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Nancy E. Anderson, Ph.D

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NOTES FROM THE FRONT LINE

Nancy E. Anderson, Ph.D.†

I. Environmental Protection in the 90's: The Case of New York City

The United States environmental movement urges us to “think globally and act locally”¹. It’s good advice but exactly when to apply it, how to apply it, and exactly who applies it are difficult to prescribe. The modern environmental protection movement is now some two decades old. Among the fruits of this movement are statutes and regulations which set goals for environmental quality as well as for the protection of human health. These goals are generally met by attempting to control designated pollutants. Such control has been achieved either by an outright ban on certain substances, such as leaded gasoline, or by setting ceilings on permissible emissions and concentrations of designated pollutants in different environmental media. Also characteristic of the modern environmental protection movement is a wave of litigation: government against corporations; one level of government against another; and citizen suits against government.²

Of particular importance to the political and social impact of the environmental movement is the implicit presumption that environmental laws are geographically neutral; they should apply equally to everywhere within the relevant jurisdiction. Therefore, advances in protecting the environment should benefit everyone equally. Now these presumptions are being challenged—especially

† New York City Department of Environmental Protection, Community Environmental Development Group. Ph.D., 1980; B.A., 1969, New York University.

1. This phrase has been used so often that there is little point in citing a putative original author. However, its meaning can be clearly illustrated by the example of the phase-out of chlorofluorocarbons, a class of chemical compounds harmful to upper atmospheric ozone. The phaseout is effectuated by local or national legislation and the impact is worldwide. In New York City, environmental cleanup often takes place boiler-by-boiler, factory-by-factory, neighborhood-by-neighborhood. For a discussion of this “global thinking,” see WORLD RESOURCES INSTITUTE, *State of the Planet*, in ENVIRONMENTAL ALMANAC 9-31 (1993), and for a discussion of local action, see *Close to Home*, in ENVIRONMENTAL ALMANAC, *supra*, at 33-34. This Essay illustrates another way of acting locally and raises the question of its “global” meaning.

2. For an illustrative history of the modern environmental movement, see ROBERT E. TAYLOR, *AHEAD OF THE CURVE* (1990).

regarding the unequal distribution of the burden associated with meeting statutory goals.³

In the last five years, local thinking about environmental protection started to take shape. It is indisputable that cities are not neutral or homogenous geographies in terms of distributing benefits and burdens by class and race. This fact is applicable to local environmental politics. Environmental justice and fair share advocates—and in some instances the courts—are finding that cities like New York are extremely heterogeneous in terms of environmental conditions and the impact of implementing environmental laws.⁴ This Essay describes the Environmental Benefits Program, which the New York City Department of Environmental Protection has undertaken in order to address some of the inequities caused by local sources of pollution in New York City. This program may serve as a model for other communities in the effort to address environmental inequities.

Local sources of urban pollution come from three generic sources: motor vehicles, "stationary sources" which include factories and boilers, and public works infrastructure, typically including municipal incinerators and sewage treatment plants. Of all these sources, only sewage plants are required by federal and state law.⁵ Commonly, factories and public works are situated in neighborhoods where the median household income is below the city's average, and which are home to people of color. The historic question of which came first, the sources of pollution or the demographic clustering, can be answered only on a case-by-case basis, but this pollution-population pattern appears too frequently to be dismissed or to have its discriminatory impact denied.⁶ Of course, exceptions to the rule exist. Not all low-income or non-white areas in American cities carry equal environmental burdens. However, in New York City neighborhoods such as Brooklyn's Greenpoint/Williamsburg and Manhattan's West Harlem, the link between class, race, and environmental pollution is all too clear.

3. See 1 U.S. ENVTL. PROTECTION AGENCY, ENVIRONMENTAL EQUITY: REDUCING RISK FOR ALL COMMUNITIES (June 1992); Marianne Lavelle, *Clinton Pushes on Race and Environment*, NAT'L L.J., Dec. 6, 1993, at 1.

4. See *Silver v. Dinkins*, 601 N.Y.S.2d 366 (Sup. Ct. N.Y. County 1993) (decision regarding the "Fair Share" provision of the New York City Charter, §§ 203-204).

