Environmental Justice: The Need for Equal Enforcement and Sound Science

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ENVIRONMENTAL JUSTICE: THE NEED FOR EQUAL ENFORCEMENT AND SOUND SCIENCE

Environmental racism is defined as racial discrimination in environmental policymaking and the unequal enforcement of environmental laws and regulations. It is the deliberate targeting of people of color communities for toxic waste facilities and the official sanctioning of a life-threatening presence of poisons and pollutants in people of color communities.¹

Racism exists. Environmental problems exist. These facts, however, do not reveal whether environmental racism is occurring . . . [E]nvironmental problems—from a minority perspective—are rather trivial in comparison to the larger economic and civil liberty issues; solve these and you have solved most, if not all, of the environmental inequities.²

I. INTRODUCTION

The proposition that residents of poor and minority communities are exposed to hazardous emissions and waste, and to hazardous waste facilities, with greater frequency than middle-class or affluent whites was largely unheard of until the release of a 1987 study conducted by the United Church of Christ’s Commission on Racial Justice (UCC).³

Today, just eight years later, “environmental justice”⁴ issues are captur-

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³. See generally UCC Study, supra note 1 (describing this study as the first of its kind and detailing its findings).

⁴. There was disagreement among organizations about the proper name for the issue and the movement, with advocates expressing a clear desire for the term “environmental justice” and other organizations preferring the term “environmental equity.” The difference appeared to be one of semantics, but the conviction each group expresses about its chosen nomenclature is indicative of the tensions underlying the issues—advocates believe the term “justice” is most appropriate because they believe injustice has already been
ing headlines,\(^5\) prompting litigation,\(^6\) closing businesses,\(^7\) and forcing politicians at every level to pay attention to what has become the civil rights movement of the 1990s.\(^8\) Focusing sharply on the adverse health effects allegedly caused by exposure to pollutants, environmental justice has moved to the forefront of national environmental concerns\(^9\) and is likely

done, while business groups preferred the term “equity” in an apparent belief that the term is less inflammatory and conclusory. The activist community has prevailed and the term “environmental justice” has become the norm. Evidence of this can be seen at the U.S. EPA, where the Office of Environmental Equity changed its name to the Office of Environmental Justice, and at the National Association of Manufacturers, where a task force working on the issue also changed its name from “Environmental Equity” to “Environmental Justice.”

5. See generally Clinton Seeks “Environmental Justice,” WASH. POST, Feb. 12, 1994, at A6 (outlining the details of a Presidential Executive Order on environmental justice); Dante J. Chinni, Administration Plans Executive Order on Environmental Justice, ENVTL. PROTECTION NEWS, Dec. 13, 1993, at 1 (discussing draft versions of a proposed Presidential Executive Order on environmental justice); Browner Looks To Equity Issue as Area Where She Can Make a Mark at EPA, INSIDE EPA, Apr. 16, 1993, at 8 (mentioning environmental justice as an issue on which Administrator Browner intended to be active).

6. See generally Viki Reath, EPA to Use Civil Rights Act in Siting Decisions, ENV’T WEEK., Oct. 7, 1993, at 1 (noting that EPA officials were considering using this new approach to environmental justice claims); Offices Reviewing Request for Civil Rights Investigation at Mississippi Site, SUPERFUND REPORT, Sept. 8, 1993 (detailing charges made by the Jesus People Against Pollution that “environmental racism” was involved in the cleanup and health testing at a Mississippi Superfund site).

7. See Jeri Clausing, The Fight for Quality of Environment: Some Applaud an East Fort Worth Chemical Plant’s Closing After Protests, Others Lament the Job Losses, FORT WORTH STAR-TELEGRAM, Feb. 28, 1993, at 1 (explaining how Fort Worth, Texas, community activists succeeded in closing down a locally owned and operated business by raising charges of environmental racism, despite the fact that the business had a good environmental record and employed local residents).

8. Id. (noting that local politicians admit they misjudged the seriousness of local environmental justice concerns and that those concerns would play a role in future activities). See generally Paul Ciampoli, “Eco-Racism”: The Next Great Civil Rights Issue?, GREEN-WIRE, Oct. 28, 1993, at 3 (suggesting that the environmental justice movement is gaining clout and credibility due to a sympathetic Administration, the passage of laws in several southern states and the formation of a church-based coalition); Browner Looks to Equity Issue as Area Where She Can Make a Mark at EPA, supra note 5, at 8 (noting that EPA Administrator Carol Browner pledged her agency’s support to EPA furthering environmental justice initiatives, and mentioning that Dr. Ben Chavis, former Executive Director of the National Association for the Advancement of Colored People, was a member of the Clinton Administration transition team); Chinni, supra note 5, at 1 (quoting the Executive Director of the National Religious Partnership for the Environment describing the “commitment of all faith groups to the priority of environmental justice”). This small sampling of news stories focusing on environmental justice concerns is illustrative of growing numbers of such stories and demonstrates the increasing strength of the movement, its civil rights overtones, and the involvement of a broad range of politicians, activists, and church leaders.

9. See A Place at The Table, SIERRA, May-June 1993, at 51 (detailing the confronta-
to be one of the most significant factors considered by federal agencies with regard to the future siting and expansion of facilities that produce, handle, or emit hazardous materials. The two-tier, 1987 UCC study concluded that “[r]ace proved to be the most significant among variables tested in association with the location of commercial hazardous waste facilities,” and that three out of five Black and Hispanic Americans live in communities with uncontrolled toxic waste sites.

The notion of “environmental discrimination”—that this disparate impact on poor and minority communities is not coincidental—gained significant credibility in 1992 when the National Law Journal reported in a series of articles that the level of fines assessed for environmental law violations was significantly lower in poor and minority communities than in more affluent, predominantly white communities. The series also reported that actual cleanup of hazardous waste sites was significantly slower in poor and minority communities than in more affluent, predominantly white communities.

These studies, as well as several books, reports, and law review articles, now serve as the foundation for the “environmental justice” movement between black and minority environmental activists and “The Big Ten” national, predominantly white environmental organizations, which has resulted in a significantly more multi-cultural makeup of those organizations today; see also Exec. Order No. 12,898, 59 Fed. Reg. 7,629 (1994) (marking the first major environmental initiative of the Clinton Administration, a clear indication that environmental justice issues have the President’s attention).

10. See Guy Costes, “Eco-Racism”: Louisiana Denies Permit to Hazwaste Plant, GREENWIRE, Jan. 25, 1994, at 5 (noting that in explaining the state of Louisiana’s decision to deny a siting permit to Supplemental Fuels, Inc., a hazardous waste treatment company, Louisiana Governor Edwin Edwards said, “Nationwide, environmental racism is a growing concern. It’s unfair to allow black communities to feel we are more lax in looking at permits in their areas.”). See also Stephen C. Jones, EPA Targets Environmental Racism, NAT’L L.J., Aug. 9, 1993, at 28 (discussing potential implications of the growing credibility of the environmental justice movement on business and industry).

