Environmental Justice: A Survey of Federal and State Responses

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ENVIRONMENTAL JUSTICE: A SURVEY OF FEDERAL AND STATE RESPONSES

"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."

I. INTRODUCTION

Seventy-five percent of all commercial hazardous waste landfills are located in predominantly African-American neighborhoods in the southeastern United States. Not surprisingly, approximately sixty-one percent of low-income African-American children have dangerously high levels of lead in their blood. In Tucson, Arizona, a predominantly Hispanic area, a street which was once called Calle Evelina has been dubbed the "Street of Death," because the residents of twenty-seven out of thirty homes have died of cancer, a fate which neighbors claim trichloroethylene-contaminated water caused.

3. Id. (citing Impacts of Lead Poisoning on Low-Income and Minority Communities: Hearing Before the Subcommittee on Health and the Environment of the House Committee on Energy and Commerce, 102d Cong. 197-98 (1992)).
Shocking statistics similar to those mentioned above induced the "nontraditional environmentalists"5 to join civil rights leaders and form what is often called either the "environmental justice movement" or the "environmental civil rights movement."6 Members of the movement seek to put an end to the suffering of minority communities which receive a disproportionate share of environmental decay and health hazards.7

This Comment offers an overview of the environmental justice movement. Part II details the history of the movement.8 Part III sets forth the federal government's response to the issue of environmental justice.9 Part IV examines the attempts of two states to deal with the problem of environmental injustice.10 Finally, Part V concludes that in order for environmental racism to cease, the federal government must follow the lead of state governments that have made strong commitments to the eradication of environmental racism.11

6. Blank, supra note 2, at 1112. The phrases "environmental racism," "environmental equity," and "environmental justice" are often used interchangeably. Anne K. No, Note, Environmental Justice: Concentration on Education and Public Participation as an Alternative Solution to Legislation, 20 WM. & MARY ENVTL. L. POL'Y REV. 373, 374 n.2 (1996). Each phrase does, however, have its own meaning. Id. For example, environmental racism "refers to those institutional rules, regulations, and policies or government or corporate decisions that deliberately target certain communities for least desirable land uses, resulting in the disproportionate exposure of toxic and hazardous waste on communities based upon certain prescribed biological characteristics." Id. (citing Bunyan Bryant, Introduction to ENVIRONMENTAL JUSTICE: ISSUES, POLICIES, AND SOLUTIONS 1, 5-6 (Bunyan Bryant, ed., Island Press 1995). Environmental equity "refers to the equal protection of environmental laws." Id. Environmental justice, on the other hand, is broader in scope than environmental equity and "refers to those cultural norms and values, rules, regulations, behaviors, policies, and decisions to support sustainable communities, where people can interact with confidence and their environment is safe, nurturing and productive." Id.
7. Blank, supra note 2, at 1109.
8. For a further discussion of the history of the environmental justice movement, see infra notes 12-29 and accompanying text.
9. For a discussion of the federal government's response to the issue of environmental justice, see infra notes 30-82 and accompanying text.
10. For a discussion of New York's and Pennsylvania's response to the issue of environmental justice, see infra notes 83-135 and accompanying text.
11. For a concluding discussion, see infra notes 136-38 and accompanying text.

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II. THE HISTORY OF THE ENVIRONMENTAL JUSTICE MOVEMENT

For several decades there has been opposition to placing environmentally hazardous sites in low-income or minority neighborhoods. Early activism occurred during the turbulent 1960's and early 1970's, however, it went unnoticed by policy makers, mainstream environmentalists and the media. Unfortunately, it was not until the early 1980's that a national environmental justice movement emerged.

In 1982 a series of protests were staged in Warren County, North Carolina. The protesters tried to prevent the siting of a polychlorinated biphenyl (PCB) landfill in the predominantly African-American county. Although the demonstration was unsuccessful, it garnered a significant amount of national attention. Additionally, the protests "became a watershed in the movement to link environmental issues with social justice."

In the years following the Warren County protests, several studies concerning the problems of environmental injustice were conducted. The United States General Accounting Office (GAO),

12. See Bullard, supra note 3, at 327.
13. Id. In fact, much of this early activism occurred before the first Earth Day in 1970. Id. For example, in 1967, an eight-year-old African-American girl drowned at a garbage dump that was located next door to an elementary school in the middle of an African-American neighborhood. Id. at 327-28. This tragedy prompted a campus protest at Texas Southern University. Id. at 328. The protest escalated into a riot during which students threw rocks and bottles at police, who retaliated with gunfire. Id. This was one of the first of many battles civil rights activists fought against environmental racism. Id.
14. Bullard, supra note 3, at 328. The movement developed generally out of mainstream civil rights organizations rather than out of any environmental organizations. Id.
15. Id. The protesters consisted of a number of national African-American civil rights groups including the United Church of Christ Commission for Racial Justice, the Southern Christian Leadership Conference and the Congressional Black Caucus. Id.
16. Blank, supra note 2, at 1113. The proposed landfill was to be the burial site for 30,000 cubic yards of soil contaminated with highly toxic polychlorinated biphenyl (PCB). Bullard, supra note 3, at 328.
17. Blank, supra note 2, at 1113. During the demonstration, civil rights activists, government officials, religious leaders and local residents joined together to march in protest. Bullard, supra note 3, at 328. More than five hundred protesters were arrested at the demonstration. Id.
19. No, supra note 6, at 374.
upon Congress’s request, conducted the first major study in 1983.\textsuperscript{20} The study focused on a large geographic region in the southeastern United States.\textsuperscript{21} It revealed that three out of the four hazardous waste sites in the region were located in predominantly African-American communities.\textsuperscript{22}

Several other studies were conducted in the 1980’s, each with equally disturbing findings.\textsuperscript{23} The escalating debate over environmental justice culminated in January 1990, when the University of Michigan’s School of Natural Resources held a conference addressing the environmental justice issue.\textsuperscript{24}

Following the conference, several grassroots organizations, scholars and environmental justice activists began to pressure the

\textsuperscript{20} Blank, \textit{supra} note 2, at 1113. The Congressional request was prompted by District of Columbia Delegate Walter Fauntroy, chairman of the Congressional Black Caucus and a participant in the Warren County protests. Bullard, \textit{supra} note 3, at 328. The study examined the relationships between race, income and the siting of hazardous wastes. Reilly, \textit{supra} note 18, at 19.