5. 33 U.S.C. § 1251 (1988); N.Y. ENVTL. CONSERVATION LAW § 17-0801 (McKinney 1988).

6. For a review of the literature on this subject, see Vicki Been, *What's Fairness Got to Do With It? Environmental Justice and the Siting of Locally Undesirable Land Uses*, 78 CORNELL L. REV. 1001 (1993).

These environmentally at-risk neighborhoods share another common feature—angry and increasingly organized community-based groups. Still, these two neighborhoods—Greenpoint/Williamsburg is a predominately Latino and white-ethnic working class Brooklyn neighborhood, and West Harlem is overwhelmingly African-American and Latino—act as if they live in separate cities; they do not work together. Often, activists within each neighborhood do not see eye-to-eye with each other. What they are doing is thinking and acting locally, very locally, to address the environmental problems troubling their respective communities. Nevertheless, without these grass-roots environmental activists, state and local government would not have created and funded Environmental Benefits Programs (EBPs)⁷.

II. Litigation Now. Legislation Later?

In institutional terms, local environmental advocacy groups have had success in using or influencing the courts to remedy deleterious environmental impacts.⁸ Such impacts not only violate environmental statutes, but are also racially unjust or geographically burdensome. Consent orders between New York City and New York State to resolve violations of State Pollution Discharge and Elimination System permits at City owned and operated sewage treatment plants (STPs) have been uniquely crafted to set aside the monies that the City owed the State in fines.⁹ These “set asides” are used to fund the EBPs. EBPs give the Greenpoint/Williamsburg and West Harlem communities the go-ahead to establish—in partnership with the City and with oversight from the State—an array of locally beneficial studies and action programs. However, by September of 1994, if any Greenpoint/Williamsburg EBP funds

7. See *infra* notes 13-26 and accompanying text.

8. For a general survey on this subject focusing on the use of the federal Civil Rights Act, Title VI, see Lavelle, *supra* note 3. See also West Harlem Env'tl. Action v. New York City Dep't Env'tl. Protection (Sup. Ct. N.Y. County 1993); *Silver*, 601 N.Y.S.2d 366 (1993) (“fair share”-based litigation).

9. State of N.Y. Dep't Env'tl. Conservation v. City of N.Y. Dep't Env'tl. Protection, No. 196-88 (Sup. Ct. N.Y. County June 23, 1988) (Order on Consent) [hereinafter *Newtown Creek Consent Order*]; State of N.Y. Dep't Env'tl. Conservation v. City of New York Dep't Env'tl. Protection, No. R2-3669-91-05 (Sup. Ct. N.Y. County July 1, 1992) (Order on Consent) [hereinafter *North River Consent Order*]. The Newtown Creek case involved overcapacity problems at the STP, i.e., the STP handled a flow of sewage that exceeded its permitted limit of 310 million gallons per day, and did not perform required “secondary” levels of sewage treatment. The *Newtown Creek Consent Order* was designed to solve these problems. The North River case involved the problem of noxious odors emanating from the plant and the need to control them.

are not earmarked for specific projects, the State could demand that those funds be paid to Albany as a fine.

Legal control over spending the funds rests with the New York City Department of Environmental Protection (NYCDEP) which is responsible for adhering to the proper contract procedures for EBP projects. New York City is unable to transfer a lump sum payment to the community under the terms of the consent order.¹⁰ In addition, accountability for how \$850,000 of public funds is spent could not be guaranteed by turning over the money directly to a community group. Nevertheless, some community members view the funds as "reparations" for the damage inflicted on them by the operation of the sewage treatment plants. There is a strong desire to direct EBP expenditures into the community through the form of contracts or job training.

