Institute, the National Institute of Environmental Health Services, the National Institute for Occupational Safety and Health, the Agency for Toxic Substances and Disease Registry, and the Food and Drug Administration.⁴ Toxicology-related research is also conducted by other Federal agencies, such as the U.S. Department of Energy and EPA's Office of Research Development.⁵ Yet little research exists to explain the relationship between environmentally induced health problems (e.g., reproductive and developmental abnormalities, urological, endocrinologic, and immune

1 U.S. Environmental Protection Agency, *Environmental Equity, Reducing Risk for All Communities* (June 1992), pp. 4-5 (hereafter cited as *Environmental Equity Report*).

2 Benjamin A. Goldman, *The Truth About Where You Live: An Atlas for Action on Toxins and Mortality*, (New York: Random House 1991) (hereafter cited as *The Truth About Where You Live*), p. 169.

3 Ibid.

4 U.S. Department of Health and Human Services, *National Toxicology Program, Review of Current DHHS, DOE and EPA Research Related to Toxicology* (June 1991), p.1 (hereafter cited as National Toxicology Program).

5 Ibid.

disorders, and respiratory problems). This is due generally to inadequate methodologies and unavailable databases.⁶ The environmental justice movement has brought attention to this science problem by calling for answers on health effects.⁷

Epidemiology studies have failed to prove definitively that residential proximity to specific industries is associated with significant health risks. Although environmentalists have long cited anecdotal evidence and some statistics to argue that pollution hits hardest those who are disadvantaged by reason of race, the argument has not had a firm scientific foundation.⁸

Minority environmental groups adamantly contend that communities of color suffer serious health problems from disproportionate exposure to environmental pollution generated by industrial and hazardous waste facilities in their neighborhoods. This contention is recited in *Toxic Waste and Race, Dumping in Dixie, The Truth About Where You Live*, and in a variety of other research literature.⁹ However, community residents are frequently unable to document their circumstances in ways that health and government authorities consider significant. When community leaders try to determine the extent of environmental contamination and potential health effects, they are often confronted with inappropriate, inconsistent, and highly technical data.

There is a significant vacuum in the health science community about environmentally induced diseases and causation.¹⁰ The difficulty in establishing a causal relationship between health effects and environmental exposures stems from many factors. First, the etiology of many diseases has not been fully elaborated. Second, most diseases to which environmental exposures may contribute have a plethora of possible causes. Third, people are also routinely exposed to a vast array of environmental agents—few of which are quantified. Fourth, the latency period for health effects from long-term, low-level exposures may be 20 years or more. Fifth, environmental pollutants may cause multiple health effects or a single health effect may result from multiple exposures.¹¹ Relatively little information exists on the influence of class, race, or ethnicity.¹²

Some of the methodology and database deficiencies are as follows:

- Techniques and methodologies for studying environmentally associated disorders generally lack the specificity to detect subtle changes in the course of diseases.
- There is a general lack of data on environmental health effects by race and income. Although there are clear differences between racial groups in terms of disease and death rates, there are limited data to explain the environmental contribution to these

6 *Environmental Equity Report*, p. 15; "Estimating Human Exposures to Environmental Pollutants: Availability and Utility of Existing Databases," *Archives of Environmental Health*, vol. 47, no. 6, (November–December 1992), pp. 398–406.

7 *Toxic Waste and Race*, p. 25.

8 John H. Cushman, Jr., "Environmental Hazards to Poor Gain New Focus at EPA," *New York Times*, Jan. 21, 1992, p. A1.

9 United Church of Christ, Commission for Racial Justice, *Toxic Waste and Race in the United States: A National Report on the Racial and Socioeconomic Characteristics with Hazardous Waste Sites* (1987), pp. 4, 21 (hereafter cited as *Toxic Waste and Race*; Robert Bullard, *Dumping in Dixie, Race, Class, and Environmental Quality* (Colorado: Westview Press, 1990), p. 8; *The Truth About Where You Live*, pp. 169–71.

10 Beverly Wright, remarks, factfinding meeting before the Louisiana Advisory Committee to the U.S. Commission on Civil Rights, Baton Rouge, Feb. 19–20, 1992, vol. I, pp. 28–31 (hereafter cited as *Transcript*); "Cause for Immediate Concern, What's Known, What's Not," *EPA Journal*, vol. 18, March–April 1992, pp. 38–39.

11 *Environmental Equity Report*, p. 14.

12 *Ibid.*

differences. With the notable exception of lead poisoning, data are not typically disaggregated by race.

- Data routinely collected on health risks posed by multiple industrial facilities, cumulative and synergistic effects, or multiple and different pathways of exposure are not collected and analyzed by race.
- Although exposure does not always result in an immediate or acute health effect, there is inadequate information about human exposures to environmental agents. The available data tend to be anecdotal, fragmented, and focused narrowly on specific pollutants, media, and routes of exposure.
- It is difficult to separate the effects of socioeconomic status from the effects of race on environmental health risks. Factors unrelated to toxic exposure such as genetic makeup, cultural beliefs, and racial behaviors also can place certain populations at higher risk. The situation is further complicated by the fact that racial minorities are statistically more likely to be disadvantaged in terms of income, education, and occupation than their white counterparts. Consequently, although there is substantial anecdotal and circumstantial evidence suggesting that class and race, taken together, affect exposure levels, we do not now have sufficient data to differentiate between the two.¹³

In 1992 the EPA's Science Advisory Board, responsible for evaluating the quality of science at EPA, released a study citing utilization of inadequate scientific procedures at EPA. The study reported that EPA often does not evaluate the scientific impact of its regulations, the interpretation and the use of science is uneven and haphazard across

programs and issues, and studies are carried out without benefit of peer review and quality assurance.¹⁴

There are many federally sponsored data systems, but poor coordination between agencies causes duplication and underutilization of data sources.¹⁵ Ken Sexton, an EPA official contended that the Federal health science community must establish methodologies and procedures to determine whether inequities exist, how serious they are, what the causes are, and what are the most cost effective mitigation strategies.¹⁶

Worries about adverse health effects of industrial pollution or hazardous waste sites have generated considerable anxiety for residents of Louisiana. In black communities, particularly in the stretch of southern Louisiana along the Mississippi River, anxiety about health effects is the reason for the label "Cancer Alley."¹⁷ Pat Bryant of the Gulf Coast Tenants Association describes the area this way:

Cancer Alley remains one of the most poisoned areas anyplace. One hundred and thirty-eight petrochemical facilities have made homes on 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. . . . Despite denials of petrochemical industry financed studies, we know that cancer incidence in this corridor is higher than the national average. Cancer is so commonplace that almost every family is touched.¹⁸

13 *Environmental Equity Report*, vol. II, pp. 4-5, 14-15; Ken Sexton "Cause for Immediate Concern, What's Known, What's Not," *EPA Journal*, p. 38-39.

14 Bonner D. Cohen, testimony before the U.S. House of Representatives, Judiciary Committee, Subcommittee on Civil and Constitutional Rights, "Environmental Racism," Washington, D.C., Mar. 3, 1993 (hereafter cited as Subcommittee on Civil and Constitutional Rights, U.S. House of Representatives).

15 *Environmental Equity Report*, vol. 12, p. 52.

16 Ken Sexton, "Cause for Immediate Concern, What's Known, What's Not," *EPA Journal*, p. 39.

17 Don Jones, EPA, *Transcript*, vol. 1, pp. 157-58; *Dumping in Dixie*, p. 65.

18 Pat Bryant, testimony Before the Subcommittee on Civil and Constitutional Rights, U.S. House of Representatives, Mar. 3, 1993.

According to Dr. Joel Nitzkin, a State health official, it is a public myth that the cancer death rates are higher in south Louisiana because of industrial pollution: "The scientific data both here in Louisiana and elsewhere in the country are quite clear. Even though for many industries there are occupational risks. . . . There is virtually no community risk."¹⁹

According to the 1990 transfer release data, industries in this corridor released at least, but probably more than, 368,236,365 pounds of toxic chemicals into the environment. This amounts to 83 percent of the toxin released in Louisiana.²⁰ A large number of chemicals discharged are toxic in various ways and are known to be mutagens, carcinogens, or both.²¹

Louisiana's 1990 cancer death rate of 186 per 100,000 population was the fifth highest in the Nation.²² Death rates in Louisiana for a number of types of cancer tend to run 10 to 15 percent above the national average. Also, black rates tend to be significantly higher than comparable white rates.²³ In the study, *The Truth About Where You Live*, high rates of cancer and heart disease were reported in Louisiana, particularly in selected areas of south Louisiana.²⁴ These observations have led to suspicion that exposure to toxic pollutants is responsible for the high cancer death rates among minorities.²⁵ However, other studies suggest that cancer mortality rates, particularly in south Louisiana, are not as

high as some believe. A study reported in the *Journal of the Louisiana State Medical Society* in 1992 stated:

Over the last three decades, mortality statistics have consistently shown higher rates for all cancers combined in south Louisiana than the national average, especially in men. This has led to a general belief that residents of south Louisiana have a higher cancer risk than the rest of the nation. . . . Unlike mortality rates which are affected by survival, cancer incidence rates, are a better indicator to measure the risk of developing cancer.²⁶

Another study cited in the medical society journal in January 1991 stated:

Most members of the general public are surprised that Louisiana does not have a higher cancer mortality ranking. . . . Louisiana ranks 16th among the 50 States in overall cancer mortality. . . . Individually controllable lifestyle factors, such as diet, smoking and alcohol consumption account for the vast majority of cancer cases. Occupational factors and environmental pollution are estimated to cause a small percentage of cancer deaths.²⁷

A study is now underway in Ascension Parish to consider an array of exposures to substances that cause cancer, including smoking, diet, occupation, and pollution. The study, funded by the Federal Government, will map Ascension Parish, plotting sources of exposures and noting which residents become ill.²⁸

19 Joel Nitzkin, *Transcript*, vol. 1, p. 259.

20 *Louisiana Toxics Release Inventory*, November 1991.

21 *National Toxicology Program*, pp. 83-197.

22 "Toxic Releases in the Lower Mississippi River Industrial Corridor."

23 Joel Nitzkin, *Transcript*, p. 248.

24 *Ibid.*

25 "Cancer in Louisiana," *Journal of the Louisiana State Medical Society*, vol. 144, April 1992, pp. 149-65.

26 *Ibid.*

27 "Chemicals, Cancer, and Risk Assessment," *Journal of the Louisiana State Medical Society*, January 1991, pp. 33-40.

28 Peter Shinkle, "Study Shows LA is Lower in Most Forms of Cancer," *The Advocate*, May 28, 1993, p. A1.

Unfortunately, the issue of health effects has mainly focused on cancer. Other ailments, such as respiratory problems, central nervous disorders, birth defects, and miscarriages, have not been studied as much.²⁹ With the exception of a health assessment in St. Gabriel on miscarriages, all significant Louisiana investigations about health have been on cancer.³⁰

Residents of Sunrise, Louisiana, once a small black community located in West Baton Rouge Parish, north of the Placid Refining Company, complained of headaches, respiratory illness, burning eyes, pink eye, runny noses, skin disorders, and constant coughing.³¹ Residents of Alsen in East Baton Rouge Parish and Revilletown in Iberville Parish, both communities located in and around heavy industries, complained of similar ailments.³² In St. Gabriel, residents reported abnormally high rates of stillbirths and miscarriages that they believed were due to industrial pollution.³³ Members of the community of Lions on the Mississippi River's east bank and located between Cargill Grain and Marathon Oil Refinery blame the emissions from these facilities for severe bouts of asthma in children, skin lesions, and respiratory disorders.³⁴ With the exception of St. Gabriel, there are no known investigations of the health complaints made by residents of these communities.

Industry, particularly the Louisiana Chemical Association, has aggressively refuted cancer claims with mainly industry-financed studies.³⁵ Environmental pollution in Louisiana, particularly pollution from the synthetic organic chemical manufacturing industry, has often been alleged by the public as being chiefly responsible for high cancer death rates known to have existed in Louisiana since at least the 1930s. During the mid-1970s, a series of reports was published, some showing weak but positive correlations between some forms of cancer and environmental pollution. Speculation and controversy surrounded most of these ecologic or hypothesis-generating studies. As a result, few scientifically valid conclusions were available to State health authorities, and it became evident that better designed, more sophisticated investigations were needed to determine why more people were dying from cancer in Louisiana than elsewhere in the Nation.³⁶

Louisiana's first cancer registry, established in 1974 by Charity Hospital in New Orleans, was transferred in 1979 to the State office of health in response to a 1978 legislative mandate for a statewide cancer registry. In 1983 the Louisiana Tumor Registry (LTR) published its first monograph of cancer incidence information. As of 1991, seven volumes of cancer statistics, specific by geographic area, age, sex, and race, have been made available by LTR to inform citizens about cancer among State residents.³⁷

29 Joel Nitzkin, *Transcript*, pp. 256-57; Beverly Wright, *Transcript*, p. 30.

30 Ibid.

31 Linda Villarosa, "Showdown at Sunrise," *Essence*, July 1991, p. 55; see Florence Robinson, letter to Farella Robinson, USCCR, May 10, 1993.

32 Florence Robinson, *Transcript*, vol. 2, pp. 383-84.

33 Kay Gaudet, *Transcript*, vol. 2, pp. 275-92.

34 Bob Anderson, "Residents of Lions, LA, Blame Industries for Illnesses," *The Advocate*, May 10, 1992, p. A1.

35 ENSR Health Sciences, "A Review of Cancer Epidemiology in Louisiana," Mar. 29, 1989 (hereafter cited as ENSR Health Study).

36 Dan Borne, paper presented to the Louisiana Advisory Committee Factfinding Meeting, Feb. 20, 1992, p. 6; see also Dan Borne letter to Farella Robinson, USCCR May 14, 1993; see also app. F.

37 Ibid.

As the State was making progress in the collection of cancer incidence data, almost 50 reports put forth by various groups assessed Louisiana's cancer rates or risks. There were, however, few consistent conclusions available to the public, mostly due to the many significant differences among the studies in design, size, data sources, and statistical procedures. For this reason, LCA contracted with ENSR Health Sciences Corporation in 1988 to conduct a critical review of all the available literature, both published and unpublished, relating to the issue of cancer in Louisiana.³⁸ This review analyzed the scientific merits of individual studies. Several environmental studies were reviewed by ENSR that looked at the relationship between cancer and residential proximity to various industries. These studies, which ENSR considered to be of significant merit, concluded that residential proximity to industry in Louisiana was not found to be associated with any significant cancer risk.³⁹

In 1989 LCA provided funds to researchers at LSU Medical Center in New Orleans to analyze the cancer incidence data. The funds were used to automate and publish previously collected data. The State's data have been published first in a 1990 report and subsequently in a followup 1991 document. The two complementary reports, both titled "Cancer Incidence in South Louisiana, 1983-1986," are intended to convey Louisiana cancer facts and figures.⁴⁰

The Advisory Committee was told that the results of the data analysis supported such behavioral factors as smoking, diet, and nutrition, and access to health care as the cause of cancer.⁴¹ The study found that in contrast to the State's well-documented high cancer mortality rates, incidence rates for all cancers combined in south Louisiana are either the same as, or lower than, the national rates. According to the 1991 report, south Louisianians have a lower risk of developing the most common cancers, with one exception—lung cancer in white men. The study points to smoking as being primarily responsible (90 percent) for the high incidence and mortality of lung cancer among males, both black and white, in south Louisiana. For cancers other than lung, the report says that the major problem appears to be a lack of early detection and limited access to needed health care.⁴²

The Louisiana division of the American Cancer Society also supported these findings. However, it did indicate that environmental pollution may be a factor, but more research was needed to reach reliable conclusions.⁴³

The St. Gabriel study on the rate of stillbirths and miscarriages caused much debate and controversy.⁴⁴ The St. Gabriel area is an economically depressed community with the majority of residents below the poverty level. At the time of the study, the population was 60 percent black and 40 percent white. There are at least 10 chemical industries in the area.⁴⁵ This investigation was done because a local pharmacist in St. Gabriel observed an abnormally high rate of miscarriages in the

38 Ibid.

39 Ibid.; ENSR Health Study, p. 28.

40 Dan Borne, paper presented to the Louisiana Advisory Committee Factfinding Meeting, Feb. 20, 1992, p. 6; see also Dan Borne letter to Farella Robinson, May 14, 1993.

41 Ibid.

42 Ibid.

43 American Cancer Society, "Questions and Answers: The Louisiana Cancer Problems," September 1990.

44 Tulane University School of Public Health and Tropical Medicine, *St. Gabriel Miscarriage Investigation East Bank of Iberville Parish, Louisiana*, Sept. 27, 1989.

45 Ibid., pp. ii-vii.

area. The Louisiana Department of Health and Hospitals contracted with the Tulane School of Public Health and Tropical Medicine to conduct the study funded by the Agency for Toxic Substances and Disease Registry (ATSDR).⁴⁶ Although the pharmacist's request for a health assessment was based on her concern that the miscarriages were caused by industrial pollution, the study was not designed to address the impact of environmental contaminants. The objective was to determine if fetal loss rates were in excess of those expected on the basis of historical records or results of other studies of fetal loss. This investigation also looked at miscarriage for whites versus blacks.⁴⁷

The report concluded that what appeared to be an abnormally high rate of miscarriages among pregnant women in the St. Gabriel area was no higher than the national average.⁴⁸ The study was unable to reach firm conclusions about miscarriage rates among blacks versus whites because of data limitation and an underrepresentation of black respondents.⁴⁹

There were many critics of the study, ranging from scientists to community groups. The study was criticized for failing to use appropriate methodologies that would accurately ascertain the extent of miscarriages caused by nearby industrial emissions.⁵⁰ Consequently, the results of the study generated considerable distrust of government-sponsored

studies. The following statement adequately describes the perception regarding government-sponsored health studies:

Beware of community health studies. . . . Do not under any circumstances ask the State and Federal government for a study because no study has ever proven a link between adverse health effects and industrial emissions. . . . It's going to be this thing around your neck, having to deal with scientific papers that say there isn't a problem. Federal and State governments are not ready to take responsibility and admit what they've done to us.⁵¹

Government's Response to Complaints of Adverse Health Effects

Federal efforts are underway at the national and regional levels to detect clinical and subclinical effects of exposure to toxic environmental agents and to improve risks assessment procedures that take into account race and socioeconomic status.⁵² EPA's Office of Research and Development and other program areas are beginning to develop standardized systems for compiling demographic information by race and income.⁵³ The EPA office has launched a program to gather critical information about the extent and causes of human exposure to environmental agents. This program—the National Human Exposure Assessment Survey (NHEXAS)—will be important in providing information

46 Ibid.

47 Ibid.

48 Ibid.

49 Ibid.

50 Kay Gaudet, *Transcript*, vol. 2, pp. 275-92; "St. Gabriel Study Rigged Against Community," *Lean Louisiana Environmental Action Network News*, vol. IV, no. 2 (August 1990), p. 6 (hereafter cited as "St. Gabriel Study Rigged Against Community").

51 Ibid.

52 Gerald Carney, *Transcript*, vol. 1, pp. 163-64.

53 Susan Perlin, Office of Health Research, EPA, interview, Mar. 4, 1993.

essential to making more informed decisions about environmental health risks.⁵⁴ (See also appendix D.)

In addition, several EPA offices, both at headquarters and in the regions, have begun to collect data on risks by income and race.⁵⁵ By integrating the 1990 census data with EPA databases such as the Toxic Release Inventory and the Geographic Information System, maps are being generated that show by income and/or race the locations of sites that may be of concern from an environmental health perspective.⁵⁶ (See also appendix D.)

But the most promising sign for change is the new EPA Administrator's support for raising EPA's standards for collection and analysis of scientific data. Among EPA's top priorities will be to improve data collection and to create an office of environmental standards. The administrator stated: "I would feel successful if EPA were recognized as being a serious scientific body—one that gave policymakers reliable scientific information."⁵⁷

In Louisiana, the Office of Public Health (OPH) and DEQ have begun to establish a dialogue on health issues. In 1988, in response to concerns by citizens, the OPH and DEQ began to consider a study on the health effects of environmental conditions in Louisiana, particularly southeast Louisiana.⁵⁸ DEQ requested funding for an environmental health

study, and the Louisiana congressional delegation secured passage for an initial funding over 2 years beginning with FY 1990. The first year appropriation made by Congress for 1990–91 specified "an environmental health study in Louisiana . . . will assist the State in identifying priorities for controlling and remediating environmental pollution for the protection of health and the environment." One-half of the study funds was received by the Office of Public Health and administered by the Agency for Toxic Substances and Disease Registry (ATSDR), which is funded by EPA through Superfund. The other half of the funding was received by the Louisiana Department of Environmental Quality and administered by EPA. The study will address cancer research, surveillance of health outcomes and environmental indicators, and statewide health education. A continuation appropriation was made for 1991-92 to complete the 2-year study on high risk pollution in the Baton Rouge-New Orleans corridor.⁵⁹

Ascension Parish was selected as the pilot for two studies. DEQ and OPH are now gathering data to determine the possible links between environmental factors and health effects.⁶⁰ One of the studies will address linking information on environmental factors to low birth weight and stillbirths. The other project involves compiling environmental and health

54 "Estimating Human Exposures to Environmental Pollutants: Availability and Utility of Existing Databases," *Archives of Environmental Health*, vol. 47, no. 6 (November–December 1992), p. 399; Responses by EPA to USCCR Questions, Apr. 13, 1993.

55 *Environmental Equity Report*, vol. 2, p. 4; Equity Risks based on income and race is determined by how an individual's identification with a particular minority or socioeconomic groups might effect his or her exposures and/or susceptibility to environmental pollutants. Exposure-related attributes considered are proximity to sources, occupation, diet and susceptibility related attributes such as genetic predisposition, age, and gender. Two general groups that are considered to be at a high risk are populations or individuals who experience the highest exposures, and those who are more biologically susceptible to the health effects of environmental pollution.

56 Responses by EPA to USCCR Questions, Apr. 13, 1993.

57 Timothy Noah, "EPA Seems to Alter Clinton Position on Incinerator," *Wall Street Journal*, Feb. 2, 1993, p. B12.

58 See Dianne Dugas, letter to Kai Midboe, "Database Development for Surveillance of Health Outcomes and Environmental Indicators in Louisiana," Oct. 9, 1992 (hereafter cited as "Database Development for Surveillance of Health Outcomes").

59 Ibid.

60 Vickie Ferstel, "Pilot Projects to Eye LA's Chemical Corridor," *The Advocate*, Jan. 18, 1993, p. B1.

information in a computerized geographic information system. Meanwhile the Louisiana Chemical Association, the Ascension Parish Medical Society, and the Police Jury have agreed to fund research seeking data on behavioral risk factors that may contribute to adverse health problems in Ascension Parish.⁶¹

DEQ, OPH, the Department of Wildlife and Fisheries, and the Louisiana Department of Agriculture have established outreach on

health issues through a health advisory notice. These advisories on health issues will be sent out to local communities through churches and other means by which citizens can be educated on health risks.⁶²

DEQ and OPH are also working with EPA's regional office on risk assessment and database refinement procedures. An initiative is underway in Louisiana to target communities with high exposures to various pollutants.⁶³

61 Ibid.

62 William Kucharski, *Transcript*, vol. 1, p. 233-34.

63 "Database Development for Surveillance of Health Outcomes;" Susan Perlin, Office of Health Research, EPA, interview, Mar. 4, 1993.

6. Site Selection, Buyouts, and Relocation

*Odors, noise and fear haunt many Louisiana communities located just beyond the fence from petrochemical industries and waste sites. To prevent such situations from occurring in the future, many environmentalists feel Louisiana needs growth plans and regulations.*¹

In Louisiana the people who live nearest hazardous waste and industries, particularly in the 85-mile industrial corridor, are black and usually poor.² One of the main causes often cited is inadequate land-use authority for permitting and siting of hazardous waste and industrial facilities.³

Zoning is the most widely applied mechanism to regulate land use in the United States and ultimately is intended to influence and shape land use in accordance with long range local needs.⁴ Zoning may be strongly tempered by political, economic, and racial considerations; therefore, competition often results between special interest groups such as developers, neighborhood associations, environmentalists, etc., for advantageous land use. Zoning conflicts coupled with unregulated growth and ineffective regulation can place whole communities in jeopardy when industries expand or locate in close proximity.⁵

It is not unusual for land-use decisions to flow from local zoning boards that are racially isolated, with no representation from the

minority communities directly affected by expanding industries. More often than not, these neighborhoods lack the political clout to direct the expansion away from their residential areas.⁶ Dr. Paul Templet attributes part of this problem to poor access to government decisionmaking.⁷ For those residents whose property values are lowered and health and safety jeopardized, the only option may be relocation.

Dr. Robert Bullard, who studied a selected area of Louisiana (Alsen), describes the nature and extent of this problem:

These industries have generally followed the path of least resistance which has been in economically poor and politically powerless black communities. The entire Gulf Coast region especially Mississippi, Alabama, Louisiana and Texas has been ravaged by lax regulations and unbridled production. Polluting industries exploit the pro-growth and pro-jobs sentiment exhibited among the poor, working class, and minority communities. Industries such as paper mills, waste disposal and treatment facilities, and chemical plants, searching for operation space, found these communities to be a logical

1 Bob Anderson, "Many Think State Should Tighten Rules on Industry," *The Advocate*, May 12, 1992, p. A5.

2 Bob Anderson, "Plant Sites: Is Racism An Issue?" *The Advocate*, May 12, 1992, p. A1; Beverly Wright, remarks, factfinding meeting before the Louisiana Advisory Committee to the U.S. Commission on Civil Rights, Baton Rouge, Feb. 19-20, 1992, vol. 1, p. 19 (hereafter cited as *Transcript*).

3 Paul Templet, *Transcript*, vol. 1, pp. 119-20; Robert Kuehn, *Transcript*, vol. 1, pp. 66-68; William Kucharski, *Transcript*, vol. 1, pp. 228-29.

4 Robert Bullard, *Dumping in Dixie, Race, Class, and Environmental Quality* (Colorado: Westview Press, 1990), p. 9 (hereafter cited as *Dumping in Dixie*).

5 *Ibid.*, p. 10.

6 *Ibid.*, p. 86.

7 Paul Templet, *Transcript*, vol. 1, p. 120.

choice for expansion. . . . Land-use decisions are usually made by individuals external to the community. Decisionmakers have few vested interests in establishing watchdog groups to monitor environmental quality in the urban ghettos or rural poverty areas in the blackbelt. Government inaction reinforces a system of exploitation, creates siting inequities, and exposes low- and middle-income black neighborhood residents to potential health risks.⁸

Some white neighborhoods in Louisiana have also been affected by industrial expansion. The community of Cut-Off, located in West Baton Rouge adjacent to Dow Chemical, was included in Dow's relocation program along with the black community of Morrisonville.⁹ Another white community, south of Lafayette, is fighting a proposed industrial landfill.¹⁰ The people who live next to the abandoned Combustion, Inc., waste site in Livingston Parish are white.¹¹ In Homer, Louisiana, a racially mixed community, the proposed site of a uranium plant, will be closest to the black area, but white and black residents have joined forces to oppose the plant's location.¹²

Yet, more often it is predominately black communities in Louisiana that are located closer in and around industrial sites and therefore may be affected most by possible displacement.¹³ Blacks used to live in river towns such as Revilletown, Morrisonville, and Sunrise. Most of these communities were

settled before the arrival of industry and have coexisted with industry as neighbors and sometimes adversaries.¹⁴

The buyout and relocation programs offered by companies such as Dow Chemical and Placid Refinery are described by company officials as strictly voluntary.¹⁵ Residents' feelings about the buyouts are mixed. Some residents have been very happy that the buyouts have taken place because they can move away from nuisances (noise, transport trucks, odors, etc.) associated with living close to industry. The buyouts also provide residents with the opportunity to move to better housing.¹⁶ On the other hand, there are Morrisonville residents like Earline Badon, who is not happy with the buyout. She stated:

My Dad walked across the yard. My grandfather walked across the yard. This is a special spot. My people are in this place, and there are some things you can't put a dollar value on. To relocate will be very difficult. . . . They tell you that you have the choice of saying yes or no, but you really don't. I see my shelter, my comfort being torn down around me. I don't have a choice.¹⁷

For industry, this is an opportunity to create green belts or buffer zones to expand. But more important, it relieves industry of lawsuits and the economic impact of industrial accidents or other problems resulting from communities that are too close. Peter Wayman, senior vice president of Moron,

8 Robert Bullard, *Dumping in Dixie*, pp. 9, 34, 47-48.

9 Bob Anderson, "Plant Sites: Is Racism An Issue?" *The Advocate*, p. A1.

10 Ibid.

11 Ibid.

12 Norton Tompkins, *Transcript*, vol. 2, pp. 453-54.

13 Bob Anderson, "Plant Sites: Is Racism An Issue?" *The Advocate*, p. A1; Beverly Wright, *Transcript*, vol. 1, pp. 19-20, 32-33.