11. See UCC STUDY, supra note 1, at xiii.
12. Id. at xiii, xiv.
14. Id. (detailing that the process for getting a Superfund site listed takes 20% longer in minority communities than in white communities, 5.6 years compared to 4.9 years, and that the pace of actual cleanup at Superfund sites is 10% slower for poor than for wealthy communities, 5.3 years compared to 4.8 years).
ment in America, a movement focused on the proposition that disproportionate exposure to hazardous wastes is deliberate and discriminatory.\textsuperscript{16} More important, environmental justice advocates claim that because of this alleged discrimination, residents of poor and minority communities suffer a disproportionate share of environmentally-induced diseases, ranging from minor respiratory ailments to cancers and birth defects.\textsuperscript{17}

Of particular concern to the United States business community is the growing sentiment within the environmental justice movement that the business community should bear the cost of remedying the alleged health problems.\textsuperscript{18} While there are indications that the business community is willing to shoulder its share of responsibility,\textsuperscript{19} there is also a strong reluctance by that community to agree in an unqualified manner that environmental injustice is deliberate or that businesses should bear the responsibility for remedying its alleged effects.\textsuperscript{20} Because the use, treat-
ment, and disposal of hazardous waste is heavily regulated, and the U.S. Environmental Protection Agency (EPA) has an aggressive program in place to ensure that commercial industrial facilities operate in compliance with federally-approved environmental guidelines, there is a strong belief that sound scientific data, directly linking industrial activities or discharges to specific adverse health effects, is a prerequisite to business acceptance of some responsibility for these adverse health effects.

This Comment shall examine the origins of the environmental justice movement, the controversy over the lack of scientific data to support claims of adverse health effects caused by environmental injustice, and proposed remedies currently under consideration at the federal level. It will briefly discuss steps that can be taken to bring environmental justice advocates and the business community together to work cooperatively in addressing environmental justice concerns, and will conclude that a two-pronged approach to addressing environmental justice concerns will best serve the interests of all concerned parties.

The first prong of this suggested approach involves the consistent, equal enforcement of existing laws and regulations by all appropriate federal, state and local environmental agencies regardless of the racial, ethnic or socio-economic status of a community. The second prong emphasizes the need for significant, additional scientific research focused on factors affecting human health, including the potential link between exposure to pollutants and adverse health effects. This Comment con-

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cludes that consistent and equal enforcement of existing laws will help address immediately the hazardous situations of greatest concern to local citizens. Moreover, the development of sound science will help identify with certainty the actual causes of adverse human health effects and allow development of the most appropriate, effective short- and long-term remedies.

II. The Evolution of Environmental Justice

A. Allegations of Discriminatory Siting

The 1970s and early 1980s were times marked, in part, by rapidly escalating public concern with environmental issues and the potential health effects of environmental degradation.\(^{24}\) Acutely aware of this growing concern, Congress established the U.S. Environmental Protection Agency,\(^{25}\) and passed several major environmental protection laws, such as the Toxic Substances Control Act (TSCA), the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Emergency Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund.\(^{26}\)

However, even as awareness grew and a new environmental consciousness swept across much of the nation, many citizens remained uninvolved in the environmental movement. Prior to the early 1980s, black and other minority communities had not been actively involved in environmental issues or environmental organizations at the national level, due in large part to more pressing concerns such as inadequate housing, education, and health care.\(^{27}\) Another contributing factor to the limited involvement of blacks and other minorities in the environmental movement

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26. TSCA, supra note 21; RCRA, supra note 21; Superfund, supra note 21.

27. See UCC Study, supra note 1, at xii. The study found that "[r]acial and other ethnic communities had been beset by poverty, unemployment and other problems related to poor housing, education and health." Id. The report stated that such communities could not "afford the luxury of being primarily concerned about their environment when confronted by a plethora of pressing problems related to their day-to-day survival." Id. See also Johnson testimony, supra note 17, at 5 (noting that poor communities must deal with day-to-day survival and issues which affect them directly, not environmental concerns);
prior to the 1980s was the nature of the movement itself—it had been historically white, middle- and upper-class in its orientation.\textsuperscript{28} One of the first signs of minority activism in the environmental movement was in 1979 when community activists in Houston, Texas, alleging racial discrimination in the site selection and permitting process, attempted to block issuance of a state permit to operate a solid waste facility.\textsuperscript{29} The activists were unsuccessful, but their actions helped draw attention to the need for minority activist groups to increase their participation in environmental issues.

**B. “Environmental Racism” Takes Hold**

The term “environmental racism” was first used in 1982 by Dr. Benjamin Chavis,\textsuperscript{30} who led protests against the state of North Carolina’s plan to build a disposal facility for poly-chlorinated biphenyls (PCBs), a known carcinogen, in poor and predominantly black Warren County.\textsuperscript{31} Chavis believed that the selection of Warren County as the disposal site was based in part on the racial composition of the area, and he joined together with more than 500 local and national civil rights activists in protest against the proposed facility.\textsuperscript{32} Ultimately, the facility was built, but the protests galvanized and empowered not only the local black community, but black activists at the national level as well.\textsuperscript{33} The activists began to appreciate the relationships between environmental issues, quality of life, and the socio-economic and racial makeup of communities. From

\begin{itemize}
\item Colquette & Robertson, supra note 15, at 154 (suggesting that minority groups did not embrace environmental causes until the early 1980s).
\item 28. UCC STUDY, supra note 1, at xi. See also \textit{A Place at The Table}, supra note 9, at 51 (discussing the fact that minorities had not held leadership positions in the environmental movement until very recently, and then only after an aggressive effort to open up the leadership ranks of those organizations to people of color).
\item 29. See Bean v. Southwestern Waste Management Corp., 482 F. Supp. 673 (S.D. Tex. 1979), aff'd, 782 F.2d 1038 (5th Cir. 1986) (holding that a motion for temporary restraining order was denied).
\item 30. See \textit{A Place at The Table}, supra note 9, at 52 (crediting the first use of the term to Dr. Ben Chavis during the series of protests held at the proposed Warren County, N.C., PCB landfill site in 1982).
\item 31. UCC STUDY, supra note 1, at 2.
\item 32. \textit{Id}.
\item 33. \textit{Id}. Among those arrested during the Warren County protests were Dr. Chavis, then leader of the United Church of Christ and now former Executive Director of the National Association for the Advancement of Colored People, former U.S. Rep. Walter Fauntroy, (D-DC), and Dr. Joseph Lowery, president of the Southern Christian Leadership Conference. \textit{Id}.
\end{itemize}
this, the "environmental justice" movement was born.\textsuperscript{34}