To date, environmental justice advocates have not seen legislation passed that is explicitly formulated to remedy class or racial inequality created by a geographic concentration of polluters. The New York City Charter's "Fair Share" provision, which can address the lack of geographically based environmental equity or fairness in siting municipal facilities, has only been tested once in the courts.¹¹ Thus, the record of court decisions in the area of environmental justice and fair share is very small. But even as more case law is created, only situation specific, *ad hoc*, judicial interpretations on these subjects will emerge.¹² Whether the future case law will evolve into a coherent policy and methodology for assessing

10. *Newtown Creek Consent Order*, *supra* note 9, No. 196-88, stipulates that the \$850,000 fine for which the City was liable, was to be used by the City to fund the program. In this case New York State was the sole plaintiff. As such, the fines could not be directly given to any citizen or community group. At one point DEP approached an existing non-profit organization to explore the feasibility of entering into a contract with the NYCDEP to undertake the responsibilities for specific EBP projects, but NYCDEP was told that the transactional costs of such an arrangement were too steep to make this arrangement attractive.

11. *Silver*, 602 N.Y.S.2d 336. Plaintiffs using Title VI of the 1964 Civil Rights Act to claim environmental discrimination in public housing projects constructed with federal funds is just beginning to make its way into regulatory forums. See Lavelle, *supra* note 3 (discussing U.S. Env'tl. Protection Agency's Environmental Appeal Board decisions of September and October 1993).

12. Case law is always *ad hoc* insofar as decisions are made based upon the specific fact patterns of the case before the court. This claim does not seek to support or refute the very significant role of *stare decisis* in the common law tradition. Instead, the intent here is to draw a distinction between making policy that directs many specific situations and mandates the mobilization of resources in a patterned way which is derived from the statute, and the impact of individual court decisions. That line may blur, for example in federal appellate or Supreme Court decisions.

claims of environmental injustice or discrimination remains to be seen.

Even if a coherent policy does emerge from litigation, sole reliance on court decisions, such as the Newtown Creek and North River Consent Orders, will not achieve community-based environmental equity improvements. Not every impacted community will be a party to settlements regarding municipal public works which could make substantial sums available. In addition, not every municipal administration will favor an EBP over paying fines. Only legislation can ensure community-based environmental remediation and the tools to pursue environmental equity, as well as the funding necessary to realize these goals.

Very little guidance is available from current legislation.¹³ Even though environmental justice claims are fairly new, this fact does not account for the lack of legislation. Curiously, environmental issues do not appear to be highly valued during election campaigns. It is often said that the American public is concerned about the environment, but it does not appear to be a focal concern at election time. As a consequence, environmental protection or environmental justice planks are not pressed by local political stakeholders, and therefore do not become top priorities for the local executive, the Mayor, or the State legislature.

In sum, community-based environmental demands currently find their expression in the courts. Their impact is felt most directly in local government day-to-day decision-making about the siting and operation of environmental public works. This impact is best illustrated by the Greenpoint/Williamsburg and West Harlem EBP's and the 1993 Fair Share decision¹⁴. Court decisions are of great importance, but the lack of legislation on the matter of environmental equity means a lack of unifying policy directives for the Mayor and governmental agencies.

III. Environmental Benefits Programs: Greenpoint/Williamsburg and West Harlem

The NYCDEP's Community Environmental Development Group is charged with the responsibility of working with citizens from Greenpoint/Williamsburg and West Harlem to plan and exe-

13. Proposed environmental justice legislation includes: H.R. 1924, 103d Cong., 1st Sess. (1993); H.R. 4571, 102d Cong., 2d Sess. (1991); H.R. 2572, S. 1161, 103d Cong., 1st Sess. (1993). This list is illustrative, not exhaustive.

14. *Silver v. Dinkins*, 601 N.Y.S.2d 366 (Sup. Ct. N.Y. County 1993).

cute an array of New York State approved projects.¹⁵ These projects are all funded by monies "set aside" as a result of consent orders involving permit violations at the Newtown Creek and the North River sewage treatment plants.¹⁶

NYCDEP is the City's drinking water and sewage treatment utility, with some additional responsibilities in the areas of clean air and hazardous materials.¹⁷ It differs from Con Edison, New York Telephone, or Brooklyn Union Gas because it is publicly owned, but as with any utility, it is heavily regulated. NYCDEP's sewage treatment operations are ultimately controlled by conditions set forth in the federal Clean Water Act. The New York State Department of Environmental Conservation (NYSDEC) is authorized to permit and oversee all STPs within the state. NYCDEP owns and operates fourteen sewage treatment plants which provide primary and, in most cases, secondary treatment to all the waste generated in the City every day.