14 Dan Borne, *Transcript*, vol. 2, p. 525; Beverly Wright, *Transcript*, vol. 1, p. 19.

15 Guy Barone, *Transcript*, vol. 2, p. 564; Dale Emmanuel, *Transcript*, vol. 2, p. 632.

16 "Too Close for Comfort," pp. 41-42; Interview Summary of Morrisonville/Cut-Off Residents in Dow Buy-out Program, prepared by Angela Linsey, Jan. 16, 1990.

17 James O'Byrne, "The Death of A Town," *The Times-Picayune*, Feb. 20, 1991, p. A12.

Stahl and Boyer, a New York consulting firm that designed the Morrisonville program for Dow Chemical, stated: "It is cheaper to buy the real estate than pay for litigation, and pay the settlement, than buy real estate."¹⁸

Other industrial companies may follow suit, using the Morrisonville program as a model. (See discussion in chapter 7.) Calling the 1990s the decade of the environment, Mr. Waymon said chemical companies must be responsible to the communities in which they reside, "Otherwise, you're going to need more PR people and lawyers than you can shake a stick at," he said.¹⁹

What has been the State's response to siting practices and buyouts? The former director of DEQ, Dr. Paul Templet, stated:

Siting is generally a local government prerogative through their zoning authority, but local governments are generally reluctant to involve themselves in determining locations of polluting facilities until the pollution becomes intolerable after the plant is built and the citizens are calling for political action. By then it is too late. It is unrealistic to expect industry to move, and it is not possible to completely eliminate the pollution, even with a proactive DEQ, so the citizens near the facility suffer or accept a buyout if it comes.²⁰

Currently, 17 States have regulations specifying setback distances from residences or public structures ranging from 500 feet to 3 miles. In establishing required setback distances for hazardous waste facilities and established structures, some States have considered projected human population growth as a criterion. Most State regulations have also included provisions for buffer zone

distances between units and the property boundary. Buffer zone distances specified in these regulations range from 150 feet to 0.5 mile, the most common buffer zone distance being 200 feet.²¹ States that have adopted these mechanisms include Ohio, which generally prohibits the siting of hazardous waste facilities of a certain size within 2,000 feet of any residence, school, hospital, or prison. Texas prohibits new and expanding landfills and land treatment facilities from locating within 1,000 feet of established residences, churches, and schools. Oregon, Pennsylvania, and Oklahoma each requires a 1-mile setback distance from residences and similar structures. In addition, Oregon requires a 3-mile facility setback distance from population centers of 20,000 or more people. Some States, such as Connecticut, have different setback requirements for land-based units and non-land-based units.²²

As reported to the Advisory Committee, some suggestions to correct poor planning and zoning practices at the local and State levels in Louisiana include: notification of the public about hazardous waste and industrial facility sitings accurately, fully, and on a timely basis; holding meetings in the community before making permit decisions; establishment of adequate buffer zone and siting restrictions for residential areas, schools, and health facilities; establishment of impact fees for communities adversely burdened by industry; and appointment of a public advocate with legal and technical resources to represent the interests of local citizens.²³

Dr. Templet devised a plan that would give each local government money to hire a

18 Kelly Alexander, *Business Report's Industry Report*, "Too Close for Comfort," p. 43 (May 1990) (hereafter cited as "Too Close for Comfort").

19 Ibid.

20 Paul Templet, *Transcript*, vol. 1, pp. 120-21.

21 Ellen Brown memo to Bob Knox, "Proposed Standards for the Location of Hazardous Waste Treatment, Storage and Disposal Facilities," Aug. 18, 1992, p. 64.

22 Ibid.

23 Robert Kuehn, *Transcript*, vol. 1, pp. 68-72.

planner to help examine the environmental consequences of zoning decisions. DEQ would assist the planner with technical information.²⁴ However, this proposal was opposed by the Louisiana Chemical Association and the Louisiana Association of Business and Industry (LABI). LCA stated that there was no need for such a plan because current local and State authority for the siting process was already open to the public and protective of community safety and the environment. LCA went on to state:

LCA is willing to look at proposed regulations or legislation if we can identify needed changes and if the intent is to make mutually agreeable improvements in the siting process. But LCA cannot support legislation simply for regulations' sake or to create barriers to siting or expansion. . . . While buffer zones around chemical plants are desirable, a lot can be done voluntarily between companies and their neighbors without regulations. . . . The unique problems that arise in different places between plants and their neighbors require unique solutions rather than broad regulations.²⁵

Another approach to this problem that offers the best hope for resolving siting problems is to use the authority implied in the IT decision to consider social and environmental equity considerations in new and newly expanding facilities.²⁶

DEQ's efforts to address siting inequities are at best minimal. Kai Midboe, secretary of DEQ stated he would like to upgrade the agency's minimal site selection regulations,

but added that responsibilities lie with local governments to ensure that zoning decisions provide sufficient protection for communities.²⁷ DEQ Deputy Secretary Kucharski stated that the department intends to make information about siting decisions more accessible to the public, but the most DEQ can do is reduce the emissions by existing facilities and consider the factors outlined in the IT decision when permitting new facilities.²⁸

Local parishes have no buffer zone requirements to cover how close plants can build up to a neighborhood. Although the State has suggested a 200-foot setback distance from communities, Louisiana has not developed land-use plans or comprehensive siting regulations that control where industry locates.²⁹

Legislative actions were started in the Louisiana legislature to address environmental justice issues. During the last legislative session (which ended June 10, 1993), two bills and a Senate resolution were introduced. Senate Bill 1028 did not pass. This bill would have required DEQ to adopt rules to ensure that environmental decisionmaking is free from discrimination, particularly in areas where the resident population does not have economic resources to participate in environmental decisionmaking. The Senate resolution was not heard by the Senate Environmental Committee. Senate Bill 1160 passed. It requires DEQ to conduct factfinding hearings throughout the State on environmental equity. A report will be made to the legislature, along with recommendations.³⁰

24 "Too Close for Comfort," p. 46.

25 Bob Anderson, "Many Think the State Should Tighten Rules on Industry," *The Advocate*, May 13, 1992, p. A5.

26 "Too Close for Comfort," p. 46.

27 Bob Anderson, "Many Think the State Should Tighten Rules in Industry," May 13, 1992, p. A5.

28 William Kucharski, *Transcript*, vol. 1, pp. 233-42.

29 Bob Anderson, "Many Think State Should Tighten Rules on Industry," *The Advocate*, May 13, 1992, p. A5; William Fontenot, telephone interview, June 5, 1993.

30 See William Kucharski, deputy secretary, DEQ, letter to Farella Robinson, civil rights analyst, USCCR. June 17, 1993.

7. Communities Too Close for Comfort

The preceding chapters led the Advisory Committee to a case review of selected communities in Louisiana that have been affected by land-use decisions causing environmental disputes. This review and analysis by the Advisory Committee also covers actions taken by industry and government to resolve equity issues. The communities of Reville-town, Sunrise, Morrisonville, Alsen, Wallace, Forest Grove, Center Springs, and Willow Springs are reviewed.

Case Review #1

Town/Community: Reville-town

Parish: Iberville

Industry: Georgia Gulf Corporation is a manufacturer of chemical and plastic products.¹

Location: Reville-town is a small unincorporated town located west of the Mississippi River. The town is approximately 200 yards from the fence line of Georgia Gulf. Other industries in and around the town are Ashland Chemical, which is about one-fourth of a mile south, and Big Three Industrial Gas, which is 1 mile west of Reville-town.²

Demographics: According to information provided by community leaders, before the buyout and relocation, Reville-town was a community of 150 black residents. The area was comprised of 51 houses on about 6 acres of land. The average income was below the U.S. poverty guidelines, and most property owners

had less than 12 years of formal education. Residents were primarily retired agricultural workers, welfare recipients, or chronically unemployed. The typical resident owned a small house, and many homes did not have indoor plumbing. The area lacked many services such as a sewage system, recreational facilities, and adequate fire and police protection. For all practical purposes, Reville-town no longer exists. Currently, no persons live in the area.³

Georgia Gulf is a complex of six different plants. As of 1992, the company had 919 employees, of whom 98 or 11 percent were minority. Over the 8 years of operation in the area, five residents of Reville-town have been employed by Georgia Gulf.⁴

Environmental Issue(s)/Dispute: Health, buyout and relocation, discriminatory parish services, and limited representation on and access to local government.⁵

Involved Community/Environmental Group Organization(s): No known community group. Organized around a coalition of residents with the assistance of legal counsel.⁶

Background: When industry began its expansion in the Plaquemine area, Reville-town was already an established community. Georgia Gulf's Plaquemine facility was originally owned by another company, Georgia Pacific. The reasons given for industrial siting in this area were land availability, excellent transportation, natural resources, and the

1 Ed Schmitt, remarks, factfinding meeting before the Louisiana Advisory Committee to the U.S. Commission on Civil Rights, Baton Rouge, Feb. 19-20, 1992, vol. 2, p. 595 (hereafter cited as *Transcript*).

2 *Ibid.*, p. 596.

3 Will Hinson, public affairs manager, Georgia Gulf Corporation, letter to Farella Robinson, USCCR, May 10, 1993.

4 Georgia Gulf Corporation, employment data submitted to Louisiana Advisory Committee for Factfinding Meeting, Feb. 20, 1992.

5 Ed Schmitt, *Transcript*, vol. 2, pp. 599-601; Janice Dickerson, *Transcript*, vol. 2, pp. 400-07.

6 Ed Schmitt, *Transcript*, vol. 2, p. 600.

availability of a good work force. The original complex was built in 1970 and operations began in 1971. However, as early as 1969, before the plant opened, industry officials had already contacted Revilletown residents with offers to purchase property in Revilletown to establish a safety zone surrounding the complex in the event that an emergency should occur. In 1975 as Georgia Pacific expanded its plant operations in the area, offers were again made to purchase Revilletown property.⁷ According to company officials, this offer was made based on an interest expressed by property owners.⁸ Between 1977 and 1981, Georgia Pacific, and later Georgia Gulf, had purchased a total of 15 lots. In 1986 a lawsuit was filed by some residents of the community. The plaintiffs alleged property damage and personal injury from the chemicals emitted from the plant.⁹

Before the lawsuit was filed, Georgia Gulf officials had already developed a plan to purchase and build homes for residents who wished to trade their current homes for new houses that would allow them to remain together. Thirteen property owners of the 36 remaining lots that were not owned by the company sued Georgia Gulf.¹⁰ As the result of the settlement agreement reached in 1988, the company received the property of the plaintiffs in exchange for a cash settlement. Additionally, the company obtained 21 lots owned by residents not involved in the litigation. The terms of the settlement agreement

were not released. Residents who were not a part of the suit received homes valued from \$45,000 to \$55,000 in exchange for their Revilletown properties.¹¹ A new residential subdivision was established called Revilletown Park for residents who wished to stay together. In exchange for the town's old church, Georgia Gulf built a new church in the subdivision. About 12 homes were built in Revilletown Park.¹²

Other small communities or subdivisions located in the same general area were not bought out. Revilletown was the closest to the plant.¹³ Of those other communities, the St. Louis subdivision is all white; Sam Scavore and Sons Mobile Home Park is integrated, with 50-50 black-white; the Ella Road Community is black; and the Random Oaks subdivision is predominately white.¹⁴

Company officials have also carried out an array of outreach activities with local communities, such as scholarship programs, health screenings, and tutoring programs in the schools.¹⁵ Although the Louisiana Coalition for Tax Justice stated that in 1991, Georgia Gulf received an \$8 million tax break, Georgia Gulf officials contend that the company's tax exemptions amounted to \$1.2 million and it was required to pay \$1.3 million in local taxes and approximately \$3.65 million in State taxes.¹⁶

Resolution/Outcome: The environmental issues in Revilletown involved public health and buyout and relocation efforts. However,

7 Ed Schmitt, *Transcript*, vol. 2, pp. 598-99; "Buzzworn: The Environmental Journal," September 1990; see Beverly Gholson, associate general counsel, Georgia Gulf, letter to Mike Ingallineri, BIC Resources, Inc., Oct. 3, 1990.

8 Ibid.

9 Ibid.

10 Ibid.

11 Ibid.; Will Hinson, letter to Farella Robinson, May 10, 1993.

12 Ed Schmitt, *Transcript*, vol. 2, p. 601.

13 Ed Schmitt, *Transcript*, vol. 2, pp. 613-14.

14 Ibid.

15 Ed Schmitt, *Transcript*, vol. 2, pp. 601-05.

16 "Citizens Stop Tax Breaks," *Louisiana Coalition for Tax Justice*, vol. 1, no. 3 (October 1991), p. 12; Will Hinson, letter to Farella Robinson, May 10, 1993.

major underlying problems were inadequate parish services available to residents and access to local government. The residents used legal action to challenge industry on environmental problems. There was no substantial support from civil rights or environmental groups, mainstream or grassroots. Attorneys played a primary role in the mobilization and resolution process.

Although the buyout program was voluntary, it appears that Georgia Pacific's and Georgia Gulf's objective was to expand the boundaries. As a tradeoff, residents of Revilletown were able to move into a new community with better housing and less pollution. The plaintiffs were never able to establish evidence that the company's operations adversely affected their health. There was no information to show that residents approached local or State government to improve monitoring systems, upgrade safety or emergency programs, or evaluate zoning codes or emissions standards.

There were no concessions to residents beyond individual benefits. This environmental dispute and resolution did not result in institutional changes in government or industry that would address environmental equity concerns of the community.

Case Review #2

Town/Community: Sunrise

Parish: West Baton Rouge

Industry: Placid Refining Company is a private independent oil refining and marketing company. It produces gasoline, diesel, and jet fuel from crude oil and other natural resources.¹⁷

Location: Sunrise is an unincorporated area along the 85-mile industrial corridor by the Mississippi River. The area is north of Placid, which is on a 55-acre tract between Louisiana Highway 1 and the Mississippi River in West Baton Rouge Parish. Sunrise is the nearest residential community to the plant. At one time only a barbed wire fence separated the town from the refinery, less than 50 yards from the community hall.¹⁸ Sunrise was located between an Exxon lubricant plant and Placid.

Demographics: Current census data are not available. Information provided by Placid officials indicated that in 1970 Sunrise was 17 percent white and 83 percent black. Of the residents closest to the plant, 48 percent were white and 52 percent black.¹⁹ In 1991 population counts provided by community leaders ranged from 200 to 265 residents.²⁰ The subdivision comprised about 90 homes, one church, and several mobile homes. Although predominately black at the time of the buyout, during the earlier years, Sunrise had been a racially and economically diverse community. Most residents subsisted on earnings below U.S. poverty guidelines of \$14,343 for a family of four, and there were a number of middle and working class residents.²¹

Placid has 206 employees. Seventeen percent are minorities. Twenty-one percent of management positions are held by minorities, and 24 percent of the top craft positions are held by minorities. In 1991, 28 percent of the workers hired were minorities. Since 1975, Placid has employed eight Sunrise residents.²²

17 Dale Emanuel, Placid Refinery Company, *Transcript*, vol. 2, p. 620.

18 *Ibid.*, p. 622; Linda Villarosa, "Showdown at Sunrise," *Essence Magazine*, July 1991, p. 55.

19 Dale Emanuel, *Transcript*, vol. 2, p. 627.

20 Paul McEnroe, "LA Town Protests Environmental Decision," *Minneapolis-St. Paul Star Tribune*, Aug. 12, 1991, p. B1; "Showdown at Sunrise," *Essence Magazine*, p. 55.

21 "Showdown at Sunrise," *Essence Magazine*, p. 61; Dale Emanuel, *Transcript*, vol. 2, p. 628.

22 Dale Emanuel, *Transcript*, vol. 2, pp. 623-24.

Environmental Issues/Dispute: Public health and quality of life issues, buyout and relocation program.²³

Involved Community/Environmental Group Organizations(s): Victims of a Toxic Environment (VOTE) United and Gulf Coast Tenants Association.

Background: The community is the beginning of the area dubbed by some residents as "Cancer Alley."²⁴ Sunrise was founded by a former slave, Alexander Banes, in 1874. According to Placid officials, industrial activity in the area began during the 1930s. The property was used by a previous owner as a tank farm, blending facility, and a transportation terminal. The refinery was already built and in operation when acquired by Placid in 1975 from Toro Petroleum. Placid officials indicated that they located in the area because of availability of land, access to the Mississippi River, abundance of crude oil and natural gas supplies, and permissible zoning.²⁵

During the 1930s, when industrial activity had already begun, the section of Sunrise closest to the refinery was occupied mostly by white residents. In the mid-seventies, because of complaints from residents, the company initiated a program to purchase property of Sunrise residents. Residents of the street closest to the plant, mostly white, were offered "fair market value" for their properties. Also, property owners were compensated for any devaluation that may have occurred because of proximity to the plant.²⁶

In 1989 plant officials received complaints about odors and a black soot in the environment. In April 1990 Sunrise residents picketed the plant to complain about toxic emissions. Two weeks later a lawsuit was filed on behalf of 241 residents charging Placid with exposing the townspeople to toxic contamination and causing health, economic, and psychological hazards.²⁷ Residents of Sunrise complained of illnesses ranging from cancer to respiratory ailment to skin diseases.²⁸ Sunrise residents did not have much faith in State and local government. They believed that in the eyes of the government, industry's interests superseded their health concerns.²⁹

Placid initiated a buyout program under which nonplaintiffs were offered prices for their homes that would allow owners to build new homes similar in size and material to their previous residences. Also, \$5,000 was provided to each household.³⁰ As of July 1993 Placid had acquired, voluntarily, more than 90 percent of the nonplaintiff homes in the area.³¹

In the summer of 1991, VOTE United challenged the company's \$757,000 tax break request over a 10-year period. Placid's application was deferred by the State Board of Commerce and Industry until additional information was provided. Although the application was subsequently approved, Janice Dickerson of VOTE indicated that the group's action was used as leverage in the plaintiffs' buyout negotiations.³² In September 1991,

23 Ibid., pp. 629-31.

24 McEnroe, "LA Town Protests Environmental Racism," p. B1.

25 Dale Emanuel, written remarks submitted to Louisiana Advisory Committee for Factfinding Meeting, Feb. 20, 1992.

26 Ibid.

27 Ibid., p. 630.

28 Villarosa, "Showdown at Sunrise," *Essence Magazine*, p. 55.

29 Ibid.

30 Dale Emanuel, *Transcript*, vol. 2, pp. 631-32.

31 Ibid.

32 Louisiana Coalition, Citizens for Tax Justice, "Citizens Stop Tax Breaks" (October 1991), p. 13; see also Larry Doty, general manager, Placid Refinery, letter to Farella Robinson, USCCR May 10, 1993.

Placid and the plaintiffs reached a tentative out-of-court agreement under which the company would purchase all the property of the plaintiffs. Final details of that agreement are confidential. Approximately 95 percent of the plaintiffs have agreed to settle, and over 50 percent have already gone through closings to sell their property to Placid.³³ As part of the settlement, the plaintiffs released Placid of all personal injury, nuisance, and damage to property.³⁴

A few Sunrise residents have elected to remain in the area. Some residents are glad they had the chance to sell their land and move to a more peaceful setting, but some others are bitter about the demise of a century-old community.³⁵

Resolution/Outcome: Residents of Sunrise used legal action and community organizing to address environmental concerns in their community.

Although residents were successful in obtaining reasonable concessions, nothing was gained beyond individual benefits. Institutionalized changes in the way industry or government operates to address environmental equity concerns, such as technical modifications in plant operations, updated safety and pollution monitoring systems, or changes in State siting practices, were not affected. Placid benefited in two ways: it was released from future liability to residents, and the

company now has the opportunity to expand and set up buffer zones around the plant.

Case Review #3

Town/Community: Morrisonville

Parish: Iberville Parish

Industry: Louisiana Division of Dow Chemical U.S.A., which manufactures basic and specialty chemicals, plastics, and pharmaceutical and agricultural products.³⁶

Location: Dow's Louisiana Division is in Plaquemine, about 10 miles south of Baton Rouge. Dow occupies approximately 1,400 acres in Iberville and West Baton Rouge Parishes. The division has 20 production plants.³⁷ Morrisonville makes up 208 acres of property bordering the plant to the east and adjacent to Dow's fence line, causing the plant to surround the community. The town church is located next to one of Dow's plastic plants. Its location was so close to the plant that one could stand at the front steps and throw a stone and hit the facility.³⁸ A small white community, Cut-Off, is north of Morrisonville in West Baton Rouge Parish and is also adjacent to Dow facilities.³⁹

The Louisiana Division of Dow has 4,400 employees and contractors. Production units in Louisiana produce 50 basic chemical products at 16 billion pounds annually. The company calculates its average economic impact on Louisiana at \$650 million annually.⁴⁰

33 Dale Emanuel, *Transcript*, vol. 2, p. 632.

34 *Ibid.*, p. 633.

35 Bob Anderson, "For Many in Sunrise, the Sun Sets With the Coming of the Refinery," *The Advocate*, May 15, 1992, p. A1.

36 Dow Chemical Company Public Relations Booklet, "Welcome to the Louisiana Division of Dow Chemical, U.S.A.," p. 1.

37 *Ibid.*

38 Guy Barone, Dow Chemical, *Transcript*, vol. 2, pp. 561-62; James O'Byrne, "The Death of a Town," *The Times-Picayune*, Feb. 20, 1991, p. A12.

39 Guy Barone, *Transcript*, vol. 2, p. 561.

40 Guy Barone, written remarks submitted to Louisiana Advisory Committee for Factfinding Meeting, Feb. 14, 1992.

Although Dow reduced its total emissions by 33 percent in 1990, it still emitted the most total chemical releases (2,372,708) in Iberville Parish.⁴¹ Statewide, of the top 25 emitters, Dow ranked 22 in total releases, 10 for air emissions, and 11 for ground water contamination.⁴²

Demographics: The original Greater Morrisonville community, which also included a white community called Cut-Off, had a population of 295, of whom 60 percent were black and 40 percent were white. There were 87 property owners located on 208 acres of land. The original community comprised two churches, two cemeteries, six businesses, and 30 tenants.⁴³ Residents were described as mainly poor to working class. Housing stock in the community varied. Some of the housing was described as substandard with roofs that leaked and inadequate cooling and heating systems. Other homes in the neighborhood were described as well-maintained and comfortable.⁴⁴

Environmental Issue(s)/Dispute: Voluntary buyout-relocation program.⁴⁵

Involved Community/Environmental Group Organization(s): Gulf Coast Tenants Association, Louisiana Environmental Action Network (LEAN), and Citizens for a Clean Environment (CLEAN). There were both internal (resident groups) and external (Gulf Coast Tenants Association and Citizens for a Clean Environment) groups organizing to challenge the buyout program. Attempts by

Baton Rouge attorneys to organize a class action lawsuit were unsuccessful.⁴⁶

Background: Dow located in the area in 1958. According to Dow, the Plaquemine area was selected for industrial development because of abundance of natural resources, available land, transportation, climate, and a skilled work force.⁴⁷

Morrisonville was founded in 1790 by slaves freed from the Australia Plantation on the banks of the Mississippi River just north of Plaquemine. A tightly knit community, it had remained largely intact for more than a century. Over the years, Dow's facilities expanded so close to the community that for safety reasons, residents and landowners were offered a voluntary relocation program affecting 250 residents. The Morrisonville program began in May 1989 as a voluntary relocation offer. Residents of Cut-Off were also eligible for the relocation program. According to company officials, the Morrisonville program was an organized way to give every household in the community Dow's very best offer on a uniform basis.⁴⁸ Within the community, there were mixed feelings about leaving. For certain residents it was good, but for others it was not. The division went along two lines of thinking: those who saw the opportunity to move away from the nuisance and hazards of living next to an industrial plant to new comfortable homes, and those who were lifelong residents whose deep roots and ancestral home were more important than new housing or economic gain. However, by most

41 Dow Chemical, Louisiana division, News Release, "Dow Sara Emissions Down 33 Percent in 1990."

42 Louisiana Toxic Release Inventory, 1990.

43 Guy Barone, *Transcript*, vol. 2, p. 564.

44 Interview Summary of Morrisonville/Cut-Off Residents, prepared by Angela Linsey, Jan. 16, 1990.

45 Guy Barone, *Transcript*, vol. 2, p. 560-61.

46 Michael Lythcott, Prudential Relocation Management, *Transcript*, vol. 1, p. 588; See also Lythcott, letter to Farella Robinson, USCCR, May 17, 1993.

47 Guy Barone, written remarks submitted to the Louisiana Advisory Committee for Factfinding Meeting, Feb. 14, 1992.

48 *The Morrisonville Program Handbook*, p. 1.

Morrisonville residents' standards, Dow provided a package that most considered fair.⁴⁹ But some residents of Cut-Off felt the offer was unfair to wealthier property owners who did not live in substandard housing because Dow's maximum purchase price was not sufficient to afford the same housing in another location.⁵⁰

Under the program guidelines, an owner-occupied property offer consisted of a minimum of \$50,000. Each home was appraised by local appraisers selected by the homeowners. Other benefits included tax counseling and legal and real estate assistance. After the sale to Dow, the house was given back to the former owner for moving or salvaging. Renters were also included in the program to receive \$10,000 if the owner sold the property.⁵¹ To help residents with questions, concerns, and guidance for their decision, Dow hired Moron, Stahl and Boyer, Inc., a relocation consulting firm. A program center was established to assist residents with questions and guidance for their decision.⁵² Relocation specialists helped those interested in learning about the program and with any support needed throughout the process, whether the people moved or decided to stay in Morrisonville.⁵³ Finally to keep the community intact as much as possible, Dow established a new subdivision called New Morrisonville for residents who wanted to stay together as a community. Dow also offered to relocate and rebuild the church.⁵⁴

Resolution/Outcome: The major environmental issue was the relocation program offered to residents of Morrisonville. Although

residents' responses to relocation were mixed, there was no organized community opposition. In less than 2 years, Dow spent more than \$10 million in the buyout of Morrisonville and got nearly everyone to sell. According to company records, as of February 1992, 95 percent of the property had been purchased while 5 percent, or four families, were uncommitted. From Dow's perspective, it had the land it sought and its potential legal liability from an accident was reduced significantly. At the same time, Dow officials can point to residents who came away satisfied with the buyout offer.

Dow's Morrisonville plan is being watched closely by other chemical companies around the country. It is the first time a plant has successfully bought out a town near its property lines in the absence of a lawsuit.

