

1994

Protecting Endangered Communities

Clarice E. Gaylord

Geraldine W. Twitty

Follow this and additional works at: <https://ir.lawnet.fordham.edu/ulj>



Part of the [Environmental Law Commons](#)

Recommended Citation

Clarice E. Gaylord and Geraldine W. Twitty, *Protecting Endangered Communities*, 21 Fordham Urb. L.J. 771 (1994).

Available at: <https://ir.lawnet.fordham.edu/ulj/vol21/iss3/16>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Urban Law Journal by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

PROTECTING ENDANGERED COMMUNITIES

Clarice E. Gaylord† and Geraldine W. Twitty‡

I. Introduction

While environmentalists have traditionally battled to protect endangered species, such as the spotted owl, the blue whale, and the California condor, nontraditional environmentalists have struggled to protect and preserve a different endangered species: people of color and low socioeconomic status. This nontraditional role is particularly relevant because many communities, both urban and rural, have become threatened by constant, multiple exposures to toxic air, contaminated water, and pesticide-ridden and chemical-laden soils.¹

Numerous reports, including a 1992 study by the United States Environmental Protection Agency ("EPA"), have suggested that people of color and low income communities have been, for decades, the unwilling recipients of numerous hazardous waste sites, incinerators, chemical factories, and sewage treatment plants.² Historically, these communities often lacked the essential resources necessary to oppose sitings of potentially hazardous facilities: money, organization, and political voice.³ Land in these communities is usually inexpensive and, therefore, is a logical, affordable target of local land-use planners and zoners seeking sites for environmentally hazardous projects. There is little or no political resistance to such sitings since most of these communities are perceived as powerless. In fact, the siting of new facilities, even hazardous industries, brings the promise of economic prosperity and tax revenues, forcing these communities, which often have high unemployment, to choose between economic security and environmental degradation.

Continuous exposure to toxic pollutants from multiple sources has been associated with significant increases in the rates of cancer,

† Director, Office of Environmental Equity, United States Environmental Protection Agency.

‡ Senior Scientist, Office of Environmental Equity, United States Environmental Protection Agency.

1. Daniel Zwerdling, *Poverty and Pollution*, 37 PROGRESSIVE 25, 25-6 (Jan. 1973).

2. See U.S. ENVTL. PROTECTION AGENCY, ENVIRONMENTAL EQUITY: REDUCING RISK FOR ALL COMMUNITIES (June 1992).

3. Robert E. Merritt, *Environmental Equity: Confronting Racial Injustice in Land Use Patterns*, 2 LAND USE FORUM 3, 3-5 (1993).

asthma, chronic bronchitis, emphysema and other respiratory diseases, reproductive and birth defects, immunological problems, and neurological disorders.⁴ More systemic studies are just now being designed to look at the correlation between etiology, latency effects, casual and multiple exposures, and health effects.

II. Profiles of Endangered Communities

A. Problems Related to Siting of Facilities

When local environmental conditions deteriorate, communities become endangered, public safety risks increase, municipal support services diminish, and residents move away, are bought out and relocated, or die from exposure-related illnesses. These communities become contaminated with toxins such as dioxin, arsenic, mercury, cadmium, and lead, which permeate not only the soils, waterways, and vegetation, but also the homes. Residential growth then stagnates and industrial growth increases. Indeed, many cities simply rezone these communities as "light industrial parks," thereby attracting more polluting industries.

For example, Altgeld Gardens is a public housing community for thousands of low-income African Americans in the southside of Chicago. This 6,000 unit complex was built over forty years ago on top of an abandoned landfill, and it is surrounded by eleven separate polluting facilities: landfills, incinerators, oil refineries, a paint factory, a steel mill, a sewage treatment plant, a chemical plant, a scrap metal yard, a lagoon, a sludge drying bed, and a freeway.⁵ This community has one of the highest concentrations of severe environmental problems and concerns in the country. Groundwater and many surface waters are highly contaminated. Air quality is in non-attainment for fine particulates and ground-level

4. Douglas Lee & H.K. Lee, *Conclusions and Reservations*, in ENVIRONMENTAL FACTORS IN RESPIRATORY DISEASES 250-51 (Douglas Lee ed., 1972); U.S. ENVTL. PROTECTION AGENCY, *supra* note 2. Exposure-related illness is particularly exacerbated in small rural towns because there is limited access to adequate health care facilities that specialize in, or even recognize, health effects resulting from environmental exposure. For instance, an area known by some as "Cancer Corridor"—the 85 mile industrial corridor between Baton Rouge and New Orleans which hosts more than 160 petrochemical factories—has the worst air quality in the nation and a lung cancer incidence well above the national norm. ROBERT D. BULLARD, DUMPING IN DIXIE: RACE, CLASS, AND ENVIRONMENTAL QUALITY 65-69 (1990).