One chief sector of New York City's economic activity is real estate. Growth in the real estate industry is infrastructure dependent. In particular, new buildings cannot be constructed if there is insufficient capacity at the appropriate STP. If the appropriate plant is operating at its permitted capacity, in theory, new construction permits can be denied.¹⁸

The Newtown Creek STP in Greenpoint/Williamsburg is the City's largest. Built in 1967, it provides primary treatment to its permitted 310 million gallons per day of sewage coming both from

15. Community Environmental Development Group staffers meet at least once a month and often 3-4 times a month at Citizens Advisory Committee plenary and subcommittee sessions to work out everything from the broad outlines of the EBP's to the details of funding commitments, contract scopes, and guest speakers at community environmental forums.

16. See *supra* note 9.

17. NYCDEP "manages the City water supply and waste water system, carries out Federal Clean Water Act and Clean Air Act regulations, handles hazardous material emergencies and toxic site remediation, oversees asbestos monitoring and removal, enforces the City's noise codes, and manages citywide water and energy conservation programs." THE 1992-1993 GREEN BOOK, THE OFFICIAL DIRECTORY OF THE CITY OF NEW YORK 122. The water supply system includes three reservoir systems and the tunnels and mains that carry and distribute the drinking water to the City. The waste water system includes the network of sewers and fourteen sewage treatment plants.

18. For obvious reasons, all new building construction requires sewer hookups to sewage treatment plants. The power to impose moratoriums on new hook ups to plants exceeding their permitted capacity is established in 33 U.S.C. § 1342(h) (1988). At West Harlem's North River STP, which commenced operation in 1986 and receives a volume of sewage which is nearing its maximum permitted capacity, the political battle over where new construction will be permitted, either in West Harlem, or "downtown," could easily become explosive.

Brooklyn and Manhattan, including the financial district and City Hall.¹⁹ Opened in 1986, West Harlem's North River STP, one of the City's newest, provides both primary and secondary treatment to its permitted flow of 170 million gallons per day. Both plants were in violation of conditions imposed by the NYSDEC permits, and litigation was avoided by consent orders entered into by the State and the City.²⁰ In both cases the State was in a position not only to order engineering changes at the STP's, but also to impose sizable fines on the City for permit violations.

If both Greenpoint/Williamsburg and West Harlem did not have vocal and organized community groups who had spent years protesting conditions at their local STPs, it is inconceivable that the EBPs would have been devised and funded. In fact, the Greenpoint/Williamsburg EBP was funded at \$850,000 and when the City first sought to settle with NYSDEC for North River violations, no EBP was proposed. Sustained community demands lead to the formation of the West Harlem EBP.

The Greenpoint/Williamsburg EBP started in 1991 and the West Harlem EBP in 1993. Greenpoint/Williamsburg's program is, therefore, more developed, and the Community Environmental Development Group has been trying to build upon what it has learned in Greenpoint/Williamsburg in order to refine the West Harlem EBP. The Community Environmental Development Group is also struggling with its role to make NYCDEP do certain things in a different manner. The EBPs have become, indeed have had to become, laboratories for a host of pilot programs. Securing agency resources and agency support for the EBPs can prove to be a difficult task.

IV. Constructing EBPs: Citizens Advisory Committees

Both EBPs are predicated upon the Community Environmental Development Group working in close consultation with Greenpoint/Williamsburg and West Harlem to develop and allocate funds for all elements of the EBPs. In order for a government agency to work with a community, a mechanism must be created for government-citizen dialogue and to ensure community input into the decision-making process. A Citizens Advisory Committee was created

19. The *Newtown Creek Order on Consent* refers to the limits placed on the permits. See *supra* note 9.

20. See *supra* note 9.

for this purpose.²¹ The Greenpoint/Williamsburg and the West Harlem programs offer contrasting models of membership criteria in their Citizen Advisory Committees, and this has shaped both the dynamics and the rate of each EBP's programmatic output.