The momentum from the Warren County protests led to a 1983 General Accounting Office (GAO)\textsuperscript{35} study that examined the racial and socio-economic status of communities surrounding four hazardous waste landfills in the southeastern United States.\textsuperscript{36} The GAO study found that blacks comprised the majority of the population living in three of the four communities studied, and that twenty-six percent of the population in each of the four counties studied had incomes below the poverty level.\textsuperscript{37} The GAO study marked the first time the federal government recognized a possible relationship between race and hazardous waste disposal sites;\textsuperscript{38} however, its impact was limited by its regional focus.\textsuperscript{39} Furthermore, the GAO report did not discuss any of the alleged disparate adverse health effects in poor communities.\textsuperscript{40}

\textbf{C. The Need for Additional Study}

The limited focus of the GAO study indicated the need for a follow-up study that was national in scope. This need led to development of the United Church of Christ's 1987 study.\textsuperscript{41} The UCC undertook a comprehensive, national analysis of the relationship between hazardous wastes and the racial and ethnic composition of affected communities.\textsuperscript{42} Using U.S. Census data, the two-part study looked at hazardous waste site locations and determined the racial and ethnic mix of the communities surrounding those sites.\textsuperscript{43}

\textsuperscript{34}Begley & Kirschner, \textit{supra} note 19, at 27. \textit{See also} \textit{Louisiana Advisory Committee to the U.S. Commission on Civil Rights, The Battle for Environmental Justice in Louisiana . . . Government, Industry and the People} (Sept. 1993), at 4 (stating that the Warren County protests triggered the beginning of the environmental justice movement in America) [hereinafter \textit{LA. Study}].

\textsuperscript{35}See \textit{GAO Study, supra} note 15. \textit{See also} \textit{UCC Study, supra} note 1, at 2-3 (detailing the events leading up to the GAO study); Rachel D. Godsil, \textit{Note, Remediying Environmental Racism, 90 Mich. L. Rev.} 394 (1991) (discussing the GAO study).

\textsuperscript{36}See \textit{GAO Study, supra} note 15 (detailing the GAO examination of four off-site landfills located in EPA Region IV, which covers much of the southeastern United States).

\textsuperscript{37}See \textit{id.} at 1.

\textsuperscript{38}See \textit{LA. Study, supra} note 34, at 5.

\textsuperscript{39}See \textit{UCC Study, supra} note 1, at 3 (noting that the GAO study was not designed to examine the relationship between the location of hazardous waste facilities throughout the United States and the racial and socio-economic characteristics of persons residing near them).

\textsuperscript{40}See \textit{generally} \textit{GAO Study, supra} note 15.

\textsuperscript{41}See \textit{UCC Study, supra} note 1, at ix.

\textsuperscript{42}\textit{Id.} at 3.

\textsuperscript{43}\textit{Id.} at 9-12.
The results of the study demonstrated that the percentage of minority residents in communities surrounding hazardous waste sites ranged from two to more than three times the average for communities without such sites, depending on the number of hazardous waste facilities operating in the community. The UCC study stated that the statistics indicate "that the disproportionate numbers of racial and ethnic persons residing in communities with commercial hazardous waste facilities is not a random occurrence, but rather a consistent pattern." According to the study, the probability of this association occurring purely by chance is less than one in ten thousand.

The UCC study concluded:

It is clear . . . that as the number of a community's racial and ethnic residents increases, the probability that some form of hazardous waste activity will occur also increases . . . . Since many facilities and uncontrolled sites tend to be located in those urban areas where large numbers of racial and ethnic Americans reside, the potential risk caused by transportation spills, explosions, toxic emissions and groundwater contamination strikes hardest at racial and ethnic Americans who have been documented to be the most "at risk" when it comes to health and well-being.

But while the UCC study clearly raised general concerns about adverse health effects in these communities due to hazardous waste and waste sites, the study failed to mention specific concerns or health effects, and provided no documentation to support the existence of health problems in these communities.

44. Id. at 13.
45. Id. at 15. While the study claims that its statistical data support the notion of deliberate, discriminatory siting of facilities that handle hazardous materials, the study only accounts for the present-day demographic make-up of a community and does not examine the demographic make-up of such communities at the time the facilities were sited or constructed. See id. at x.
46. UCC Study, supra note 1, at 15.
47. Id. at 17. In drawing this conclusion the UCC study authors are referring not only to their study, but also to other studies on the health and well-being of blacks and minorities. Id. at 15-16.
48. See generally id. The lack of scientific data documenting the actual causes of adverse health effects is a persistent problem in addressing environmental justice concerns. While there are statistical studies about the locations of facilities handling hazardous materials, and the present-day demographic make-up of those locations, there is no data correlating facility emissions with actual human exposures to those emissions. And while such information is difficult to gather and analyze, it appears critical to the potential long-term success of the environmental justice movement that such efforts be undertaken.
The reliance of the UCC study on statistical inference rather than empirical data has become a recurrent theme in subsequent examinations of environmental justice concerns. For example, in *Dumping in Dixie: Race, Class and Environmental Quality*, Dr. Robert Bullard examined whether southern black communities had been targeted for the siting of hazardous waste facilities because of a perceived economic and political vulnerability. Dr. Bullard's study documented struggles by black communities to fight such sitings, and concluded that sitings were the product of deliberate discrimination. The book did not, however, offer any scientific evidence of a disproportionate level of adverse health effects on minorities as a result of such sitings.

D. Environmental Protection Agency Involvement

In response to environmental justice concerns raised by a group of University of Michigan professors, the U.S. EPA in 1990 established an Environmental Equity Workshop within the Agency. The workshop issued a 1992 report, *Environmental Equity: Reducing Risk for All Communities*, which recognized that minority communities experience above average exposure to some environmental hazards, such as lead, air pollution, toxic waste dumps, and tainted fish. The report ultimately concluded, however, that poverty is a more significant factor than race in determining which communities face the greatest environmental health risks.

At least one aspect of that assertion was challenged later in 1992 in a series of articles by *National Law Journal* reporters Marcia Coyle and Marianne Lavelle. By examining EPA enforcement actions during the years 1985 to 1991, the authors documented significant disparities in EPA enforcement activities between white and racial minority communities.

49. BULLARD, supra note 15, at 37-78.
50. See generally BULLARD, supra note 15.
51. Environmental Justice, 1993: Hearings Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary, 103d Cong., 1st Sess. 3 (1993) (testimony of Dr. Paul Mohai, Assistant Professor, Univ. of Mich.). Dr. Mohai was one of the members of the group that met with then-EPA Administrator William K. Reilly and persuaded the EPA to establish the internal working group to investigate allegations of environmental injustice and begin drafting EPA policy on the issue. See also LA. STUDY, supra note 34, at 6.
52. U.S. ENVTL. PROTECTION AGENCY, ENVIRONMENTAL EQUITY: REDUCING RISK FOR ALL COMMUNITIES VOL. 1, 2-15 (1992) [hereinafter ENVIRONMENTAL EQUITY REPORT VOL. 1].
53. Id. at 3.
54. Lavelle & Coyle, supra note 13, at S2.
55. Id. at S-2, S-4 (documenting disparities in fines and the level of enforcement activi-
The series concluded that, on average, white communities saw faster action, better clean-up quality, and heavier fines levied than communities in which blacks, Hispanics and other minorities lived. Unequal enforcement often occurs whether the minority community is wealthy or poor; this finding supports the assertion that race is a determinative factor in predicting how well environmental laws will be enforced.