Case Review #4

Town/Community: Alsen

Parish: East Baton Rouge

Industry(s): Rollins Environmental Services, Inc., is a commercial hazardous waste treatment and disposal company. The company uses an incinerator and landfill to dispose of chemical and petrorefining by-products.⁵⁵

Location: Alsen is an unincorporated community on the Mississippi River several miles north of Baton Rouge. It lies at the beginning of the 85-mile industrial corridor, or the area sometimes called "Cancer Alley."⁵⁶ Rollins and Rhone-Poulenc are the two commercial hazardous waste sites in the Baton Rouge area,

49 James O'Byrne, "The Death of a Town," *Times-Picayune*, Feb. 20, 1991, p. A1.

50 Interview Summary of Morrisonville, Cut-Off Residents, prepared by Angela Linsey, Jan. 16, 1990.

51 *Morrisonville Program Handbook*; Guy Barone, *Transcript*, vol. 2, pp. 567-69.

52 "Too Close for Comfort," p. 45.

53 Guy Barone, *Transcript*, vol. 2, pp. 565-67.

54 *Ibid.*

55 Robert Miller, Rollins Environmental Services, Inc., interview, June 20, 1991.

56 Florence Robinson, president, North Baton Rouge, Environmental Association, *Transcript*, vol. 2, p. 379; see Florence Robinson, letter to Farella Robinson, USCCR, May 10, 1993; *Dumping in Dixie*.

both located in the Alsen/Scotlandville area. Within 2 miles of the Rollins facility, the resident population is predominately black. There is also a large concentration of petrochemical industries and two Superfund sites in and around the area. These industries are: Petro Processors, a Superfund site; the Grow Chemical Company; Union Tank Car Company; Schuylkill Metals; Reynolds Aluminum Petroleum Coke Division; Allied Signal, now called Paxon; La Chem Chemical Company; Deltech; Exxon Resin Plant; and Petro Processors Superfund site at Brooklawn. Two and one-half miles north of Alsen is Grant Chemical, and about 2 miles north of it is Georgia Pacific.⁵⁷

Demographics: As of January 9, 1993, the Alsen population count was 2,500.⁵⁸ There are approximately 525 households in the predominately black community. Alsen developed as a rural community of black landowners to its present status as a stable, working class suburban enclave. Average family income for the general (zip code) area is \$26,816. According to Dr. Florence Robinson, the average income for Alsen is probably less. The community still maintains much of its small town flavor. Many of the residents have roots dating back several generations.⁵⁹

Environmental Issue(s)/Dispute: Health and quality of life issues and siting practices.

Involved Community/Environmental Group Organization(s): North Baton Rouge Environmental Association and Louisiana Environmental Action Network (LEAN)

Background: The Alsen area and some of the surrounding communities, such as

Scotlandville and Istrouma, originally consisted of large tracts of land owned by a few families. Much of this land was consolidated into a large plantation. From all accounts, it appears that the area along Springfield Road, now called Alsen, was established as early as 1854. Alsen, which is just a small part of the area, consisted mainly of agrarian families until recently. With the exception of Scotlandville, the general area was mostly white, but in the 1960s and early 1970s white families began moving and were replaced by black families. This pattern is continuing today.⁶⁰ Rollins located in the area in 1970.⁶¹

Southern University, a historically black university, and Louisiana State University (LSU), a traditionally white university, are both in East Baton Rouge Parish. Southern is located in the north and LSU is located in the south. An onsite review of the two areas by the Advisory Committee shows a startling contrast between the two universities' exposure to teeming smokestacks. Southern is nestled among a large number of industries that generated the highest total toxic discharge in East Baton Rouge Parish in 1989. LSU is located in an area that had no facilities reporting toxic releases.⁶² Further analysis by Dr. Robinson revealed that 45 percent of the black population in East Baton Rouge lives in zip codes where toxic chemicals are discharged into the environment, while only 19.7 percent of the white population lives in such zip code areas.⁶³

According to community leaders, the Rollins facility has been of some concern for a number of years. They complained that in

57 Florence Robinson, written remarks submitted to Louisiana Advisory Committee Factfinding Meeting, Feb. 20, 1992; "Too Close for Comfort," p. 44.

58 Peter Shinkle, "DEQ Issues Revised 10-Year Permit to Rollins," *The Advocate*, Jan. 9, 1993, p. A1.

59 Florence Robinson, written remarks submitted to Louisiana Advisory Committee for Factfinding Meeting, Feb. 20, 1992; see Florence Robinson, letter to Farella Robinson, USCCR, May 10, 1993.

60 Ibid.

61 Ibid.

62 Ibid.

63 Ibid.

addition to chemical waste, Rollins disposes of medical waste, heavy metals, pesticides, and radioactive waste.⁶⁴ Residents report many health complaints such as sinus problems, headaches, asthma, rashes, chronic tiredness, cancer, and spontaneous nosebleeds. In addition to health problems, residents report problems with pets, livestock, poultry, trees, and crops.⁶⁵

In 1980 residents began to organize around pollution issues affecting the community. Complaints were filed with DEQ with no immediate results. In 1981 local residents filed a multimillion dollar class action lawsuit against Rollins. The lawsuit was settled in 1987. The maximum settlement award received by each plaintiff was \$3,000. However, the settlement splintered the community into those who opposed the \$3,000 settlement and those who felt they should take the money. Residents who opposed the settlement felt there was a need for continued health monitoring in the community. In the end, the plaintiffs released the company from liability of any future health-related problems.⁶⁶

Rollins is the fourth largest commercial hazardous waste facility in the country. In addition to Baton Rouge, Rollins maintains facilities in New Jersey and Texas. Company officials question why Rollins has been singled out as being responsible for environmental pollution in Alsen, since at least nine other plants are located in and around the Alsen community.⁶⁷ In 1992 the Baton Rouge facility burned 80 million pounds of hazardous waste. The plant has a checkered environmental record, having caused groundwater contamination. It has received numerous fines for violation of environmental laws, including a

\$10,000 fine in 1991 for illegally receiving and burning radioactive materials from nuclear weapon plants and other sites.⁶⁸ This year, DEQ issued Rollins a revised 10-year permit to incinerate hazardous waste. This permit appears to cap a process that began in the 1980s when Rollins started the effort to renew its permit under the Recovery Conservation and Recovery Act.

To address residents' concerns, the permit requires Rollins to install eight air pollution monitors along its fence line. Rollins will also have to shut down its existing incinerator and replace it with a new one within 3 years. According to State officials, the permit, as stipulated, will ensure that the environment and the health and safety of residents are protected. Although community leaders wanted DEQ to deny the permit, they believe they still have won a small victory with the acknowledgment by the State of their concerns.⁶⁹

In accordance with the final permit issued in November 1992, Rollins has tied into the City-Parish Emergency Response System to alert citizens of industry-related emergencies and/or accidents. According to members of the North Baton Rouge Environmental Association, the emergency system is inadequate. They complained that the Emergency Response Committee is not responsive nor is its membership reflective of the citizens who live in local communities and impacted by industrial pollution.

Rollins has also established extensive community relations efforts. It provides money and resources to support a multitude of community projects such as a food bank for senior citizens, job and health fairs, improvements to

64 Ibid.

65 Ibid.

66 Robert Bullard, *Dumping in Dixie*, pp. 66-68.

67 "Too Close for Comfort," p. 44.

68 Peter Shinkle, "DEQ Issues Revised 10-Year Permit to Rollins," *The Advocate*, Jan. 9, 1992, p. A1.

69 Robert Miller, *Transcript*, vol. 2, pp. 691-92.

the local church, and funding projects for neighboring schools.⁷⁰

Recently, Rollins applied for a permit change for incinerating hazardous waste. According to company officials, the change would enable Rollins to decrease the amount of pollutants released into the air. As of July 1993, DEQ had not taken action on the permit but agreed with Rollins that the permit change would allow decreases in the amount of pollution. Some residents of Alsen are suspicious of this latest permit modification.⁷¹

Rollins contends that its environmental practices are fair and nondiscriminatory. While providing a much needed service for the manufacturing industry, company officials believe they provide a well-managed treatment and disposal facility to ensure the protection of public health and the environment.⁷²

Resolution/Outcome: Alsen is in a highly industrialized area. Florence Robinson contends that the community is saturated with industry due to past discriminatory practices that they now have to live and suffer with in the absence of relocating.⁷³ Residents of Alsen used legal action and community organizing to address the environmental problems in their community. Through the North Baton Rouge Environmental Association, community residents have effectively communicated their concerns to government and industry. The lawsuit and subsequent State monitoring of air quality forced Rollins to reduce emissions. Public opposition to the problem intensified in the mid-1980s when citizen groups and environmentalists turned out in force to oppose an application by the firm to burn

PCBs. This protest was successful in blocking the PCB burn.

Overall, life in the Alsen community has improved since residents have become more informed about hazardous waste issues and convinced State officials to monitor closely air quality in their community. Although economic concessions were obtained from Rollins through an earlier lawsuit, residents have also been able to secure more monitoring and safety measures for their community. Alsen's environmental problems may not be over, but increased resident participation and more scrutiny by State government have made it more difficult to site new hazardous waste facilities in the area.

Case Review #5

Town/Community: Wallace

Parish: St. John the Baptist

Industry: Formosa Chemicals and Fibre Corporation proposed to build a rayon and wood pulp processing plant.⁷⁴

Location: Wallace is a river town on the west bank of the Mississippi River. The area includes a 28-mile stretch of land between New Orleans and Baton Rouge running from one end of St. John to the middle of St. James Parish.⁷⁵ Several historic plantation homes are located in the area where the proposed plant will be built. The 1,800 acres of land needed to build is about 1,000 feet from some property owners in Wallace.⁷⁶ Other industries are located across the river from Wallace, such as Marathon Petroleum, Nalco Chemical Company, and Marathon Petroleum Terminal.⁷⁷

70 Ibid., pp. 692-93; see Florence Robinson, letter to Farella Robinson, USCCR, May 10, 1993.

71 Peter Shinkle, "Rollins Seeks Changes in BR Permit," *The Advocate*, June 25, 1993, p. B1.

72 Ibid., pp. 690-91.

73 See Florence Robinson, letter to Farella Robinson, USCCR, May 10, 1993.

74 Nathalie Walker, *Transcript*, vol. 1, p. 84.

75 *National Law Journal Report*, p. S-5.

76 Ibid., Lionel Bailey, environmental safety manager, Formosa Chemicals, *Transcript*, vol. 2, pp. 720-23.

77 *National Law Journal Report*, p. S-5.

Formosa is the largest rayon and pulp processing manufacturer in the world with one location in Taiwan. In addition to rayon, Formosa is a major producer of chemicals with locations in Taiwan, Baton Rouge, Pointe Coupee, Texas, and Delaware. If located in Wallace, a \$700 million processing plant will be built, employing approximately 1,000 persons.⁷⁸

Demographics: Wallace is a century-old town with approximately 750 residents, of whom 98 percent are black. There are 18 houses, 10 mobile homes, 1 church, and a society hall in the community. Residents are described as mainly poor. Agriculture-related occupations form the basis for employment. The area is underdeveloped with no ambulance service, no sewage system, one grocery store, a poor school system, and poor drinking water.⁷⁹

Environmental Problem/Dispute: Siting practices, health and quality of life issues, and relocation.⁸⁰

Involved Community/Environmental Group Organization(s): River Area Planning Group, Sierra Club Legal Defense Fund, and the West St. John Civic Association

Background: The community of Wallace was founded by slaves from nearby plantations around 1874. Most of the area served as a sugar cane plantation. Residents are economically poor with little political clout.⁸¹

In 1989 the governing body of St. John Parish rezoned Wallace and the outlining plantation area, expanding it from residential to commercial and heavy industrial use. According to Formosa officials, two public hearings were held to discuss rezoning. The residents who opposed the plant siting blame the St. John Parish Police Jury and the zoning commission for allowing the rezoning of Wallace for industrial expansion.⁸² The area is economically depressed with no substantial tax base.⁸³ Residents contend that the local government was influenced by the promise of jobs and added tax income. These residents wish to live in and preserve the community.⁸⁴ They also questioned why the Wallace area was selected, since there was one other potential industrial site just down the road. Thus, the residents contend the siting of the facility was based on race. Formosa officials state the other site was not selected because it cost too much.⁸⁵ The plant's location also drew the ire of other environmental and preservationist groups because it was on historic plantations that predate the Civil War.⁸⁶

On the other hand, some residents supported Formosa's efforts to locate in the area. The West St. John Civic Association, a 40-member multiracial group, rallied behind Formosa. Virgie Johnson, a member of the group, reported that the members supported Formosa because the plant would provide economic opportunities and restore a dying

78 Ibid., Lionel Bailey, *Transcript*, vol. 2, p. 712.

79 Lionel Bailey, *Transcript*, vol. 2, pp. 717, 722.

80 Nathalie Walker, *Transcript*, vol. 1, pp. 83-110.

81 *National Law Journal Report*, p. 55.

82 Wilford Greene, River Area Planning Group (RAP), *Transcript*, vol. 2, p. 488; Steve Culpepper, "Formosa's Proposed Rayon Plant Typifies Struggle on River Road," *The Advocate*, May 11, 1992, p. A7.

83 Lionel Bailey, *Transcript*, vol. 2, p. 717.

84 Wilford Greene, *Transcript*, vol. 2, p. 488.

85 Sharon Harrington, "Challenging Race Discrimination in Environmental Law and Policymaking;" see Alden Andre, vice president, Formosa, letter to Farella Robinson, USCCR, May 24, 1993.

86 Culpepper, "Vestiges of the Old South Under Siege," *The Advocate*, May 11, 1992, p. A7.

community. Although members say they also had questions about the plant's environmental impact on the community, they believed Formosa would be a good neighbor.

Mobilization against the plant began shortly after the company announced its plans. Wilford Greene, founder of the River Area Planning Group (RAP), was instrumental in rallying people against the plant location.⁸⁷ Other groups joined in support such as LEAN, the Louisiana Coalition for Tax Justice, and Greenpeace, but the organization that provided the primary support was the Louisiana Office of the Sierra Club Legal Defense Fund (Defense Fund). The Defense Fund provided RAP with legal counsel in their efforts to challenge Formosa.⁸⁸

According to media reports and environmental groups, the Formosa Baton Rouge facility had an extensive history of violating its permit limitations for toxic releases. It was reported that Formosa was assessed a record fine of over \$3 million in Texas for pollution problems and that Delaware temporarily revoked Formosa's operating license because of environmental problems.⁸⁹

Some residents did sell their property and relocate. Three residents whose property was requested rejected the company's offer, leaving the company with 37 acres less than needed. The voluntary buyout of residents' homes was not as elaborate as the Morrisonville plan, Revilletown, or Sunrise. According to company officials, prices ranged from \$5,000 to \$6,000 an acre for the premium

sites. Mr. Greene stated that overall offers ranged from \$30,000 to \$50,000.⁹⁰

Formosa officials contend that their selection of the Wallace site was not based on race. Instead, they report they were invited and courted by then Governor Buddy Roemer and local parish officials to locate in the area. Formosa was promised sale taxes waivers by the school board and up to \$450 million in tax breaks for 10 years.⁹¹

Although Formosa conceded that the company had its share of compliance problems, it was dedicated to building a state-of-the-art plant to ensure the safety and health of workers and people who live around it. Company officials contended that the Baton Rouge chemical plant has not had compliance problems and that the plant in Delaware is viewed as a model for other industries.⁹²

Company officials said that 99 percent of the residents support their move into the area.⁹³ Formosa made efforts to convince residents of its good intentions. Company officials promised to hire local people to the extent possible. They offered remedial help to those job applicants who might score below the job requirement level.⁹⁴

An environmental impact statement was required to permit the facility. Company officials complained of the lengthy EIS process and surmised that the EIS would cost millions of dollars. By October 1992 the company had already spent \$10 million in land purchases toward construction of the plant.⁹⁵

Resolution/Outcome: After 3 years RAP, with the assistance of the Sierra Club Legal

87 Culpepper, "Formosa's Proposed Rayon Plant Typifies Struggle on River Road," *The Advocate*, May 11, 1992, p. A7; Virgie Johnson, letter to Sandra McDade, Louisiana SAC member, Mar. 12, 1992.

88 Ibid.

89 Culpepper, "Formosa's Proposed Rayon Plant Typifies Struggle on River Road," p. A7.

90 Ibid.; Lionel Bailey, *Transcript*, vol. 2, p. 725; Wilford Greene, *Transcript*, vol. , p. 497.

91 Culpepper, "Formosa's Proposed Rayon Plant Typifies Struggle on River Road," p. A7.

92 Ibid.

93 Lionel Bailey, *Transcript*, vol. 2, p. 721.

94 Culpepper, "Formosa's Proposed Rayon Plant Typifies Struggle on River Road," p. A7.

95 Ibid.

Defense Fund, successfully halted the siting of the Formosa plant. One tactic used was to bring attention to the issue through the media. Wallace received national attention in feature stories by the *New York Times*, the *National Law Journal*, and a Bill Moyers TV report on PBS, "People, Politics and Pollution." RAP's efforts also brought attention to alleged inequities in local and State siting practices.

On October 8, 1992, the company announced that it would not continue plans to build the plant in St. John the Baptist Parish. Reasons given for this action were a pending lawsuit by a resident and the lengthy processing on the EIS. However, RAP leaders believe Formosa officials backed out when they saw how empowered the community had become against the plant site. Community leaders believe this victory sends a strong message to all industries across the State. RAP will be watching to see what Formosa does with the property purchased.⁹⁶

Case Review #6

Town/Community: Forest Grove and Center Springs (Homer, LA)

Parish: Claiborne

Industry: Louisiana Energy Services (LES) is a proposed privately owned uranium enrichment plant established through a consortium of U.S. utilities and a European corporation, known collectively as LES. Three U.S.

electric utilities, Duke Power in North Carolina, Northern States Power in Minnesota, and Louisiana Power and Light, have joined with Urenco, a European corporation, to prepare uranium for commercial nuclear reactors.⁹⁷

Location: LES facilities will be constructed about 5 miles outside the city limits of Homer in northern Louisiana. LES would be located less than 100 yards from Center Springs, a black community on the outskirts of Homer. Within 2 miles of the plant site is another black community, Forest Grove. The plant will locate in the middle of these communities. The two communities are physically linked by a road that parish officials have agreed to close and reroute to accommodate the LES plant.⁹⁸ About 3 miles from the proposed site is Lake Claiborne, a small retirement community of white residents.⁹⁹

Demographics: Claiborne Parish is a poor rural area where half the population is black.¹⁰⁰ According to LES officials, the area around the plant site is sparsely populated. But within 5 miles of the facility, population density is highest near Homer and along the shore of Lake Claiborne.¹⁰¹ Homer's population is about 4,000, Forest Grove and Center Springs have about 250 black residents, and Lake Claiborne comprises about 1,000 white residents.¹⁰² The Forest Grove-Center Springs area is agricultural, while Lake Claiborne is primarily a retirement community and recreational area.¹⁰³

96 Nathalie Walker, telephone interview, Oct. 15, 1992.

97 Norton Tompkins, Citizens Against Nuclear Trash (CANT), *Transcript*, vol. 2, p. 455; Rick Raber, "Proposed Uranium Plant Has LA Senator All Aglow," *Times-Picayune*, Jan. 12, 1989, p. A1.

98 "Challenging Race Discrimination in Environmental Law and Policymaking," p. 4.

99 Norton Tompkins, *Transcript*, vol. 2, p. 463.

100 Nathalie Walker, *Transcript*, vol. 1, p. 89.

101 See Mary Boyd, Louisiana Energy Services (LES), letter to Farella Robinson, USCCR, Oct. 27, 1992.

102 Norton Tompkins, interview, Apr. 8, 1992; See Mary Boyd, LES, letter to Farella Robinson, USCCR, Oct. 27, 1992.

103 See Mary Boyd, letter to Farella Robinson, USCCR, Oct. 27, 1992.

Environmental Problem/Dispute: Permitting and siting practices and health and safety issues.¹⁰⁴

Involved Community/Environmental Group Organization(s): Citizens Against Nuclear Trash (CANT) and Sierra Club Legal Defense Fund

Background: Forest Grove and Center Springs are very old, largely black communities, whose families tend to be extended and close knit. A retirement community of white residents close by, Lake Claiborne, will also be affected by the siting of this plant. LES would be the first privately owned uranium enrichment plant in the United States.¹⁰⁵ The plant will enrich uranium, one of the steps involved in producing fuel for nuclear power plants.¹⁰⁶ At issue are such questions as the safety of surrounding communities, potential contamination of underground water supplies, and possible pollution of Lake Claiborne.¹⁰⁷

U.S. Senator J. Bennett Johnson encourages and supports the proposed plant location. According to Senator Johnson, this is an opportunity for the industrial diversification the State needs to fuel an economic recovery. According to Federal Government officials, the company's enrichment plant will employ state-of-the-art technology and will be cleaner and safer than most other industrial activities.¹⁰⁸

Local citizens have numerous concerns about the LES facility, which will produce approximately 4,000 tons per year of highly toxic radioactive waste. This waste will be stored in the area closest to the residents of

Center Springs, and just down the road from Forest Grove. Local residents are worried about toxic discharges emitted from the plant into local waters, which many local residents depend on for subsistence fishing. Moreover, the threat of groundwater contamination by the plant looms large for the 40 homes within 5 miles of the plant site that rely on wells for drinking water. Elderly residents who live near the plant and have no transportation are concerned about how they will get out of the area in the event of an accidental release.¹⁰⁹

Not everyone in the general community of Homer opposes the siting of LES. According to LES officials, only a handful of persons opposes LES. They say most community residents welcome the jobs and tax revenues that LES will be generated.¹¹⁰ CANT claims that there is more opposition to the plant than LES officials report and says some residents are afraid to admit it publicly for fear of losing their jobs. Leaders of CANT say LES has engaged in a public relations campaign to mislead residents by offering free trips to Europe and attempts to offer donations to black churches.¹¹¹

CANT has retained the Sierra Club Legal Defense Fund to represent it in the licensing proceedings before the Nuclear Regulatory Commission (NRC), which are underway. LES has also submitted an environmental impact statement to NRC. According to the Sierra Club Legal Defense Fund, LES has failed to provide, in its license application to the NRC, detailed information on the racial, cultural, and social aspects of the community. CANT

104 Nathalie Walker, *Transcript*, vol. 1, pp. 62-83.

105 Nathalie Walker, *Transcript*, vol. 1, pp. 88-89; Norton Tompkins, *Transcript*, vol. 2, p. 463.

106 Nathalie Walker, *Transcript*, vol. 1, p. 90.

107 *Ibid.*, pp. 91-92.

108 Rick Raber, "Proposed Uranium Plant Has LA Senator All Aglow," *Times-Picayune*, Jan. 12, 1989, p. A1.

109 Nathalie Walker, *Transcript*, vol. 1, p. 91.

110 Rick Raber, "Proposed Uranium Plant Has LA Senator All Aglow," *Times-Picayune*, Jan. 12, 1989, p. A1.

111 *Ibid.*; Norton Tompkins, *Transcript*, vol. 2, p. 471.

has intervened in the licensing proceeding for the proposed facility before the NRC, and eight issues were raised in objecting to the proposed plant. These objections have been accepted for hearing, including LES' inadequate emergency plan and its failure to avoid or mitigate the disparate impact of the plant on the Forest Grove and Center Spring communities.¹¹²

Resolution/Outcome: Some residents of Forest Grove and Center Springs, through the efforts of CANT and the Sierra Club Legal Defense Fund, are protesting the siting of LES. The siting of this facility has caused black residents and white residents to form the community group CANT and to join together with other environmentalists and civil rights groups. This coalition includes national groups such as the Southern Christian Leadership Conference, the National Conference of Black Lawyers, the League of Women Voters, Greenpeace, the Gulf Coast Tenants Association, and the Louisiana Environmental Action Network.

On December 21, 1992, CANT sent a letter to Vice President-elect Gore requesting a review of the situation and a possible moratorium on the approval of any operating licenses or permits for any new manufacturing/processing plants that would generate hazardous and/or radioactive waste in minority communities.¹¹³

Case Review #7

Town/Community: Willow Springs

Parish: Calcasieu

Industry: Browning-Ferris Industries Chemical Services, Inc. owns a hazardous

waste site.¹¹⁴ The site is operated by CECOS International, Inc. Both of these companies are wholly owned subsidiaries of Browning-Ferris Industries, Inc. (BFI).¹¹⁵

Location: The facility is on an 80-acre site near the west fork of the Calcasieu River and north of Sulfur, Louisiana. Immediately to the south of the site is a small community called Willow Springs and many camps along the river called the west fork of the Calcasieu River. Willow Springs is within one-half mile of BFI's hazardous waste site. To the west and north of the BFI site are woodlands, pasture, and farm lands and rural homes, some on larger tracts of land and some on individual 1 and 2 acre lots. By and large, these residents are from one-half to 4 miles in distance from the site. There are approximately five subdivisions in this area where residential lots have been sold.¹¹⁶

Demographics: Willow Springs is a community of about 15 black families, approximately half of whom are at the poverty level or below with the remainder in the middle income range. Most of these individuals have a very limited education, at the most, a high school education. Willow Springs is completely rural and has no commercial establishments. It is served by a rural electric utility and has a rural community water supply that was installed about 7 or 8 years ago. Other than the BFI plant site, the nearest other major industry is approximately 2 miles south of the community and consists of a major coal burning plant operated by Gulf States Utilities.¹¹⁷

The five subdivisions in the area where individual lots have been sold have middle income residents who have at least a high

¹¹² Ibid.

¹¹³ See Citizens Against Nuclear Trash, letter to Vice President Albert Gore, re: Environmental Racism, the Proposed Uranium Enrichment Plant in Claiborne Parish, LA, Dec. 21, 1992.

¹¹⁴ Ruth Shepherd, Calcasieu League of Environmental Action Now (CLEAN), *Transcript*, vol. 2, p. 514.

¹¹⁵ Leonard Knapp, letter to Farella Robinson, USCCR, May 6, 1993.

¹¹⁶ Leonard Knapp, letters to Farella Robinson, USCCR, Feb. 17 and May 6, 1993; "Voice for Progress," June 16, 1989; Linda Young, "BFI Must Seek Permit," *American Press*, Aug. 3, 1993, p. A1.

¹¹⁷ Ibid.

school education. Most of them either make their living farming or working in area plants. To the east across the Houston River is a subdivision that is upper middle class in character and lies approximately one-half mile from the BFI site.¹¹⁸

Environmental Problem/Dispute: Permitting and cleanup of a leaking hazardous waste site causing groundwater and air contamination.¹¹⁹

Involved Community/Environmental Group Organization(s): Calcasieu League of Environmental Action Now, Inc. (CLEAN), Tulane Environmental Law Clinic, and Leonard Knapp, legal counsel.