Looking first at the Greenpoint/Williamsburg Citizen Advisory Committee which got underway in September 1991, the most notable feature of this group is its open membership structure. Anyone can become a member by attending three meetings. However, a distinction quickly surfaced between those who were nominal group members and those who had decision-making authority within the groups. The Steering Committee is composed of those citizens who have been the most tenacious, but this does not mean that there has been a high level of internal agreement within the Steering Committee or that Steering Committee members are the most representative of the Greenpoint/Williamsburg community at large.²² Since Steering Committee members represent only themselves, and not any community-based constituency or recognized political figure, no outside pressure can be brought to bear on the Steering Committee to resolve internal wrangling or to arrive at programmatic decisions in a timely fashion.

One result has been to put the brakes on what is a slow process under the best of circumstances. Although a Workplan was delivered to NYSDEC at the beginning of the EBP, it has not served as a blueprint; in fact, the Workplan has offered scarcely any programmatic support or direction. What this has meant in practice is that each element of the EBP has had to be defined and redefined and sometimes sidetracked or abandoned during its three year lifetime. Another result has been to discourage potential Steering Committee members from joining because of the appearance of a group that is splintered and unproductive. This has led to the risk of cutting off the Community Advisory Committee from the larger community that it is supposed to represent.²³

21. To say that a Community Advisory Committee "must" be established is a pragmatic descriptor; nowhere is the creation of a Community Advisory Committee dictated by local law or court decision. Without a Community Advisory Committee, however, there is simply no practical way to gather community representatives on a regular basis to plan EBPs.

22. For example, some Citizen Advisory Committee members would like all manufacturing to be eliminated from Greenpoint/Williamsburg, while others favor environmental progressive and protective manufacturing development in the area. Personal communication from Eva Hanhardt, Greenpoint/Williamsburg EBP Project Director (Dec. 15, 1993) (on file with author).

23. For a general independent assessment of the Greenpoint/Williamsburg EBP, see Chantal Shipman et al., *Activism and Agony: A Brooklyn Community Seeks*

The West Harlem Community Advisory Committee has taken a different approach. Unlike the Greenpoint/Williamsburg committee, West Harlem used a brokered membership model. NYCDEP identified the major organizational constituencies in West Harlem who had an articulated stake in improvements at the North River STP and the overall environmental conditions of the area.²⁴ Two representatives from each of these groups were invited to join the Community Advisory Committee. Eight locally elected officials are represented on the Committee and five representatives are nominated by NYCDEP. Meeting since June 1993, the Committee delivered an EBP Workplan to NYCDEP and NYSDEC in December 1993. This Workplan contains the outline for a community-wide health study, focusing on the relationship between the incidence of respiratory illness and environmental pollutants. It also sets the groundwork for a community-wide cumulative environmental impact assessment. At present, our ability to understand all the dynamics of pollution in a particular geographic area is in its infancy. This component of the West Harlem EBP hopefully will be a substantial methodological advance and become an instrument of community planning. Education and job training projects are also central to the West Harlem EBP.

The West Harlem Workplan should be a better guide to EBP action than the Greenpoint/Williamsburg Workplan. However, this does not mean that the quality or impact of each element of the West Harlem EBP will be better than the Greenpoint/Williamsburg EBP. Since the Greenpoint/Williamsburg EBP started almost two years before the West Harlem Program there is much more process and product to evaluate.²⁵

V. The Greenpoint/Williamsburg EBP: A Programmatic Overview

Although made up of many different elements, there are four that are central to the Greenpoint/Williamsburg EBP. The first is a two-part epidemiological study conducted by the New York City

Environmental Justice: A Case Study in Progress (1993) (draft); INTERNATIONAL COUNCIL FOR LOCAL ENVTL. INITIATIVES, CASE STUDY #14, COMMUNITY-BASED ENVIRONMENTAL MANAGEMENT (1993).

24. The three identified organizations were Community Board #9, the North River Citizens Environmental Review Board (NRCERB), and the West Harlem Environmental Action Coalition (WHEACT).

25. Since the West Harlem EBP is at a much earlier stage of development than the Greenpoint/Williamsburg EBP, it is impossible to determine at this time which model is more effective or what criteria should be used in making this determination.