E. Evolution Into a National Movement

The National Law Journal series put the EPA, and the nation, on notice that environmental justice issues were of serious concern, and that even the environmental arm of the federal government was not above reproach. Today, armed with additional statistical studies, books, articles, and a growing sense of optimism, the environmental justice movement is in full swing. Activists are organizing across the country, gaining stature at the EPA, and beginning to form what one advocate calls “a national guard for the environment.”

III. Attempts at Legal Remedies

A. Arlington Heights Erects an Insurmountable Barrier

Against this active backdrop of academic and government study, and national organizing, environmental justice advocates have also turned to the courts and filed lawsuits alleging racial discrimination in environments between poor and minority communities as compared to white, more affluent communities.

56. Id. at S-2. The report notes that in some environmental enforcement actions minority communities actually see a higher rate of fines than those imposed in other communities. But, because the disparities between the two types of communities are so severe for Clean Water Act and multi-media pollution cases, the average for poor communities across all laws is less than that for non-minority communities. Id.

57. Id. at S-2 (finding that the income of a community is not a reliable predictor of whether those who pollute a poor community will be dealt with harshly; race, on the other hand, appears to be a more reliable predictor of the severity of enforcement actions).

58. Ellen Spears, “Freedom Buses” Roll Along Cancer Alley, 15 Southern Changes, Spring 1993, at 2-11; Ferris testimony, supra note 16, at 3. Also, on February 9-11, 1994, more than 1,000 environmental justice activists gathered in Washington, D.C., to plan a strategy for a national campaign to promote environmental justice causes.

59. See Browner Looks to Equity Issue as Area Where She Can Make a Mark at EPA, supra note 5, at 8 (stating that EPA Administrator Carol Browner has seized upon the issue of environmental equity as an area where she can make a real difference at EPA because no prior agency chief has focused on the problem of “environmental racism”).

60. Spears, supra note 58, at 11 (quoting environmental justice activist Connie Tucker).
tal decision-making. Between 1978 and 1990, environmental justice advocates brought several legal challenges to hazardous waste facility siting decisions, alleging violations of the Equal Protection Clause of the Fourteenth Amendment. These challenges attempted to prove the existence of environmental racism largely through statistical analysis, relying almost entirely upon correlations between the racial makeup of a community and the location of hazardous waste sites. In such cases, the plaintiffs generally have raised allegations of corporate and governmental disregard for the impact of environmental abuse on people of color, of failures by federal, state and local governments to involve citizens in the decision-making process, and of failure to inform community residents of the potential harm posed by hazardous wastes. However, these attempts have been unsuccessful.

In Bean v. Southwestern Waste Management Corp., citizen activists alleged that the Texas Department of Health had followed a pattern of racial discrimination in siting previous solid waste facilities, and that project promoters deliberately lied to the community about the nature of the most recent project. Noting both the validity of the citizens' claims and the fact that citizens actively opposed the project once they learned of its true nature, the Federal District Court in Southern Texas nevertheless rejected claims of intentional discrimination that were supported solely by statistical evidence. The court held that the statistical evidence did not rise to a level that proved discriminatory intent, nor did it supplement other evidence of such intent. The court found that the plaintiffs' "statistics break down under closer scrutiny" and that, while the permitting decision being challenged might have been "unfortunate and insensitive," that conclusion did not support claims that the permitting decision was motivated by purposeful discrimination.

62. LA. STUDY, supra note 34, at 19.
63. Id.
64. Id.
66. Id. at 674-75, 676 n.5.
67. Id. at 675-77.
68. Id.
69. Id. at 678.
70. Id. at 680.
71. Id.
In another significant case, *East-Bibb Twiggs Neighborhood Ass'n v. Macon Bibb Planning and Zoning Commission*, the United States Court of Appeals for the Eleventh Circuit examined whether granting a permit for a sanitary landfill in a black community in Georgia violated the Equal Protection Clause of the Fourteenth Amendment. The Eleventh Circuit found that "residents had to prove that the actions resulted in a disproportionate racial impact and that the [siting] Commission acted with a discriminatory intent or purpose." Again, citizen activists relied heavily on statistical analysis to prove intentional discrimination, and their arguments were rejected.

The *Bean* and *East Bibb* decisions comport with U.S. Supreme Court decisions holding that plaintiffs cannot rely on the disparate impact of a government action on a racial group to mount a successful civil rights claim under the Equal Protection Clause. In order to prevail on a civil rights claim, the plaintiff must also prove that a racially discriminatory purpose motivated the government action.

In *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, a housing discrimination action that alleged civil rights violations, the Supreme Court outlined a five-factor test to be used in evaluating equal protection clause claims. The Court held that such claims must be evaluated in light of: (1) the impact of the official action and whether it bears more heavily on one race than another; (2) the historical background of the decision, especially if it reveals that official actions have been taken for invidious purposes; (3) the sequence of events preceding the decision; (4) any procedural or substantive departures from the normal decision-making process; and, (5) the legislative or adminis-
trative history, specifically contemporary statements, minutes of meet-
ings, or reports.79 These five factors form the contemporary test that plaintiffs attempting to prove discrimination by disparate impact must meet.

B. Shifting Tactics

Because of the heavy evidentiary burden imposed by Arlington Heights,80 and in light of numerous courtroom defeats,81 environmental justice advocates realized that attempting to prove racial discrimination by relying solely on statistical analysis and correlation to the presence of hazardous waste facilities in poor or minority communities was unproduc-
tive.82 As a result, advocates considered using other civil rights ap-
proaches to attack environmental discrimination.83 Under such
approaches, disparate enforcement of environmental laws would be at-
tacked in the same manner as housing, education and employment discrimination.84 However, these approaches still have burdens of proof that are difficult to meet, whether it is the traditional standard of inten-
tional discrimination, or a discriminatory effect standard, such as that used in employment cases brought pursuant to Title VII of the Civil Rights Act of 1964.85

The intent standard enunciated in Bean, under which the challenged conduct must be shown to be motivated by discriminatory purpose, has proven particularly difficult for environmental justice advocates because “[i]t forces minority residents to produce evidence of intentional racial

79. Id. at 252.
80. Id. at 252.
82. Interview with Dr. Clarice Gaylord, Director, EPA Office of Environmental Equity (now Environmental Justice), in Washington, D.C. (Oct. 7, 1993) [hereinafter Gaylord interview]. See also Reath, supra note 6, at 1-2, (noting the difficulty of plaintiffs in proving intent in previous environmental discrimination cases).
84. Colquette & Robertson, supra note 15, at 154; Reath, supra note 83, at 2 (noting that Title VI Civil Rights claims have been used successfully to desegregate public housing and in employment appeals).
discrimination when they have the least access to such evidence. And if they are going to get any, it will be in the context of probably complicated and protracted litigation . . . .” Similarly, meeting the discriminatory effects standard required by Arlington Heights, under which the challenged conduct must be shown to have a discriminatory or disparate impact on a protected group, has proven equally troublesome. As with the advocates’ reliance on statistical evidence to prove discrimination, to date neither the intent standard nor the discriminatory effects standard approach has been successful in addressing claims of environmental injustice.87