Background: From all available information, it appears that the area has been used as a waste site since 1968. Since that time the 80-acre site has served as a burial ground for toxic wastes from oil fields and petrochemical industries. According to Ruth Shepherd of CLEAN, the site consisted of open pits used for dumping. No fence secured the area. The immediate community around these pits was Willow Springs. At that time, dumping at the site was illegal because it had not been permitted.¹²⁰ Representatives of CLEAN say the immediate area was selected for dumping because Willow Springs residents are poor and politically weak. Because of concern about the illegal dumping, a resident petitioned the local jury protesting the dumping, but the police jury did not respond. A meeting of neighborhood residents, including whites who lived in the general area, was held, and a committee formed to stop the illegal dumping.¹²¹

Although the waste site is now permitted, groundwater and air contamination

associated with this site have generated a lawsuit on behalf of residents in Willow Springs and a joint lawsuit by EPA and the State asking for a cleanup of the site.¹²² The lawsuit was filed in 1980 by approximately 475 individuals living in the area. Over the years, some plaintiffs have moved away and/or lost interest, and the total now involved in the litigation is approximately 405 individuals, some of whom are children. The specific complaint of each individual varies a great deal, but basically they complain of air contaminants, water contamination, and basic property devaluation. The litigation has now been pending approximately 12 years and numerous motions have been filed by both sides. The first two plaintiff cases involving four individuals are set for September 3, 1993. The plaintiffs say they are eager to get their case resolved.¹²³

In 1988 EPA and the State filed a joint suit charging BFI/CEOS with violating its permits. The joint suit asks a Federal court to order that the groundwater beneath its Willow Springs hazardous waste disposal site be cleaned up and kept clean. A cleanup plan for the site was approved by DEQ in 1990. The government suit was settled with a penalty of \$1.5 million in fines being levied.¹²⁴

According to CLEAN, leaking continues at the site. Each month BFI injects more than 1.5 million gallons of aqueous hazardous material into its deep disposal well. For over 16 years, residents have been complaining about the leaking that continues at the site. According to CLEAN, the waste site has had devastating effects on Willow Springs. Cattle, hogs, and fish have died. Land values have

118 Ibid.

119 Ibid.; Ruth Shepherd, *Transcript*, pp. 513-18.

120 Ruth Shepherd, *Transcript*, vol. 2, pp. 513-18.

121 Ibid.

122 Ibid.; "Voice of Progress," June 16, 1989.

123 Ibid.; Leonard Knapp, letter to Farella Robinson, USCCR, May 6, 1993.

124 Ibid.; Linda Young, "BFI Must Seek Permit," *American Press*, Aug. 3, 1993, p. A1.

decreased, and about 20 residents have died from cancer in recent years.¹²⁵

In 1992 the Department of Natural Resources (DNR) granted BFI a permit modification to move hazardous wastes from its other operations to the Willow Springs facility. This would include receiving hazardous waste from EPA Superfund sites. CLEAN and Willow Springs residents feared the permit modification could result in expansion of the facility. The Tulane Environmental Law Clinic filed a lawsuit against DNR when members of CLEAN asked for help.¹²⁶

Resolution/Outcome: CLEAN, a mainly white environmental group, has assisted black residents of Willow Springs in challenging the cleanup of the waste site. A subsequent

lawsuit was filed by residents of Willow Springs and the surrounding areas. The group's activities with the assistance of legal counsel resulted in EPA and State officials taking legal action on the cleanup of this site.

Recently, the 19th Judicial District Court ruled that the 1992 permit modification approved by DNR was invalid and that DNR could not issue any more injection well permits to BFI until the company implemented a permitting process that included publication of legal notices and public hearings. Although members of CLEAN consider this a victory, the situation is still not resolved because they expect BFI to apply for a new commercial permit.¹²⁷

125 Ibid.; Ruth Shepherd, *Transcript*, vol. 2, pp. 513-18.

126 Linda Young, "BFI Must Seek Permit," *American Press*, Aug. 3, 1993, p. A1.

127 Ibid.

8. Findings and Recommendations

The following findings and recommendations are submitted under the provision of section 703.(2)(1) of the Commission's regulations, empowering the Advisory Committee to initiate and forward advice and recommendations to the Commission upon matters that the State Committee has studied. The Louisiana Advisory Committee concludes and recommends the following actions:

Louisiana Environmental Laws and Rulemaking

Finding 1: The Advisory Committee finds that black communities in the corridor between Baton Rouge and New Orleans are disproportionately impacted by the present State and local government systems for permitting and expansion of hazardous waste and chemical facilities. These communities are most often located in rural and unincorporated areas, and residents are of low socioeconomic status with limited political influence. Some residents of these communities complain that they are excluded from the local and State siting and permitting decisionmaking affecting their communities. Communities found to be affected include but are not limited to Revilletown, Sunrise, Morrisonville, Wallace, Alsen, Forest Grove, Center Springs, and Willow Springs. Residents of these communities complained of adverse health effects and quality of life issues such as safety, noise, and traffic associated with living in and around such facilities. Two communities, Revilletown and Sunrise, were dismantled by voluntary buyout programs, and one community, Morrisonville, was relocated.

This finding is further supported by the following facts: a U.S. Environmental Protection Agency report, *Toxics Release Inventory and Emissions Reductions 1987-1990 in the Lower Mississippi River Industrial Corridor*, concludes that many of the facilities emitting large amounts of chemicals are located in

areas with predominately minority population. Populations within 2 miles of facilities releasing 90 percent of total industrial corridor releases feature a higher proportion of minorities than the State average. The report also concluded that several historically black rural communities have been bought out by chemical or petroleum refining facilities to create plant buffers. Although racial discrimination in targeting of black communities for industrial and hazardous waste facilities is denied, State officials and industry acknowledge that black communities in Louisiana are disproportionately impacted by such facilities. In spite of the disproportionate impact upon certain communities, the State and local governments have failed to establish regulations or safeguards to ensure such communities are reasonably protected from a high concentration of hazardous waste and industrial facilities and risks associated with living in and around such facilities.

Recommendation 1: The Advisory Committee recommends that the Louisiana Department of Environmental Quality develop comprehensive State regulations to balance environmental costs and benefits along with the social, economic, and aesthetic values of the affected communities as called for by the Louisiana Supreme Court in the case *Save Ourselves v. Louisiana Environmental Control Commission* (IT decision).

The Advisory Committee further recommends that, similar to other States cited in this report, the State and local governments adopt regulations specifying setback distances or buffer zones from residences, churches, and schools to ensure reasonable distances from industrial and hazardous waste facilities. Consideration should be given to including a buffer zone in all original construction plans and obtaining the services of an independent and professional planner to assist in examining the environmental consequences of siting and permitting decisions.

Recommendation 1a: The Advisory Committee recommends that local parishes immediately take action to ensure that zoning decisions provide sufficient protection for affected communities. In this effort, the Louisiana Department of Environmental Quality should provide guidance and technical assistance on siting practices and the equity issues that should be considered.

Recommendation 1b: The Advisory Committee recommends that local parishes and towns affected by industrial and hazardous waste facilities review the process of appointing citizens to zoning boards and commissions so that racial minorities are included in the decisionmaking process.

Recommendation 1c: The Advisory Committee recommends that the Louisiana Department of Environmental Quality provide residents affected by a proposed facility, or proposed expansion of an existing facility, sufficient notice before approval of such action. The notice should identify the type and anticipated amounts of toxic and hazardous waste that will be emitted by the facility, vulnerable areas and populations, and the risk of accidents.

Finding 2: The Advisory Committee finds that during the last legislative session ending June 10, 1993, two bills were introduced to address discrimination in environmental decisionmaking. House Bill 1160 passed, requiring the Secretary of the Department of Environmental Quality to conduct factfinding hearings to investigate environmental equity issues in the administration of department programs with respect to resident populations who do not have the economic resources to participate in the environmental decisionmaking affecting their communities. Senate Bill 1028, which was not passed, would have required DEQ to adopt rules to ensure that environmental decisionmaking is free from discrimination in permitting, licensing, and enforcement decisions. This bill would have also enabled resident populations without economic resources to participate in environmental decisionmaking.

Recommendation 2: The Advisory Committee recommends that the Secretary of the Department of Environmental Quality

immediately hold a hearing in response to House Bill 1160. The Advisory Committee recommends that during the next legislative session, to be convened in March 1994, the Louisiana State Legislature consider enacting a bill to address nondiscrimination and equity in environmental decisionmaking. In formulating such a bill, the information to be considered in the State legislature should review a variety of sources, including but not limited to local and State reports such as the DEQ hearings cited in House Bill 1160; national reports such as the U.S. Environmental Protection Agency, *Environmental Equity, Reducing Risks for All Communities*; the *National Law Journal Report*, "Unequal Protection"; and the information contained in this report, *The Battle for Environmental Justice in Louisiana.....Government, Industry, and the People*.

Merging Environmental Equity with Environmental Decisionmaking in Louisiana

Finding 3: The Advisory Committee finds that Louisiana State agencies have not yet merged equity into formal decisionmaking. In light of the allegations of environmental racism and the thrust to reform environmental decisionmaking, significant opportunities exist for strengthening equity in environmental programs and activities at the State level. Although the Department of Environmental Quality has established an ombudsman and technical assistance office, complaints have already been reported about ineffective technical assistance and the office's inability to respond to citizen grievances in an unbiased way.

Recommendation 3: The Advisory Committee recommends that, although the State has recently initiated an environmental equity study with Louisiana State University, the Department of Environmental Quality consider and take appropriate action on the recommendations already made by Governor Edwards' Environmental Quality Transition Team on January 17, 1992. Some of the relevant recommendations that the Department

of Environmental Quality should consider are:

1. Comprehensive and balanced siting regulations need to be developed to manage and control the location of new landfills, incinerators, and hazardous waste facilities to protect public health and sensitive environmental areas.
2. When setting standards for the operations of hazardous waste sites, the Department of Environmental Quality and the Secretary should consider the mandate given by the Louisiana Supreme Court, and heavily consider the socioeconomic impact in making a decision.
3. The impact of environmental policy on people of color and the poor has not been previously considered by the Inactive and Abandoned Sites Division and the Enforcement and Legal Services Division. Environmental fairness should be studied by each division in cooperation with grassroots organizations.
4. The Solid and Hazardous Waste Division needs to consider increasing minimum siting distances and buffer zones.
5. The Department of Environmental Quality needs to develop risk-based decisions to better understand situations causing major impacts to man and environment.
6. The Department of Environmental Quality should conduct an assessment of all personnel. People of color, women, and other minorities must continue to have an equal opportunity for advancement at all levels of the agency.
7. The Department of Environmental Quality should establish creative mechanisms to recruit and retain minorities.
8. Environmental fairness should be studied by each division in cooperation with grassroots organizations.

Louisiana Outreach and Education

Finding 4: The Advisory Committee finds that the Department of Environmental Quality has recently made efforts to strengthen its outreach and education efforts to the public. An environmental magazine was reinstated to

inform the public about State and local environmental issues. However, because a fee of \$8.00 is required, it may limit many citizens' access to the magazine. Moreover, many residents, mostly black, live in isolated areas of the State with limited opportunity to gain access to information through normal channels and are unable to understand the technical information contained in government documents. Although State and local environmental groups have provided outreach and legal guidance to residents, additional efforts should be considered.

Recommendation 4: The Advisory Committee recommends that the Department of Environmental Quality take affirmative steps to ensure that communities most affected by hazardous and industrial pollution are effectively reached. Particular attention should be placed on black communities located along the Mississippi River industrial corridor and communities located in rural and unincorporated areas of the State.

Recommendation 4a: The Advisory Committee recommends that the State's historically black institutions of higher learning seek funding from the U.S. Environmental Protection Agency's Minority Academic Institution Initiative to develop an education outreach program for rural communities. Education and outreach activities in the areas of health education access to local and State government decisionmaking and self-advocacy for empowerment of communities may be beneficial.

Finding 5: The Advisory Committee finds that some black citizens and organizations view with skepticism and distrust some agencies in State government, including the Department of Environmental Quality. These views are held because of poor access to government and an ongoing perception that State government discriminated against them to promote and sustain the interests of industry and business.

Recommendation 5: The Advisory Committee recommends that the Secretary of the Department of Environmental Quality and other State agency heads take action to dispel the perception that special consideration is afforded to industry and business interests over

the environmental needs of black communities impacted by hazardous waste and industrial facilities. These actions can be in the form of community task force meetings and reports.

Health Effects and the Science Problem

Finding 6: The Advisory Committee finds that in the health science community at the State and Federal levels, there is little evidence about environmental pollution exposures and the connection to health effects and the contributions of income, race, or ethnicity. Nor are data routinely collected on health risks posed by multiple industrial facilities, cumulative effects, or different pathways of exposure. The information delivered to the public is often incomplete and confusing.

In Louisiana worries about adverse health effects due to industrial pollution or hazardous waste sites have generated considerable anxiety for residents of the State and created an image of the State as an unhealthy place to live. Although the health studies conducted are not definitive, some suggest that factors such as smoking, diet, and lack of access to health care may contribute more to cancer. In black communities, particularly in the stretch of southern Louisiana along the Mississippi River, anxiety about health effects from chemical facilities is the reason for the area being dubbed "Cancer Alley" by some groups. Although no connection between toxic emissions and health risks has been clearly demonstrated, some studies and media reports have highlighted the potential for significant risks to these populations from toxic releases. Moreover, with the exception of a health study on miscarriages, all significant investigations about health effects have been limited to cancer. Other ailments complained of, such as skin disorders, respiratory problems, central nervous disorders, etc., have not been studied.

Finally, there is a general mistrust of government-sponsored studies. Some environmental and community-based groups recommend that residents avoid such studies.

Recommendation 6: The Advisory Committee concurs with the U.S. Environmental

Protection Agency's recommendation in the 1992 report, *Environmental Equity Report: Reducing Risks For All Communities*, that:

EPA should establish and maintain information which provides an objective basis for assessment of risks by income and race, beginning with the development of a research and data collection plan. EPA should incorporate considerations of environmental equity into the risk assessment process. It should revise its risk assessment procedures to ensure, where practical and relevant, better characterization of risk across populations, communities or geographic areas. These revisions could be useful in determining whether there are any population groups at disproportionately high risk.

The Advisory Committee recommends that Louisiana health officials should begin to develop at the State level, a database and risk assessment methodologies to answer questions about the distribution of pollution and exposure related to health on the basis of race, ethnicity, and income. New studies should consider an array of exposures that causes cancer. This should also include a database to address other health ailments.

Recommendation 6a: The Louisiana Advisory Committee recommends that the Department of Environmental Quality and the Office of Public Health take affirmative steps to educate residents of affected communities about environmental health issues. Also, the preceding recommendations cited under *Outreach and Education* should be implemented in an attempt to dispel distrust of health policy decisions.

Industry

Finding 7: The Advisory Committee finds that although representatives of the Louisiana chemical industry have been involved in constructive dialogue on environmental equity issues, some other industry officials and representatives of community groups contend that industry has not participated in a full and open discussion on environmental problems in racial minority communities and the problems associated with racial discrimination.

Recommendation 7: The Advisory Committee recommends that industry reexamine

siting decisions and special attention be paid to communities most affected by hazardous waste emitted by industries. As a good faith effort, the Louisiana Chemical Association should expand on the Responsible Care Program initiatives to address environmental equity, and affirm its commitment to nondiscrimination in the management of plant facilities.

Federal Laws and Rulemaking

Finding 8: The Advisory Committee takes note of the studies across the country that show that industrial and hazardous waste facilities are located disproportionately in minority communities and that the residents face more hazards than the rest of the population. Based upon studies and reports from environmental groups, civil rights groups, and government agencies, legitimate claims are made that racial minorities are distinctly disadvantaged by many factors, including discrimination, income, inadequate health care, low quality housing, limited access to government, and lack of political empowerment. Louisiana is an example of this phenomenon.

Significant reform in environmental laws and structural reform in the U.S. Environmental Protection Agency's policymaking framework is being studied by the U.S. Environmental Protection Agency to promote equitable sharing of burdens and benefits of environmental protection. Although significant efforts are underway to merge equity into Federal policymaking, enforcement authorities and procedures have not yet been established to implement and ensure compliance with environmental equity policies by private, local, State, and Federal entities. Moreover, final decisions have not yet been made on how equity measures will be coordinated with the U.S. Environmental Protection Agency's civil rights enforcement efforts.

Recommendation 8: The Advisory Committee concurs with the U.S. Environmental

Protection Agency's recommendations in the 1992 report, *Environmental Equity Report: Reducing Risk for All Communities*. The Advisory Committee particularly supports the report's recommendation that the U.S. Environmental Protection Agency should review and, where appropriate, revise its permit, grant, monitoring, and enforcement procedures to address high concentrations of risk in racial minority communities.

In this effort, the U.S. Environmental Protection Agency should assess Louisiana's permit and siting practices at the State and local parish levels to ensure that decisions are free from inequities and discrimination. Strategies should be developed that will target environmental equity enforcement under the civil rights statutes administered by the U.S. Environmental Protection Agency, and to assess the process by which the U.S. Environmental Protection Agency enforces the environmental laws and how the agency's external civil rights compliance program will be implemented in conjunction with equity initiatives. The U.S. Environmental Protection Agency should monitor the communities of Alsen, Wallace, Forest Grove, Center Springs, and Willow Springs to ensure that siting decisions in those communities are in compliance with EPA equity and civil rights standards.

Finding 9: As early as 1973 in a report on Federal civil rights enforcement, the U.S. Commission on Civil Rights faulted EPA for its lack of enforcement under Title VI. The Commission found that EPA:

... has not developed policy relating to exclusionary zoning or the employment practices of recipients; and has not fully determined that Title VI implications of its programs, aside from the construction grant program.¹

The Advisory Committee also concurs with the U.S. Commission on Civil Rights report, *Enforcement of Equal Employment and*

¹ U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort, A Reassessment* (January 1973), p. 289.

Economic Opportunity Laws and Programs Relating to Federally Assisted Transportation Projects, that comprehensive, executive oversight and direction have been lacking in implementing Federal civil rights policies. This is due to inadequate monitoring by Federal agencies and a lack of resources to respond adequately to needs for enforcement of Federal civil rights laws, particularly Title VI enforcement.²

Recommendation 9: The Louisiana Advisory Committee calls upon the U.S. Commission on Civil Rights to monitor and report on the U.S. Environmental Protection Agency's and other relevant Federal agencies' ability to carry out their environmental civil rights responsibilities under Title VI. We urge the Commission to conduct a study during the 1993-94 fiscal year to identify the nature and extent of inequities in Federal enforcement of environmental laws on the basis of race.

² U.S. Commission on Civil Rights, *Enforcement of Equal Employment and Economic Opportunity Laws and Programs Relating to Federally Assisted Transportation Projects* (January 1993), p. 13; Transcript of U.S. Commission on Civil Rights Commission Meeting, April 1993, pp. 146-47.

Appendix A

Dissent to the Environmental Equity Report of the Louisiana Advisory Committee.

In "break[ing] new ground", as this report claims to do (p. 1), excitement and enthusiasm sometimes substitute for detached judgment. So it is with this report which embraces the "new movement called the environmental justice movement." (p. 1) As advocacy for this new movement, the report reads well and speaks well for the effort and energy of the writer. As fact-finding, however, the report fails on its own terms as well as for lack of fundamental fairness.

The report simply fails to find facts which could establish its own definitional premise. The "Introduction" defines the problem as one of "environmental racism", adopting the definition given by the originator of that term, Dr. Benjamin Chavis. (p. 1) "Environmental racism ... 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." (p. 1-2, emphasis added). None of the extensive findings contains anything about, nor could they support a finding of, "deliberate targeting" or "official sanctioning".

Absent from the report is the one finding most clearly supported by the evidence: **Environmental Racism has not been shown to exist in Louisiana.**

At a meeting of the State Advisory Committee called to discuss the draft of this report, I contended that the testimony presented at the hearing clearly disproved racial discrimination. In general, others present at that meeting responded that the members of the committee knew prior to the hearing that discriminatory motive would not be found. In fact, however, the primary focus of this project as originally approved targeted racially motivated discrimination.

The committee approved the Environmental Equity project on June 1, 1990, after reviewing a report by the United Church of Christ, entitled Toxic Wastes and Race in the United States (1987). The Church of Christ report "suggest[ed] that the disproportionate members of racial and ethnic persons residing in communities with commercial hazardous waste facilities is not a random occurrence, but rather a consistent pattern." (p 15, emphasis added). We approved the project, which I voted for, in order to determine whether racially motivated discrimination was responsible for this non-random pattern.

The transcript demonstrates the centrality of racial motivation to the hearing until it became clearly established that the proof of racial motivation did not exist. The first witness, Dr. Wright, was ambiguous on this point in her testimony. In questioning, however, it was demonstrated that she was not distinguishing between racially motivated discrimination and non-random results ("whether its conscious or not doesn't matter", Tr. at 34). The second witness, Professor Wendy Brown, identified the difficulty of proving intent (T. 55-59). In questioning the third witness, Dr. Kuehn, one committee member noted "we are really focusing on racially motivated environmental decisions" (T. 75) and asked whether the environmental decisions being discussed are "primarily based on socioeconomic factors rather than a deliberate intentional decision to pollute in a minority community?" (T. 76). Dr. Kuehn responded "My own personal view is that I find it hard to believe that some of the decisions could be explained in any other way, but I am not a sociologist. I can't prove it." (T. 76, emphasis added). As the fourth witness, Ms. Walker, stated in response to a question, the evidence "is not going to constitute or rise to the level of a pattern from which you can infer the requisite discrimination intent." (T. 97). With such evidence from the leading environmental witnesses, the issue was settled early in the hearing.

At some point, the focus of this project changed. However important these additional issues are, it is simply wrong not to answer the main issue that initiated this project by clearly stating: we received no evidence of racially motivated discrimination in the making of environment decisions in Louisiana.

In addition to the major non-finding of the hearing, the handling of at least some of the witnesses was troublesome. Two of the witnesses made serious allegations against a particular company (T. 45 and 84-89). At least one of these witnesses had been involved in a suit against the company. Although information about this suit and the substance of this testimony would have been known prior to the hearing, the company was not invited to send a representative to testify. Rather, upon reading the charges in the newspaper following the first day of the hearing, a representative of the company (a black man) asked to be allowed to testify. In testimony and questioning from me, the witness refuted the major allegations made against the company by the witness. (T.709 et seq.). Regardless of the merits of their legal dispute, it is fundamentally unfair to allow one party to a lawsuit to make allegations against the other without giving adequate notice to the other and offering an opportunity to be heard.

The overall handling of this project reminds me of the situation that occasionally occurs during a criminal case. Sometimes during voir dire when a potential juror is asked whether he or she can presume the innocence of the defendant and give him a fair trial, the juror will answer quite innocently in terms that effectively say: "Of course, I'll give him a fair trial before convicting him." Like the prospective juror, the staff and committee members, I believe, are acting with the best of intentions. Nonetheless, the report, and the process which produced it, have blindly stepped over and around the

evidence which so clearly establishes no racially motivated discrimination on environmental decisions in Louisiana.

While I am the only current member of the committee to dissent, three former members who served at the time of and who sat through the hearing are no longer on the committee. Based on conversations with them, it appears that if a vote were taken of the ten committee members who attended the hearing, the vote would be 6 for and 4 against.

Respectfully submitted,



John S. Baker, Jr.
Professor of Law
Louisiana State University
Law Center*

*Professional affiliation used only for identification purposes. These views in no way reflect those of the employing institution.

Appendix B

LOUISIANA ADVISORY COMMITTEE
TO THE
U.S. COMMISSION ON CIVIL RIGHTS

LOUISIANA STATE UNIVERSITY
PLEASANT HALL, ROOM 148
BATON ROUGE, LA 70803

"ENVIRONMENTAL EQUITY"
FEBRUARY 19-20, 1992

AGENDA

WEDNESDAY, FEBRUARY 19, 1992

9:00 a.m. - 9:15 a.m.

OPENING REMARKS

- Robert A. Kutcher, Chairperson
Louisiana Advisory Committee
- Melvin L. Jenkins, Director
Central Regional Division

SESSION I

9:15 a.m. - 9:45 a.m.

OVERVIEW OF SOCIAL JUSTICE ISSUES AND ENVIRONMENT

- Dr. Beverly Wright, Associate Professor
Wake Forest University
Winston-Salem, North Carolina

9:45 a.m. - 10:15 a.m.

LEGAL PERSPECTIVES

- Professor Wendy Brown
Tulane Law School
National Conference of Black Lawyers

10:15 a.m. - 10:45 a.m.

- Dr. Robert Kuehn, Director
Tulane Environmental Law Clinic

10:45 a.m. - 11:15 a.m.

- Natalie M. Walker, Managing Attorney
Louisiana Sierra Legal Defense Fund

11:15 a.m. - 1:00 p.m.

LUNCH

SESSION II

GOVERNMENT DECISIONMAKING

1:00 p.m. - 1:30 p.m.

--Dr. Paul Templet
Louisiana State University Environmental
Studies Department
Former Secretary of Louisiana Department
of Environmental Quality

1:30 p.m. - 2:00 p.m.

--Dr. Gerald Carney, Toxicologist
--Don Jones, Program Analyst
U.S. Department of Environmental Protection
Region VI
Dallas, TX

2:00 p.m. - 2:30 p.m.

--James H. Welsh, Director
Injection and Mining Division
Office of Conservation
Department of Natural Resources

2:30 p.m. - 3:00 p.m.

--William Fontenot
Citizens Access Unit
Attorney General Office
State of Louisiana

3:00 p.m. - 3:30 p.m.

BREAK

SESSION III

GOVERNMENT DECISIONMAKING (Cont'd)

3:30 p.m. - 4:00 p.m.

--William Kucharski
Louisiana Department of Environmental Quality

4:00 p.m. - 4:30 p.m.

--Joel L. Nitzkin, M.D. D.P.A.
Office of Public Health
Department of Health and Hospitals

4:30 p.m. - 5:00 p.m.

--Dr. Lu Ann White, Ph.D.
Tulane University Medical Center
School of Public Health and Tropical Medicine

5:00 p.m. - 5:30 p.m.

--Kay Gaudet, Pharmacist
St. Gabriel, Louisiana

5:30 p.m. - 6:00 p.m.

--Melvin Kip Holden
State Representative

6:00 p.m. - 7:00 p.m.

DINNER

SESSION IV

ENVIRONMENTAL AND COMMUNITY GROUP PERSPECTIVES

- 7:00 p.m. - 7:30 p.m. --Pat Bryant, Director
Gulf Coast Tenant Association
New Orleans, Louisiana
- 7:30 p.m. - 8:00 p.m. --Beth Butler
Organizing and Support Center
ACORN
New Orleans, Louisiana
- 8:00 p.m. - 8:30 p.m. --Mary Lee Orr, Executive Director
Louisiana Environmental
- 8:30 p.m. - 9:00 p.m. --Florence Robinson
North Baton Rouge Environmental Association
Baton Rouge, Louisiana
- 9:00 p.m. - 9:30 p.m. --Janice Dickerson, Community Organizer
Gulf Coast Tennant Association
Baton Rouge, Louisiana

9:30 p.m.

RECESS

HURSDAY, FEBRUARY 20, 1992

9:00 a.m. - 9:15 a.m.

OPENING REMARKS

- Robert Kutcher, Chairperson
Louisiana Advisory Committee

SESSION V

ENVIRONMENTAL AND COMMUNITY GROUPS (Cont'd)

- 9:15 a.m. - 9:45 a.m. --Bill Nevitt, President
Louisiana Sierra Club
- 9:45 a.m. - 10:15 a.m. --Norton Tompkins
Citizens Against Nuclear Trash (CAN'T)
Homer, Louisiana
- 10:15 a.m. - 10:45 a.m. --Wilford M. Greene
River Area Planning Group
Vacherie, Louisiana
- 10:45 a.m. - 11:15 a.m. --Amos Favorite, President
Ascension Parish Residents Against Toxic
Pollution
Geismar, Louisiana

- 4 -

11:15 a.m. - 11:45 a.m. --Calcasieu League for Environmental Action
(CLEAN)
Lake Charles, Louisiana

11:45 a.m. - 12:15 p.m. --Floris Floyd, President (Cancelled)
NAACP
North Lake Charles, Louisiana

12:15 p.m. - 1:30 p.m.

LUNCH

SESSION VI

INDUSTRY PERSPECTIVES

1:30 p.m. - 2:00 p.m. --Dan S. Borne, President
Louisiana Chemical Association

2:00 p.m. - 2:30 p.m. --Guy S. Barone, Jr.
Public Affairs, Dow
--Michael Lythcott
Prudential Relocation Management

2:30 p.m. - 3:00 p.m. --Harry A. Lloyd
Industrial Relations Department
Georgia Gulf
Plaquemine, Louisiana

3:00 p.m. - 3:30 p.m. --Dale Emmanuel
Placid Refinery

3:30 p.m. - 4:00 p.m. --Jim Porter, President
Louisiana Mid-Continent Oil and Gas Association

4:00 p.m. - 4:15 p.m.