5. *Hearings on Environmental Justice Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 103d Cong., 1st Sess. (1993) (testimony of Hazel Johnson, Resident of Altgeld Gardens and founder and Executive Director of People for Community Recovery on Environmental Justice).

ozone,⁶ particularly due to hazardous emissions from the steel mill coke ovens and landfill sites. Additional toxic air discharges originate from the numerous industries and motor vehicles in the area.

Historic industrial and land-use patterns in Chicago's southside, some dating back to the mid-1800s, have grossly impacted the environment and have led to the high concentration of landfills and dump sites in that area. Most of the area was originally wetlands and was treated as "expendable." Local zoning policies allowed disposal facilities to be sited in Chicago's southside before the EPA was authorized to regulate hazardous waste and to protect wetlands.

Today, over forty hazardous waste sites, including landfills, dumps, abandoned industrial buildings, and spill sites, have been identified in Chicago's southside. All were evaluated in the early years of the EPA, using the old Superfund hazardous-ranking scoring system. However, because Altgeld Gardens and other city residents drink Lake Michigan water, rather than the widely contaminated groundwater, the exposure risks to public health and the environment were considered insufficient to qualify for the National Priorities List and subsequent remedial cleanups.

The situation in Altgeld Gardens recently caused a shift in the EPA's paradigm for determining its enforcement targeting. The EPA had never concentrated on the cumulative, synergistic effects of such multifaceted exposures. Until recently, EPA enforcement efforts have been media specific; that is, Clean Air, Clean Water, Resource Conservation and Recovery Act ("RCRA"), and the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") provisions were dealt with separately. The EPA is only now realizing the necessity of changing this approach in order to help communities in crisis, such as Altgeld Gardens. The EPA is switching to more multi-media, risk-based, enforcement targeting.⁷ Specifically, it is developing different

6. Under the Clean Air Act, the EPA must establish standards for ground-level ozone, carbon monoxide, sulfur dioxide, nitrogen dioxide, lead, and particulate matter. 42 U.S.C. §§ 7409-10 (1988). Each year, the EPA identifies areas having excess levels of these pollutants as "non-attainment" areas.

7. On July 22, 1993, EPA Administrator Carol M. Browner proposed a consolidation and reorganization of EPA's Headquarters Enforcement Program—the Green Border Program. Among the new provisions is a separate division, the Multimedia Enforcement and Strategic Planning Division, which will provide multimedia enforcement capacity to ensure a whole facility-, ecosystem-, and population-based approach to enforcement. This provision has *not* advanced beyond the level of proposed activity. Interview with Chen Wen, Office of Enforcement, U.S. Env'tl. Protection Agency (May 2, 1994).

models of risk assessment that account for cumulative, holistic, and synergistic consequences, and it is re-evaluating its Superfund scoring system to account for a broader array of exposure pathways.

Measures must be taken to reduce exposure, risk, and ultimately, the occurrence of similar high-density mixed-residential/industrial land uses. The local permit-approval process must prevent multiple sitings in communities like Altgeld Gardens. Tragically, the situation in Altgeld Gardens is duplicated perhaps one hundred-fold throughout the United States, particularly in areas where people of color and of low income reside.

When property is rezoned to a mixed land-use area, property values generally plummet. Homeowners cannot sell their property because prospective buyers do not want to live near incinerators, landfills, sewage treatment facilities, or industrial plants. Residents who want to escape and to relocate may find themselves under great psychological stress.⁸ Since relocation is not an option for low-income residents, a cleanup of the community must occur. Unfortunately, funding for cleanup projects depends on whether the location qualifies as either a Superfund site or an RCRA corrective action site, and whether a state has the authority and funding to clean up the community.