C. The Move to Civil Rights Actions

Recently, the search has led environmental justice advocates to embrace a new tactic: using Title VI of the Civil Rights Act of 1964,88 which proscribes discrimination in federally-assisted programs, to force states to consider environmental equity issues when siting hazardous waste facilities.89 While Title VI itself is not new, its potential use in environmental justice actions is the result of new thinking at the EPA. Prior to March, 1993, the EPA apparently believed that Title VI requirements were not applicable to its decision-making.90 However, in March, 1993, Dr. Clarice Gaylord, director of the EPA’s Office of Environmental Equity, stated to the U.S. House Subcommittee on Civil and Constitutional Rights that this was no longer the EPA’s position, and that no internal policy or legal

86. LA. STUDY, supra note 34, at 19 (quoting presentation of Susan Eller at the May, 1992, gathering of the National Federation of Churches for Environmental Justice, making the point that finding proof of intentional discrimination is almost impossible for environmental justice advocates).

87. Id. at 19. See generally Stephen C. Jones, Inequities of Industrial Siting Addressed, NAT'L L.J., Aug. 16, 1993, at 20 (noting that most environmental discrimination cases have been brought under equal protection claims and suggesting that recent changes at the EPA regarding Title VI claims may encourage new lawsuits).


89. Reath, supra note 6, at 1; see Jones, supra note 87, at 20; Gaylord interview, supra note 82 (expressing the belief that a Civil Rights approach to environmental justice concerns is more likely to achieve desired results).

90. See Panel Considers Need for Legislation to Combat Pollution in Poor, Minority Areas, 23 ENVT. REP. 2953 (1993). Rep. Don Edwards, (D-CA), stated that the EPA believes that Title VI of the Civil Rights Act does not apply to its scientific and technical activities. He based that view on the 1971 testimony of then-EPA Administrator William Ruckleshaus before the House Subcommittee on Civil and Constitutional Rights. Id. at 2953.
precedent precludes the application of civil rights law to EPA programs.\textsuperscript{91} Under Title VI, federal funds can be withheld from states that participate in actions or decisions that have a discriminatory effect; discriminatory intent need not be proven.\textsuperscript{92} Advocates are now pressuring the EPA on two fronts: to apply Title VI considerations to the siting of new hazardous waste facilities,\textsuperscript{93} and, to consider expanding the EPA pre- and post-award reviews of state environmental programs receiving federal financial assistance under delegation agreements with the EPA.\textsuperscript{94} Advocates claim that an expanded review process that includes an analysis of the racial and ethnic composition of a community, and a thorough examination of state decisions on siting or permitting of hazardous waste facilities, could help address the impact and management of such programs on poor and minority communities.\textsuperscript{95}

It now appears that this new approach, or even the threat of such an action by the EPA, could become a powerful tool for environmental justice advocates. In the Fall of 1993, the EPA began referring environmental equity claims to its Civil Rights division for investigation under Title VI provisions.\textsuperscript{96} The first of those investigations, prompted by claims of environmental discrimination in the potential siting of a hazardous waste treatment facility in the predominantly black St. Gabriel - Carville area of southern Louisiana, was underway in January, 1994, when the state of Louisiana denied the final permit for the plant.\textsuperscript{97} Although the specific

\textsuperscript{91} Environmental Justice, 1993: Hearings Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary, 103d Cong., 1st Sess. (1993) (testimony of Dr. Clarice Gaylord, Director, EPA Office of Environmental Justice). Dr. Gaylord, in her written responses to questions, clarified an apparent misunderstanding regarding the application of civil rights law to the EPA. She stated that when former EPA Administrator William Ruckelshaus testified in 1971 that Title VI did not apply to EPA activities, he was simply stating that because EPA had not promulgated its own internal civil rights regulations, Title VI did not apply to EPA at that time. Dr. Gaylord explained that Mr. Ruckelshaus “never stated that the civil rights laws did not apply to EPA programs.” \textit{Id.}


\textsuperscript{93} Reath, \textit{supra} note 83, at 2 (detailing the concerns of U.S. Civil Rights Commission officials that they cannot address Sierra Club environmental justice concerns in a timely manner, and asking the EPA to undertake a high-level, priority review of Mississippi’s hazardous waste facility permitting program).

\textsuperscript{94} Gaylord interview, \textit{supra} note 82. \textit{See also} LA. STUDY, \textit{supra} note 34, at 21.

\textsuperscript{95} See LA. STUDY, \textit{supra} note 34, at 21.

\textsuperscript{96} Reath, \textit{supra} note 6, at 1 (announcing that in a major policy shift, EPA in mid-September had referred an environmental racism appeal to its Office of Civil Rights for further investigation); Gaylord interview, \textit{supra} note 82 (mentioning that the EPA had begun routinely referring all environmental justice complaints to its Office of Civil Rights).

\textsuperscript{97} \textit{See} Coates, \textit{supra} note 10, at 5 (noting that environmental justice concerns played
impact of the EPA investigation on the state's decision to deny the permit is unclear, Louisiana Governor Edwin Edwards specifically cited the specter of environmental racism when explaining the decision, stating that "[n]ationwide, environmental racism is a growing concern. It's unfair to allow black communities to feel we are more lax in looking at [hazardous waste facility] permits in their areas."98

IV. THE ALLEGED HEALTH EFFECTS OF ENVIRONMENTAL INJUSTICE

A. The Lack of Empirical Data in Advocate Studies

Environmental justice advocates adamantly contend that communities of color suffer higher rates of adverse health effects because these communities are disproportionately exposed to hazardous waste or hazardous waste facilities.99 To date, most of the books, studies, and articles published on this subject recite and generally support the theory that adverse health effects are causally related to exposure to hazardous waste facilities.100 As one article states, "Although studies are scarce and much work remains to be done, few doubt the connection between cancer and pollution."101 And therein lies the unresolved problem frequently confronted by environmental justice advocates. While stories of illnesses abound, and the beliefs of those who claim that their health has been adversely affected by environmental injustice are sincere, a lack of empirical cause-and-effect data remains. Confounding this problem is the widespread recognition that epidemiological studies have thus far failed to prove that living in close proximity to hazardous waste industries is

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98. Id. (quoting Louisiana Governor Edwin Edwards' recognition that environmental justice issues were a significant factor in the state decision, a decision that arguably sets a tone for such siting decisions across the country).