\textsuperscript{21} See Bullard, \textit{supra} note 3, at 328. The relevant region was Environmental Protection Agency (EPA) Region IV which included Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee. \textit{Id.}

\textsuperscript{22} \textit{Id.} (citing GAO REPORT, \textit{supra} note 2, at 1-6). The four sites included Chemical Waste Management in Sumter County, Alabama, SCA Services in Sumter County, Alabama, Industrial Chemical Company in Chester County, South Carolina and the Warren County PCB Landfill in Warren County, North Carolina. \textit{Id.} at 328 n.54 (citing GAO REPORT, \textit{supra} note 2, at 1).

\textsuperscript{23} For example, in 1986 the United Church of Christ’s Commission on Racial Justice conducted a major study which analyzed the relationship between race and the location of hazardous waste sites across the nation. Blank, \textit{supra} note 2, at 1113. The study discovered that race is the single best predictor of where commercial hazardous waste facilities are located. Audrey Wright, \textit{Note, Unequal Protection Under the Environmental Laws: Reviewing the Evidence on Environmental Racism and the Inequities of Environmental Legislation}, 39 WAYNE L. REV. 1725, 1729 (1993). The report further concluded that it was virtually impossible for the disproportionate distribution to have occurred by chance and that underlying factors related to race affected the location of waste facilities. \textit{Id.} Some of these underlying factors are: (1) the availability of cheap land, often located in minority communities; (2) the lack of local opposition, often resulting from minorities’ lack of political resources; and (3) the lack of mobility of minorities resulting from poverty. \textit{Id.} (citing Paul Mohai & Bunyan Bryant, \textit{Environmental Injustice: Weighing Race and Class as Factors in the Distribution of Environmental Hazards}, 63 U. COLO. L. REV. 921, 922 (1992)).

\textsuperscript{24} Blank, \textit{supra} note 2, at 1114. The conference was organized to bring further attention to the issues surrounding environmental racism. See Bunyan Bryant \& Paul Mohai, \textit{The Michigan Conference: A Turning Point}, 18 EPA JOURNAL 9, (Mar./Apr. 1992). The conference marked the first time that “a retrieval/dissemination conference on race and the incidence of environmental hazards [were] held where the majority of presenters of scholarly papers were people of color.” \textit{Id.} at 10. The conference was important in that it prompted scholar-activists to collectively focus on the issues of environmental justice. \textit{Id.} In addition, it gave national visibility to the debate on environmental inequity which in turn increased the awareness of government policymakers and citizens. \textit{Id.}
federal government into taking steps to address the issue. Finally, in 1990 the United States Environmental Protection Agency (EPA) established an Environmental Equity Workgroup (Workgroup) and charged it with assessing the evidence revealing that racial minorities and low-income communities are exposed to higher environmental risks than the general population.

In 1991 the efforts of the United Church of Christ's Commission on Racial Justice, combined with the Southwest Organizing Project and other grassroots organizations, gave rise to the First National People of Color Environmental Leadership Summit, held in Washington, D.C. Delegates from all fifty states and representatives from various environmental groups attended the groundbreaking summit which brought national attention to the environmental justice movement. These united efforts demonstrate that the environmental justice movement, while relatively new, has taken great strides in attempting to solve the problems associated with environmental racism. However, despite the advancements of the grassroots organizations and EPA, the federal government has

25. Bullard, supra note 3, at 329. The activists and scholars emphasized environmental issues ranging from lead pollution and poisoning to the siting of landfills and incinerators. Id.

26. Reilly, supra note 18, at 19. The Environmental Equity Workgroup (Workgroup) was comprised of forty professionals from various divisions of the Environmental Protection Agency (EPA). Id. One of the ancillary goals of the Workgroup was to gather recommendations about what EPA might do to address any disparities that may be found. Id. The Workgroup released a report in June 1992, detailing its findings. Id. at 20. The Workgroup found, among other things, that there is a general lack of data of environmental health effects in correlation with race and income. Robert M. Wolcott & Reina Milligan, Findings and Recommendations of EPA's Environmental Equity Workgroup, 18 EPA Journal 20 (Mar./Apr. 1992).

In addition, the Workgroup found that "while there are large gaps in data on actual health effects, it is possible to document differences in observed and potential exposure to some environmental pollutants by socioeconomic factors and race." Id. Furthermore, the Workgroup found that there was much room for improvement in the manner and procedures by which EPA collected data. Id. at 21. The Workgroup also made several recommendations including the following:

(1) EPA should increase the priority [given] to issues of environmental equity;
(2) EPA should establish and maintain information which provides an objective basis for assessing risks by income and race ... [and]
(3) EPA should identify and target opportunities to reduce high concentrations of risk to different population groups, employing approaches developed for geographic targeting.

Id.

27. Gaylord & Twitty, supra note 1, at 778. More than 650 grassroots leaders attended the summit and adopted the "Principles of Environmental Justice, — a platform calling for an end to the discriminatory poisoning of low income communities and people of color worldwide." Id. at 778-79.

28. Blank, supra note 2, at 1114. In addition to attracting national attention, the summit brought legitimacy to the environmental justice movement. Id.
yet to adequately address the critical issues surrounding the environmental justice movement.29

III. The Federal Response

The primary responsibility for protecting the environment and endangered communities lies with the federal government.30 The federal government, however, has done remarkably little to address this issue.31 Although Congress has proposed several bills, no legislation specifically addressing environmental justice has been enacted.32 Environmental justice advocates have sought protection in the federal courts, but thus far have been largely unsuccessful.33 In fact, the only substantial initiative undertaken at the federal level came on February 11, 1994, when President Clinton issued an Executive Order directing all federal agencies to confront environmental justice issues.34

A. The Legislative Branch

Since 1992, both the House and Senate have introduced several legislative proposals.35 Unfortunately, none of the proposals have been enacted.36 The following is an overview of some of the bills that have been proposed regarding environmental injustice.