The federal government has recently been criticized for not employing the remedial measure of cleanup, but instead choosing containment in minority communities.⁹ Since containment does not halt the degradation of endangered communities, communities not chosen for cleanup are effectively sentenced to extinction.

Environmental degradation and abuse is turning some century-old communities where people of color reside into ghost towns. Communities in Louisiana, such as Alsen, Sunrise, St. Gabriel, Morrisonville, Wallace, and Lyons, are victims of prolonged exposure to numerous petrochemical plants and other polluting industries.¹⁰ As a result, these communities are disappearing.

In 1980, Wallace, Louisiana, a river town on the west bank of the Mississippi River had a population of 750 residents, of whom 98% were African Americans. This town was founded by former slaves who worked and bought their land from sugar cane plantation

8. BENJAMIN A. GOLDMAN, *THE TRUTH ABOUT WHERE YOU LIVE: AN ATLAS FOR ACTION ON TOXINS AND MORTALITY* 258-88 (1991).

9. Marianne Lavelle & Marcia Coyle, *Unequal Protection: The Racial Divide in Environmental Law*, NAT'L L. J., Sept. 21, 1992, at S1, S1-S12.

10. Bob Anderson, *Plant Sites: Is Racism an Issue?*, BATON ROUGE MORNING ADVOC., May 12, 1992, at A1, A5.

owners. Historic cemeteries, former slave quarters, and quaint churches add to Wallace's rich heritage. But Wallace is dying.¹¹ Gigantic petrochemical plants employing thousands of non-resident Whites dot this town.¹² These plants are apparently self-contained because no commercial development is evident in Wallace. There are no malls, theaters, restaurants, or even fast food restaurants. Most of the side roads are unpaved. There are no sewage lines or garbage pick-ups. The school system is grossly under-equipped and understaffed. The young adults who manage to attend college rarely return to the town in large numbers.¹³ The population of Wallace is currently less than 400 and is mostly elderly. Moreover, Wallace's population has an unusually high incidence of cancer, asthma, hypertension, strokes, and other illnesses. Wallace has received no economic benefits from its proximity to these industrial facilities.

Wallace's residents are economically poor and have little political clout. In 1989, the governing body of St. John Parish rezoned Wallace, further converting it from residential to commercial and heavy industrial use.¹⁴ The purpose of the rezoning was to attract yet another industrial giant, Formosa Chemicals, to the Parish and thereby to create jobs and taxable income. Because the proposed facility was to be built on an historic plantation that predated the Civil War, preservationists joined with national, environmental justice activists to block the siting.¹⁵ Despite the opposition, the rezoning went through.¹⁶

Other historic African-American Louisiana towns in similar predicaments have negotiated with private industry to arrange for voluntary property buy-outs and relocation programs. For instance, Morrisonville, Louisiana, comprised of 300 residents and 208 acres, was surrounded on all sides by a Dow Chemical U.S.A. plastics plant. The plant was ranked in 1990 as one of the top twenty-five statewide emitters of toxic chemicals that pollute both air and groundwater.¹⁷ Dow's facilities expanded so close to the community that in 1989, with the residents' safety at risk, Dow of-

11. Lavelle & Coyle, *supra* note 9, at S1-12.

12. LOUISIANA ADVISORY COMM. TO THE U.S. COMM'N ON CIVIL RIGHTS, THE BATTLE FOR ENVIRONMENTAL JUSTICE IN LOUISIANA. . . . GOVERNMENT, INDUSTRY, AND THE PEOPLE 55-57 (Sep. 1993) [hereinafter LOUISIANA COMM.].

13. Site visit to Wallace, La. by Clarice Gaylord (Nov. 3, 1993).

14. LOUISIANA COMM., *supra* note 12, at 56.

15. *Id.*

16. *Id.*

17. *Id.*

ferred the residents a voluntary buy-out and relocation program. Ninety-five percent of the residents accepted the buy-out. Some were glad to escape from the unhealthy, hazardous conditions; others complained that their historic community had been destroyed.¹⁸

Small, rural towns such as Wallace and Morrisonville are not well served by the federal, state, or local governments. As in Altgeld Gardens, residents of these communities are virtually excluded from participating in local and state decisionmaking about sitings that affect their communities. EPA, state, and local officials have also failed to establish adequate safeguards to protect these communities from high concentrations of hazardous facilities. Moreover, no documentation links health risks to this kind of exposure.

