Environmental Justice in North Carolina: Budding Change for Vulnerable Communities

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I. Introduction

Environmental justice requires the “fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income” in the “development, implementation, and enforcement of environmental laws, regulations and policies.”1 If “industrial, governmental, or commercial operations or the execution of federal, state, local, and tribal programs and policies” exposes a community to environmental risks beyond those of surrounding communities, then residents of the vulnerable community must have the opportunity legally address that injustice.2 The lack of equal access to address, not only the disparate environmental impacts, but also the decisions that created those disparate impacts in the first place undermine the goal of environmental justice.3

In North Carolina, environmental injustice persists in a variety of forms, ranging from housing segregation to confined animal feeding operations to groundwater contamination.4 However, regardless of the manner in which environmental injustice presents itself, the objective is to eliminate the unequal distribution of environmental harm on vulnerable communities. All residents across all communities regardless of population demographics should bear the harm equally, rather than be forced to eliminate the environmental harms themselves.5

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2 Id.
3 Id.
5 Id.
This paper will provide a brief overview of the environmental justice movement and its core principles, discuss three major areas of environmental injustice in North Carolina, and suggest changes necessary to move towards an equal distribution of environmental burdens.

II. History of Environmental Justice

First, a history of the environmental justice movement is necessary to understand the disproportionate impact of pollution and waste management on vulnerable communities in North Carolina. Concerns about the unequal impact of environmental harms on particular communities arose from a general surge in the number of federal environmental laws designed to address the degradation of the environment as a whole. After the enactment of statutes such as the Clean Air Act, the National Environmental Policy Act, and the Clean Water Act, it became apparent that certain communities suffered from a disproportionate impact of environmental harms.

The recognition of this discrepancy developed into a national issue, in great part, through the 1982 grassroots protests in Warren County, North Carolina. Warren County residents began protesting after discovering that illegally dumped polychlorinated biphenyl (PCB) stored in a local landfill had caused significant soil contamination and groundwater pollution. Civil rights activists became involved after the community alleged that the State of North Carolina originally

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7 Clean Air Act, 42 U.S.C. § 7401 (2006) (requiring the EPA to create and enforce regulations to protect public health from air pollution).
8 National Environmental Policy Act, 42 U.S.C. §§ 4321 (2006) (requiring federal government to create and enforce a national policy that takes into account effects on environment).
10 Kaswan, Environmental Justice, supra note 7.
sited the landfill in Warren County because the County consisted of a predominately African-American population.13

In response to this allegation, Congress requested the United States General Accounting Office (GAO) to investigate “the correlation between the location of hazardous waste landfills and the racial and economic status of the surrounding communities” in Environmental Protection Agency (EPA) Region IV, which covers eight southeastern states, including North Carolina.14 The GAO reported that there was a correlation: “three of the four major offsite hazardous waste facilities were in fact located in predominantly African-American communities, even though African Americans comprised only about one-fifth of the region’s population.”15

The grassroots protests increased national awareness of environmental justice and instigated further inquiry into the link between communities of color and low-income populations and hazardous waste materials and other environmental pollution sources.16 Following the protests in Warren County, the first National People of Color Environmental Leadership Summit convened in 1991 to create the Principles of Environmental Justice.17 These principles aim to “build a national and international movement of all peoples of color to fight the destruction and taking of [their] lands and communities” and have provided the basis for the scope and objectives of the environmental justice movement to guide all environmentally vulnerable communities.18

13 Rhoda, supra note 12.
15 Guana, supra note 14.
17 Id.
18 See id.
However, despite the increased awareness of environmental justice issues, the movement struggled to gain traction in the court systems.\(^\text{19}\) One argument against the movement posed that the root of disproportionate siting was due, not to racism and economic discrimination, but rather to market forces.\(^\text{20}\) Legal experts theorized that, rather than decision makers choosing to site “noxious land uses” in communities of color and low-income populations, residents of those communities chose to move to areas containing environmental hazards for economic reasons.\(^\text{21}\)

A case in point is *Bean v. Southwestern Waste Management Corp.*\(^\text{22}\), in which the Fifth Circuit affirmed without opinion the denial of an environmental justice claim brought under the equal protection clause of the Fourteenth Amendment of the U.S. Constitution.\(^\text{23}\) The Court refused “to find a pattern or practice of discrimination in the placement of solid-waste facilities” in an African-American community in Houston, Texas, because only two state agencies had permitted such placement.\(^\text{24}\) This decision created a precedent for denying environmental justice claims brought under a civil rights framework, which courts still uphold today.\(^\text{25}\)

### III. Environmental Justice Issues in North Carolina

Vulnerable communities in North Carolina suffer from a number of environmental hazards including, but not limited to, landfills, solid waste management, and other EPA-monitored polluting sites, groundwater contamination, confined animal feeding operations, and

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20 Id.
21 Id. at 44.
23 Eady, supra note 24, at 45.
24 Id.
hydraulic fracturing. These vulnerable communities include those consisting of predominantly African-American, Latino, Native American, or low-income populations.

a. Impacts of Landfills, Solid Waste Management, and other EPA-Monitored Polluting Sites

The Inclusion Project, established by the Center for Civil Rights at the University of North Carolina School of Law, documents the legacy of housing segregation and its impacts in North Carolina. The 2013 report released by the Inclusion Project provides a case study of the impacts of environmental justice issues for “super-majority non-white neighborhoods,” henceforth referred to as excluded communities. The project proved that these excluded communities, in which seventy-five percent of the population self-identified as non-white, were disproportionately impacted by environmental hazards.