In June 1992, (then) Senator Al Gore of Tennessee and Representative John Lewis of Georgia sponsored the Environmental Jus-
The bill sought a moratorium on the siting of facilities which would impose additional environmental risks in predetermined high risk areas. Two versions of the EJA were re-introduced in 1993: one by Representative Lewis and another by Senator Max Baucus of Montana. Although the latter proposal was similar to the EJA of 1992, it differed in that it did not call for a moratorium on the siting of toxic chemical facilities in high impact areas. It did, however, express the same goal of the EJA of 1992.

The Environmental Justice Act of 1992 (EJA) sought to achieve this goal by requiring the collection of data on environmental health effects. Blank, supra note 2, at 1116. The EJA required the following:

- Identification of areas that have the highest amount of toxic chemicals and assessment of the resulting health effects in those areas, [which] ensures that residents of such areas have both the opportunity and resources to participate in facility siting processes, and [which] requires federal action when activities in such areas have significant adverse impacts on human health.

2. The Department of the Environment Act of 1993

Subsequently, Senator John Glenn of Ohio introduced the Department of the Environment Act of 1993. This bill had a unique proposal calling for the elevation of the EPA Administrator to Cabinet level status. This would have enabled EPA to respond to environmental concerns with more authority.
the establishment of a Commission on Improving Environmental Protection within the Bureau of Environmental Statistics of the Department of the Environment.\textsuperscript{46} Unfortunately, Congress discontinued deliberation of the proposed Department of the Environment Act in 1994.\textsuperscript{47}

3. \textit{The Environmental Equal Rights Act of 1993}

The Environmental Equal Rights Act of 1993 (EERA) was offered as an amendment to the Solid Waste Disposal Act.\textsuperscript{48} If enacted, the EERA would have authorized the use of petitions to protest the scheduled construction of certain waste facilities in minority and low-income communities.\textsuperscript{49} Specifically, the EERA targeted "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."\textsuperscript{50} The EERA would have allowed these citizens to petition to prevent the issuance of an operating permit for such a facility.\textsuperscript{51}

4. \textit{The Environmental Health Equity Information Act of 1993}

The Environmental Health Equity Information Act of 1993 was introduced as an amendment to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).\textsuperscript{52} If enacted, the proposal would require "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."\textsuperscript{53} Additional-
ally, the bill would have permitted the establishment of a database to conduct an exhaustive review of communities at risk. 54

The foregoing are only a few examples of the many bills Congress has proposed to help solve the problems of environmental racism. 55 Although some state and local governments have been successful in passing environmental justice legislation, the federal government has thus far been either unable or unwilling to pass comprehensive environmental justice legislation. 56

B. The Judicial Branch

Minorities who have found themselves victims of environmental racism have also turned to the federal court system in an attempt to achieve justice. 57 Environmental justice advocates initially believed they could use the Fourteenth Amendment’s Equal Protection Clause 58 to bring federal court claims in the fight against

54. Gaylord & Twitty, supra note 1, at 782. In addition, such a database would be able to thoroughly categorize and profile those communities at risk. Id.

55. There are several more narrowly tailored proposals. For example, the Community Information Statement Act was offered as an amendment to the Solid Waste Disposal Act in 1993. S. Rep. No. 103-553, 103d Cong. (1993). This proposal would have required the preparation of a community information statement on all disposal facilities. Id. Data included in the statement would have included the race, ethnic background and income in the communities affected by disposal facilities. Id.

In addition, the Lead-Based Paint Hazard Abatement Trust Fund Act of 1993 was proposed as an amendment to the Residential Lead-Based Paint Hazard Reduction Act of 1992. H.R. Rep. No. 103-2479, 103d Cong. (1993). The proposal would have authorized an entitlement program to allow states and local governments to operate lead abatement programs which would be funded by revenue gained from excise taxes and a trust fund. Id. Additionally, this proposal provided measures to increase the number of affordable safe housing and child care centers in low-income areas. Id.

Finally, the Pollution Prevention and Incineration Alternatives Act of 1993 was offered as an amendment to the Resource, Conservation, and Recovery Act (RCRA). H.R. Rep. No. 103-2488, 103d Cong. (1993). This legislation would have imposed a moratorium on the siting of new municipal solid waste incinerators until 1997. Id. In addition, the legislation proposed that an impact statement be prepared showing the effect of such a siting on low-income and minority communities. Id.

56. For a discussion of the federal proposals which have not been enacted, see supra notes 30-55 and accompanying text.

57. For further discussion of the results of using the federal court system, see infra notes 61-70 and accompanying text.

58. U.S. Const. amend. XIV, § 1. The Fourteenth Amendment states in pertinent part as follows: “[N]o state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . nor deny to any person within its jurisdiction the equal protection of the laws.” Id. The Fourteenth Amendment is employed to achieve racial justice in a variety of contexts. See, e.g., Buchanan v. Warley, 245 U.S. 60 (1917) (stating ordinance which prevented African-Americans from purchasing homes in Caucasian neighborhoods violates Fourteenth Amendment); Nixon v. Herndon, 273 U.S. 536 (1927)
environmental racism. However, in 1977 the Supreme Court held in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, that a race-neutral law with a disparate impact on minorities or low-income individuals will only violate the Equal Protection Clause if the enacted law is discriminatory in its intent. Subsequent case law indicates that providing the necessary evidence of discriminatory intent is a burden which has been difficult, if not impossible, for environmental justice plaintiffs to overcome. For example, in *Bean v. Southwestern Waste Management Corp.*, the plaintiffs attempted to challenge a permit decision authorizing the operation of a waste disposal facility in their community. The plaintiffs introduced several sets of data to support their allegation of discriminatory intent, and yet still failed to meet the evidentiary burden set forth in *Arlington Heights*.