B. Problems Not Related to Siting of Facilities

1. Lead Poisoning in the Home

Environmental abuses and exposure to toxicants are not limited to siting and permitting issues. More than three million children in the United States, mostly African Americans and Hispanics, are currently exposed to lead contamination because they reside in old and poorly maintained buildings.¹⁹ African-American children from poor families are subjected to dangerous levels of lead at a rate nine times that of children from more affluent families.²⁰ These children are at greater risk of ingesting lead-laden paint, inhaling lead-laden dust within the home, consuming water from lead-leaching plumbing, ingesting foods from soldered cans, and playing in soil that is saturated with lead from years of gasoline emissions.²¹

It has been reported that fifteen percent of American children have blood lead levels above the standard ten micrograms per deci-

18. LOUISIANA COMM., *supra* note 12, at 56.

19. AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY, *THE NATURE AND EXTENT OF LEAD POISONING IN CHILDREN IN THE UNITED STATES: A REPORT TO CONGRESS* 3 (1988).

20. John F. Rosen, *Metabolic Abnormalities in Lead Toxic Children: Public Health Implications*, 65 BULL. OF N.Y. ACADEMY OF MED. 1067, 1067-83 (1989).

21. Joel Schwartz & Ronnie Levin, *Lead: Example of the Job Ahead—Inner City Children Suffer the Most*, EPA J., Mar./Apr. 1992, at 42, 42-44; *Lead Cleanup in the Midwest*, EPA J., Mar./Apr. 1992, at 56.

liter of blood.²² Fifty-five percent of all African-American children existing at the poverty level have an increased blood lead level.²³ Similar documentation exists for Hispanic children in the lower economic strata.²⁴ As a result of lead exposure, the poisoned children grow up mentally disabled and learning impaired.²⁵

2. Pesticide Poisoning

Approximately 300,000 migrant farm-workers are poisoned each year because of unprotected exposure to pesticides and toxic hazards.²⁶ This is exacerbated by deplorable housing conditions, unsafe water, and inadequate sewage facilities. Two authors independently have reported high pesticide levels in blood and adipose tissue among people of color and low income populations.²⁷ These problems are particularly acute around the Mexican border in small unincorporated townships called colonias.²⁸ In a colonia, utilities typically associated with urban communities are totally lacking. Here, the homes are mostly constructed of scrap lumber. Water, gas, electricity, and sewage services do not exist.²⁹

These are but a few examples of unequal protection and disparate exposure. In a recent report, Benjamin Goldman documented sixty-four studies that provided overwhelming empirical evidence that people of color and of lower income communities face disproportionate environmental impacts in the United States.³⁰ The Goldman report further states that, in the endangered communities, race is a more reliable predictor of environmental abuse than

22. *Lead Cleanup in the Midwest*, *supra* note 21, at 56. A study by the University of Maryland suggests that the current standard is too high. Anita Manning, *Blood Lead Standard May Be Too High*, USA TODAY, Oct. 19, 1993, at A1.

23. Manning, *supra* note 22, at A1.

24. Olivia Carter-Pokras et al., *Blood Lead Levels of 4-11 Year-old Mexican-American, Puerto-Rican, and Cuban Children*, 105 PUB. HEALTH REP. 388, 390-91 (1990).

25. Schwartz & Levin, *supra* note 21, at 42-44.

26. U.S. ENVTL. PROTECTION AGENCY, *supra* note 2 at 16; Ivette Perfecto & Baldemar Velasques, *Farm Workers: Among the Least Protected—They Suffer the Most from Pesticides*, EPA J., Mar./Apr. 1992, at 13, 13-14.

27. THE SOCIAL BURDENS OF ENVIRONMENTAL POLLUTION: A COMPARATIVE METROPOLITAN DATA SOURCE 622 (Brian J.L. Berry ed., 1977); F.W. Kutz et al., *Racial Stratification of Organochlorine Insecticide Residues in Human Adipose Tissue*, 19 J. OCCUP. MED. 619, 619-23 (1977).