BREAK

SESSION VII

INDUSTRY PERSPECTIVES (Cont'd)

4:15 p.m. - 4:45 p.m. --Charles J. McDermott
Director of Government Affairs
Waste Management, Inc.
Washington, D.C.

4:45 p.m. - 5:15 p.m. --Robert S. Miller
Rollins Environmental Services
Baton Rouge, Louisiana

5:15 p.m. - 5:45 p.m. --Emily S. Stich, Director (Cancelled)
Environmental Quality Council
Louisiana Association of Business and Industry

- 5 -

5:45 p.m. - 6:00 p.m.

BREAK

6:00 p.m. - 7:30 p.m.

OPEN SESSION

7:30 p.m.

ADJOURNMENT

Appendix C



UNITED STATES
COMMISSION ON
CIVIL RIGHTS

624 Ninth Street, N.W.
Washington, D.C. 20425

March 8, 1993

The Honorable Carol M. Browner
Administrator
Environmental Protection Agency
Room 1200 WT
401 M Street, S.W.
Washington, D.C. 20460

FILE COPY

Dear Administrator Browner:

The U.S. Commission on Civil Rights (Commission) is undertaking a preliminary examination of environmental equity issues and civil rights enforcement activities at the Environmental Protection Agency (EPA). To facilitate this endeavor, we ask that you provide written answers to the enclosed list of questions by March 19. We would greatly appreciate detailed responses, and please include any other supporting documents that will help us to develop a solid understanding of relevant EPA policies and operations.

The Commission seeks this information in fulfilling its statutory mandate to appraise the laws and policies of the Federal Government with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin or the administration of justice, 42 U.S.C. § 1975c (a)(3). The information will be used, first, to complete the record being assembled by the Commission's Louisiana State Advisory Committee on environmental equity issues in southern Louisiana (see enclosed project description and forum agenda), and second, as a basis for on-going monitoring by the Commission of EPA's civil rights enforcement activities and emerging issues relating to environmental risks.

In recent days, members of my staff have held preliminary meetings with representatives of your Office of Civil Rights and Office of Environmental Equity. The meetings were quite useful, and we look forward to working with these offices and the Office of Enforcement as we examine environmental equity and civil rights enforcement issues in greater depth. The Commission also hopes to meet with you in the near future to discuss EPA's policies and plans in areas of mutual interest.

If you have any questions about the Commission's inquiry, please contact Dr. James S. Cunningham, Assistant Staff Director for Civil Rights Evaluation, at (202) 376-8582.

Sincerely,

A handwritten signature in black ink, appearing to read "Bobby D. Doctor".

BOBBY D. DOCTOR
Acting Staff Director

Enclosures

**U.S. COMMISSION ON CIVIL RIGHTS QUESTIONS TO
THE ENVIRONMENTAL PROTECTION AGENCY ON
ENVIRONMENTAL EQUITY AND CIVIL RIGHTS ENFORCEMENT**

Have any follow-up actions been taken on the recommendations made in EPA's report, *Environmental Equity*? Please describe these actions separately for each recommendation.

Describe coordination between units in EPA to formulate consistent and effective policies on environmental equity.

Describe coordination between EPA and other Federal agencies to formulate consistent and effective policies on environmental equity.

What specific activities have been undertaken by EPA in cooperation with other Federal agencies or by Federal agencies at EPA's request to address the relative environmental problems in racial minority communities?

Have steps been initiated to address the findings cited in the National Law Journal Report (Sept. 21, 1992) regarding disparities in EPA enforcement activities and penalties imposed in white communities versus racial minority communities?

Little research exists on the relationship between environmentally induced health problems (e.g., disease, developmental abnormalities), on the one hand, and race, ethnicity, and socioeconomic status, on the other. What efforts are being made to address this? Are there plans to develop a data base and risk assessment methodologies to provide information about inequities in the distribution of environmental risks and exposure? Are efforts being coordinated with the Agency for Toxic Substances and Disease Registry (ATSDR) or the National Institute of Environmental Health (NIHEH) at HHS?

Since EPA is responsible for granting permits to State agencies, what actions has EPA taken on reports of inequitable siting and permitting practices at the State and local level?

How would you describe industry's position on EPA's environmental equity initiatives? What incentives have been used to garner industry's support on these initiatives?

Does EPA provide contracts, grants or other financial assistance, directly or indirectly, to chemical companies or waste management facilities? If so, describe.

10. Are you aware of any legal precedent or internal EPA legal interpretation that interprets EPA's policies or jurisdiction as prohibiting the application of civil rights laws and programs to address environmental equity issues? If such an internal opinion exists, does EPA plan to review the opinion in light of the findings and recommendations in *Environmental Equity*? Please attach relevant documents (e.g., court decisions, General Counsel opinions).
11. What enforcement authorities and procedures exist or are being developed to implement and ensure compliance with environmental equity policies by private, local, state, and federal entities?
12. Which organizational units in EPA are responsible for enforcing title VI of the Civil Rights Act of 1964 and the nondiscrimination provisions of other environmental laws under EPA's jurisdiction? Describe how civil rights and other environmental equity activities are coordinated within EPA (see question #2).
13. Describe your agency's external civil rights compliance program.
14. What is the role of your agency's external civil rights compliance program in implementing the environmental equity initiative?
15. Does EPA plan to expand the enforcement of civil rights laws (e.g., by conducting investigations and compliance reviews) relating to nondiscrimination in federally assisted programs. If so, would this expansion include new or expanded efforts to ensure that federally assisted programs are environmentally equitable?
16. How does EPA distinguish between environmental equity and nondiscrimination by participants in Federal and federally assisted programs?
17. Are complaints or findings of inequities based on the racial characteristics of an affected community reported to EPA's Office of Civil Rights to determine if they involve title VI issues?
18. What steps does EPA take to ensure that its own policies and programs are not discriminatory?
19. *Environmental Equity* states (p. 21), "EPA's role in permitting comes after the [solid waste] site has been chosen [at the State or local level] and involves technical considerations." OSWER is developing standards for local site decisions. Where does the development of these standards stand now? What equity and nondiscrimination issues will they include?

Appendix D



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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ESD
OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT
1

Mr. Bobby D. Doctor
Acting Staff Director
U.S. Commission on Civil Rights
624 Ninth Street, N.W.
Washington, D.C. 20425

Dear Mr. Doctor:

In response to your March 8, 1993 letter to Administrator Carol Browner, I submit the U.S. Environmental Protection Agency's answers to your 19 questions on environmental equity and enforcement activities at our Agency.

We welcome the Commission's timely review and look forward to working with you to ensure that civil rights laws are used effectively and creatively in carrying out this Agency's mission. In fact, your review complements an internal assessment of past actions and options for the future. We hope to demonstrate, in a concrete and comprehensive fashion, this new Administration's commitment to achieving environmental justice.

We request that additional copies of the project description and forum agenda from the Louisiana State Advisory Commission be sent to us since these materials were apparently lost in the original correspondence.

If you have any questions or need further information about the Agency's response, please contact either Dan Rondeau, Director, Office of Civil Rights at (202)-4575 or me at (202) 260-6357.

Sincerely Yours,

Clarice E. Gaylord, Director
Office of Environmental Equity

**RESPONSES BY THE ENVIRONMENTAL PROTECTION AGENCY
TO QUESTIONS BY THE UNITED STATES COMMISSION ON CIVIL RIGHTS
ON ENVIRONMENTAL EQUITY AND CIVIL RIGHTS ENFORCEMENT**

1. Have any follow-up actions been taken on the recommendations made in EPA's report, Environmental Equity? Please describe these actions separately for each recommendation.

The Environmental Protection Agency is making progress on each of the recommendations presented in the Agency's June 1992 report, Environmental Equity: Reducing the Risk for All Communities. The following is a summary of the actions being undertaken by the Agency to implement those recommendations; as noted in our responses, a number of the activities cut across more than one of the report's recommendations. The types of activities initiated by EPA range from outreach to specific communities bearing disproportionate environmental risk burdens, to the development of complex risk analyses.

The issue of environmental equity presents EPA with an impressive array of complex challenges and opportunities. While the responses to these questions reflect that the Agency has begun to grapple seriously with the problem of assuring environmental equity, we recognize that these are only the first steps. Many practical and technical questions remain. Further, because the previous structure used by the Agency to address equity concerns may not have been adequate to deal with the enormity of this problem, the Agency is presently examining what, if any, changes are required to carry out its commitment to fairness under the environmental laws.

The Agency will continue to improve upon its efforts to ensure environmental equity. This commitment is reflected in one of the major themes for the work of the Agency: lead abatement. High levels of lead exposure is one of the most pervasive problems affecting inner city children, potentially interfering with physical and mental development. Typically, these children are from low-income and minority communities. An emphasis on lead abatement may result in ensuring environmental equity for these children.

Recommendation 1. EPA should increase the priority that it gives to issues of environmental equity.

As described below, the Agency has initiated actions involving research, education, and outreach. EPA remains dedicated to strengthening environmental equity initiatives in the future.

Among other actions, EPA has increased the priority given to environmental equity by creating the Office of Environmental Equity. Charged with serving as the focal point for equity concerns and providing oversight to all parts of EPA, the Office's work plan includes a range of activities, such as:

- Establishing Agency equity programs;
- Tracking the implementation of the Agency's equity efforts;
- Serving as a clearinghouse for the dissemination of equity information to EPA staff and the public;
- Providing interagency coordination on equity issues;
- Enhancing equity outreach, training, and educational programs for the public through conferences, symposia, and other meetings;
- Supporting consultation between EPA and outside equity organizations; and
- Supporting key research on environmental risk reduction projects.

For fiscal year 1994, the Agency has proposed increasing funding for the Environmental Equity Office by \$500,000 (37.5%), for a total of \$1.3 million. These funds will be used to support the functions outlined in the Equity Office's work plan.

EPA has also requested an additional \$15 million for FY94 specifically to begin implementing the roughly 30 requirements set forth in Title X of the Residential Lead-Based Paint Hazard Reduction Act. Among other benefits, this budgetary initiative will help establish a National Clearinghouse on Childhood Lead Poisoning.

Beyond just its internal activities, the Agency is also working to establish an external Environmental Equity Advisory Council. The Council will be helpful in keeping environmental equity at the forefront of the Agency's agenda and providing new ideas on how to deal with equity issues in a proactive manner.

Recommendation 2. EPA should establish and maintain information which provides an objective basis for assessment of risk by income and race beginning with the development of a research and data collection plan.

The Office of Research and Development has launched a program to gather critical information about the magnitude, extent and causes of human exposure to environmental agents. This program -- the National Human Exposure Assessment Survey (NHEXAS) -- will be important in providing information essential to making more informed decisions about environmental health risks. This survey is being designed to provide much needed information, targeted to specific populations, where exposure information will make the greatest difference in addressing uncertainties in making risk management decisions.

In addition, a number of offices within EPA, both at Headquarters and in the Regions, have begun to collect data on equity risks by income and race. By integrating the 1990 Census data with EPA data bases such as the Toxic Release Inventory (TRI) and the Geographic Information System (GIS), maps are being generated which show by income and/or race the locations of sites that may be of concern from an environmental health perspective. We believe that the availability of income and ethnicity data will be important to developing risk reduction strategies in the future.

For example, the Office of Emergency and Remedial Response is examining the location of Superfund sites and demographically characterizing the surrounding communities. It will then be possible to link the percentage of, for example, minorities living around the sites, with variables such as the timeliness of EPA's actions at the sites or the type of remedy selected. The demographic information being developed by this office will be particularly significant in the future: Plans are underway to expand the data base and have it accessible to site decision-makers, thereby providing them with tools for incorporating an environmental equity perspective into their decisions.

Recommendation 3. EPA should incorporate considerations of environmental equity into the risk assessment process. It should revise its risk assessment procedures to ensure, where practical and relevant, better characterization of risk across populations, communities or geographic areas. These revisions could be useful in determining whether there are any population groups at disproportionately high risk.

As part of the Agency's Comparative Risks Project, EPA is in the process of modifying the comparative risk approach so that groups at high risk can be identified. Specifically, methodologies are being developed for

better identification of high risk communities and for integrating information dealing with demographics, environmental risk, and social system susceptibility.

An example of how this Agency has begun to implement Recommendation 3 is the Office of Water's work to modify fish advisories. The Office is developing methodologies that will take into consideration demographics (the presence of subsistence fisher populations), geographic differences (the amount of fish consumed on a daily basis in particular areas), bio-concentration factors (the type and quantity of contaminants taken up by which fish species), and cultural aspects (certain cultures eat certain fish). In addition, the methodologies will consider the cumulative and synergistic effects of various contaminants.

Recommendation 4. EPA should identify and target opportunities to reduce high concentrations of risk to specific population groups, employing approaches developed for geographic targeting.

As described in the response to Recommendation 2, EPA is developing data and improving data bases to aid in using geographical targeting. Geographic targeting is already being used by various EPA offices. For instance, maps developed by our improved integrated geographical information system are being used to help the Office of Environmental Equity investigate complaints of environmental inequity in certain communities.

Recommendation 5. EPA should, where appropriate, assess and consider the distribution of projected risk reduction in major rulemakings and Agency initiatives.

This is an area of significant opportunity for the Agency where much work needs to be done. Many Agency initiatives are ripe for inclusion of equity considerations; for example, equity concerns may be appropriate for consideration should the Agency's pursue rulemaking on location standards for siting of hazardous waste treatment and disposal facilities under the Solid Waste Disposal Act.

As another example, multi-media enforcement initiatives may present a fertile area for risk reduction. Here, the Agency takes action against a number of parties who are out of compliance with more than one of the environmental laws and who are each contributing to a particular environmental problem. Many low-income and minority communities suffer the heaviest environmental risk burden because they are often exposed

to numerous sources of pollution or contamination simultaneously. Multi-media enforcement initiatives could drive to the very heart of this problem.

While there are numerous areas in which the Agency may move at this time to consider projected risk reduction in its rulemakings and initiatives, as a practical and technical matter full implementation of this Recommendation will also depend upon sound scientific analysis of risk exposure and how effective risk reduction may be achieved. The responses to Questions 3 and 6 discuss some of the ways in which the Agency is moving forward on this front.

Recommendation 6. EPA should selectively review and revise its permit, grant, monitoring and enforcement procedures to address high concentrations of risk in racial minority and low-income communities. Since state and local governments have primary authority for many environmental programs, EPA should emphasize its concerns about environmental equity to them.

This is another area of creative opportunity in which the Agency has work yet to be done. In the context of permitting procedures, much of the federal environmental laws have been delegated to the states or local governments for implementation, imposing some limitations on EPA's ability to affect their actions. As a result, the Agency may not have significant control over permit issuance where the application falls within the strictures of national requirements. Similarly, siting, zoning and other land use decisions are almost exclusively made at the state or local level. The challenge, therefore, is how to work within this structure in order to effectuate environmental equity.

In order to emphasize our concern about environmental equity, the Agency is making environmental equity a major agenda item at EPA conferences with state and local governments. For example, environmental equity was a major theme at this year's Toxic Release Inventory conference. EPA has also made a commitment to evaluate the fairness of regulatory and statutory criteria used by state and local governments to issue permits and grants in areas that might have adverse impact on low-income and minority communities.

The Agency is engaged in reviewing internal programs to reflect our concern with environmental equity issues. As set out in response to Question 5, the Office of Enforcement has begun an effort to assess the role of enforcement in environmental equity. It is anticipated

that this work will produce a number of useful ideas regarding policies, procedures, and initiatives to aid in ensuring equity.

Recommendation 7. EPA should expand and improve the level and forms with which it communicates with racial minority and low income communities and should increase efforts to involve them in environmental policy making.

EPA is expanding its communication strategy agency-wide to include low-income and minority communities. All EPA offices and Regions are being encouraged to hold local environmental meetings within the year. Such meetings will bring together individuals from grass-roots groups, local, state and federal officials, industry, and academia to discuss resolve local environmental problems. Emphasis will be placed on educating affected communities about available EPA delivery services, their rights and responsibilities under environmental laws, and how they can become more involved in local environmental policy decision-making. The Agency is also considering using local community organizations such as legal defense services as a means to provide affected communities with guidance on their rights in crisis situations.

The Agency is encouraging the publication of all appropriate public notices, fact sheets, guidance, or similar materials in multiple languages to make information more accessible to the public. For instance, fish contamination notices are being published in English, Spanish and Vietnamese. Superfund fact sheets are also being published in Chinese, Korean, and Navajo. All regional, state and local officials are being encouraged to provide interpreters in non-English languages at public meetings where sites are located near non-English speaking populations. Such efforts will allow non-English speaking people to participate more effectively in the public process.

The Agency is expanding its outreach efforts to reach more low-income and people of color communities. Plans are to distribute environmental equity materials and conduct seminars on community rights with organizations such as national church organizations, NAACP, Urban League, national Hispanic organizations, and tribal groups. EPA is also sponsoring equity programs on ethnic radio and television broadcasts. A hot line number for environmental equity has been set up to enhance EPA's accessibility to these communities.

A practical example of an innovative outreach effort occurred in March of this year. Under the 1990

Amendments to the Clean Air Act, EPA is required to hold public hearings on proposed rules regarding emission standards for hazardous organic air pollutants. The Office of Air and Radiation incorporated environmental equity considerations into its rule-making process by holding the hearings this past March in the Louisiana community where a concentration of organic chemical plants emit large amounts of air pollutants. This effort brought together industry, the Agency, and community leaders, facilitating maximum participation by those most exposed to the emissions.

Recommendation 8. EPA should establish mechanisms, including a center of staff support, to ensure that environmental equity concerns are incorporated in its long-term planning and operations.

See the response to Recommendation 1. EPA is examining what other institutional entities, if any, should be established to implement Recommendation 8.

- 2. Describe coordination between units in EPA to formulate consistent and effective policies on environmental equity.**

Coordination among the offices in EPA is essential to ensure the success of the environmental equity program at EPA. As set forth in response to Question 1, Recommendation 1, the Office of Environmental Equity is charged with this task.

Education of EPA staff also plays an important role in the developing effective environmental equity policies. If staff understand equity issues, they are more likely to identify and develop solutions to equity problems. Therefore, the Office of Environmental Equity is coordinating a series of ongoing environmental awareness workshops that are being held in EPA Headquarters and the Regions to familiarize Agency staff with equity issues.

- 3. Describe coordination between EPA and other Federal agencies to formulate consistent and effective policies on environmental equity.**

EPA will hold its first Environmental Equity Interagency Meeting on April 22, 1993. The agenda for the meeting will include a discussion of how each represented agency incorporates equity concepts into existing policies and future plans for environmental decision-making. Among the agencies that will participate in the interagency group are the Departments of Energy, Defense, Health and Human Service, Interior and Agriculture.

In the area of environmental health, a number of interagency projects are already underway. For instance, in August 1992, EPA, the Agency for Toxic Substances and Disease Registry (ATSDR), and the National Institute of Environmental Health Science (NIEHS) jointly sponsored the workshop "Environmental Health Equity: Research Issues and Needs" in Durham, North Carolina. The conference sought to review existing literature on environmental equity, and determine research needs and issues. A follow-up symposium for the scientific and public community is being planned for the summer of 1993.

Another example of coordination is in the area of data sharing. ATSDR is currently using some of EPA's Geographic Information System (GIS) sets in its minority health initiative. After examining the demographics around various Superfund sites listed on the National Priorities List, ATSDR will assess whether minorities are at a greater health risk than non-minorities living in the same proximity to the Superfund sites.

4. What specific activities have been undertaken by EPA in cooperation with other Federal agencies or by Federal agencies at EPA's request to address the relative environmental problems in racial minority communities.

See response to Question No. 3.

5. Have steps been initiated to address the findings cited in the National Law Journal Report (Sept. 21, 1992) regarding disparities in EPA enforcement activities and penalties imposed in white communities versus racial minority communities?

In an effort to assist the Agency in addressing environmental equity, the Enforcement Management Council established a workgroup composed of legal and technical staff from EPA Headquarters and regional enforcement offices. The Workgroup was directed to examine the issue of equity in our enforcement actions with respect to each of the statutes under which the Agency has enforcement jurisdiction. The workgroup is scheduled to release a report on its findings this summer.

Specifically, the workgroup has focused on determining where in the enforcement process it is possible for bias to occur, what affirmative actions the Agency might undertake to eliminate any bias in enforcement activity, and how to prevent such bias. As part of this project, the Workgroup will review the National Law Journal's allegations to determine their validity and recommend changes, if necessary, to the Agency's enforcement policies and procedures.

6. Little research exists on the relationship between environmentally induced health problems (e.g., disease, developmental abnormalities), on the one hand, and race, ethnicity, and socioeconomic status, on the other. What efforts are being made to address this? Are there plans to develop a data base and risk assessment methodologies to provide information about inequities in the distribution of environmental risks and exposure? Are efforts being coordinated with the Agency for Toxic Substances and Disease Registry (ATSDR) or the National Institute of Environmental Health Science (NIEHS) at HHS?

In addition to the work described in response to Questions 1, 3 and 4, the Agency is currently developing an environmental equity data base which will integrate health effects data from the National Health And Nutrition Examination Survey-III (NHANES-III), demographic data from the 1990 Census, and environmental data from air monitoring stations and the Toxic Release Inventory data base. This data base integration will assist scientists in developing disease correlations with air exposure data in high impact populations.

EPA has also begun discussion with the National Association of County Health Officials to develop environmental training programs for local health officials. These health officials will then be better prepared to provide information to ATSDR on health problems from environmental exposures. In turn, the information provided to ATSDR will result in better environmental health statistics which can, in turn, apprise EPA of environmental health threats in specific communities.

7. Since EPA is responsible for granting permits to State agencies, what actions has EPA taken on reports of inequitable siting and permitting practices at the State and local level?

Except in the limited circumstances described in response to Question 1, Recommendation 5, EPA does not grant permits to state agencies, nor does it have the legal authority to review state siting decisions. Regulations pertaining to siting facilities are historically developed at the state and local level. EPA does, however, authorize the state programs which issue permits to specific facilities at specific sites and the Regional offices review some technical aspects of the permits. Despite these limitations, there are a number of avenues which need to be examined by EPA to ensure that environmental equity issues are considered by states when reviewing siting and permitting activities.

8. How would you describe industry's position on EPA's environmental equity initiatives? What incentives have been

used to garner industry's support on these initiatives?

It is difficult to characterize any single constituency's views of EPA's environmental equity initiatives. As indicated in response to Question 1, however, the Agency has expanded communication efforts with many different constituencies.

9. Does EPA provide contracts, grants or other financial assistance, directly or indirectly, to chemical companies or waste management facilities? If so, describe.

EPA is a large agency with ten Regional offices and numerous field offices and laboratories. Within this structure are many offices and programs. As part of the Agency's mission, it has approved or funded research by private entities and engaged, to varying extents, in joint research. As a large agency, it has also relied upon contractors in the provision of services such as trash removal or for products such as chemicals to be used in EPA laboratories. Therefore, in order to respond to this question, the Agency requests clarification of the type of information sought.

10. Are you aware of any legal precedent or internal EPA legal interpretation that interprets EPA's policies or jurisdiction as prohibiting the application of civil rights laws and programs to address environmental equity issues? If such an internal opinion exists, does EPA plan to review the opinion in light of the findings and recommendations in Environmental Equity? Please attach relevant documents (e.g., court decisions, General Counsel opinions).

EPA has a strong affirmative commitment to application and enforcement of Title VI of the Civil Rights Act of 1964, as well as provisions of the environmental laws specifically prohibiting discriminatory actions (see response to Question 11). The Office of Civil Rights (OCR), is unaware of any legal precedent or EPA opinion interpreting EPA's policies or jurisdiction as prohibiting the application of civil rights laws in addressing environmental equity issues. Similarly, the Office of General Counsel (OGC) has never issued an opinion prohibiting the application of civil rights laws to environmental equity issues.

On this topic, there seems to be some confusion stemming from a report about William Ruckelshaus' testimony before the USCCR in March 1971. In that testimony, Mr. Ruckelshaus explained that the Agency was using the civil rights regulations from the Department of Interior until it promulgated its own regulations. EPA's regulations were subsequently issued in March 1972. Mr. Ruckelshaus never stated that the civil rights laws did not apply to EPA programs.

It should also be pointed out that the Agency's various civil

rights regulations have always required applicants for EPA assistance to submit assurances that they will comply with the requirements of the applicable civil rights statutes.

11. What enforcement authorities and procedures exist or are being developed to implement and ensure compliance with environmental equity policies by private, local, state and federal entities?

Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination on the grounds of race, color, or national origin in programs or activities receiving Federal financial assistance. Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of disability in federally assisted and conducted programs. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, prohibits discrimination on the basis of sex in any program receiving EPA assistance under the Federal Water Pollution Control Act, as amended, including the Environmental Financing Act of 1972. The regulations implementing these statutes are found at 40 CFR Parts 7 and 12. The Title VI regulations and the environmental statutes themselves provide EPA the authority to promote environmental equity policies.

The Agency is also in the process of developing a strategy which would target environmental equity enforcement under the statutes administered by EPA. As described in Question 5, the Enforcement Management Council has established an Equity Workgroup which will focus on the opportunities for ensuring that environmental equity under the statutes that the Agency enforces. The workgroup report, scheduled for completion this Summer, will review the process by which EPA enforces the Federal environmental laws, and consider how equity in compliance and enforcement can best be implemented.

12. Which organizational units in EPA are responsible for enforcing Title VI of the Civil Rights Act of 1964 and the nondiscrimination provisions of other environmental laws under EPA's jurisdiction? Describe how civil rights and other environmental equity activities are coordinated within EPA.

The EPA Office of Civil Rights is responsible for enforcing Title VI of the Civil Rights Act of 1964, Section 13 of the 1972 Amendments to the Federal Water Pollution Control Act, and the other statutory non-discrimination provisions.

At this time, environmental equity activities within EPA are coordinated by the Office of Environmental Equity. The Agency is presently examining its equity activities and determining the most effective and efficient structure for accomplishing its equity

mission.

13. Describe your agency's external civil rights compliance program.

EPA's External Civil Rights Compliance Program has five operational components:

1. Complaint Processing activities entail pre-investigative attempts at settlement, investigation, development of findings and efforts to secure voluntary compliance prior to referral for administrative enforcement. Eight (8) complaints were filed in FY '92; currently, there are eleven (11) external complaints in the inventory. Nine (9) complaints allege discrimination on the basis of disability. Region IV, encompassing the southeastern quadrant of the United States has the highest complaint volume.

2. Pre-award Reviews consist of examination of pre-award review reports submitted by applicants for Federal financial assistance to determine whether applicants are complying or are able to comply with civil rights requirements. Pre-award review reports request information on characteristics of the population to be served by the project and on existence of lawsuits and complaints against the applicant. In FY '92, EPA funded 1,159 Federal financial recipients in the amount of \$2,560,949,459.

3. Post-award Reviews consist of on site or desk examination efforts to determine whether recipients are complying with civil rights requirements. OCR is developing plans for a pilot post-award compliance review project.

4. Technical Assistance initiatives normally include training and providing advice or instruction to Regional EEO Officers, who are responsible for line External Compliance responsibilities. In the last year, this activity has been limited to sharing information and researching answers to specific questions from Regional EEO Officers.

5. Enforcement Monitoring includes activities pertaining to the review and assessment of recipient compliance with court orders, voluntary compliance agreements and other corrective action agreements. OCR has relied in part upon complainants who were parties to voluntary agreements to monitor corrective actions that pertain specifically to the complainant. Follow up instructions of a systemic nature for corrective action are prepared as necessary.

14. What is the role of your agency's external civil rights

compliance program in implementing the environmental equity initiative?

The Agency is presently examining this issue. It is anticipated that the interface of these two programs may be a future avenue for assuring fairness under both the civil rights and the environmental laws.