(holding Texas statute denying African-Americans right to vote violated Fourteenth Amendment).


61. *Id.* *Arlington Heights* involved an equal protection challenge to Arlington Heights' denial of a rezoning request. *Id.* at 254. The plaintiffs contended that the village's decision not to rezone the area in question from single-family to multifamily residences was racially motivated. *Id.* at 269-70. The Court stated that the plaintiffs had not met their burden of proving racial animus and held proof of discriminatory intent must exist in order to maintain an equal protection claim. *Id.* at 264-65. The Court also set forth several factors to consider in determining whether such a discriminatory purpose exists. *Id.* at 266-68. These factors include: (1) the impact of the official action on one race more than another; (2) the historical background of the decision, especially if invidious purposes have prevailed in the past; (3) the sequence of events occurring before the decision; (4) departures from the standard decision-making process; and (5) legislative and administrative history. Coleman, *supra* note 59, at 462 (citing *Arlington*, 429 U.S. at 266-268).


64. *Id.* In this case the plaintiffs used 42 U.S.C. § 1983 to establish their claim. *Id.* at 674. Section 1983 provides the basis for a remedy when federally mandated rights are deprived and serves as a method for protecting individuals from harms committed by government officials. Coleman, *supra* note 59, at 464 n.59.

The plaintiffs in *Bean* set forth two separate theories to establish the requisite discriminatory intent. These theories were: (1) the permit decision was "part of a pattern or practice" of discrimination in the placement of solid waste sites; and (2) approval of the permit amounted to discrimination in view of the placement of landfills and the events surrounding the permit application in the past. Coleman, *supra* note 59, at 464 (citing *Bean*, 482 F. Supp. at 677-78).

65. *Bean*, 482 F. Supp. at 677-79. Rather, the District Court for the Southern District of Texas first rejected the plaintiffs' argument that the approval of the permit was based on a pattern or practice of discrimination. *Id.* at 677. The court examined the available statistical data and found that 82.4% of the solid waste sites granted permits were located in census tracts with 50% or less minority popula-
In 1991 a similar case arose in Virginia. In *R.L.S.E., Inc. v. Kay*, a citizens group brought a claim against the Board of Supervisors of King and Queen County, Virginia. The plaintiffs alleged that the Board maintained a pattern and practice of racial discrimination in locating and zoning landfills. Although the court found the placement of landfills in King and Queen County racially disproportionate, it held this evidence was insufficient to prove discriminatory intent. Thus, the requirement of showing

Next the court rejected the plaintiffs' argument that the approval of the permit constituted discrimination in light of the historical record of placing solid waste sites in similar locations. The plaintiffs supplied three sets of data. The first set focused on two solid waste sites. The district court rejected this data as inconclusive because the number of sites was not a statistically significant number. The second set focused on the total number of solid waste sites located in the specified area. The court examined the data and found that "[w]ithout some proof that the sites affect an area much larger than the census tract in which they are in, it is very hard to conclude that the placing of a site in the target area evidences purposeful racial discrimination." Finally, the third set of data focused on the city as a whole. The data revealed that 67.6% of the solid waste sites are located in the eastern half of the city, where 61.6% of the minority population lives. However, the district court also found this data to be unreliable and inconclusive. Therefore, the plaintiffs had not met their burden of demonstrating discriminatory intent.


67. Id. This case arose in response to the Board of Supervisor's decision to purchase land for a new landfill in King and Queen County. *R.L.S.E.*, which stands for Residents Involved in Saving the Environment, was a bi-racial community organization created to oppose the development of a proposed regional landfill. Several concerned citizens attended the Board of Supervisors' public hearings and presented a petition which was signed by 947 individuals who opposed the proposed landfill. In addition, several members of *R.L.S.E.* proposed numerous alternative sites for the landfill. Despite the opposition of the residents of King and Queen County, the Board voted to approve the plans for the landfill and consequently, the residents filed suit.

68. Id. at 1148. The plaintiffs claimed the waste sites were purposefully placed in areas with high minority populations, rather than in non-minority areas.

69. Id. at 1149-50. In reaching its conclusion, the court conducted a demographic analysis of landfill sites located in King and Queen County. First, the court found 64% of the population living within a half-mile radius of the proposed site was comprised of African-Americans. Additionally, 100% of the population living within a one mile radius of the Mascot landfill was African-American at the time the landfill was sited. Moreover, an estimated 95% of the population living in the immediate area surrounding the Dahlgren landfill was African-American at the time the landfill was sited. Finally, an estimated 100% of the residents living within a half mile radius of the Owenton landfill were African-American at the time the landfill was sited. Thus, the court was forced to concede an obvious racially disproportionate impact. Nevertheless, the court held the Board balanced the economic, environmental and cultural needs of the County in a responsible and conscientious manner and thus, had no discriminatory intent.
discriminatory intent has effectively precluded the use of the Equal Protection Clause as a tool in the struggle against environmental injustice. Consequently, the federal court system has proved to be an inadequate forum in which to fight environmental injustice.

C. The Executive Branch

One of the newest and most important tools used in the struggle for environmental justice is the Executive Order President Clinton issued in 1994. Entitled "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," Executive Order 12,989 (Order) represents the federal government’s first real commitment to environmental justice. The Order sets forth four goals for the elimination of environmental injustice. First, the Order requires every executive agency to adopt an environmental justice strategy. Second, the Order creates the Interagency Working Group on Environmental Justice.