28. Jack Lewis, *The U.S. Colonias: A Target for Aid—Border Shantytowns Are Separate But Unequal*, EPA J., Mar./Apr. 1992, at 61, 61-62.

29. *Id.*

30. Benjamin A. Goldman, *Not Just Prosperity: Achieving Sustainability with Environmental Justice*, NAT'L WILDLIFE CORP. CONSERVATION COUNCIL 9 (1993).

is income.³¹ While local, state, and federal laws may appear to be racially neutral, the application of such laws and regulations may not provide for the equal protection of all citizens.

III. Recognition of Endangered Communities

Environmentally inequitable issues were formally brought to the attention of the EPA in 1990 by a group of social scientists, political activists, and biological investigators calling themselves the Michigan Coalition.³² They pressured the EPA, demanding that it focus more attention on environmental injustices. William K. Reilly, the EPA Administrator at the time, formed a work group to examine EPA's current and past practices and to determine whether the Agency was negligent or insensitive to socioeconomic concerns in carrying out its policies, rule-making, enforcement, inspection, research, risk assessment, risk management, and risk communication. The workgroup report was released in June, 1992. It found that the EPA lacked a record of accomplishment in these areas.³³ The report concluded that environmental and health data had not been routinely collected and analyzed by income and race, by health risks posed by multiple industrial facilities, by cumulative and synergistic effects, or by multiple and different pathways of exposure.³⁴

Although the EPA debated accepting environmental injustice as a formal issue, the movement gathered its strength and was fueled by grass roots organizations and community activists who viewed environmental injustices as a life and death struggle for the survival of their communities. These organizations held the First National People of Color Environmental Leadership Summit in Washington, D.C. in October, 1991. More than 650 grass roots leaders adopted "Principles of Environmental Justice"—a platform calling for an

31. *Id.* In tests comparing racial and income disparities, racial disparities were detected in every case for six of the ten kinds of environmental concerns examined, and in the majority of cases for the four remaining concerns (90% of tests for racial disparities in air pollution, 89% of the tests for toxic releases, 78% of the tests for hazardous waste, and 73% of the tests for solid waste). When race and income were compared, to determine whether race or income was independently or more significantly related to environmental disparity, race proved more important in nearly three-quarters of the tests (22 out of 30).

32. Bunyan Bryant & Paul Mohai, *The Michigan Conference: A Turning Point*, EPA J., Mar./Apr. 1992, at 9, 9-10.

33. U.S. ENVTL. PROTECTION AGENCY, *supra* note 2, at 12-14.

34. *Id.* at 12-14.

end to the discriminatory poisoning of low income communities and of people of color worldwide.³⁵

The leaders of the environmental justice movement continued to hold the EPA accountable for its actions. These activists met four times with the EPA administrators and senior officials, constantly prodding for progress reports and requesting permission to review operating plans, procedures, and financial reports. These same leaders met with President Clinton on February 11, 1994, at the signing of the Executive Order.³⁶

Under the Clinton Administration, the following events have served significantly to fuel the environmental justice movement:

- (1) President Clinton, in his Earth Day message, stated that environmental justice is a priority for his administration and directed the EPA to work with the Department of Justice on targeted enforcement strategies;
- (2) an Executive Order released by President Clinton on February 11, 1994, directed all federal agencies to deal with environmental justice issues in minority and low income populations;³⁷ and
- (3) EPA Administrator, Carol Browner, further legitimized environmental justice at the federal level by making it one of her top four agency priorities.

IV. Responsibility for Protecting Communities

A. Responses at the Federal Level

The primary responsibility for protecting endangered communities resides at the federal level. It is the EPA's responsibility to provide equal environmental protection to all individuals regardless of race, creed, ethnicity, culture, or socioeconomic status. Until 1990, however, the EPA failed to recognize that environmental inequities and disproportionate environmental risks existed in mi-

35. Charles Lee, *Beyond Toxic Wastes and Race*, in *CONFRONTING ENVIRONMENTAL RACISM: VOICES FROM THE GRASSROOTS* 55-52 (Robert D. Bullard ed., 1993).