99. See Ferris testimony, supra note 16, at 5 (mentioning study on birth defects in children born to mothers living near hazardous waste sites); Johnson testimony, supra note 17, at 3; Almanza testimony, supra note 17, at 1-10; Gaylord interview, supra note 82; Deeohn Ferris, Remarks at a meeting of the National Association of Manufacturers (Aug. 10, 1993) (notes on file with author).

100. See generally Colquette & Robertson, supra note 15, at 183 (listing health hazards faced by poor and minority people through disproportionate exposure to chemicals); UCC STUDY, supra note 1, at 4 (citing EPA concerns about uncontrolled hazardous waste sites); Catalina Camia, Poor, Minorities Want Voice in Environmental Choices, CONG. Q., Aug. 21, 1993, at 2257; Morning Edition: Environmental Racism Charged by Minority Groups, National Public Radio broadcast, Sept. 8, 1993, available in LEXIS, Nexis Library, NPR File.

101. Spears, supra note 58, at 3.
definitively linked to adverse health effects. The environmental justice studies themselves lack this empirical proof. The 1987 UCC study repeatedly alleged a correlation between toxic exposures and health problems, and referred to "the growing disparity in health status between 'minority' and 'non-minority' Americans," but made no allegations about specific adverse health effects. The report called for the federal government to "conduct epidemiological studies to determine if hazardous wastes and other environmental pollutants are contributory factors in the development of known health problems in racial and ethnic communities." In fact, even where industry- or plant-specific concerns about potential environmental hazards have been voiced, such as at Altgeld Gardens, a poor and predominantly black housing development on the south side of Chicago, scientific studies of the alleged adverse health effects of residents are still lacking despite more than twenty years of complaints and claims.

B. The Lack of Empirical Data in EPA Studies

In its 1992 report the EPA found that:

Little evidence exists linking the differences in disease and death rates to environmental factors; and for the diseases identified as environmentally induced, little evidence exists identifying the contributions of class, race or ethnicity. . . . Cancer provides a prime example of a disease scientists have studied intensively, yet about which the combined contributions of race, ethnicity,

102. See John H. Cushman, Jr., Environmental Hazards to Poor Gain New Focus at EPA, N.Y. TIMES, Jan. 21, 1992, at A1. See also UCC STUDY, supra note 1, at 25 (acknowledging the clear need for additional epidemiological studies to determine what, if any, cause-and-effect relationship exists between adverse health effects and proximity to hazardous materials facilities).

103. See UCC STUDY, supra note 1, at xii, 2, 4.

104. Id. at 15.

105. Id. at 25.

106. Morning Edition: Environmental Racism Charged by Minority Groups, supra note 100. The University of Illinois' School of Public Health performed a survey of Altgeld Gardens residents and found heightened risks of troubled pregnancies and a greater incidence of chronic obstructive pulmonary diseases, including emphysema, bronchitis, and asthma. However, Dr. Herbert White, who helped conduct the survey, pointed out that it was only a survey, not a scientific study, and thus did not establish a cause-and-effect relationship between dumps and diseases. Id.

107. Id. (noting that Hazel Johnson's husband died of cancer in 1969 and that his death, along with allegations of an abnormally high cancer rate on the south side of Chicago in general, spurred Mrs. Johnson to organize People for Community Recovery, a local activist group concerned with health problems).
and environment remain unclear.108

The EPA Environmental Equity report also found that while there are differences between racial groups in terms of disease and death rates,109 "[t]he population differences in disease and death rates undoubtedly are caused by a number of confounding factors, including economic, social, cultural, biological and environmental variables. However, while the differences are dramatic, there is a paucity of data on the environmental contribution to these diseases."110 With the exception of lead poisoning, where significantly more black children as compared to white children have unacceptably high blood lead levels, the EPA was unable to determine an environmental pathogen that was disproportionately distributed along racial lines.111

C. Recent Empirical Information

A recent study conducted by the Social and Demographic Research Institute (SADRI) of the University of Massachusetts has added to the controversy over the lack of empirical data evidencing environmental injustice.112 The SADRI study compared the social and demographic makeup of census tracts containing hazardous waste facilities with those that do not have such facilities and found no consistent and statistically significant differences in the racial and ethnic composition of tracts that contain such facilities and those that do not.113 The study found instead that such facilities are likely to be found in industrial areas, and that claims of intentional discrimination, or the existence of a pattern of deliberate placement of hazardous waste facilities in poor and minority communities, are not supported by the evidence.114

108. U.S. ENVTL. PROTECTION AGENCY, ENVIRONMENTAL EQUITY: REDUCING RISKS FOR ALL COMMUNITIES VOL. 2, 4-5 [hereinafter ENVIRONMENTAL EQUITY REPORT VOL. 2]. The conditions identified as environmentally induced are reproductive and developmental abnormalities, urological, endocrinologic and immune disorders, and respiratory problems.

109. ENVIRONMENTAL EQUITY REPORT VOL. 1, supra note 52, at 11. Age-specific death rates are higher for black males and females than their white counterparts in all age groups from zero to 84 years of age. Furthermore, overall death rates from cancer are greater in blacks than whites for both males (33% greater) and females (16% greater). Id. However, the report goes on to note that when cancers are broken down by type, there is great variation in rates of occurrence by race or ethnicity. Id.

110. Id.

111. Id.


113. Id. at 135-36.

114. Id. at 136-37 (noting that decisions on locating hazardous waste facilities appear to
D. The Need for Sound Science Versus The Need for Prompt Action

Understandably, for any entity being asked to accept the lion's share of responsibility for a set of problems so socially broad and financially significant as those raised by environmental justice advocates, a paucity of sound scientific evidence with which to evaluate health claims and develop effective responses is troublesome. For the business community, in particular, prudence and fiduciary responsibility dictate a cautious response to the demands of environmental justice advocates absent such evidence.¹¹⁵

While businesses are working to fully understand and address the health concerns raised by environmental justice issues,¹¹⁶ advocates are concerned that business' claim of the need for more scientific information on which to base decisions could ultimately become an excuse for inaction.¹¹⁷ Dismissing traditional risk assessment as "a figment of the imagination"¹¹⁸ and stating that methods used to measure source emissions are "alchemy,"¹¹⁹ Deeohn Ferris, one of the environmental justice movement's leading advocates, contends that the "way science is done today does not accommodate the concerns of this movement."¹²⁰ Ferris acknowledges that "[w]e need more data gathering,"¹²¹ but also insists that sufficient information already exists about the adverse health effects suffered by people living in close proximity to industrial facilities, and that prompt action is both necessary and justified.¹²²

However, assertions such as these serve to illustrate the point of this Comment—that environmental justice advocates want immediate action, based on statistical inferences and coincidence, while business is reluctant to accept blame and shoulder responsibility without a more traditional,
tangible, scientific definition of the problem. This is not a problem unique to environmental justice: similar questions have arisen, for example, in the debate over human exposures to the electro-magnetic fields produced by high-voltage power lines. However, in those instances, proof or disproof of adverse health effects on humans may be easier to establish through scientific study because inquiries can focus narrowly on one element within a limited framework, making the analysis somewhat less complex. The development of conclusive scientific data regarding adverse health effects caused by environmental discrimination or injustice is much more difficult because the link may be too attenuated. Claims of adverse health effects due to environmental discrimination often involve general claims of exposure through air, water, and soil contamination that somehow result in adverse health effects. Because the source of the pollutants, as well as the levels and incidents of exposure to those pollutants, are difficult to assess under these circumstances, assertions that any one party or combination of parties is specifically responsible are extremely difficult to prove.