70. Schwartz, supra note 33, at 10,544. In addition to the above-referenced cases, plaintiffs have unsuccessfully attempted to use the Equal Protection Clause in other environmental justice cases. See, e.g., East Bibb Twiggs Neighborhood Ass’n v. Macon-Bibbs County Planning & Zoning Comm’n, 706 F. Supp. 880 (M.D. Ga. 1989) (finding no evidence discriminatory intent motivating government decision to build a solid waste facility in African-American neighborhood), aff’d, 896 F.2d 1264 (11th Cir. 1989); NAACP v. Gorsuch, No. 82-768-CIV-5, slip op. (E.D.N.C. Aug. 10, 1982) (holding siting of dump for PCBs in North Carolina county with highest concentration of African-Americans did not violate Equal Protection Clause); Harrisburg Coalition Against Ruining the Env’t v. Volpe, 330 F. Supp. 918 (M.D. Pa. 1971) (finding no evidence of discriminatory intent motivating government decision to build highway through public park primarily used by African-Americans).


72. No, supra note 6, at 384. Environmental justice activists applauded the Order, because it stressed the coordination of government agencies to address the issues surrounding the environmental justice movement. Id.

73. Id.

74. Exec. Order No. 12,898, 59 Fed. Reg. at 7,629. Specifically, the order requires the following:

[e]ach Federal agency shall 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 in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

Id. at 7,629. The environmental justice strategy each agency develops should: (1) promote enforcement of all health and environmental statutes in areas with minority and low-income populations; (2) ensure greater public participation; (3) improve research and data collection relating to the health and environment of minority and low-income populations; and (4) identify differential patterns of consumption of natural resources among minority and low-income populations. Id. at 7,630.
Third, the Order encourages public participation to resolve environmental justice issues. Fourth, the Order requires further research on environmental justice.

Unfortunately, the Order includes some internal limitations which may lessen its intended effect. For example, the Order specifically states that it does not create a right to judicial review of issues involving the compliance or noncompliance with the Order. Additionally, the Order requires each federal agency to as-

75. Id. The Interagency Working Group on Environmental Justice (Working Group) is comprised of the heads of the following executive agencies and offices: (1) Department of Defense; (2) Department of Health and Human Services; (3) Department of Housing and Urban Development; (4) Department of Labor; (5) Department of Agriculture; (6) Department of Transportation; (7) Department of Justice; (8) Department of the Interior; (9) Department of Commerce; (10) Department of Energy; (11) Environmental Protection Agency; (12) Office of Management and Budget; (13) Office of Science and Technology Policy; (14) Office of the Deputy Assistant to the President for Environmental Policy; (15) Office of the Assistant to the President for Domestic Policy; (16) National Economic Council; (17) Council of Economic Advisors; and (18) such other Government officials as the President may designate. Id.

The Working Group has seven vital functions including: (1) providing guidance to federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority and low-income populations; (2) providing guidance to each federal agency as it develops environmental justice strategies; (3) assisting EPA and other agencies conduct research; (4) assisting in the coordination of data collection as required by the order; (5) examining the existing data and studies on environmental justice; (6) holding public meetings as required by the order; and (7) developing interagency model projects on environmental justice. Id.

76. Id. at 7,632. The Order permits the public to submit recommendations to federal agencies relating to the incorporation of environmental justice principles into federal agency programs and policies. Id. Furthermore, the Order requires each federal agency to work to ensure that public documents, notices and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public. Id. Additionally, the Working Group is required to hold public hearings, when appropriate, for the purpose of fact-finding and receiving public comments concerning environmental justice. Id.

77. Id. at 7,631. For example, the order mandates each federal agency collect, maintain and analyze information which assesses and compares environmental and human health risks borne by populations identified by race, national origin or income. Id. This information should be used to determine whether each agency's programs, policies and activities have disproportionately high and adverse human health or environmental effects on minority or low-income populations. Id.

Moreover, the Order requires each federal agency to collect and analyze information related to race, national origin, income level and other readily accessible information for areas which surround facilities or sites expected to have a substantial environmental, health or economic effect on the surrounding populations. Id.

78. Id. at 7,629.

79. Executive Order No. 12,898, 59 Fed. Reg. at 7,632-33. Thus, the efforts, or lack thereof, of an agency to comply with the order remain unchecked.
sume the financial costs of complying with the order.\textsuperscript{80} Thus, while the Order demonstrates the federal government's commitment to join the fight against environmental racism, insufficient funds and lack of judicial scrutiny limit its ability to achieve its intended goal. In addition, it cannot yet be determined whether federal agencies have substantially complied with the Order.

Since the environmental justice movement began, the three branches of the federal government have taken small strides to address the issues of environmental justice.\textsuperscript{81} However, with the exception of Executive Order 12,898, we have yet to see a strong commitment, by the federal government, to ending environmental racism.\textsuperscript{82} Because it is often more cost-effective to site hazardous waste and other facilities in low-income and minority areas, the practice will inevitably continue until the federal government commits once and for all to ending environmental racism.

IV. THE STATE RESPONSE

In contrast to the weak federal response to environmental injustice problems, several states have taken affirmative steps to combat environmental racism within their borders.\textsuperscript{83} For instance, both New York and Pennsylvania recently introduced state environmental justice laws.\textsuperscript{84}

A. New York

In 1995 the New York legislature introduced a bill to amend the state's existing environmental conservation law in an attempt to achieve environmental justice.\textsuperscript{85} Although the bill declares the

\textsuperscript{80} Id. at 7,632. This task may be difficult considering the reduced budgets of agencies.

\textsuperscript{81} For a discussion of the efforts by the legislative branch to address environmental justice issues, see supra notes 35-56 and accompanying text. For a discussion of the efforts by the judicial branch, see supra notes 57-70 and accompanying text. For a discussion of the efforts by the executive branch, see supra notes 71-80 and accompanying text.

\textsuperscript{82} For a discussion of Executive Order 12,898, see supra notes 71-80 and accompanying text.