36. Exec. Order No. 12,898, 59 Fed. Reg. 7,629 (Feb. 11, 1994).

37. Exec. Order No. 12,898. Specifically, each agency is directed to "make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." *Id.* The Order calls for the creation of an Interagency Working Group on Environmental Justice to organize and coordinate agency activities. Additionally, the Order addresses "the need for ensuring the protection of populations with differential patterns of subsistence consumption of fish and wildlife" by requiring federal agencies to inform the public of risks associated with certain consumption patterns. *Id.*

nority and low-income populations. Equal protection is now being recognized as a serious factor as the EPA develops policies, regulations, guidelines, and strategies tailored to address this long-standing issue.

One glaring problem is the absence of specific legislation on environmental justice. There are several bills on the congressional agenda, including the reintroduction of the 1992 Environmental Justice Act, initially offered by then Senator Al Gore.³⁸ The 1993 version of the Environmental Justice Act, sponsored by Senators Baucus, Moseley-Braun, and Campbell, is designed "to establish a program to ensure nondiscriminatory compliance with environmental, health, and safety laws and to ensure equal protection of the public health."³⁹ The bill includes provisions for the identification and ranking of environmental high-impact areas, the reduction of toxic chemicals, and technical assistance grants.

The Environmental Justice Act of 1993, as introduced by John Lewis, differs significantly from the version sponsored by Senator Baucus *et al.*, in calling for a moratorium on siting of environmental high-impact areas.⁴⁰ Moratoriums on new facilities in communities already overloaded with multiple polluting sources is a topic of considerable debate. One side argues that the goal of reducing or eliminating toxic exposure cannot be adequately achieved if new sources are being added to the total chemical load of these communities.⁴¹ The other side argues that the elimination of commercial growth is not the answer and that only stricter pollution controls and better technology can prevent unhealthy exposures and continue to stimulate the economy.⁴²

The Lewis bill also calls for data collection on environmental health effects in impacted communities and the institution of mechanisms to ensure that the residents of these communities have both "the opportunity and the resources to participate in the technical process which will determine the possible existence of adverse health impacts."⁴³ The Lewis bill would encourage community participation through technical assistance grants.⁴⁴

38. S. REP. NO. 1611, 103d Cong., 1st Sess. (1993).

39. CENTER FOR POLICY ALTERNATIVES, ENVIRONMENTAL EQUITY ON THRESHOLD OF POLICY BREAKTHROUGH (1993).

40. H.R. REP. NO. 2105, 103d Cong., 1st Sess. (1993).

41. S. REP. NO. 1161, 103d Cong., 1st Sess. (1993).

42. H.R. REP. NO. 2105, 103d Cong., 1st Sess. (1993).

43. *Id.*

44. *Id.*

The Department of the Environment Act of 1993, introduced by Congressman John Conyers, calls for the elevation of the EPA Administrator to Cabinet status.⁴⁵ Such high-level recognition of the EPA would clearly signify the commitment of the Clinton Administration and Congress to environmental issues and would enhance the ability of the EPA to address environmental concerns more authoritatively. As it becomes more important to develop and maintain multifaceted approaches to environmental issues, there is a greater need for a Cabinet level Secretary whose strategies and policies can be integrated and accepted by other Department heads. The proposal also calls for creation of a Bureau of Environmental Statistics, an Office of Environmental Justice, and an Environmental Policy Commission. These three major divisions would be required to compile and disseminate information concerning environmental conditions, to address the disproportionate environmental impact faced by minorities and people of low income, and to make recommendations for changes in management, organization, and priorities to the Secretary. Unfortunately, this proposal was recently removed from deliberation by Congress.⁴⁶

The Community Information Statement Act, offered as an amendment to the Solid Waste Disposal Act, would require the preparation of a community information statement on all disposal facilities.⁴⁷ Some of the specific criteria called for includes race, ethnic background, and income in the affected communities. The Committee on Environment and Public Works is currently reviewing the amendment.