V. PROPOSED SOLUTIONS

A. Major Congressional Responses

In addition to using new legal approaches to mount challenges to alleged environmental injustice, environmental justice advocates are also turning to the legislative and executive branches for action. Two prominent pieces of legislation aimed at addressing claims of environmental injustice were introduced in recent years; The Environmental Justice Act

123. See generally LA. STUDY, supra note 34, app. at 69-71.
124. See Roy W. Kreiger, On the Line, 80 ABA JOURNAL, Jan. 1992, at 41 (explaining that during a trial based on allegations that a child's disease was caused by electro-magnetic field radiation, an initial hurdle faced by the court was the lack of empirical evidence linking the child's exposure to her illness).
125. Interview with Dr. Rae Zimmerman, Taub Urban Research Center, New York University, Feb. 8, 1995 (notes on file with author) [hereinafter Zimmerman interview]. Dr. Zimmerman stated that while a direct cause-and-effect relationship between electro-magnetic radiation exposure and incidence of human illness has yet to be conclusively proven, she did note that where there is only one agent suspected of causing illness, the cause-and-effect analysis is less complex than where multiple agents are involved. For an in-depth analysis of environmental health risks from chemical emissions, and the difficulties in determining regulatory standards that will be protective of human health, see Rae Zimmerman, GOVERNMENTAL MANAGEMENT OF CHEMICAL RISKS (Edward J. Calabrese et al. eds., 1990).
126. Zimmerman interview, supra note 125.
of 1993, S. 1161, by Senator Max Baucus of Colorado, and The Environmental Justice Act of 1992, H.R. 2105, by Representative John Lewis of Georgia. The Baucus and Lewis bills are similar in form and process, and state as fact the proposition that environmental injustice exists.

The bills each require the following actions: identification through existing pollution discharge data collected by the federal government of the 100 counties or other appropriate geographic areas that bear the highest "toxic loading" as determined by EPA emissions reporting data; designation of those 100 areas as Environmental High Impact Areas (EHIA), subject to increased EPA oversight and enforcement; conducting a federally-supervised scientific study of those areas to determine whether commercial facilities or hazardous waste sites within the designated borders are, in fact, causing adverse health effects in residents; and, imposition of a moratorium or ban on industrial development in an EHIA if the federally-supervised scientific studies indicate such activities are having an adverse effect on the health of residents.

Although requiring similar action, the legislative proposals differ in result. The Baucus bill would, in effect, impose a cap on the level of pollution in an EHIA. It would require any commercial facility wishing to locate or expand operations in an EHIA to negotiate with existing businesses for a reduction in their pollution levels, so that any added industrial activity would not raise overall pollution levels above the cap. The Lewis bill would, instead, impose a moratorium on business development in an EHIA where the study of alleged health effects resulted in a positive finding. The desired result of both bills is a significant reduction of pollution within an EHIA, in the apparent belief that such reductions would automatically result in improved health for EHIA residents. Neither bill was passed by the 103rd Congress.

128. H.R. 2105, 103d Cong., 1st Sess. (1993). Both the Baucus and Lewis bills were also introduced on the 102d Congress, the House version by Rep. Lewis, and the Senate version by then-Senator Albert Gore.
129. See S. 1161; H.R. 2105.
130. Although the term "toxic loading" is not defined in the legislation, it appears to mean assignment of a numerical ranking based on industrial pollutant emission data currently reported to the EPA under a variety of regulatory reporting requirements.
131. See S. 1161; H.R. 2105.
132. See S. 1161.
133. Id.
134. See H.R. 2105.
B. Administration Involvement

In addition to their federal legislative activities, environmental justice advocates convinced the White House Office of Environmental Policy to issue a Presidential Executive Order mandating that environmental justice concerns be evaluated in all federal activities and at all federal facilities. Under the Executive Order, federal agencies are required to “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations in the United States” and its territorial possessions.

The Executive Order established an inter-agency working group to “provide guidance to [federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects] and to act as a clearinghouse for all federal agency actions to ensure that environmental justice concerns are addressed in a consistent manner across the federal government.” The Executive Order also requires federal agencies to conduct research and collect data on the cumulative effects of exposure to pollutants, and to compile data on race, national origin, income level, and other relevant information for areas surrounding federal facilities. This process will begin to address the acknowledged lack of empirical data on exposure to pollutants and incidents of adverse health effects in minority and low-income populations. Finally, the Executive Order would also use Title VI of the Civil Rights Act to prevent adverse human health and environmental problems in poor and minority communities. Similar to the approach being used by the EPA, the Executive Order will use the federal funding cudgel to force states, through the federal bureaucracy, to ensure that programs receiving


138. Id. at 7629.

139. Id.

140. Id. at 7631.

141. Id. at 7632.

142. Gaylord interview, supra note 82; Reath, supra note 83, at 2; Morning Edition: Civil Rights Laws Used to Protect the Environment, supra note 83.
federal funds do not discriminate on the basis of race, color, or national origin.\textsuperscript{143}

Even in the moments immediately following the Executive Order signing ceremony, the need for scientific analysis of environmental justice concerns was at issue. In explaining that the Executive Order was aimed at helping the "people most at risk"\textsuperscript{144} in our nation, EPA Administrator Carol Browner noted that determining which populations were most at risk still remained to be done,\textsuperscript{145} and that no data on the effects of exposure to pollutants had been collected on a racial, ethnic, or socioeconomic basis.\textsuperscript{146}

VI. SUGGESTIONS ON MOVING TOWARD RESOLUTION

A. Credibility Through Science

Today, it appears that the environmental justice movement is not moving forward as quickly as advocates desire.\textsuperscript{147} One of the fundamental obstacles impeding its progress is the lack of sound scientific data linking the discharge of industrial pollutants to adverse health effects on a community-specific basis. In addition, the long-standing differences between environmental activists, civil rights advocates, and the business community\textsuperscript{148} have created a situation in which the main participants in the debate have significant preconceived notions and prejudices about each other.\textsuperscript{149} This polarization, bred by decades of fear and mistrust about each other's motivations, poses a difficult hurdle which can only be overcome through cooperative, productive efforts, and the passage of time.