\textsuperscript{83} See, e.g., Ark. Code. Ann. § 8-6-1501 (Michie 1993) (adopting rebuttable presumption against placement of solid waste disposal sites within twelve miles of each other to prevent concentration of waste sites in minority communities); Ky. Rev. Stat. Ann. § 224.46-830(2) (Banks-Baldwin 1992) (requiring siting decisions to consider social and economic impacts of proposed facilities on affected communities); Minn. Stat. § 115A.21(1) (1993) (forbidding government authorities from licensing more than one hazardous waste site in each county).


state of New York's commitment to environmental justice, the legislature recently determined New York suffers from vast environmental inequity. Further, the legislature found the disproportionate share of environmental burdens and risks may be the result of "demographic, local zoning and siting decisions, the failure to fully consider cumulative impacts during environmental review and past invidious discrimination." Thus, the legislature concluded, state and local governments must identify and minimize the disproportionate adverse human health and environmental effects caused or worsened by New York's programs, policies and activities in order to achieve environmental justice.

The bill seeks to amend the environmental conservation law by adding a new article which calls for the creation of an environmental justice task force. Specifically, section 6-0103 establishes a balanced inter-agency task force consisting of twenty-five members who represent all relevant, interested parties. Except for the Commissioners and their designees, eight of the members will represent "racial and ethnic minorities or low-income communities," five will represent academic institutions possessing "specialized knowledge and expertise in environmental law or engineering," three will represent the public interest in the environment, and four will represent business and industry concerns.

86. Id. § 1. "The legislature hereby declares that it is the policy of the state to ensure the equitable distribution of environmental benefits and the fair and responsible avoidance of human health and environmental risks to all of New York's citizens and communities." Id.

87. Id.

88. Id.

89. Id.

90. Id. § 6-0103. The members of the task force are:
(1) the Commissioner, who shall serve as the chairperson of the task force; (2) the Commissioner of the Department of Labor or such person's designee; (3) the Commissioner of the Department of Health or such person's designee; (4) the Commissioner of the Department of Economic Development or such person's designee; (5) the Commissioner of the Department of Agriculture and Markets or such person's designee; (6) seven members appointed on the recommendation of the Speaker of the Assembly; (7) seven members appointed on the recommendation of the temporary President of the Senate; (8) three members appointed on the recommendation of the minority leader of the Senate; and (9) three members appointed on the recommendation of the minority leader of the Assembly.

Id.

91. Id. Further, section 6-0107 requires written reports by the task force. By January 1, 1996, the task force is required to report initial findings and recommendations to the governor and the legislature. Id. § 6-0107. Specifically, by June 13, 1996, the task force shall issue a report setting forth its findings and conclusions and making relevant recommendations. Id.
The task force proposes four main goals. First, the task force will "develop criteria for identifying disproportionate adverse human health or environmental effects on racial and ethnic minority populations and low-income communities." Second, the task force will compile an extensive listing of hazardous sites located in the state of New York. The sites identified will be those which might detrimentally affect racial and ethnic minority populations as well as low-income communities. Third, the task force will examine state and local environmental and other laws and regulations to ascertain whether such laws sufficiently "identify, evaluate and prevent the inequitable distribution of adverse human health and environmental impacts." Further, the task force will develop and recommend legislative, regulatory and policy changes to the governor and legislature in an attempt to strengthen the state's environmental justice scheme. Fourth, the task force will "coordinate with, provide guidance to, and serve as a clearinghouse for, state agencies in the development of environmental justice strategies, to ensure that the state and local government programs, activities and policies are administered, interpreted and enforced consistently, effectively and fairly."

Section 6-0105 would establish an environmental justice strategy. According to this section, each New York state agency which conducts any state program or activity affecting human health or the environment will complete development of its own specific environmental justice strategy. Additionally, each agency must be able to describe the completed strategy, including specific steps to be implemented, to the task force. Further, the head of each

92. Id. § 6-0103.
93. Id. § 6-0103(2)(A).
94. Id. § 6-0103(2)(B).
95. Id. The hazardous sites include solid waste landfills, hazardous waste facilities and sites, wastewater treatment plants, waste incinerators and other similar projects. Id.
96. Id. § 6-0103(2)(C).
97. Id.
98. Id. § 6-0103(2)(D).
99. Id. § 6-0105. A state agency develops an environmental justice strategy by "using data gathered by the task force and the agency, and other pertinent information ... [to] determine whether its programs, policies, and activities have disproportionate adverse human health or environmental effects on racial and ethnic minority populations and low-income communities." Id. § 6-0105(1).
100. Id. § 6-0105(5). The section requires each agency to "develop and implement an environmental justice strategy that addresses and seeks to eliminate disproportionate adverse human health or environmental effects that such agency's programs, policies, and activities may impose on racial and ethnic minority populations and low-income populations." Id. § 6-0105(2).
agency will designate either an executive staff or high level management member as the agency’s environmental justice coordinator.101

This environmental justice strategy is intended to accomplish five main goals.102 First, the strategy is intended to further the complete administration of all “human health and environmental statutes” in geographical areas containing racial and ethnic minority populations and low-income communities.103 Second, the strategy seeks to ensure the study “of the possible adverse environmental and human health impacts of project siting and approval and other agency actions” that suitably identifies and addresses negative environmental or human health effects.104 Third, the strategy intends to augment “research and data collection relating to the health of the environment and racial and ethnic minority populations” as well as low-income communities.105 Fourth, the strategy attempts to guarantee “racial and ethnic minority populations and low-income communities participate [completely] in the development and implementation of state policy and in regulatory activities that affect human health or the environment.”106 Finally, the strategy seeks to “ensure that environmental benefits, recreational opportunities, and open space resources are . . . proportionately [accessible] for enjoyment by racial and ethnic minorities and low-income communities.”107

B. Pennsylvania

In 1995 the General Assembly of the Commonwealth of Pennsylvania also introduced legislation in an attempt to achieve environmental justice.108 Known simply as the Environmental Justice Act (PA EJA), the bill was introduced after the General Assembly acknowledged the release of significant amounts of toxic chemicals

101. Id. § 6-0105(5). The environmental justice coordinator “shall develop, in consultation with the task force, the agency’s environmental justice strategy, and shall have primary responsibility for its implementation.” Id. § 6-0105(4).