The Environmental Equal Rights Act of 1993, an amendment to the Solid Waste Disposal Act, would authorize petitions against construction of certain waste facilities scheduled for minority and low income communities.⁴⁸ The Act would grant "any citizen residing in a State in which a new facility for the management of solid or hazardous waste is proposed to be constructed in an environmentally disadvantaged community" the right to petition to prevent the issuance of an operating permit.⁴⁹

The Environmental Health Equity Information Act of 1993, an amendment to the Comprehensive Environmental Response,

45. H.R. REP. NO. 109, 103d Cong., 1st Sess. (1993).

46. Interview with Marilyn Jarvis, Administrative Aide to Congressman John Conyers (Feb. 24, 1994).

47. S. REP. NO. 533, 103d Cong., 1st Sess. (1993).

48. H.R. REP. NO. 1924, 103d Cong., 1st Sess. (1993).

49. *Id.*

Compensation, and Liability Act of 1980, "requires the Administrator of the Agency for Toxic Substances and Disease Registry to collect and maintain information on the race, age, gender, ethnic origin, income level, and educational level of persons living in communities adjacent to toxic substance contamination."⁵⁰ The enactment of this bill would allow the establishment of a database that would thoroughly characterize communities at risk. The Committee on Energy and Commerce is reviewing the document.⁵¹

The Lead-Based Paint Hazard Abatement Trust Fund Act of 1993 is a proposed amendment to the Residential Lead-Based Paint Hazard Reduction Act of 1992 and the 1986 Internal Revenue Code.⁵² Using revenue gained from excise taxes and a trust fund, the Act would authorize an entitlement program to allow states and local governments to operate lead abatement programs. Among its provisions are measures to increase affordable, safe housing and child care centers in low income communities. The current reviewing committees are Banking, Finance & Urban Affairs, and Ways and Means.

The Pollution Prevention and Incineration Alternatives Act of 1993, which is an amendment to the Resource, Conservation, and Recovery Act, would legislate a moratorium on the siting of new municipal solid waste incinerators until 1997.⁵³ Among the provisions to be instituted after 1997 is an impact statement relating the effect of such a siting on low-income minority communities. The Committee on Energy and Commerce is reviewing the document.⁵⁴

B. Responses at the State Level

Responsibility also rests in the hands of state and local city planners, zoning officials, housing experts, and environmental officers who must provide more responsible protection for all communities. The decisionmaking process for siting locally undesirable land uses needs to be re-evaluated so that inexpensive land and minimal community opposition are not the primary determinants in the process.

While the proposed federal bills are winding their way through Congress, ten states have taken the lead in proposing environmen-

50. H.R. REP. NO. 1925, 103d Cong., 1st Sess. (1993).

51. CENTER FOR POLICY ALTERNATIVES, ENVIRONMENTAL EQUITY ON THRESHOLD OF POLICY BREAKTHROUGH (1993).

52. H.R. REP. NO. 2479, 103d Cong., 1st Sess. (1993).

53. H.R. REP. NO. 2488, 103d Cong., 1st Sess. (1993).

54. CENTER FOR POLICY ALTERNATIVES, *supra* note 51.

tal justice legislation. Arkansas, Louisiana, Tennessee, and Virginia have passed legislation to protect people of color and low income communities from environmental inequities.⁵⁵ California, Georgia, New York, North Carolina, and South Carolina have legislation pending.⁵⁶ Most noteworthy is the proposed New York State bill, which would require demographic information to be submitted with each siting permit. If the designated site has a significant percentage of people of color or of low income residents, each permit must be accompanied by an economic development plan for that community. Generally, state legislation ranges in scope from requiring local public hearings on environmental justice issues, to revising siting criteria, to mandating study of socioeconomic and demographic data in siting patterns, and to requiring that local communities become actively involved in environmental policy-making.

V. Recommendations to Protect Endangered Communities

A. Public Education and Awareness

Endangered communities need to be aware of their basic rights and responsibilities under environmental laws. They need to know what information, technical assistance, and legal services are available to them. They need to know that they have the same rights as communities in more affluent neighborhoods. Endangered communities should be made aware that they have the right to serve on local planning boards, to initiate public hearings, and to review environmental assessments and impact statements. They should be informed that they can appeal certain permitting decisions to EPA's Environmental Appeals Board, access EPA public information systems, and obtain health and safety data under Community right to know laws.