15. **Does EPA plan to expand the enforcement of civil rights laws (e.g., by conducting investigations and compliance reviews) relating to nondiscrimination in federally assisted programs. If so, would this expansion include new or expanded efforts to ensure that federally assisted programs are environmentally equitable?**

OCR is considering ways by which the Agency's environmental equity initiative can be better integrated with Title VI enforcement. For example, OCR could expand pre-award and post-award compliance reviews of states receiving Federal financial assistance to carry out various environmental programs under delegation agreements with EPA. These reviews could have a positive effect by addressing the impact on minority communities on the way the states conduct their environmental programs in light of the requirement to comply with the civil rights statutes.

The goal of Title VI and the other civil rights statutes is to achieve compliance with the basic prohibition against discrimination in any program or activity receiving EPA assistance. While the ultimate remedy is fund termination through enforcement action, this is not the objective of the civil rights statutes in view of the very beneficial reasons why the Federal financial assistance is given in the first place. The purpose is to assure that everyone receives these benefits on an equitable basis.

16. **How does EPA distinguish between environmental equity and nondiscrimination by participants in Federal and federally assisted programs?**

EPA regards nondiscrimination as when no person is excluded from participation in, is denied the benefits of, or is subjected to discrimination under any program or activity either conducted by the Federal government or receiving Federal financial assistance on the basis of race, color, national origin, sex or disability.

Environmental equity is a broader and more generally defined term that does not yet have a meaning agreed upon by all parties to the debate. EPA's June 1992 report defined environmental equity as the equitable distribution of environmental protection benefits. This concept refers to the distribution and effects of environmental problems, and the policies and processes to reduce

differences in who bears the environmental risks. In contrast to the term "environmental racism," environmental equity more broadly includes the disproportionate risk burden placed on any population group, as defined by gender, age, income, location, or occupation, as well as by race. Environmental equity structures the analysis of complex and sensitive issues using a scientific, risk-based approach which recognizes that the distribution of environmental risks is often measurable and quantifiable. The term also reflects a fundamental shift the Agency is presently undergoing, from a fragmented, statute-by-statute system of environmental protection, to an integrated, risk-based method that focuses on which communities suffer the greatest combined burden from all sources of contamination or pollution.

17. Are complaints or findings of inequities based on the racial characteristics of an affected community reported to EPA's Office of Civil Rights to determine if they involve Title VI issues?

Such complaints can be filed directly with the Office of Civil Rights; however, complaints are also being telephoned into the Office of Environmental Equity's hot line. Once the Office of Environmental Equity receives a complaint it is coordinated with the Office of Civil Rights to ensure that these complaints are handled as required under Title VI.

18. What steps does EPA take to ensure that its own policies and programs are not discriminatory?

EPA manages an external compliance program, a discrimination complaint process program, a special emphasis program and a comprehensive affirmative employment progress plan to ensure that its own policies and programs are not discriminatory. Training for all staffing levels on various EEO topics is a significant component of this effort.

19. Environmental Equity states (p. 21), "EPA's role in permitting comes after the [solid waste] site has been chosen [at the State or local level] and involves technical considerations." OSWER is developing standards for local site decisions. Where does the development of these standards stand now? What equity and nondiscrimination issues will they include?

With one exception, OSWER is not developing standards for local site decisions. It did develop regulatory options for environmental "location standards" which would apply to the environmental risk aspects of siting of new Resource Conservation and Recovery Act facilities. These location standards would cover a variety of physical site characteristics which affect risks, such

as hydrogeologic characteristics, seismic zones and floodplains. A regulatory proposal for location standards was sent to the Office of Management and Budget, and was returned for reconsideration this past winter. OSWER is now reviewing options for our next steps.

With respect to the inclusion of equity issues in a location standards rulemaking, EPA did include language regarding environmental equity considerations in the draft location standards preamble for comment. As part of any location standards rulemaking process, EPA would request comment on equity issues and concerns.

U.S. CIVIL RIGHTS UPDATE

U.S. Commission on Civil Rights

SAC Research Prompts National Look at Environmental Equity by Commission

The Commission's Office of Civil Rights Evaluation (OCRE), which monitors Federal agencies for their compliance with civil rights laws and regulations, is looking into the Environmental Protection Agency's approach to environmental equity. The project follows a Louisiana Advisory Committee factfinding meeting last year into residents' concerns about what they call "cancer alley," and industry calls the "chemical corridor" — the more than 100-mile stretch between Baton Rouge and New Orleans where some 125 chemical and oil producers are located among a heavily African American population.

"This inquiry is one example of how important the work of our state advisory committees (SACs) is in identifying and shedding light on emerging civil rights issues, as well as on local and regional

civil rights concerns," says the Commission's Acting Staff Director Bobby Doctor. Doctor has served for many years as the Commission's Southern Regional Director working with the SACs in that area.

The question of environmental equity has been receiving much attention lately from both the President and Congress, where Rep. Don Edwards (D-Calif.) recently chaired a subcommittee on Civil and Constitutional Rights hearing on environmental equity.

In his Earth Day 1993 address on April 21, President Clinton directed EPA to "begin an inter-agency review of federal, state and local regulations and enforcement" that promote "inequalities of environmental decision making [which] adversely affected minority and low income populations."

EPA Administrator Carol M. Browner has also identified environmental equity as one of her four top priorities, and Rep. John Conyers, Jr. (D-MI) is preparing legislation which would make EPA a cabinet-level department and greatly expand environmental equity responsibilities and authority.

Progress in toxics abatement has been made by the Louisiana Department of Environmental Quality since the SAC's initial investigation began, according to Melvin Jenkins, Regional Director of the Commission's Central

Region. Even so, Louisiana remains one of the most polluted states in the Nation, ranking first or second in recent studies of toxic water discharges, discharge of carcinogens, and importing hazardous wastes. With a large number of chemical companies, the state also is home to hazardous waste sites, and has been ranked 48th in effectiveness of its State policies to address environmental problems.

"The factfinding meeting last year generated a number of questions which involve EPA and therefore the Nation as a whole," says Jenkins. Although many environmental issues are decided at the state and local level, Jenkins points out, the Commission's research was buttressed by a special investigation by the *National Law Journal*. The report, published last fall, said that nationwide, Federal pollution clean-up efforts are slower and civil penalties are lower in heavily minority areas than in those populated by whites.

"We are reviewing the response to our initial inquiries of EPA," says Dr. James Cunningham, director of OCRE. "A preliminary review indicates that we may need to ask more questions," he added, citing June as the soonest that a report could be released.

"It is clear that EPA is at the very earliest

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SAC NEWS

Stress on Gang Prosecutions/Vagueness in Federal Sentencing Act Result in Discrimination, Nevada SAC Told

The Nevada Advisory Committee of the U.S. Commission on Civil Rights heard some chilling information about the state of law enforcement in Las Vegas recently: a stress on prosecuting gang members, and vague Federal sentencing guidelines, have resulted in significant disparities in treatment of people of color in that state by police and the administration of justice system. Committee members were so concerned that "the (Federal) Sentencing Reform Act of 1984 has created a disparate impact" that they have asked the Commission to look into the matter.

"A major civil rights question involved is whether the sentencing scheme for crack offenses violates due process and equal protection," wrote Chairperson Margo Piscevic in an April 9 letter to the Commission. "Equally important, is whether the U.S. Attorney's Office for the District of Nevada and other Districts around the Nation intentionally discriminate on the basis of race."

According to speakers at the committee's forum, Federal sentencing guidelines call for a five-year minimum sentence for those convicted of a crack (base) cocaine violation, while those convicted of cocaine powder violations face no minimums on their sentences. Since statistics show African Americans more likely to be involved with crack cocaine while white defendants more frequently were charged with powder cocaine offenses, the law's inexactitude contributes to discrimination in the administration of justice involving cocaine violations, explained Franke Forsman, the Federal Public Defender.

"The whole thrust on gang prosecutions, if it

didn't start out as racist, has developed into discrimination," added Ms. Forsman, now in the middle of a four-year term.

In 1990, all prosecutions for Federal base cocaine crimes were of African Americans, and African American and Hispanic males 18 to 24 received sentences an average of 36 months longer than similarly convicted white males of the same age. The disparity in prosecution and sentencing for these crimes has become so striking that a number of Nevada authorities are looking at the reasons behind such statistics.

According to speakers at the forum, mislabeling of a suspect as a gang member because of the style of his clothes, reports from others or being seen in the company of a gang member results in excessive pre-trial detention of African American and Hispanic youths.

The city's gang task force has more than 500 cards on file identifying youngsters as gang members. Ms. Forsman told the committee.

"Some Hispanic and African American kids have been stopped so often that their cumulative fines were \$14,000 and \$16,000 for traffic and loitering violations," she said.

The committee is also looking into basic police-community relations in the predominantly African American west Las Vegas area, where riots occurred last spring.

The Nevada SAC recently released a report on police-community relations in Reno, part of its long-term study of administration of justice in the state.

That report commended the city's police department for its progressive and community-oriented policing, especially its

community surveys about the adequacy of police services and follow-up interviews with individuals who have had contact with officers regarding that experience with the department. □

Publications Available from Library

The Commission's Robert S. Rankin Civil Rights Memorial Library stocks the reports of the Commission and State Advisory Committees. They are available free to the public while supplies last. Many of these reports address issues of continuing interest in the area of civil rights.

SAC and Commission reports currently available include:

***Extending the Equal Employment Opportunity Law to Congress*, 1980:** analyzes the constitutional issues that could arise if Federal equal employment opportunity laws were extended to employees of the U.S. legislative branch. 37 pp. No. 005-901-00024-3.

To order a publication, write the library at the address on page 8, or call 202 376-8110. □

EPA, from page 1

stages of developing environmental equity policies and enforcement programs," he added. □

Environmental PROTECTION NEWS

THE LEADING NEWS RESOURCE FOR ENVIRONMENTAL REGULATION LITIGATION LEGISLATION AND POLICY ANALYSIS

APRIL 19, 1993

VOL. 8, NO. 7

Policy

U.S. Civil Rights Commission To Review EPA Siting and Enforcement Practices

Soon-to-be released study focuses on pollution's effect on minorities

The U.S. Commission on Civil Rights is poised to release a study that looks, for the first time, at whether EPA's implementation of its regulations discriminates against communities that are mostly populated by people of color, James Cunningham, assistant staff director for Civil Rights Evaluation at the Commission told *Environmental Protection News*.

The report, which has been undertaken by the Commission's Central Region Office in Kansas City, Mo., looks at the industrial region in southeastern Louisiana known as "cancer alley." In this area, which is located along the Mississippi River between New Orleans and Baton Rouge, La., many large petrochemical plants are near low-income neighborhoods populated by racial minorities, said Farella Robinson, civil rights analyst with the Commission's Central Regional Office.

The regional office is wrapping up the report and preparing findings and recommendations related to manufacturing plants, as well as other issues such as housing and health care that affect low-income, racial minority groups, said Robinson.

The recommendations are likely to affect how companies interact with EPA, by addressing siting and permitting issues, Robinson added. The report will be released in mid-May and submitted to Congress, EPA and possibly the White House, said Cunningham.

The Commission also sent a letter on March

8 to EPA Administrator Carol Browner asking her to investigate the agency's compliance with Title 6 of the 1964 Civil Rights Act, to ensure that none of the agency's policies or practices discriminate against people because of race, religion, handicap or national origin.

Browner has said publicly that she is concerned with environmental equity issues, which refers to the distribution of environmental risks across population groups. The agency is undertaking a review to answer the commission's questions, the agency spokesman said.

The commission is worried that neighborhoods densely populated by racial minorities, including Native Americans, African Americans and Latinos, have a disproportionate number of polluting sources located nearby when compared to other neighborhoods. The cumulative pollution effect can take a toll on the health of the individuals living in those neighborhoods, Cunningham said.

Those working to pressure federal officials to take action are "optimistic" that the new administration will respond to their concerns. Vice President Albert Gore Jr. introduced Environmental Justice Act of 1992 while in the Senate. This should boost environmental equity concerns to the attention of President Bill Clinton, bill supporters say.

Congress is not ignoring the issue. Last month, the House Judiciary Subcommittee on Civil and Constitutional Rights held a hearing examining the issue of environmental protection and social justice. Also, Rep. John Lewis (D-Ga.) is expected to reintroduce the Environmental Justice Act, his staffer said.

— By Catherine M. Cooney

ENVIRONMENTAL PROTECTION NEWS

The Times-Picayune

MARCH 30, 1993

T U E S D A Y

157TH YEAR NO 66 35 CENTS

Bias? EPA probed on 'cancer alley'

By staff and wire reports

Based largely on information from the "cancer alley" between New Orleans and Baton Rouge, the U.S. Commission on Civil Rights has launched an investigation into whether the Environmental Protection Agency discriminates by giving less effort to the pollution problems of communities that are mostly populated by minorities.

The commission found "reason

to question the enforcement policies and practices" of the EPA, based on its investigation of the Baton Rouge-New Orleans industrial corridor, and other information, James Cunningham, an assistant staff director, said Monday.

"We feel there is a problem there. There are apparent shortcomings in the enforcement of existing civil rights laws," he said.

The investigation will take about six weeks, and the results

will be released in a Baton Rouge news conference, a commission official said.

The decision was praised as long overdue by civil rights and environmental activists in Louisiana.

"One theme we have heard over and over again is that the minority community has felt its basic civil rights to clean air, clean water and clean land is being violated every day," said Marylee Orr, director of the Louisiana Environmental Action

Network.

Orr, whose group represents more than 70 community-based environmental groups, was among those who testified before the commission in February 1992 on environmental problems along the Mississippi River.

"These people's quality of life is affected by the large exposure to toxic chemicals," she said. "They talked to the commission about their increased health

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CONTINUED . . .

EPA

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problems, ranging from nose bleeds to increases in respiratory illness and asthma."

In a March 8 letter to EPA Administrator Carole Browner, the commission's acting staff director, Bobby Doctor, said the probe is "a preliminary examination of environmental equity issues and civil rights enforcement activities at the EPA."

The commission sent Browner 19 questions dealing with the agency's overall civil rights policies, and what efforts it makes to ensure equal treatment of minority and non-minority communities throughout the country.

Browner, in a speech last week to the Environmental Justice Project Legal Forum, said environmental equity is "an area that requires a lot of attention."

An EPA task force report last February concluded that there is clear cause for concern about the exposure of many minorities to pollution, but contended its effect on the health of minorities is less clear. The task force recommended that the EPA pay closer attention to the issue.

The National Law Journal, which reported Monday on the commission's probe, conducted an eight-month study that found that white communities see higher penalties for polluters and faster action on toxic waste problems than minority communities.

The publication's findings were part of the reason the commission launched its probe, Cunningham said. "It's apparent there are serious disparities in the risks that minority and non-minority groups experience in relationship to their environment, and the environmental hazards they experience," he said.

Melvin Jenkins, regional director for the commission in Kansas City, Mo., said the probe was begun after the commission's Louisiana state advisory committee questioned why so many polluting industries had moved to the corridor along the Mississippi between New Orleans and Baton Rouge heavily populated by minorities.

The region contains more than 175 chemical plants and oil refineries, and research has indicated higher death rates for certain types of cancer in south Louisiana than in the rest of the country.

Jenkins said the hearing last year focused in part on several industries' programs of relocating nearby residents away from their facilities.

Jenkins said the investigation also will look into how state agencies, including Louisiana's Department of Environmental Quality, deal with pollution problems affecting minorities.

Amos Favorite, a member of the Ascension Parish Residents Against Pollution, said he is not sure if EPA's actions are discriminatory, but he is sure the agency is not doing its job in Louisiana.

He said his group is especially concerned about EPA's inability to clean up toxic Superfund sites, such as the Cleve Reber dump.

"They do nothing to stop these people from doing what they're not supposed to do," Favorite said. "They conduct all these different tests and investigations and feasibility studies, but they're nothing but a waste of money."

Louisiana DEQ Secretary Kai Midboe said he believes minorities along the industrial corridor are disproportionately affected by pollution, but denied it is racially motivated.

"I do feel there's a legitimate issue involved," he said. "I don't think the laws written or the plants located in that area were done on a racially motivated basis, but that doesn't mean there's no racial impact."

"Minorities tend to be disproportionately located near those plants, and that's because the plants tend to locate where they can buy land inexpensively," he said. "Minorities are disproportionately represented in poor neighborhoods and that's where the land is cheaper."

Civil rights group asks EPA about discrimination charges

Jim Shrine
Editor

FRONT PAGE

WASHINGTON — A grass-roots campaign against "environmental racism" that started in Louisiana has found its way to Washington.

The U.S. Commission on Civil Rights is following up on allegations that the Environmental Protection Agency and other federal agencies discriminate against minority communities in their application of environmental law.

The issue started when the commission's Louisiana State Advisory Committee, responding to residents' complaints, began looking into environmental problems in the so-called "Cancer Alley," a stretch of more than 100 miles between New Orleans and Baton Rouge with about 125 oil and chemical companies.

"There's a group of people very concerned about the emissions in the air. They're concerned about the health haz-

ards and they want something done about it," said Melvin Jenkins, a regional director of the commission's Central Region Office.

The regional office took its findings to Washington, and together they're going to the EPA. The commission sent to the EPA a list of 19 questions concerning environmental equity and civil rights enforcement.

"We are taking a national perspective and homing in on the Washington offices of key enforcement agencies," said James Cunningham, assistant staff director for civil rights evaluation.

"We would expect the EPA and other responsible agencies that have an effect on environmental risks to implement strong new policies that would incorporate environmental equity goals into all facets of their operation."

At about the same time last month the

Please see **CHARGES**, Page 12

Group says EPA discriminates against minorities

From **CHARGES**, Page 1

commission was sending its letter to the EPA, Rep. Don Edwards, D-Calif., was chairing a subcommittee on Civil and Constitutional Rights. It addressed many of the same issues.

In his opening statement, Edwards said the problem of environmental injustice affects minority communities across the country.

"Today, we begin the process of gathering more information about this problem and the manner in which the United States can be most effective in protecting its citizens from lives plagued by toxins and illness," Edwards said.

Another factor that brought the issue into the spotlight was a series in the National Law Journal titled, "Unequal Protection: The Racial Divide in Environmental Law."

The journal's study found that white communities see higher penalties for polluters and faster action on hazardous

waste problems than minority communities.

Information presented in the House subcommittee hearing included a finding that 60 percent of Latinos and blacks in America live in areas with toxic waste sites. The study that reported the finding said race was the most important predictor of where waste facilities are located.

The Southwest Network for Environmental and Economic Justice said companies that use the prospect of new jobs and economic development as a reason for locating hazardous waste facilities in poor communities are practicing "economic blackmail."

"These are problems that have existed for a long time ... that are almost built into the system," Cunningham said. "One of the problems we see is that an awful lot of the enforcement of environmental laws is delegated to state and local governments, particularly in environmental equity decisions."

Midboe, race and pollution

Times-Picayune, 4/1/93
New Orleans

We felt compelled to respond to the comments made by Louisiana Department of Environmental Quality Secretary Kai Midboe in your article on the U.S. Commission on Civil Rights' proposed investigation of environmental policy in "Cancer Alley" (The Times-Picayune, March 30).

Mr. Midboe admits that people of color in the New Orleans-Batón Rouge corridor bear the brunt of Louisiana's runaway toxic pollution, but contends that the reasons behind this discrimination are economic rather than racial.

Mr. Midboe fails to recognize that vulnerable communities are targeted by polluting facilities for a host of reasons, and poverty is only one of them. Race, lack of political power, age, geographical location and education levels are others. Mr. Midboe might also be interested to learn that the majority of the studies comparing race and income as predictors of disproportionate environmental risk found race to be the better predictor.

More to the point, having recognized the discriminatory impact of pollution on people of color in Cancer Alley, what is the Louisiana DEQ doing about it? Louisiana's Constitution gives the DEQ broad authority to consider socio-economic impacts in the siting and permitting of polluting facilities. To date DEQ has done nothing to use this authority to remedy the admitted disproportionate impacts of environmental hazards on people of color.



Kai Midboe
Challenged on 'equity

The same insidious pattern of industrial siting that Mr. Midboe dismisses as a function of economics, has been identified by the U.S. Commission on Civil Rights as sufficiently disturbing to warrant a preliminary investigation of enforcement policies and practices.

Rather than predicting the results of the commission's investigation before it has been concluded, we challenge Mr. Midboe to use his own authority to meaningfully address issues of environmental equity.

Nathalie M. Walker
Robert B. Wiygul
Sharon Carr Harrington
Sierra Club
Legal Defense Fund

Baton Rouge Advertiser 4-2-93

La. youngster surprised at probe of bias in 'cancer alley'

By The Associated Press

RESERVE— The 12-year-old who told President Clinton about Louisiana's "cancer alley" was surprised that the government is investigating whether it is partly a product of racial bias.

"This area has been overlooked, but not for racial reasons," Furrell Brewer said Thursday. "The reasons are probably ... I'd say just because most of the chemical plants aren't very apparent to the community."

"Though people have a pretty good idea of what's going on, it's not always apparent because most of these chemical plants are in pretty remote areas. ... That doesn't mean pollution doesn't reach surrounding communities. Pollution travels. And it still affects us."

Brewer brought renewed national attention to the corridor between Baton Rouge and New Orleans when he told Clinton on a television program that he thought

pollution contributed to the cancer that killed his brother.

On Monday, the U.S. Commission on Civil Rights announced that it is looking into whether the U.S. Environmental Protection Agency pays less attention to communities that are mostly populated by minorities.

That story was prompted partly by a National Law Journal report that the EPA sets higher penalties for polluters and acts faster on toxic waste problems in white communities than in minority communities, officials said.

The commission's Louisiana state advisory committee, which asked why so many polluting industries were allowed in the corridor, also influenced the decision, regional director Melvin Jenkins said.

The corridor is packed with chemical and oil industries and research shows significantly higher cancer death rates in south Louisiana than in the rest of the

country.

However, the Louisiana Tumor Registry found that the cancer rate is about the same in Louisiana as in the rest of the country, with one exception: the lung cancer rate among white men is 31 percent higher than the national rate.

That study showed that the Louisiana's higher cancer death rates apparently are due to late diagnosis and treatment, cancer researchers have said.

Minorities along the industrial corridor are disproportionately hurt by pollution, but it isn't a racial mat-

ter, said Kai Midboe, secretary of Louisiana's Department of Environmental Quality.

"I don't think the laws written or the plants located in that area were done on a racially motivated basis, but that doesn't mean there's no racial impact," he said Monday.

Petrochemical companies buy land where it is cheapest, cheap land tends to be in poor neighborhoods, and poor neighborhoods often are largely minority, he said.

Appendix F

THE CHEMICAL INDUSTRY **AND ENVIRONMENTAL EQUITY IN LOUISIANA**

**A report to the Louisiana Advisory Committee of the
United States Commission on Civil Rights**

**Fact-Finding Meeting
February 19-20, 1992
Baton Rouge, Louisiana**

**Submitted by the
Louisiana Chemical Association**

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Listening and responding to our neighbors

Louisiana people are seriously concerned about the impact that industrial activity may have on their health and overall quality of life. The families who live next to our facilities are even more concerned. The Louisiana Chemical Association (LCA) appreciates the invitation to contribute to this fact-finding meeting because these concerns are shared by the chemical industry.

In the past, the chemical industry has not adequately addressed its neighbors' anxieties, fears and complaints. At times, we have not always reached far enough beyond our fence lines to provide information and extend a hand of help and opportunity.

In the past, industry thought it was enough to provide jobs, pay taxes, and obey environmental laws and regulations. Then public expectations changed, and industry was slow to recognize and respond to those changes.

LCA polls show that the average Louisiana citizen does not trust the chemical industry and has a low opinion of our performance. Blacks and other minority citizens trust us even less. More often our polls show that blacks and other minorities surveyed do not agree the chemical industry can operate in an environmentally sound manner (Figure 1) nor do they agree that we are trying to reduce pollution (Figure 2). They do not agree that we are listening to our neighbors (Figure 3). They are also less likely to agree that we are providing needed jobs (Figure 4).

In the past, industry challenged such perceptions but today we have opened our minds to the truth that supports these beliefs. For today, a cultural change is taking place in the chemical industry, and it is a change for the better. Like society as a whole, Louisiana's chemical industry is making progress, but our work is not done.

Industry made mistakes in the past and is now acting to correct problems and improve performance. Plant managers see beyond their fence lines. They realize that their neighbors' problems are often complex and that solutions to problems can be elusive. They are learning that answers can be found through partnerships with their neighbors, other businesses, citizen groups, and government.

LCA shares and appreciates the advisory committee's interest in these issues. The exchange of ideas during this fact-finding effort will hopefully lead to an even greater understanding of the challenges we all face. LCA welcomes each committee member as another partner in this ongoing process. Together, we can create a healthy environment and economy for all Louisiana citizens.

Site selection and changing expectations

Many concerned people have raised an important and legitimate question: why are Louisiana chemical plants located in certain areas?

In Louisiana, chemical companies select sites based on sound business criteria that match their special type of manufacturing to the states's unique and diverse natural resources. The racial makeup of the surrounding community is not, nor has it ever been, one of these criterion.

Most Louisiana plants are vast, world-class operations designed and sited to compete for business in the global market of bulk commodity chemicals. In fact, 25% of all chemicals manufactured in Louisiana are exported abroad (Document 1).

In the past, the criteria used to select these sites shared many common characteristics, such as:

- deep river ports for shipping
- rail transportation to reach domestic markets
- abundant land to site large-capacity operations
- access to natural resources
- access to natural gas pipelines
- a neighboring plant to supply chemical feedstocks.

For example, the site selected for the Olin plant in Lake Charles, La., provided an almost inexhaustible supply of high quality salt from the West Hackberry Salt Dome, ample calcium carbonate from oyster shell deposits, an abundant supply of natural gas, and excellent transportation facilities. Olin began purchasing the land in the 1930's from farmers and cattlemen.

Many of these commercial siting factors were also important strategic factors during World War II when Louisiana's modern chemical industry was born. For example, the Oak Point plant now owned by Chevron Chemical in Belle Chasse, La., was built in 1941 to produce engine oil for the U.S. Navy. Originally a forested swamp, the site was selected because it provided close access to the Gulf of Mexico and was much less vulnerable to German or Japanese attack than plants on the east and west coasts.

Louisiana's infant chemical industry produced lubricants, aviation fuel, synthetic rubber, explosives and aluminum for the war effort. Louisiana's river and rails provided the means to move immense quantities of these war materials to other U.S. factories and huge volumes of fuel to U.S. and Allied forces worldwide.

More recently, site selection criteria have expanded as expectations of both the public and of industry have changed. New considerations include:

- environmental impact of the facility on the site and on the surrounding community
- local hiring
- community acceptance of the facility
- company commitment to civic leadership
- quality of local education
- state and local tax burden on business.

Additionally, the Louisiana Department of Environmental Quality (LaDEQ) must examine site suitability based on criteria that are defined by regulation and/or by case law. A key question LaDEQ must consider is, have the potential and real adverse environmental effects of the proposed facility been avoided to the maximum extent possible?

Some factors the agency must consider in order to answer this question follow:

- is the site in or near environmentally sensitive areas?
- is the site in a flood plain?
- is groundwater protected?
- is air quality protected?
- have site characteristics been studied?
- what is the potential environmental impact of the waste to be disposed of at the site?
- how will leachate be prevented and/or collected?
- how will the facility be closed?
- what are the post-closure plans for the facility?

Each plant's history is different, but in no case have minority communities been targeted for the siting of chemical manufacturing plants in Louisiana. This concern does not square with the economic and logistic realities that must be faced in the site selection process, nor with the history of the properties purchased by LCA member companies.

Many LCA companies built on old plantation sites where the surrounding community probably was, and may still be, predominantly black. Some facilities were built in rural areas that had no communities around them until years later. In some cases, the surrounding community had been mostly white, then changed over time.

