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Hazards at home





Protecting the right to clean living

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In poor and minority neighborhoods, many homes are tainted with pollution. The result: illness and declining property values. Here's how one community is fighting back.

The "environmental justice" movement was born of the recognition that poor people and racial minorities encounter environmental hazards particular to their immediate surroundings.¹ African-American children face significantly higher rates of lead poisoning, in part because they frequently live in older, deteriorating homes with lead paint and absentee landlords.² Latino farmworkers are regularly exposed to unacceptable levels of pesticides.³ Disproportionate numbers of poor people live near dangerous polluters like the petrochemical plants lining "Cancer Alley" along the Mississippi River.⁴ Compounding the problem, industries are hit with significantly

smaller fines for violations of environmental regulations committed in poor communities.⁵

Trial lawyers have long been involved in efforts to compensate the victims of these harmful patterns, usually using traditional common-law damages claims. Toxic tort cases have produced several innovations in the common law, including the remedy of medical monitoring.⁶

During the 1980s and 1990s, environmental justice activists opened another legal front in the battle. They focused on the tendency of government agencies to permit "siting" of the most hazardous industrial activities in communities that are environmentally vulnerable and lack political clout. Ultimately, these activists

forced government authorities to recognize the problem.

The EPA endorsed the principle of "environmental justice." The agency established it as a cornerstone of federal policy that "no group of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies."⁷⁷

Even more significant, the agency issued regulations under Title VI of the Civil Rights Act of 1964,⁷⁸ providing that recipients of federal funding (including most state environmental protection agencies) "shall not choose a site or location of a facility that has the purpose or effect of . . . subjecting [individuals] to discrimination under any program or activity . . . on the grounds of race, color, or national origin or sex."⁷⁹

These actions kindled the hope that environmental justice would become a civil right enforceable in the federal courts. But that hope has faded in the wake of a slow, steady retrenchment by the courts and in the enforcement philosophy of the federal government.

Most famously, private remedies such as medical monitoring, which environmentalists once hoped would be available under the strict liability standards of the Superfund law,⁸⁰ have been curtailed or eliminated.⁸¹ Remediation by the federal government itself has been virtually eliminated due to Congress's failure to reauthorize the industry taxes that provided the funding for all such Superfund activity. As efforts to seek statutory and regulatory remedies stalled, the victims of environmental injustice have turned once again to common law approaches. The citizens of Camden, New Jersey, are a significant case in point.

The Camden community

Camden is the second-poorest city in the United States. In 2000, its population was 79,904, of which 53.3 percent were African-American and 38.8 percent were Latino.⁸² Nearly a third of all families lived below the poverty level.⁸³

During World War II and the years immediately following, Camden's economy expanded. Large employers, many with major defense contracts, attracted thousands of workers. After the war, these industries continued to provide employment as they converted to suc-

cessful peacetime production or took on new contracts related to the Cold War.

But the city's largely unregulated growth, accompanied by a great influx of ethnically diverse workers, led to overpopulation, pollution, and racial tension. Nearly all of Camden's industrial and residential land was developed. Most of the available housing was old and overcrowded. Industrial and residential waste polluted the water and air. The city lacked social services to deal with the larger, more multicultural post-war population.⁸⁴

By the early 1970s, Camden had become one of the poorest, most racially polarized communities in the United States. Manufacturing jobs were steadily moved from the city, and the residents who were left behind, most of them minorities, fell into poverty.

By the late 1990s, two major environmental justice issues had surfaced in Camden. First, the South Jersey Port Corp.—owner of industrialized land adjacent to the Camden neighborhood known as Waterfront South—decided to lease the property to the St. Lawrence Cement Co. (SLC). The company built a plant to grind and process industrial waste, in the form of 850,000 tons of blast furnace slag and 16,500 tons of gypsum annually, to be sold as a cement additive.

Then, in late 2001, the EPA announced its conclusion that, for more than 20 years, more than 50,000 Camden residents served by the public water-distribution system had been exposed

to hexavalent chromium and volatile organic chemicals (VOCs), substances that have been linked to cancer and other serious illnesses.⁸⁵

A state investigation indicated that the pollution originated from several manufacturing, refining, and plating facilities, as well as from a municipal landfill located nearby.

Waterfront South's judicial odyssey

The population of Waterfront South is about 2,100, of which 41 percent are children and 91 percent are minorities. The residents have a high rate of asthma and other respiratory ailments.⁸⁶

Waterfront South already was a popular location for industrial facilities, including a "trash to steam" plant, a gas-fired power plant, and two Superfund sites. The EPA was investigating four sites within a half mile of SLC's facility for the possible release of hazardous substances. The New Jersey Department of Environmental Protection (DEP) had identified 15 contaminated sites in Waterfront South, including a radiologically contaminated General Gas Mantle Co. site and a Martin Aaron, Inc., site last used as a drum-recycling operation that resulted in chemical and heavy metal contamination.

Camden citizens voiced their concerns during a public-comment period

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