B. Public Participation in Environmental Decisionmaking

Residents from communities directly affected by hazardous facilities should be encouraged to form Citizens Advisory Panels and to become actively involved in or appointed to local, municipal, and industrial zoning boards, commissions, and task forces. In this way they can have a voice in policies and decisions that directly affect the storage, transportation, and disposal of hazardous materials in

55. LAURA J. FITTON ET AL., CENTER FOR POLICY ALTERNATIVES, ENVIRONMENTAL JUSTICE: ANNOTATED BIBLIOGRAPHY 13 (1993).

56. *Id.*

their communities. They must increase their participation at the earliest stages in the process of siting decisions.

C. Community Economic Development

Endangered and dying communities need to be cleaned up and revitalized. Federal, state, and local governments, and private industry should combine their resources and ideas to support economic development programs. This can be done by training, certifying, and employing residents to clean up contaminated sites, thereby reducing exposure and risk while stimulating the economy.

D. Use of Existing State and Federal Laws

The EPA should work aggressively and systematically to ensure that a community's concerns of environmental injustice are incorporated into existing environmental regulations. Stringent measures should be instituted to effect compliance with existing laws such as Title VI of the Civil Rights Act of 1964, which stipulates that no federal dollars may be used on projects that allow discriminatory actions to occur.⁵⁷ Title VI may provide leverage in determining whether state or local governments receive grant funds for communities suffering disparate environmental abuse. Finally, local siting and permitting criteria should be revised to identify the socioeconomic demographics of the community for which a site is proposed.

E. Interagency Cooperation and Collaboration

The EPA is establishing an interagency workgroup to integrate federal participation in environmental justice issues. The Departments of Justice, Agriculture, Housing and Urban Development, Commerce, Health and Human Services, Interior, Energy, Defense, Treasury, and Veterans Affairs have joined with the EPA in working toward eliminating environmental injustices.⁵⁸

F. More Aggressive Enforcement, Inspections, and Compliance Monitoring

EPA should take a more assertive posture in imposing rigorous penalties and fines on those who pollute endangered communities.

57. 42 U.S.C. 2000d (1988).

58. Executive Order No. 12,898, 59 Fed. Reg. 7,629 (Feb. 11, 1994), calls for the creation of an Interagency Working Group on Environmental Justice to organize and coordinate agency activities. The preliminary meeting of the Group was held on April 28, 1994, and was chaired by Deputy Administrator Kathy Aterno.

Enforcement policies should reflect the Agency's commitment to environmental justice, including multi-media enforcement actions in communities at risk.

G. Pollution Prevention Measures

Industry should assume a responsible role in instituting measures directed at pollution reduction and ultimately, the elimination of environmental pollutants. Industries should evaluate their practices and, where appropriate, institute research to replace current methodology with environmentally "friendly" procedures. They should expand the job market to accommodate the technology aimed at processes that produce non-toxic materials and reduce the volume of materials destined for disposal. Ultimately, industry must interact with the communities through outreach and sensitivity-based programs for the community as well as the industry's employees.

H. Better Health Care Delivery Systems

The country needs to significantly improve the health care delivery system in endangered communities. This begins with broadening the scope of basic health care. There should be more comprehensive training of health care providers to increase sensitivity to, and recognition of, environmentally-related illnesses. State and local governments should forge ahead with plans for accessible, affordable treatment centers within these communities.

I. Improving Health Risk Assessments

The scientific community should be encouraged to launch research programs that address the cumulative and synergistic effects of environmentally related conditions that affect the health of people in endangered communities. Recommendations of "safe-levels" of exposure to chemicals that have known carcinogenic and mutagenic effects should directly reflect the ethnic and cultural practices of the endangered communities. The EPA should encourage technological advancements that foster research about hazardous pollution exposure and its connection to health effects and risk assessment.

J. Access to Adequate Legal Services

It is essential that the legal profession become fully knowledgeable regarding the broad aspects and implications of environmental

justice issues, particularly those affecting minorities and low income communities. Attorneys should become integral participants in efforts to save endangered communities. Law schools should institute environmental justice clinical programs, such as the one established at the Georgetown University Law Center.⁵⁹ Such programs would provide the endangered community with a valuable resource to combat environmental injustice. Environmental justice can be reached only when federal, state, and local governments, as well as law schools, take meaningful steps to fully address these issues.

59. Nancy E. Roman, *Georgetown Students Dump on Junk East of the Anacostia*, WASH. TIMES, June 15, 1992, at A7.