102. Id. § 6-0105(3). These five main goals can be achieved by “identifying programs, policies, planning and public participation processes, enforcement and rule making that have the potential to affect human health or the environment that must be adopted, revoked or revised.” Id.

103. Id. § 6-0105(3)(A).

104. Id. § 6-0105(3)(B).

105. Id. § 6-0105(3)(C).

106. Id. § 6-0105(3)(D).

107. Id. § 6-0105(3)(E).

108. H.R. 2321, 180th Gen. Ass. (Pa. 1995). The bill proposes to establish “a program to ensure nondiscriminatory compliance with environmental, health and safety laws; and providing for equal protection of the public health.” Id.
into the environment. Moreover, the General Assembly noted that the release of many other toxic chemicals, posing substantial health threats, was not being reported. Consequently, the General Assembly concluded that although income and race are not typical criteria by which to compile and study "environmental and health data of toxic chemical releases," ethnic and racial minorities as well as low-income Americans may be disproportionately subjected to toxic chemicals in both their homes and workplaces.

As a result, the General Assembly introduced the PA EJA intending to achieve six main goals. The first goal is to "[e]stablish and maintain information which provides an objective basis for assessment of health effects by income and race." The PA EJA's second goal is to recognize those areas in which the largest amounts of toxic chemicals in the air, land, water and workplace have been released. The third goal is to "assess the health effects that may be caused by emissions" in those areas subjected to the

109. Id. § 2(1). More specifically, the General Assembly concluded that "over 3,500,000,000 pounds of toxic releases were reported by approximately 19,600 industrial plants in 1990, under Title III of the Emergency Planning and Community Right-To-Know Act of 1986." Id.

110. Id. § 2(2). The General Assembly noted that the Emergency Planning and Community Right-To-Know Act of 1986 excludes hundreds of chemicals listed as toxic under various environmental laws, including the following:

(i) sixteen hazardous air pollutants and five extremely hazardous substances listed in the Clean Air Act; (ii) one hundred forty chemicals regulated as hazardous waste under the Resource Conservation and Recovery Act of 1976 because of acute or chronic toxicity; (iii) over 200 chemicals identified as known or probable human carcinogens by the Environmental Protection Agency and the National Toxicology Program; (iv) sixty-nine special review pesticides identified under the Federal Insecticide, Fungicide and Rodenticide Act and hundreds of restricted use pesticides; and (v) ninety reproductive toxins identified by the California Department of Health.

111. Id. § 2(3).

112. Id. § 2(4)(i).

113. Id. § 2(4)(ii). The General Assembly stated the term "release" shall "have the same meaning as used in section 101(22) of the Comprehensive Environmental Response Compensation and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986 and shall also include any release which results in exposure to persons within a workplace." Id. § 3. In addition, the General Assembly stated that the term "toxic chemicals" includes the following:

(1) all hazardous substances as defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980; (2) all materials registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act; (3) all chemicals subject to section 313 of the Emergency Planning and Community Right-To-Know Act of 1986; (4) all contaminants identified in the Safe Drinking Water Act; (5) all chemicals listed by the National Toxicology Program as known or probable human carcinogens; and (6) all materials subject to the requirements
most environmental impact.\textsuperscript{114} The fourth goal is to "ensure that groups or individuals residing within environmental high-impact areas have the opportunity and the resources to participate in the technical process which will determine the possible existence of adverse health impacts."\textsuperscript{115} The fifth goal is to identify those activities in high-impact environmental areas found to have a significant adverse impact on health.\textsuperscript{116} Finally, the sixth goal is to "[i]ncorporate environmental equity considerations into planning and implementation of all federal environmental programs and statutes."\textsuperscript{117}

To achieve the above goals, the PA EJA, if enacted, initially requires the identification of environmental high-impact areas.\textsuperscript{118} To accurately determine these impacted areas, within six months after the effective date of the PA EJA, the Secretary of Environmental Resources of the Commonwealth ("Secretary") must first ascertain whether counties or other geographic units are the most appropriate designation of environmental high-impact areas.\textsuperscript{119} Subsequently, "[w]ithin twelve months after the effective date [of the PA EJA], the Secretary shall publish a list, in rank order, of the total weight of toxic chemicals\textsuperscript{120} released in each designated area in this Commonwealth "during the most recent five-year period for which data [is] available."\textsuperscript{121} In assembling this list, the Secretary must incorporate "all appropriate and available data compiled

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concerning material safety data sheets for hazardous chemicals under the Occupational Safety and Health Act of 1970.
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\textit{Id.}\textsuperscript{114} Id. \textsection 2(4)(iii).
\textsuperscript{115} Id. \textsection 2(4)(iv).
\textsuperscript{116} Id. \textsection 2(4)(v).
\textsuperscript{117} Id. \textsection 2(4)(vi).
\textsuperscript{118} Id. \textsection 4.
\textsuperscript{119} Id. \textsection 4(a). The secretary will make this determination "in consultation with the Agency for Toxic Substances and Disease Registry, the National Institute for Environmental Health Sciences, the National Center for Health Statistics and the Bureau of the Census." \textit{Id.} \textsection 4(a).
\textsuperscript{120} Id. \textsection 4(b). For each designated area, the Secretary must compute and enter the following statistics on the total weight of toxic chemicals into a database: (1) the total weight of toxic chemicals released into the ambient environment; (2) the total weight of toxic chemicals released in each environmental medium of air, water, land or workplace; (3) the total weight of each toxic chemical released into the ambient environment and into each environmental medium of air, water, land or workplace. The secretary, whenever possible, shall adjust the estimates of each of the items in paragraphs (1) through (3) to account for the toxicity of the toxic chemicals.
\textsuperscript{Id.} \textsection 5(b).
\textsuperscript{121} Id. The act states the Secretary "shall use available data until further information is reported" if less than five years of data are available. \textit{Id.} \textsection 4(b).
under any environmental regulatory authority and other sources, including available data on the presence of lead-based paint and toxic chemicals from mobile vehicles." 122 Subsequently, no later than five years after the date of initial publication, and not less than every five years thereafter, 123 "the Secretary shall revise and republish the [above] list . . . using data compiled during the preceding five-year period." 124