That was yesterday however; today in Louisiana more plants and largely black communities do share the same neighborhood, so the relevant question is, what are we doing to be better neighbors now? Partnerships are working in many areas, so it is important that we look at the work being done, and the job that lies ahead.

Improving environmental performance

The chemical industry's environmental performance has and will continue to improve. LCA wants Louisiana to be a leader in environmental management, so our performance is critical.

Since 1987, the chemical industry has achieved a 51% reduction in total toxic chemical emissions to Louisiana's air, land and water. LCA recognizes that the public is using emission numbers as a yardstick to measure our environmental commitment. Many reduction efforts are a voluntary response to public concern about these emissions.

Voluntary partnerships among citizens, industry and government are getting results in Louisiana. Under the LaDEQ Corporate Response Program, industry has voluntarily submitted plans that promise major reductions in emissions and waste by 1996 (Document 2).

The corporate headquarters of more than 20 LCA members have also signed on to the Environmental Protection Agency's (EPA) 33/50 Program, which seeks a 33% cut in a corporation's nationwide emissions of certain chemicals by year-end 1992 and 50% by 1995.

Many LCA members have also joined a voluntary industry program called Responsible Care. Under this program, companies must follow Codes of Management Practices designed to improve performance in all areas ranging from community outreach to pollution prevention (Document 3).

Along with environmental groups, LCA supported the Louisiana Clean Air Act of 1989, which sets a goal of 50% reduction in air toxics by 1996.

With citizen oversight, Ozone Task Force groups in Baton Rouge and Lake Charles are working on ozone abatement plans and getting results. When ozone pollution threatened the Baton Rouge area last August, 25 companies used voluntary administrative controls to reduce ozone-forming emissions under an agreement with LaDEQ (Documents 4 and 5).

LCA companies worked alongside many others to help develop the Louisiana Environmental Action Plan (LEAP) to 2000 (Document 6).

At the local level, LCA plants are becoming more aggressive in their response to complaints of odors, noise, and traffic. For example, certain companies in East Iberville help neighbors locate the source of odors day or night. Chemical trucks in East Iberville have also been rerouted so they no longer travel past local schools.

LCA continues to support strong environmental enforcement from a well-funded, well-staffed LaDEQ. We have promised to work with LaDEQ on efforts to help the agency attract and keep the professionals they need to be a more effective agency.

Community awareness and emergency response

Louisiana's chemical industry ranks as one of the safest manufacturing industries in the state (Document 7). The industry works hard to protect workers, to prevent accidental releases and to respond effectively to emergencies.

The safety ethic is also extended directly into the community. For example, industry and government in East Baton Rouge Parish (EBRP) formed the first "Mutual Aid" system for emergency response in 1944.

After the tragedy in Bhopal, India, Louisiana recognized that emergency response and community preparedness needed improvement. Joined by state and local emergency response authorities in 1985, Louisiana chemical plants were first in the nation to start Community Awareness and Emergency Response (CAER) programs.

CAER, a voluntary program to improve community preparedness, has been adopted both nationally and internationally. The chemical industry supports CAER activities in most every major urban and industrial parish. For example, many industrial parishes now have community alert systems installed at industry expense under CAER.

When the federal Emergency Preparedness and Community Right-to-Know Act became law in 1986, the chemical industry joined the effort to make it work in Louisiana. Louisiana was first in the nation to form its State Emergency Response Commission with industry support. At the parish level, our companies participate in their Local Emergency Planning Committee activities.

LCA members respect the citizen's right-to-know and strive to keep their neighbors informed and to gain their input on community issues. Emergency response plans, chemicals we make and transport, and plant emissions are openly discussed with the community.

For example, each year many CAER groups publicly release plant emissions data reported to the EPA and LaDEQ under the Toxics Release Inventory (TRI). LCA also issues a public TRI report that is sent to every parish library in the state and that lists the key TRI contact, phone number and address of each member plant (Document 8). These voluntary reports are provided to the public well in advance of official EPA release.

Many plants also support local Community Advisory Panels (CAPs) that help address concerns and work with industry on solutions. Ten CAPs meet on a monthly basis in many industrial parishes. All ten include black and other minority representatives.

Cancer: the search for answers in Louisiana

"The Louisiana cancer problem has reached such a level of concern that it is the subject of national attention and is generating considerable anxiety for the residents of our state". This quote, from a 1990 American Cancer Society (Louisiana division) brochure (Document 9), captures some of the fear and worry that many Louisiana people, black and white, have regarding cancer: what are its causes? who are its victims? why are there so many deaths? when will we know the facts?

During the early and mid-1970's, a series of reports were published, some showing weak but positive correlations between some forms of cancer and environmental pollution. Speculation and controversy surrounded most of these ecologic or hypothesis generating studies. As a result, few scientifically valid conclusions were available to state health authorities, and it became evident that better designed, more sophisticated investigations were needed to determine why more people were dying from cancer in Louisiana than elsewhere in the nation.

In 1974, Charity Hospital in New Orleans established the first cancer registry in Louisiana. The registry and all its records were transferred to the state Office of Health in 1979, following a 1978 mandate by the Louisiana legislature that a statewide tumor registry be established. Since 1983, the Louisiana Tumor Registry (LTR) has expanded gradually, finally achieving true statewide coverage in 1988.

While the state was making slow progress in the collection of cancer incidence data, researchers at the LSU School of Medicine (LSUMC) in New Orleans were publishing the more sophisticated studies needed to address the many hypotheses generated by those early ecologic studies; several of these studies specifically addressed cancer mortality in blacks. By the late 1980's, almost fifty reports dealing with cancer in Louisiana had been put forth by various groups.

In 1988, the LCA commissioned ENSR Health Sciences Corporation to perform a critical review of the published and unpublished literature relevant to the issue of cancer in Louisiana. That report, "A Review Of Cancer Epidemiology In Louisiana," (Document 10) placed strong emphasis on the scientific merits of individual studies. Both the data and methods of analysis in the studies were closely scrutinized. The report also made suggestions for future research to provide further insight into the Louisiana cancer problem.

Aware that the state had been collecting cancer incidence data through the LTR (but not publishing it) and recognizing that no other group or agency had, or was willing to provide the funds, LCA contributed approximately \$300,000 to LSUMC to allow for the computerization and publication of Louisiana's first-ever report on cancer incidence (beyond the New Orleans metropolitan area).

Completed in 1990 and released by the Louisiana Department of Health and Hospitals (DHH), "Cancer Incidence In South Louisiana: 1983-1986," (Document 11) is an 800-page monograph of statistical tables relating to the occurrence of new cases of cancer (i.e., cancer risk) in southern Louisiana over a four year period; the information is both race (black/white) and gender (male/female) specific. These data were intended to stimulate cancer research in Louisiana over the next several years.

Two needs quickly became apparent: (1) a more user-friendly format to facilitate data analysis, and (2) inclusion of the national SEER (Surveillance, Epidemiology, and End Results) rates for comparing Louisiana to the nation. Again with no other source of funding, the LCA provided a second grant (\$64,000) to the LSUMC investigators to develop a report responsive to these needs.

Released in 1991 by DHH, this 300-page report (Document 12) presents the monograph data in graphic and narrative form to render it more user-friendly than the collection of tables in the 1990 report. The newer document is intended to help convey Louisiana cancer facts to both scientific and non-scientific audiences.

The study found that in contrast to the state's well-documented high mortality rates from cancer, incidence rates for all cancers combined in south Louisiana are "either the same as, or lower than, the national (SEER) rates". According to the study, south Louisianians have a lower risk of developing the most common cancers, with one exception--cancer of the lung. The study points to smoking as being "primarily" responsible (90%) for the high incidence and death rates of lung cancer among males, both black and white, in Louisiana. Although lung cancer rates for black men and women in south Louisiana (all regions combined) are similar to the national averages, the study found that black males in New Orleans "have the highest rate on record." For cancers other than lung, "the major problem appears to be a lack of early detection and limited access to needed health care". The report identifies at least four risk factors for cancer, with environmental pollution associated with perhaps 2% of all cancer deaths, both nationally and in Louisiana.

Presently LSUMC is nearing completion of a study of cancer incidence in a seven parish (EBR, West Baton Rouge, Ascension, Iberville, St. John, St. James, and St. Charles) region along the Mississippi River, often referred to as "cancer alley". This long needed study is being done without funding from the LCA. Along with other interested parties, we will learn of this study's findings when it is published in a peer-reviewed scientific journal later this year.

The chemical industry is seriously concerned about any aspect of its operations potentially impacting the public health. Numerous respected national and international scientific organizations have identified environmental pollution as one risk factor for cancer; the best estimates suggest about 2% of cancer deaths may be attributed to environmental pollution. We recognize that this estimate is based on limited data and may be modified by the results of additional research. Regardless of such research, the chemical industry is committed to practices that will reduce any potential contribution it makes to cancer risk.

Industry supports education

The future of Louisiana's environment and economy depends upon education, and the chemical industry is involved at all levels (Document 13). LCA member companies support local education efforts that benefit minorities such as:

- adopting predominantly black schools
- providing tutors in predominantly black schools
- summer hiring programs for teachers
- summer internships for students
- high school apprentice crafts programs
- sponsoring INROADS, a program which prepares minority youth for corporate and community leadership
- funding minority scholarships
- providing equipment to local schools and universities.

Many companies support the educational efforts of local Earth Day events. Baton Rouge Earth Day, another partnership of environmental groups and industry, is the largest annual celebration of its type in the nation, attracting more than 80,000 people each year.

At the state level, LCA works with the Louisiana Science Teachers Association, Friends of the Environment, 4-H Club, State Science Fair, the Louisiana Energy and Environmental Resource and Information Center at LSU, and other organizations to support science and math teachers.

LCA also provides science kits to middle school teachers under the Chemical Education for Public Understanding Program (CEPUP). The kits help teachers bring environmental science to life in the classroom (Document 14). So far, more than 200 Louisiana teachers have received CEPUP training and many of them teach in predominantly black public schools.

During training, some teachers have told us that the CEPUP kits are the most science equipment they have ever received from anyone in their teaching careers. Many are buying classroom supplies out of their own pockets. Chemical industry efforts to support education must continue, but it is obvious that the state faces problems in education that can only be solved on a larger scale.

Recruitment, training, and employment

Louisiana's chemical industry is a continuous process, high-technology industry. To compete in a global marketplace, we need a well-educated and skilled workforce.

The problems with education are evident when Louisiana chemical companies begin testing new job applicants. It is becoming increasingly more difficult to find qualified people to fill the highly technical jobs needed in chemical operations.

Sometimes it's difficult to find qualified applicants in the immediate area, but industry does try. For example, many high school graduates interviewed do not test at the high school level. Quite often, companies put new trainees through remedial courses in order to raise their academic skills. These young people are the lucky ones. For many others, the system has left them unprepared for the opportunity a high school education should offer.

In addition, the state vo-tech system has not been able to respond to the rapid changes in the workforce. To compensate, some companies now conduct their own programs. Many LCA companies support a privately funded vo-tech center in Baton Rouge, the Associated Builders and Contractors Skills School.

Louisiana's Secretary of Economic Development recently said, "We're not stupid people, but we lack specific skills." LCA agrees. Government, industry, business and labor must help vo-tech help the unskilled.

Chemical industry jobs are open to any qualified person, but industry has strong affirmative action programs and places special emphasis on the recruiting, training, and hiring of blacks, women, and other minorities. Many LCA companies try to achieve affirmative action goals by:

- establishing local Minority Outreach Programs to draw more qualified minority job applicants
- recruiting at predominantly black state universities
- supporting programs like the Louisiana Engineering Advancement Program for Minorities.

The chemical industry also makes a special effort to recruit and hire residents who live in the parish where our plants are located. For example, Ciba-Geigy in Iberville Parish sponsors a chemical operator training program. On average, 50% of the trainees are local residents of Iberville.

In preparation for these hearings, LCA recently conducted an internal survey of its 87 member facilities. Forty-four facilities responded representing 42% of our total employment. These facilities report that minorities make up about 22% of their workforce. According to the latest affirmative action report from the Louisiana Department of Employment and Training (DET), minorities represent about 26.5% of the state workforce (Reference 1).

These 44 LCA facilities also report that blacks alone represent 21% of their workforce. In comparison, the U.S. Bureau of Labor Statistics reports that black workers hold 10.8% of jobs for all Louisiana manufacturing industries (Reference 2).

Economic development to benefit everyone

Chemical industry efforts to support affirmative action do not minimize the fact that Louisiana's minority unemployment rate is very high. According to the DET affirmative action report, Louisiana's average unemployment rate is 6.2% while minority unemployment is nearly double at 10.7% (Reference 1).

These statistics are not lost on the black community. In LCA polls, blacks and other minorities cite unemployment as the most important problem facing Louisiana (Figure 5).

Economic development means more jobs and the chemical industry wants to continue to play a key role in our efforts to build new opportunities for all Louisianians. LCA members want to expand and diversify chemical operations and are working to attract downstream industries that will use Louisiana products to produce finished goods and to create new jobs.

Chemical production contributes 40% of the value added to Louisiana manufacturing, creates more than \$19 billion in sales for other Louisiana businesses, pays \$7 billion in household wages and provides combined direct and indirect jobs for more than 230,000 citizens (Document 1).

Minority businesses also share in the economic benefits gained by the chemical industry's presence. Many LCA member companies such as Dow, Fina, Shell and Union Carbide have active minority vendor and purchasing programs. LCA's internal survey shows that in 1991, 18 plants purchased more than \$51 million in goods and services from minority suppliers.

The jobs and income from sales and wages directly benefit the state and the parishes where industry locates. For example, LCA member plants employ more than 35,000 direct and full-time contract employees. About 52% of these employees live in the parish where they work, 47% live in neighboring parishes, and less than 1% live in bordering states.

The chemical industry's economic benefits reach even farther into the community to help provide higher personal income and more services for everyone. Industrial parishes stand near the top of state rankings for personal income (Table 1) and sales and property tax revenues per capita (Document 15). For example, St. Charles Parish ranks sixth in per capita personal income, second in per capita property tax collections and second again in per capita sales tax revenues.

The chemical industry is very capital intensive, so the purchase of capital goods and equipment necessary to run a chemical plant boost local property and sales tax revenues (Document 15). Industrial parishes reap a major share of property and sales tax revenue from area industry and business. In Ascension parish, for example, the petrochemical industry and other business and commercial enterprises pay 75.4% of all property taxes while homeowners pay only 2.2 percent. In Iberville Parish, the petrochemical industry and other related businesses pay 66.3% of sales taxes.

Industry broadens the parish revenue base significantly and that helps provide improved government services and better schools. For example, industrial parishes pay some of the highest teacher salaries in the state. Largely rural St. James Parish, also home to six major chemical sites, pays public school teachers an average of \$28,846 annually, the sixth highest teacher salary in the state according to the Department of Education (Table 2). Industrial property tax revenues help give St. James teachers top pay because the parish can afford to contribute a local parish salary supplement of at least \$6,262 to the state-paid teacher minimum foundation salary. Industrial St. Charles Parish pays the highest base teacher salary supplement in the state of \$8,255 (Document 16).

The future

Recently, the LCA Board of Directors publicly reaffirmed its commitment to improve environmental performance (Appendices C and D). This commitment includes continuing to improve relations with our neighbors. The chemical industry knows that much of our environmental performance is driven by the public and that the plant manager who is not spending time out in his or her community will soon lose the right to operate in that community.

Again, LCA appreciates the opportunity to contribute to these proceedings. There are many challenges ahead for Louisiana's economy and environment. Success will come with continued partnerships and understanding among government, industry and citizens. Together, we can show the nation that Louisiana is a leader, both in environmental quality and economic development.

References

1. Louisiana Office of Employment and Training. Manpower Information for Affirmative Action Programs. Baton Rouge, LA: May 1992.
2. U.S. Department of Labor. Bureau of Labor Statistics. Geographic Profile of Employment and Unemployment, 1990. (Bulletin 2381). Washington, DC: U. S. Government Printing Office, June 1991.

Appendix A: Tables

TABLE 1: RANKING OF PER CAPITA INCOME FOR SELECTED LOUISIANA PARISHES IN THREE TIME PERIODS

1989		1965		1939	
1. East Baton Rouge	\$16,236	1. Jefferson	\$2,772	1. St. Bernard	\$648
2. Lafayette	15,411	2. Orleans	2,659	2. Bossier	584
3. Jefferson	15,235	3. E. Baton Rouge	2,638	3. E. Baton Rouge	583
4. Orleans	14,838	4. St. Bernard	2,507	4. Orleans	524
5. St. Tammany	14,702	5. Caddo	2,410	5. Caddo	472
6. St. Charles	14,484	6. Webster	2,397	6. Calcasieu	433
7. Caddo	14,211	7. Calcasieu	2,227	7. Ouachita	426
8. Plaquemines	13,481	8. Plaquemines	2,173	8. Jefferson	373
9. Calcasieu	13,202	9. Lafayette	2,087	9. Webster	372
10. St. James	12,873	10. St. Tammany	2,051	10. Jefferson Davis	349
11. Rapides	12,865	11. St. Charles	2,037	11. Iberia	347
12. Ouachita	12,783	12. Bossier	2,022	12. Cameron	332
13. St. Bernard	12,665	13. Ouachita	2,004	13. St. Mary	308
14. Cameron	12,426	14. Cameron	1,992	14. Morehouse	302
15. Bossier	12,362	15. Rapides	1,969	15. Jackson	301
16. Ascension	12,224	16. Ascension	1,940	16. Plaquemines	300
17. Lafourche	12,091	17. Vernon	1,931	17. Rapides	300
18. St. John / Baptist	11,918	18. Terrebonne	1,919	18. Madison	297
19. W. Baton Rouge	11,869	19. Lafourche	1,905	19. St. Charles	294
20. Iberia	11,787	20. St. Mary	1,895	20. Lafayette	289
25. Iberville	10,888	21. St. James	1,850	26. W. Baton Rouge	266
58. West Feliciana	8,451	28. St. John / Baptist	1,683	28. St. James	263
		29. Iberville	1,662	31. Iberville	256
		34. W. Baton Rouge	1,588	34. St. John / Baptist	248
		43. West Feliciana	1,384	42. West Feliciana	232
				48. Ascension	217
LA average:	12,923	LA average:	2,106	LA average:	351
Metro average:	14,150	Metro average:	2,437	Metro average:	N/A
Non-metro average:	10,163	Non-metro average:	1,582	Non-metro average:	N/A

Source: U. S. Department of Commerce, Regional Economic Measurement Division. County and Metropolitan area personal income, 1987-1989. Survey of Current Business, 71 (4), p. 47.

Source: U. S. Department of Commerce, Regional Economic Measurement Division. County and metropolitan area personal income for selected years. Survey of Current Business, 60 (4), p. 45.

Source: French, R. W., Waters, E. (1945, December) Income estimates for Louisiana parishes 1939 and 1943. Louisiana Business Bulletin, 7 (1), pp. 40-41.

**AVERAGE SALARY BY PARISH
1991-1992**

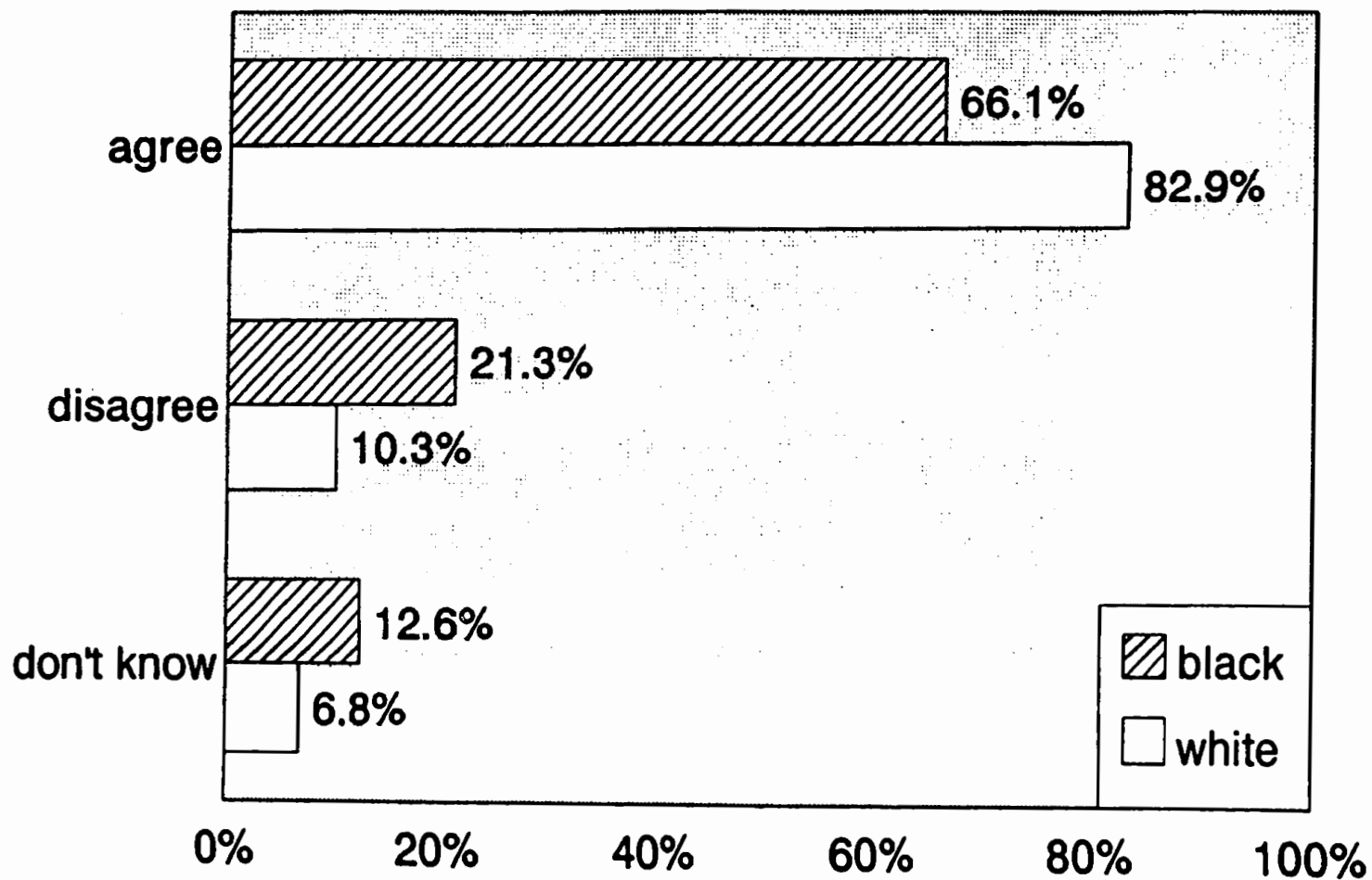
TABLE 2

1	St. Tammany	\$ 31,790
2	Cameron	30,587
3	Ouachita	30,375
4	Orleans	30,060
5	Bossier	29,839
6	St. James	28,846
7	West Feliciana	28,655
8	Caddo	28,269
9	St. Charles	27,830
10	St. John	27,517
11	Winn	27,380
12	E. Baton Rouge	27,348
13	Lincoln	27,260
14	W. Baton Rouge	27,186
15	Plaquemines	27,031
16	Jefferson	26,969
17	Bienville	26,824
18	St. Bernard	26,598
19	Iberville	26,597
20	Ascension	26,522
21	Lafayette	26,363
22	Rapides	26,258
23	Concordia	26,221
24	STATE AVERAGE	26,114
25	Pointe Coupee	26,107
26	Beauregard	25,724
27	St. Mary	25,676
28	Vermilion	25,534
29	Terrebonne	25,298
30	DeSoto	25,259
31	Calcasieu	25,079
32	Assumption	24,793
33	Claiborne	24,785
34	Iberia	24,523
35	Madison	24,460
36	Hatchitoches	24,387
37	Jefferson Davis	24,367
38	City of Bogalusa	24,048
39	Jackson	23,914
40	Tangipahoa	23,675
41	Sabine	23,618
42	Washington	23,601
43	Acadia	23,365
44	West Carroll	23,354
45	Richland	23,318
46	Livingston	23,253
47	Webster	23,118
48	E. Feliciana	22,935
49	St. Martin	22,788
50	Vernon	22,738
51	Evangeline	22,656
52	Avoyelles	22,571
53	E. Carroll	22,552
54	Allen	22,510
55	Caldwell	22,338
56	LaSalle	22,238
57	Franklin	22,158
58	Union	22,105
59	City of Monroe	22,024
60	Morehouse	21,907
61	Catahoula	21,716
62	St. Helena	21,524
63	St. Landry	21,186
64	Tensas	20,569
65	Grant	20,397
66	Lafourche	19,889
67	Red River	18,898

Louisiana Department of Education
Office of Management and Finance
Bureau of School Finance and Budgets

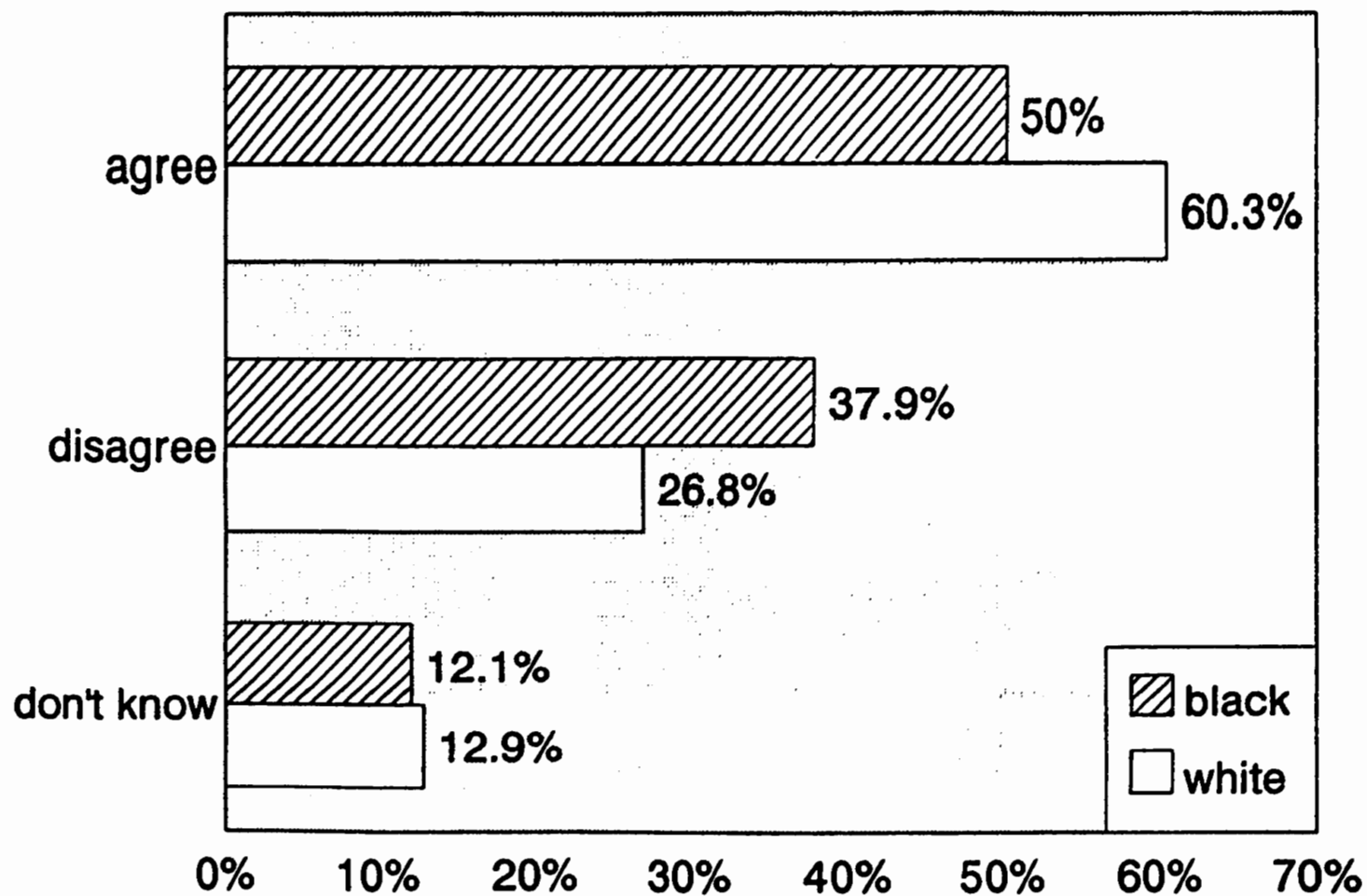
Appendix B: Figures

Fig. 1: Blacks, other minorities are less likely to agree that the chemical industry can operate in an environmentally sound manner