These environmental hazards are caused by both “open or closed solid waste facilities, [which] includ[e] landfills of all types, waste transfer stations, incinerators, and recycling facilities” as well as EPA-monitored polluting sites, which include “hazardous waste sites, major discharges of air pollution, and major point-source pollution water sources.” Due to a “combination of their depressed property values, lack of political voice, . . . and racial discrimination,” excluded communities are likely to house the solid waste facilities of nearby communities with predominately white and high-income populations. The effect of the environmental injustice on the communities is measured in terms of exposure rates to the solid

28 Peter Gilbert, About the Project, UNC CENTER FOR CIVIL RIGHTS, http://www.uncinclusionproject.org/about/ (last visited Oct. 17, 2014) [hereinafter About the Project].
29 Id.
30 The State of Exclusion, supra note 26, at 4.
31 Id., at 17.
32 Id.
waste facilities or polluting sites. The percentage of the population within one mile of a facility determines the exposure rate; and because a community can be within one mile of multiple facilities, that rate can reflect a cumulative impact on the community.

The Inclusion Project found that the general exposure rate of all North Carolina residents to solid waste facilities is slightly over five percent. However, by limiting the communities to those of predominantly African-American residents, that rate increases to over ten percent.

Furthermore, within the Triangle J. Council of Governments, which includes Chatham, Durham, Johnston, Lee, Moore, Wake, and Orange Counties, excluded communities have an exposure rate of over twenty percent—the highest in the state.

As to other EPA-monitored polluting sites, almost twenty-five percent of North Carolina residents live within one mile of such sites. However, this statistic increases to forty-one percent for Latino communities and forty-four percent for African-American communities. These results demonstrate that communities of color are almost two times more likely to live within a one-mile radius of a landfill or other polluting site as compared to all other communities in North Carolina.

The Solid Waste Management Act of 2007 provided strong legislative language to prevent a landfill from being sited in an area if it would “negatively impact a community of color or a low-income community.” However, the Solid Waste Management Reform Act of 2013.

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33 Id.
34 Id.
35 Id.
37 Id.
38 Id.
39 Id.
if passed by the House of Representatives, would reverse the legislative changes that have benefited excluded communities.43 In particular, the reform would remove the opportunity to take into account the impacts of other nearby facilities of a community when siting a new landfill.44 By removing the cumulative impact effect on exposure rates, excluded communities would be at a greater risk of having more than one landfill sited within a one-mile radius.45

Furthermore, the 2013 Act would specifically affect Hyde and Columbus Counties of North Carolina.46 The 2007 Act caused landfill proposals in these two Counties to be denied, in part, because of the high percentage of minority populations in those counties.47 However, the 2013 act would enable “mega-landfills” to be developed in those counties, despite the previous denials, where “plenty of space” is still available as long as those natural areas are not “intrinsically valuable” and do not “bring in revenue for the state.”48 Consequently, the 2013 Act is a step backwards in achieving environmental justice in North Carolina.

b. Impacts of Groundwater Contamination

Another environmental justice issue of particular concern in North Carolina is the contamination of its groundwater. A prime example is the contamination of the Badin Lake groundwater in Stanley County to demonstrate this point.49

In 1990, Alcoa applied for a permit to store hazardous waste at its Aluminum Smelting Facility in Badin, Stanley County, North Carolina, consisting of the Alcoa Badin landfill, the Old

43 Landfills, supra note 41.
44 Act Now on Senate Bill 328: Tell Your Legislators to Oppose this Landfill Bill, NORTH CAROLINA ENVIRONMENTAL JUSTICE NETWORK, available at http://ncejn.files.wordpress.com/2013/06/ncejn-s328-flyer4-8-5x11.pdf.
45 See Id.
46 Landfills, supra note 41.
48 Id.
49 Issues, supra note 4.
Brick Landfill, and the Alcoa Badin Works main plant. 50 During an inspection of the facility, the EPA discovered PCB pollution in Badin Lake caused by groundwater contamination from the Alcoa landfill, among other environmental hazards. 51 This lake is frequently used by nearby communities of color for recreation and subsistence fishing; it is also central to several Native American culture sites. 52