Based on the above list of identified environmental high-impact areas, the Secretary would have to publish a list of the one hundred designated areas with the highest total toxic chemical releases within twelve months of the effective date of the PA EJA. 125 Thereafter, the Secretary of Environmental Resources and the Secretary of Labor and Industry would use the list to conduct compliance inspections of facilities determined to have the highest potential for release of toxic chemicals. 126 Ultimately, these inspections are intended to confirm the facilities’ compliance with all applicable environmental health and safety standards. 127

Subsequently, within two years after the effective date of the PA EJA, a report would be issued, for public comment, identifying impacts on human health in environmental high-impact areas exposed to toxic chemicals. 128 According to the PA EJA, the Administrator must strive to achieve several important goals in coordinating this report. 129 If the report pinpoints any significant ad-

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122. Id. § 5(a).
123. Id. § 5(d).
124. Id. Further, within six months of the act’s effective date, the Secretary must “review the methodology used to compile and summarize information collected under section 313 of the Emergency Planning and Community Right-to-Know Act and publish for comment any proposed changes to the methodology necessary to calculate and compile the information required.” Id. § 5(c).
125. Id. § 6(a).
126. Id. § 6(a). Inspections would be conducted within two years of the effective date of this act (and not less frequently than every two years thereafter) on facilities subject to the Secretaries’ jurisdiction in environmental high-impact areas. Id. § 6(b).
127. Id. § 6(b). Beyond these compliance inspections, the Secretary of Environmental Resources and the Secretary of Labor and Industry may assign any authorized State or Indian tribe to administer any other inspections permitted by any state law regulating toxic chemicals. Id. § 6(c).
128. Id. §§6(d). Potential acute and chronic impacts on human health may include “incidence of cancer, birth deformities, infant mortality rates and respiratory diseases.” Id. § 6(d). The Secretary of Health, the Secretary of Environmental Resources, the Secretary of Labor and Industry, the Bureau of Indian Affairs and the Commissioners of the United States Commission on Civil Rights will compile this report. Id. The Administrator of the Agency for Toxic Substances Disease Registry of the Department of Health and Human Services will coordinate the report. Id.
129. Id. § 6(d). These goals include the following:

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verse impacts on human health from exposure to toxic chemicals in an environmental high-impact area, the PA EJA would direct the Secretary to "promulgate regulations applicable to any state permit for construction or modification of a toxic chemical facility in that area." 130

Finally, the PA EJA would permit the Secretary to award a technical assistance grant to those in an environmental high-impact area who may be affected by the release of toxic chemicals from a toxic chemical facility. 131 A technical assistance grant would have to meet three requirements. First, it must be "[d]esigned to facilitate access by representatives of environmental high-impact areas to the activities that involve public participation under this act and any other related law." 132 Second, it must be utilized to procure technical assistance regarding the observation and review authorities as described in the statute. 133 Finally, it must be an amount no greater than fifty thousand dollars. 134

Thus, both New York and Pennsylvania, as well as several other states, have begun to take steps to end environmental racism within

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(1) [i]solate the impacts of environmental pollution;
(2) [s]egregate the effects of other factors such as health care availability or substance abuse;
(3) [r]ank the relative risks posed by the toxic chemicals present in environmental high-impact areas and by the varied sources of toxic chemicals, both individually and cumulatively;
(4) [consider] the need to remedy the impacts of such toxic chemicals in high population density areas;
(5) [e]valuate the levels below which the release of toxic chemicals, either individually or cumulatively, must be reduced to avoid adverse impacts on human health; and
(6) determine the impacts of maintaining toxic chemical releases at the current levels.

Id. § 6(d).

130. Id. The bill states that, "[t]he regulations shall require a net reduction in the release of any toxic chemical determined to cause such significant adverse impacts on human health in that area." Id. § 7.

131. Id. § 8. This section stipulates that these technical assistance grants are "[s]ubject to appropriations and in accordance with rules promulgated by the Secretary of Health in consultation with the Secretary of Environmental Resources." Id.

132. Id. § 8(b)(1).

133. Id. § 8(b)(2).

134. Id. § 8(b)(3). The bill also provides a specific contribution requirement. In order to preserve a grant, each grant recipient must pay a non-federal share which is equal to 20% of the grant amount. Id. § 8(c). However, this 20% contribution requirement may be waived if the grant recipient sufficiently proves financial need to the Secretary. Id. Further, the bill states that the Secretary is to make only one grant for each environmental high-impact area. Id. At the end of each grant period, the Secretary will determine whether a grant renewal is necessary. Id.
their borders. Consequently, they have set good examples for the remaining states and the federal government to follow.

V. Conclusion

"The fundamental right to a clean [and] safe environment cannot exist only for the wealthy [and] non-minority citizens of this country."136 Yet despite the overwhelming evidence of the disproportionate impact of the nation's environmental practices on minority communities, the federal government has been slow to act.137 In order to eliminate environmental racism, environmental laws must be reformed to include consideration of the effect of siting decisions on the chosen communities. One executive order is not enough. The federal government must follow the lead of the several state governments which have taken a stand and committed themselves to the eradication of environmental injustice.138 If the federal government does not become more involved in the fight against environmental racism, politically and economically disadvantaged groups and vulnerable minority communities will continue to bear the brunt of environmental hazards and waste.

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135. For a discussion of other states which have enacted similar legislation, see supra note 83.
136. Blank, supra note 2, at 1136.
137. Wright, supra note 23, at 1752.
138. For a discussion of the states' approaches, see supra notes 83-135 and accompanying text.