Department of Health on mortality and morbidity in the Greenpoint/Williamsburg area.²⁶ The study was undertaken to determine whether residents of Greenpoint/Williamsburg exhibit a statistically elevated incidence of certain cancers and childhood leukemias, birth defects and asthma. Based upon review of existing health data, the report concluded that Greenpoint/Williamsburg residents experienced cancer, birth defects, and asthma at rates comparable to or below the New York City average.²⁷ Only certain stomach cancers were found at a rate higher than the City norm, and stomach cancer appears to be causally linked to diet rather than environmental exposure.²⁸ Although this Health Department study may not be the last word on the subject, it is the first community based health study of its kind in New York City. It provides detailed, scientifically credible data which can be applied, for example, to demands for increased public health services, medical research and environmental protection initiatives as well as to specific land use or economic development plans in Greenpoint/Williamsburg.

The second major component of the Greenpoint/Williamsburg EBP is a pilot multi-media/pollution prevention project compliance initiated by NYCDEP. NYCDEP, like many federal, state, and local environmental protection agencies, organizes its inspections, enforcement actions, and record keeping along single medium lines. For example, air inspectors work to enforce air program standards, industrial pretreatment inspectors enforce industrial discharge and waste water standards, and hazardous materials inspectors focus on the management or disposal of hazardous substances. Rarely do they work together or pool their data to take an overview of any particular plant. As a result, a complete environmental picture of company x or y is unavailable. Similarly, if enforcement

26. MARGRIT KAMINSKY ET AL., HEALTH PROFILE OF CANCER, BIRTH DEFECTS, ASTHMA, AND CHILDHOOD LEAD POISONING IN GREENPOINT/WILLIAMSBURG, SECOND REPORT (June 1993) [hereinafter KAMINSKY, SECOND REPORT]; MARGRIT KAMINSKY ET AL., HEALTH PROFILE OF CANCER, ASTHMA, AND CHILDHOOD LEAD POISONING IN GREENPOINT/WILLIAMSBURG, FIRST REPORT (Dec. 1992) [hereinafter KAMINSKY, FIRST REPORT].

27. KAMINSKY, FIRST REPORT, *supra* note 26; KAMINSKY, SECOND REPORT, *supra* note 26. Although the Department of Health Study did not find conclusive evidence of negative health effects, the study prompted interest in the relationship between health and pollution sources. Moreover, negative health effects are not the only environmental inequities that may be suffered by communities. Other examples include noxious odors and concentration of hazardous waste.

28. KAMINSKY, FIRST REPORT, *supra* note 26; KAMINSKY, SECOND REPORT, *supra* note 26.

actions are undertaken, remediation measures are too often pursued without looking at the systemic impact of the chosen solution. Fines are perceived as just another cost of doing business and often lack their presumed deterrent impact. Surely, this is not the way to protect the environment or prevent pollution.

To date, the pilot multi-media/pollution prevention project has inspected seventeen facilities; another three inspections per month are being planned. This component of the EBP is the only one that makes NYCDEP take a hard look at its own operations and encourages the NYCDEP to experiment with new ways to protect the environment using existing legal and staff resources. The multi-media/pollution prevention project still must squarely address how to use the power of the law to foster problem-solving pollution prevention investments by violators, instead of limiting itself to the business-as-usual model of collecting fines or shutting down extremely recalcitrant actors.

Expanding the range of tools available for this pollution prevention campaign points to a related EBP component, the Clean Industries Program. Initiated with a blend of EBP and United States EPA funds, the Clean Industries Program actively pursues contacts with local business leaders, trade associations, and local development projects to educate them on the technical and economic benefits of pollution prevention.²⁹ Participation in the Clean Industries Program is voluntary. November and December 1993 meetings on this subject, organized by the Pollution Prevention Committee, a branch of the Community Advisory Committee, were very well attended by Greenpoint/Williamsburg business interests and other government agencies. The purpose of the Clean Industries Program is to educate businesses about the economic advantages and technical feasibility of pollution prevention. The Clean Industries Program lays the groundwork for environmentally sustainable local economic development. Over time, the converting pollution control to pollution prevention will also benefit urban public health.³⁰ In addition, the Community Environmental Development Group obtained a United States EPA grant to conduct education and outreach in Greenpoint/Williamsburg to inform

29. Although the Clean Industries Program is not directed by the Community Environmental Development Group, its Greenpoint/Williamsburg focus is a result of staff collaboration within NYCDEP.