The North Carolina Environmental Justice Network (NCEJN), in conjunction with the Southern Environmental Law Center (SELC) and Stanley County, is currently investigating the risks to human health due to the PCB contamination in the Yadkin River system. 53 As part of this investigation, they developed a detailed remediation plan to remove the “harm to communities of color from PCB contamination and on-going problems with inadequate site clean-up.” 54 NCEJN and SELC submitted this plan to North Carolina’s Division of Waste Management with the suggestion that the Division of Water Quality should not grant Alcoa’s Water Quality Certification proposal until the completion of an environmental justice and water quality analysis of Badin Lake. 55

Furthermore, they state that the Yadkin and Yadkin Pee-Dee hydropower projects should not be relicensed for those same reasons and recommend that environmental justice analysis become a general “condition . . . for inclusion in any license issued.” 56 Accordingly, they claim

51 Id.
53 Id.
54 Id.
56 Id.
that this issue falls under Title VI of the Civil Rights Act of 1964 because “inadequate consideration has been given to minority residents in the area of Badin Lake.” If accepted, this plan would be a significant achievement for the environmental justice movement to prevent groundwater contamination and to hold corporations responsible for their environmentally hazardous actions.

c. Impacts of Confined Animal Feeding Operations

North Carolina is the second greatest hog producing state in the country and currently hosts over ten million hogs within its borders. Farmers raise the vast majority of these hogs in concentrated animal feeding operations (CAFOs) in Eastern North Carolina. These CAFOs produce nineteen million tons of waste per year, which is both costly and challenging to dispose of. Furthermore, streams, rivers, and groundwater supplies are frequently contaminated by lagoon spills and runoff from waste that is sprayed on fields. This pollution causes the property values and health of nearby communities to plummet.

Within the eastern half of the state, CAFOs are located along what is known as the Black Belt of the South, where, historically, slaves worked on plantations. To this day, the African-American communities in this region experience a “high rate of poverty, poor health care, low

60 Id.
61 Id.
62 Id.
63 Id.
64 Wendee Nicole, *CAFOs and Environmental Justice: The Case of North Carolina*, 121 ENVTL. HEALTH PERSPECTIVES A182, A186 (2013) [hereinafter *CAFOs and Environmental Justice*].
education attainment, unemployment, and substandard housing.” Environmental injustice is a significant problem because of CAFO clustering in such low-income and minority communities. Studies show that eastern North Carolina counties with larger minority populations house greater concentrations of hog factories than counties with higher percentages of white residents.

While hog farming provides North Carolina with economic benefits, hog production significantly degrades natural resources and harms citizens of the state. In recognition of these negative impacts, the Swine Farm Environmental Performance Standards Act of 2007 requires CAFOs to “use environmentally superior technologies (ESTs) to substantially reduce emissions and prevent waste discharges into surface and ground waters.” However, despite incentives to encourage farmers to upgrade their lagoons to ESTs, not even one percent of the hog farms have done so because the bill only requires “new or expanded” CAFOs to meet the newest waste management standards. While the Act prevented the growth of new hog facilities, it did not address the issues of preexisting CAFOs. Farmers are not in violation of the Act if they simply do not change their current methods of waste management. Furthermore, the state passed a bill in 2011 that allowed hog facilities to update their buildings without updating their waste management systems to ESTs. This essentially created a loophole around the 2007 Act.

65 Id.
66 Id.
67 Id.
68 Corporate Hog Production in NC, supra note 45.
70 CAFOs and Environmental Justice, supra note 50.
71 Id.
72 Id.
73 Id.
74 Id.
75 Id.
To safeguard vulnerable communities from the air and water pollution caused by hog production, further research is needed into CAFOs and ESTs, along with legislature to implement improvements based on that research. To this effect, the North Carolina Environmental Justice Network, Rural Empowerment Association for Community Help, and Waterkeeper Alliance, Inc. filed a complaint with the EPA against the North Carolina Department of Environment and Natural Resources on September 3, 2014, to address these issues, claiming that current CAFO practices are in violation of Title VI of the Civil Rights Act of 1964 and the EPA’s implemented regulations.

VI. Conclusion

While the issues and impacts of environmental injustice are being actively and accurately identified, much legislation and action is still necessary to remove the disproportionate effects of environmental harms on vulnerable communities. The first step in resolving these effects is to give communities of low-income populations and color better and greater access to litigation comparable to that of non-vulnerable communities in North Carolina. Financial and political barriers to litigation enable environmental hazards to remain a burden on vulnerable populations. As such, those communities need access to the court systems to begin overcoming these burdens. However, this would only allow these communities to address pre-existing

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76 Corporate Hog Production in NC, supra note 63.
77 Civil Rights Act of 1964, supra note 60.
80 See Guana, supra note, at 86.
81 Id.
82 Id.
83 Id.
harms disproportionately affecting them. 84 Equal access to decision-making processes that create healthy environments is necessary to prevent disparate impacts in the first place. 85 In sum, while significant efforts have identified the issue and the initial steps necessary to achieve environmental justice have begun, much more legislation, and even more action is necessary to fully realize environmental justice.

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85 Id.