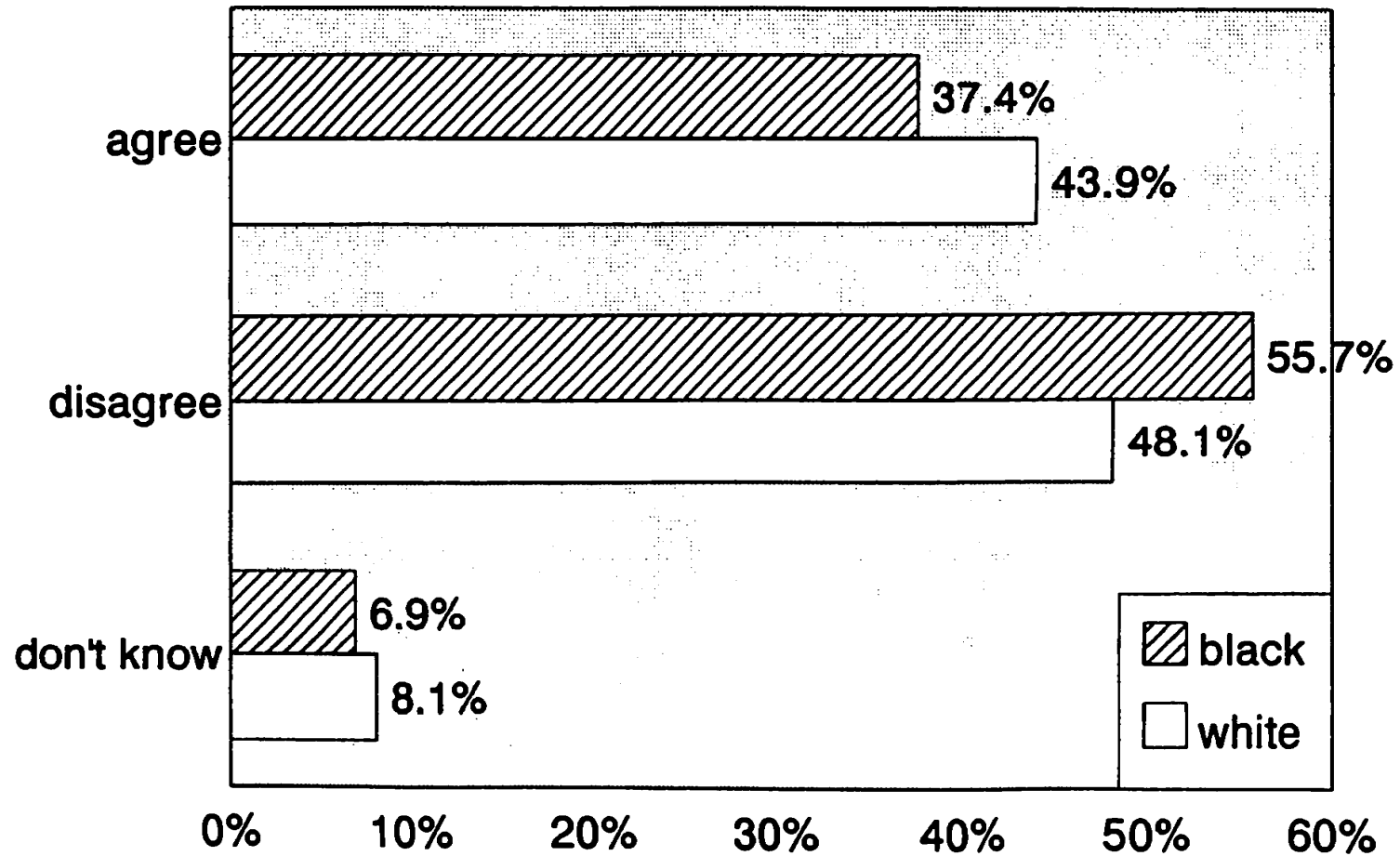
Percent response, LCA poll, August 1991

Fig. 2: Blacks, other minorities are less likely to agree that chemical companies are working to reduce pollution



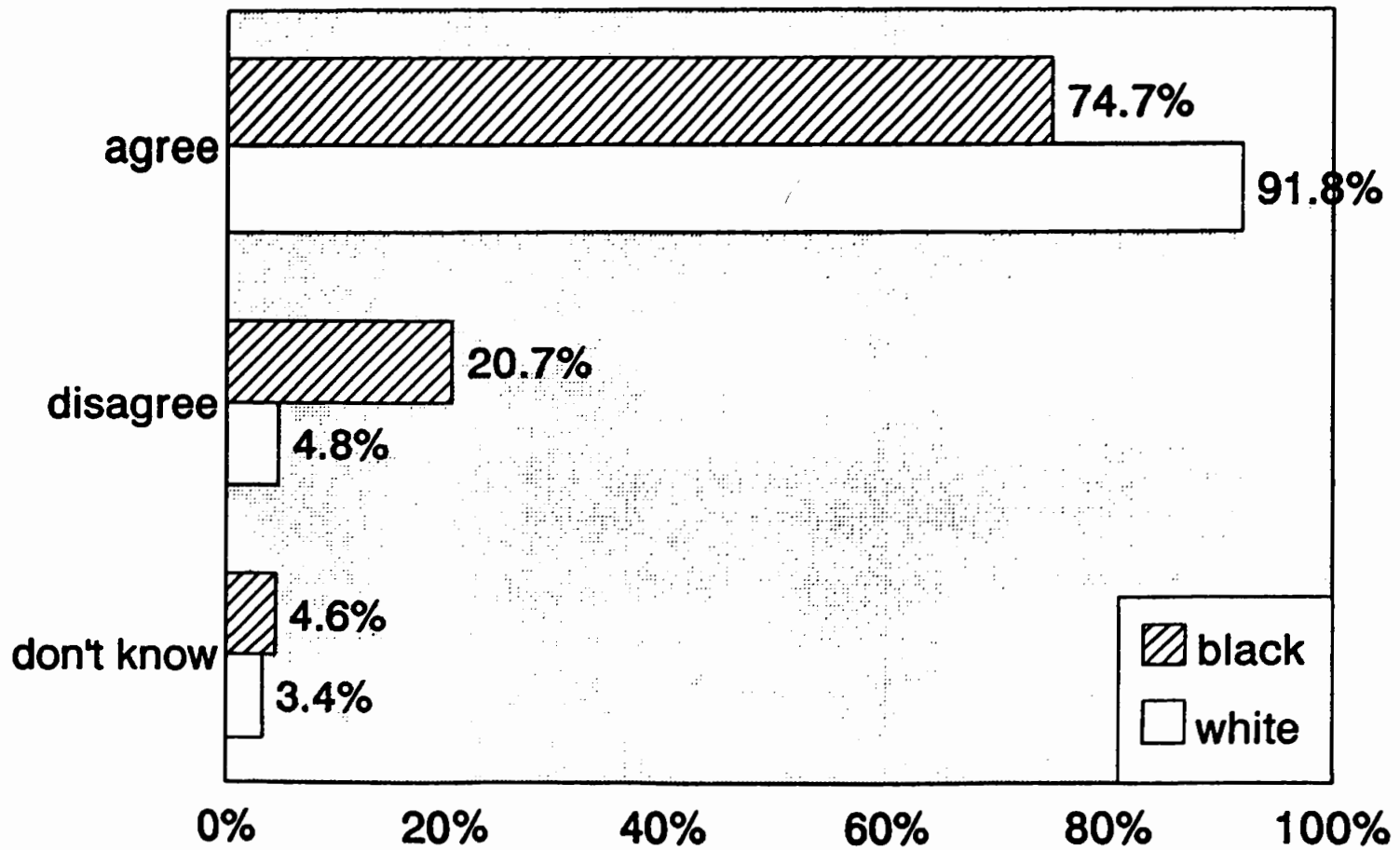
Percent response, LCA poll, August 1991

Fig. 3: Blacks, other minorities are less likely to agree that chemical companies listen to their neighbors



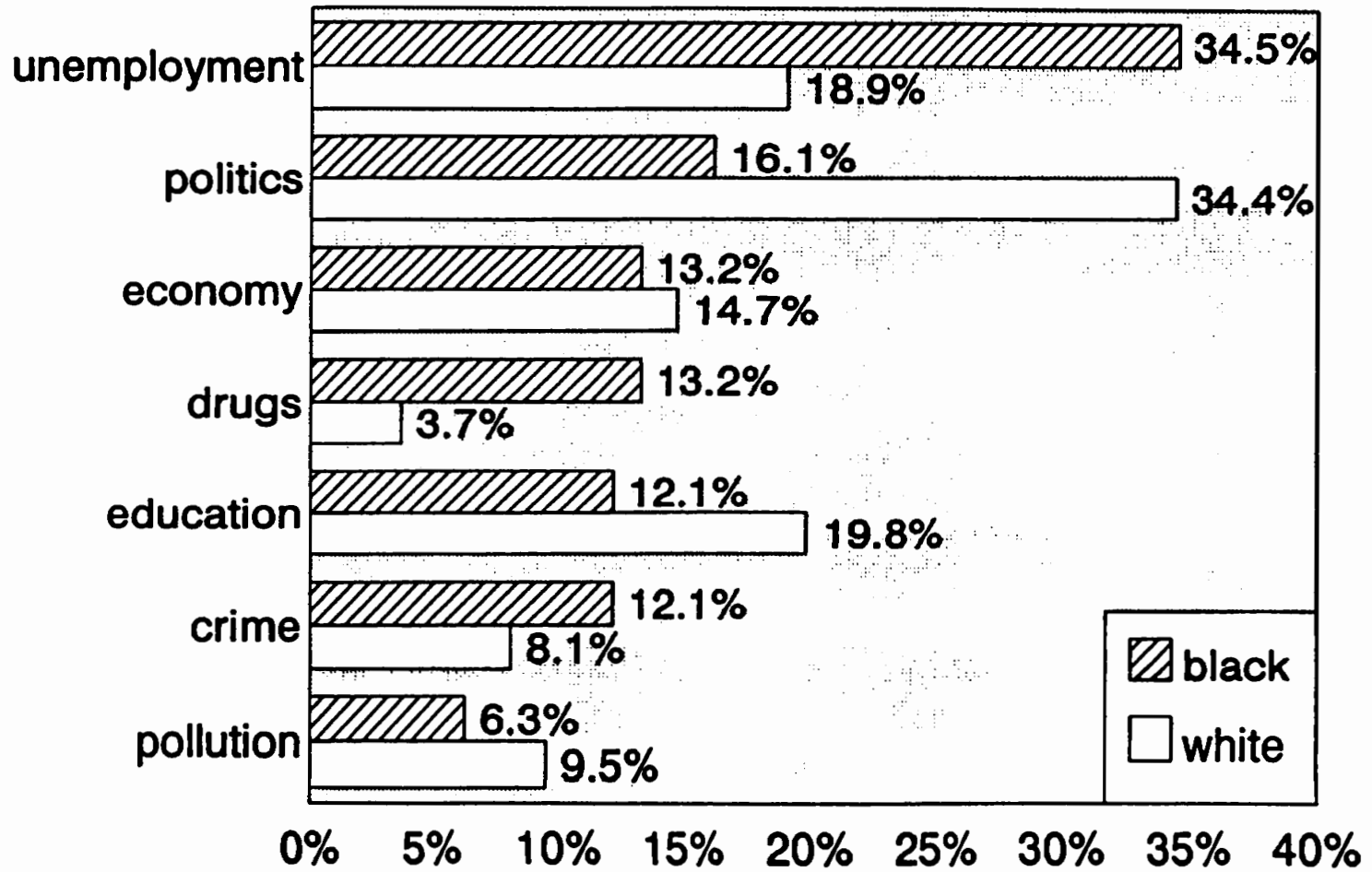
Percent response, LCA poll, August 1991

Fig. 4: Blacks, other minorities are less likely to agree that chemical companies provide needed jobs



Percent response, LCA poll, August 1991

Fig. 5: Blacks, other minorities cite unemployment as the most important problem in Louisiana



Percent response, LCA poll, August 1991

Appendix C: LCA Board of Directors

LCA BOARD OF DIRECTORS, 1991-1992

Joseph MacKenzie, Chairman
Chevron Chemical Company

Tom Gray, Vice-Chairman
Union Carbide Corporation

Ray Torgerson, Secretary
Shell Chemical Company

Wayne Leonard, Treasurer
Borden Chemical & Plastics

Scott Shean
Agrico Chemical/Freeport McMoRan

Don Romanik
American Cyanamid Company

Bobby Shackelford
Ampro Fertilizer, Inc.

William Moran
BASF Corporation

David Gleason
E. I. Dupont De Nemours & Company

Bill Senn, Jr.
Exxon Chemical Americas

Alden Andre'
Formosa Plastics Corporation

Chris Jones
Kronos La. Inc.

Tommy Morrow
Occidental Chemical Corporation

John Friend
Vista Chemicals

John Waupsh
Vulcan Materials Company

Larry Adcock, Past Chairman
Dow Chemical USA, La. Division

Appendix D: LCA Environmental Position Paper



LOUISIANA CHEMICAL ASSOCIATION

DAN S BORNE
PRESIDENT

LCA ENVIRONMENTAL POSITION PAPER

December 16, 1991

Louisiana will have a new administration in 1992. With any change of this magnitude, there are questions about how the state's environmental regulatory activities will be governed.

This paper lays out the environmental position of the Louisiana Chemical Association's member companies and addresses the concerns of some citizens that industry will be less ardent in its efforts to clean up the environment.

Louisiana: The Public Drives Environmental Leadership

Our environmental performance will continue to improve. We recognize and acknowledge that much of our environmental performance is driven by the public, both as consumers of our products and as neighbors to our facilities. We also hope that the public will recognize that we are not just 65 faceless companies; rather, we are 30,000 of their neighbors and relatives making daily, positive contributions to our state and nation.

Quite simply, our goal is to have Louisiana viewed by the nation as a leader in environmental management. We want to help prove to the nation that Louisiana can make mutual progress in improving its economy while continuing to improve its environment. We will continue to take a leadership role to ensure that this goal is achieved.

Figuratively speaking, we have drawn a line in the sand...behind us...and we are not stepping back across it. Not in emissions, not in regulatory developments and compliance, not in enforcement, and not in attitude.

We have made some mistakes in environmental management in the past and we admit that. We are also undergoing a tremendous change from within the industry, a positive cultural change in the way we do business. Environmental considerations are no longer an "add on"; rather, they are primary design criteria for all of our present and future efforts.

Our Goal: Continuous Emissions Reduction

We have taken a leadership role in developing new waste reduction and waste minimization techniques and will continue to do so. These changes are already reaping significant benefits. Since 1987, the chemical industry has achieved a 51% reduction in total toxic chemical emissions to Louisiana's air, land and water. Many of these reductions are a voluntary response to public concerns about emissions. We recognize that the public is using emission levels as a yardstick to measure our environmental commitment, and we accept that.

We are also committed to further reductions. The state will achieve an overall 50% reduction in air toxics (1988 base year) by 1996 as required by the Louisiana Air Toxics law and our facilities will be integral to this effort. Our ultimate goal is the elimination of all wastes, even though we realize it may not be technologically possible. We will work toward this goal by continually striving for ongoing reductions in the amount of wastes we generate and in the emissions we release to the environment.

We Support Strong, Fair Environmental Policies

Companies need to know the rules of the game before they invest or re-invest in Louisiana. A strong, fair environmental posture is critical to the state's long term economic growth and the viability of our own industry. We will continue to support a well-funded DEQ and strong environmental enforcement. It is, however, incumbent upon the state to keep regulations tough, equitable, consistent and based on solid science.

We are taking an active role in the process of developing environmental legislation, policies and regulations. That process should continue to be conducted in an honest, open manner, and requires give and take among a variety of interests: industry, regulators, citizens, legislators and others. Our goal is to continue to work with, rather than against, the regulatory and environmental community. And, on occasion, if we "agree to disagree" on some issues, we'll have good, justifiable reasons.

Working Hand-in-Hand to Make Positive Changes

We are committed to a spirit of cooperation and teamwork. We feel there are no good guys or bad guys on environmental issues. We agree that there is a need to jointly develop solutions to real problems. We have recently participated in coalition building activities, such as the Ozone Task Force, the Air Toxics Committee, and several Community Advisory Panels, which demonstrate that cooperative solutions can be developed. Our goal is to expand these types of cooperative endeavors.

Our Commitment to Louisiana's Future

Our commitment is a simple one...continuous improvement. We accept that the public, including some of our own employees and their families, may be skeptical. We appreciate the public's concern over the impacts of our industry and are committed to addressing those concerns, not just with words, but through our actions. Track our performance, review the trends in annual emissions reductions, look at the way we are designing our new production units, and visit our facilities. And, over time, together we will show the nation that Louisiana is truly a leader, both in industrial production and environmental management.

LCA CONTACT: Dan Borne or Richard Kleiner, 504/344-2609.

Appendix G



GUIDING PRINCIPLES

Member companies of the Chemical Manufacturers Association are committed to support a continuing effort to improve the industry's responsible management of chemicals. They pledge to manage their businesses according to these principles:

- To recognize and respond to community concerns about chemicals and our operations.
- To develop and produce chemicals that can be manufactured, transported, used and disposed of safely.
- To make health, safety and environmental considerations a priority in our planning for all existing and new products and processes.
- To report promptly to officials, employees, customers and the public, information on chemical-related health or environmental hazards and to recommend protective measures.
- To counsel customers on the safe use, transportation and disposal of chemical products.
- To operate our plants and facilities in a manner that protects the environment and the health and safety of our employees and the public.
- To extend knowledge by conducting or supporting research on the health, safety and environmental effects of our products, processes and waste materials.
- To work with others to resolve problems created by past handling and disposal of hazardous substances.
- To participate with government and others in creating responsible laws, regulations and standards to safeguard the community, workplace and environment.
- To promote the principles and practices of Responsible Care by sharing experiences and offering assistance to others who produce, handle, use, transport or dispose of chemicals.

Appendix H

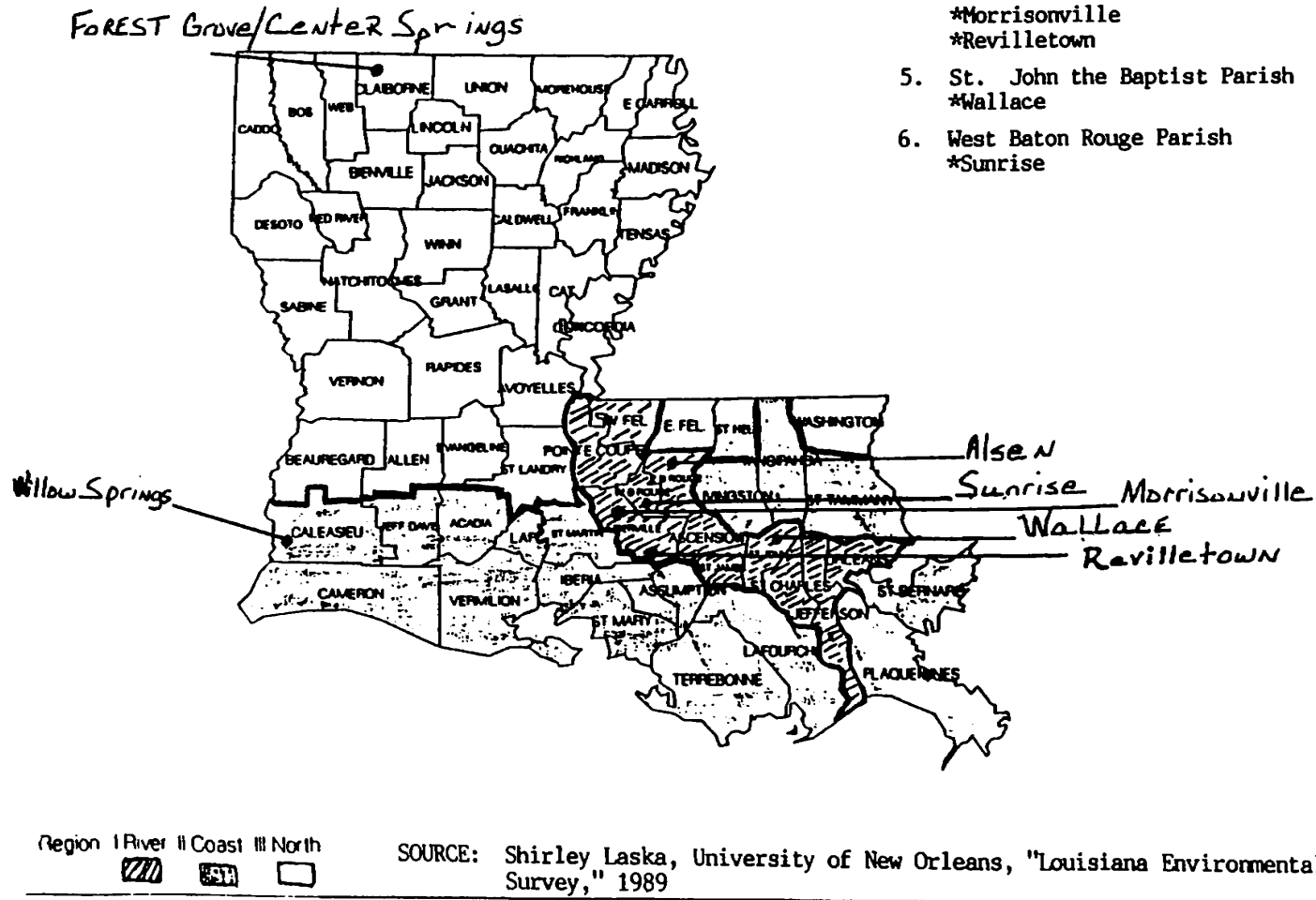
THE LOWER MISSISSIPPI RIVER INDUSTRIAL CORRIDOR



SOURCE: Louisiana Department of Environmental Quality, Louisiana Toxics Release Inventory, 1991, p. 22

Louisiana

Parishes and Regions



Appendix J

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**UNITED STATES
COMMISSION ON
CIVIL RIGHTS**

624 Ninth Street, N.W.
Washington, D.C. 20425

September 24, 1993

**The Honorable Carol M. Browner
Administrator
Environmental Protection Agency
Room 1200 WT
401 M Street, S.W.
Washington, D.C. 20460**

Dear Administrator Browner:

The Louisiana Advisory Committee to the U.S. Commission on Civil Rights, as part of its responsibility to advise the Commission on civil rights issues within the State, held a factfinding meeting in February 1992, in Baton Rouge, Louisiana. The purpose of that meeting was to gather information on environmental problems in selected black communities in Louisiana with particular emphasis on communities in southern Louisiana located in and around hazardous waste and industrial facilities. The enclosed report, The Battle for Environmental Justice in Louisiana...Government, Industry, and the People, is the published result of that meeting and other background research conducted by the Louisiana Advisory Committee.

The Advisory Committee takes note of the studies across the country that indicate that some industrial and hazardous waste facilities are located disproportionately in minority communities and that the residents may face hazards more so than the rest of the population. Based upon studies and reports from environmental groups, civil rights groups and government agencies, claims have been made that racial minorities are distinctly disadvantaged by many factors including discrimination, income, inadequate health care, low quality housing, limited access to government, and political empowerment. The Advisory Committee finds that black communities in the corridor between Baton Rouge and New Orleans are disproportionately impacted by the present State and local government system for permitting and expansion of hazardous waste and chemical facilities. These communities are most often located in rural and unincorporated areas, and residents are of low-socioeconomic status with limited political influence. Some residents of these communities complain that they are excluded from the local and State siting and permitting decisionmaking affecting their communities.

The information contained in this report does not rise to a finding of intentional discrimination in environmental decisionmaking by the State and local governments in Louisiana. However, there is evidence of environmental disparities between white and black populations as it relates to siting and permitting practices and a continued perception that minority communities are targeted and sanctioned for hazardous waste and industrial facilities.

Among numerous findings and recommendations of the report, the Advisory Committee finds that in the health science community at the State and Federal levels, there exists little evidence about environmental pollution exposures and its connection to health effects and the contributions of race, ethnicity or income. Nor is data routinely collected on health risks posed by multiple industrial facilities, cumulative effects, or different pathways of exposure. Some residents of communities affected by hazardous waste and industrial facilities complain that the health information delivered to the public is often incomplete and confusing, causing a general mistrust of government-sponsored studies. Some environmental and community-based groups recommend to residents to avoid such studies. The Advisory Committee concurs with and supports the U.S. Environmental Protection Agency's recommendation cited in the 1992 report, Environmental Equity Report: Reducing Risks for All Communities that:

EPA should establish and maintain information which provides an objective basis for assessment of risks by income and race, beginning with the development of a research and data collection plan. EPA should incorporate considerations of environmental equity into the risk assessment process. It should revise its risk assessment procedures to ensure, where practical and relevant, better characterization of risk across populations, communities, or geographic areas. These revisions could be useful in determining whether there are any population groups at disproportionately high risk.

Although significant reform in environmental laws and policymaking is underway by the U.S. Environmental Protection Agency to merge equity into environmental protection decisionmaking, enforcement authorities and procedures have not yet been established to implement and ensure that private, local, State and other Federal entities are in compliance with environmental equity policies. Moreover, final decisions have not yet been made on how equity measures will be coordinated with U.S. Environmental Protection Agency's civil rights enforcement efforts. Therefore, the Advisory Committee supports EPA's 1992 report recommendation that:

The U.S. Environmental Protection Agency should review and where appropriate, revise its permit, grant, monitoring and enforcement procedures to address high concentration of risk in racial minority communities.

In this effort we concur with the Louisiana Advisory Committee's recommendation that the U.S. Environmental Protection Agency should assess Louisiana's permit and siting practices at the State and local parish levels to ensure that decisions are free from inequities and discrimination. Further, strategies should be developed which will target environmental equity enforcement under the civil rights statutes and regulations administered by the U.S. Environmental Protection Agency; assess the process by which the U.S. Environmental Protection Agency enforces the environmental laws and how the agency's external civil rights compliance program will be implemented in conjunction with equity initiatives. Finally, the U.S. Environmental Protection Agency should monitor the communities of Alsen, Wallace, Forest Grove/Center Springs and Willow Springs, and other similarly situated communities to ensure that siting decisions in those communities are in compliance with EPA equity and civil rights standards.

On behalf of the Louisiana Advisory Committee, we ask that your office review the report, and if warranted, undertake a comprehensive civil rights review of the State's environmental policies and practices. We further ask that you advise us of your reaction to the report.

If more information is needed regarding this matter, we ask that your representative contact Melvin L. Jenkins, director of the Commission's Central Regional Office, Kansas City, Missouri at (816) 426-5253.

Thank you for your cooperation in this matter. I look forward to hearing from you soon.

Sincerely,

For the Commissioners



ARTHUR A. FLETCHER
Chairperson

Enclosure

U.S. COMMISSION ON CIVIL RIGHTS
Central Regional Office
Old Federal Office Building
911 Walnut Street, Room 3103
Kansas City, MO 64106

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