30. For an analysis of the impact of air pollution on public health see Douglas W. Dockery et al., *An Association Between Air Pollution and Mortality in Six U.S. Cities*, *NEW ENG. J. MED.*, Dec. 9, 1993, at 1753.

residents, teachers, and school children about the problems posed by household hazardous waste as well as practical solutions.

The third critical element of the Greenpoint/Williamsburg EBP is developing a Geographic Information System. This system is a powerful computer education and research program which translates a large number of data bases into maps. These maps offer a remarkable educational and diagnostic display of virtually all environmental, land use, health, and financial information currently available in databases. Other useful databases can be programmed into the Geographic Information System; its range is enormous.

Funded by the EBP, Hunter College is currently programming a Geographic Information System at two levels. At one level, a person with some computer training will be able to make sophisticated analytic queries about a specific geographic location. At a second level, a computer program is being written that will allow almost anyone to make queries from an extensive pre-selected set of data. The system will be housed in the community-based Watchperson's Office. It will be an essential resource in undertaking a proposed Greenpoint/Williamsburg cumulative environmental assessment.

Finally, the Watchperson is the fourth critical element of the EBP. The Watchperson will not be a NYCDEP employee. Instead s/he will be an independent, environmentally-trained community educator and advocate. The EBP will fund the Watchperson for two years. At the end of that time the Watchperson will have obtained status as a not-for-profit corporation that will be able to carry on with the legacy of the program to serve the Greenpoint/Williamsburg community.

The Watchperson is designed to institutionalize the knowledge, the experience, and the community links developed during the three-year EBP in order to draw upon these gains in the future. S/he will also sponsor education and citizen environmental monitoring projects. In addition, the Watchperson will enhance NYCDEP's response to citizen complaints about problems such as sewer backups, clogged catchbasins, noise, and odors by ensuring that such complaints are channeled to the proper office and by tracking the timeliness of NYCDEP responses.

VI. The Power and the Limits of EBPs

An EBP is a model program to address urban environmental issues in a geographically specific and comprehensive manner. EBPs are transformative in that they can change communities, change the way government does business, and change the relationship be-

tween communities and local government. In New York City, EBPs are emerging as tools for addressing community environmental needs and for creating community-based environmental planning across a wide spectrum of issues ranging from health, to land use, to economic development. The EBPs have stimulated change within NYCDEP, particularly the multi-media and Clean Industries Programs. Better response to citizen complaints is also anticipated. Further, it is clear that EBP's are stimulating NYCDEP to fulfill its responsibilities for environmental protection in a manner that is urban in its orientation and attendant to the increasingly intrinsic criteria of justice and fairness.

At the same time, there are significant transformative limits of EBPs which must be discussed. Funding for the Greenpoint/Williamsburg and West Harlem EBP was the result of Consent Orders stemming from permit violations at NYCDEP STPs.³¹ It is not at all clear that NYCDEP will always choose the alternative of an EBP over paying a fine, or that the State, if it is the plaintiff, will agree to this approach.³² Given New York City government's ongoing fiscal crisis and the political need to keep a lid on water and sewer rates, the prospect for every community to obtain a fully-funded EBP is not great. Moreover, not every plaintiff is successful; proving environmental injustice or unfair share claims, even if a viable statutory or common law vehicle for such claims can be found, is always a gamble. Further, not every project proposed by the Community Advisory Committee meets with the technical approval of NYCDEP, and there may be disagreement within NYCDEP and NYSDEC about the feasibility or advisability of particular proposals. Thus, there may be many inequities that will not be remedied through court-ordered, specially funded programs. Government policy makers and community activists must push forward down the path that EBPs have opened for us.

31. *See supra* note 9.

32. The Clean Water Act, 33 U.S.C. § 1251 (1988) contains citizen suit provisions. The utility of these provisions have yet to be determined by the courts for achieving environmental justice and fair share objectives.