\textsuperscript{144} News Conference (C-Span broadcast, Feb. 11, 1994, following signing of Exec. Order No. 12,898, 59 Fed. Reg. 7629 (1994)).
\textsuperscript{145} Id. EPA Administrator Browner described the data collection efforts required under the Executive Order as "a first step" and said that "we have not collected" such data previously.
\textsuperscript{146} Id.
\textsuperscript{147} Begley & Kirschner, supra note 19, at 30 (quoting activist Deeohn Ferris as saying "[f]or now, industry is just seeking information").
\textsuperscript{148} See UCC STUDY, supra note 1, at xi, xii (noting that the environmental movement historically did not include blacks); LA. STUDY, supra note 34, at 15; Begley & Kirschner, supra note 19, at 30 (noting that some environmental justice advocates still do not want to work with industry).
\textsuperscript{149} See A Place at The Table, supra note 9, at 51-52 (discussing how minority activists recently forced their way into partnership and leadership positions with the "Big 10" national environmental organizations, and the general mistrust and misunderstanding between whites and people of color, and business and environmentalists, that still must be overcome).
Statistical studies conducted to date indicate that a significant number of facilities that handle hazardous substances and wastes are located in poor and minority communities. A logical corollary to this situation, advocates argue, is that residents of those communities are disproportionately exposed to emissions from such facilities and suffer adverse health effects as a result. But the situation is far more complex than environmental justice advocates appear willing to admit. Many industrial facility sites were most likely chosen for their favorable financial, geological, geographic, and infrastructure conditions. In many instances, industrial facilities were built in areas that were thinly populated at the time of construction, and in other situations facilities may have been sited in specifically designated industrial parks.

While it is important to understand why certain facilities are located in certain locations, both for historical purposes and to prevent actual occurrences of “environmental injustice,” it must be recognized that changing circumstances do not support charges of racism or discrimination. Changes in community demographics may increase the obligations of a company to listen and respond to community concerns, but they should not serve as grounds for levelling inflammatory charges unsupported by clear evidence.

At this critical stage of the environmental justice movement, advocates should work to cooperate with the business community to foster the development of sound scientific data, and not let the debate over the actual causes of adverse health effects degenerate into finger-pointing and laying blame for past actions. If the ultimate concern of environmental justice advocates is to improve the overall health of poor and minority citizens for the long-term, they must allow scientific inquiry to uncover

150. See generally UCC Study, supra note 1; GAO Study, supra note 15; Lavelle & Coyle, supra note 13; LA. Study, supra note 34.

151. Begley & Kirschner, supra note 19, at 30 (quoting activist Deeohn Ferris’ statements that conventional science does not fit the needs of the environmental justice movement and that she does “not want to wait for a body count” before action is taken).

152. See CENTER FOR THE STUDY OF AMERICAN BUSINESS, CHRISTOPHER BOERNER & THOMAS LAMBERT, ENVIRONMENTAL JUSTICE?, POLICY STUDY 121, at 6 (1994) (noting that most studies examining the facility siting issue look at the make-up of a community at the time of the study rather than at the time the siting decision took place).

153. Many decisions affecting environmental justice concerns are made by state or community government boards overseeing facility siting and permitting decisions. The impact of such decision-making is beyond the scope of this Comment, but for an interesting comment on community planning as an approach to addressing environmental justice concerns see Robert Collins, Environmental Equity: A Law and Planning Approach to Environmental Racism, 2 VA. ENVTL. L.J. 495, 507 (1992).
the actual causes of adverse health effects. The debate over environmental justice may then progress on to the development of practical, effective programs to address those identified causes of adverse health effects.

B. The Potential for Legislative Actions

Legislative proposals, such as the Baucus and Lewis environmental justice bills, can establish programs that address environmental justice concerns, but their heavy-handed limitations on future business growth may do more harm than good. Severely limiting business options for growth or expansion will likely mean that businesses will not locate or expand in locations identified as "environmental high impact areas." While a lack of industrial activity might reduce exposure to pollutants, it will definitely reduce employment opportunities for all residents of an EHIA, thereby denying them the significant emotional and physical benefits that come from employment; in particular employer-provided or subsidized health care benefits would not be available. However, the legislative proposals suggest a promising step that would provide a needed focus for addressing environmental justice concerns: the conduct of a national, scientific study to determine the actual health effects posed by hazardous facilities, and whether industrial discharges are, in fact, responsible for the adverse health effects alleged. A national study, performed by a credible third-party organization such as the National Academy of Sciences or the Centers for Disease Control, could accomplish two key objectives. First, the study would enhance the credibility of environmental justice advocates in the eyes of the business community and provide a framework within which to address adverse health effects and their actual causes. Second, the information gathered in such a study, or series of studies, would be of national importance because it would help educate the public about the severity of problems that may not be obvious to much of the population. It would also provide the justification necessary to establish a national-scale program to address problems that have yet to be quantified, much less understood.

As for the concerns voiced by environmental justice advocates that calls for further study are a delaying tactic, advocates must begin to recognize the legitimate, sometimes legal, responsibilities that businesses have to boards of directors, stockholders, and employees. Business owners cannot be expected to accept responsibility, and its consequent financial obligations, without adequate justification and documentation.

154. See supra part V.
Unless and until environmental justice advocates recognize the constraints and obligations on business, and the benefits to all parties of a scientifically-grounded, cooperative working relationship, no potential solution will go as far as it might otherwise. Forcing ill-founded federal programs on businesses already over-burdened by environmental regulation will not serve the long-term interests of any concerned party. Indeed, such an approach may do more harm than good by creating the false impression that actual problems are being addressed, thereby delaying the implementation of more appropriate, effective actions.

VII. Conclusion

The debate over environmental justice is at a crucial juncture. Advocates have succeeded in significantly raising the profile and credibility of the movement, the business community has expressed its willingness to listen and learn, and the federal government is headed by an administration that has proclaimed environmental equity as a top priority. Few environmental movements have come so far so fast.

But in order to move the debate to the next level, toward productive resolution, and to overcome the inherent mistrust between the various stakeholders, a two-pronged approach to environmental justice issues is necessary. First, the federal government, working in cooperation with advocacy groups and industry, must commit itself to the consistent, equal enforcement of all existing environmental statutes and regulations, regardless of the race or socioeconomic status of a community. Only through an unfailing commitment to addressing the immediate concerns of environmental justice advocates through existing laws and regulations will the government regain its credibility and affirm its commitment to protect the environmental well-being of all citizens. Such an equal enforcement program would fit with the administration's recent civil rights approach to environmental justice, and it would provide visible action to abate health problems that the environmental justice movement seeks.

The second prong, aimed at effecting long-term solutions to identified health problems and preventing the occurrence of hazardous situations, is the commencement of a federal-level, nationwide study or series of studies to determine if there are causal links between the operation of facilities handling hazardous materials and occurrences of specific health problems. The scientific information gained through such an undertaking would provide a solid foundation for long-term solutions to health problems in an effective, efficient manner that addresses the needs and
concerns of all affected parties. To do less, or to deny the need for such scientific inquiry, will only give false hope to those whose interests the advocates represent by holding out the promise of real, long-term programs to address citizen concerns, but in the end delivering only short-term remedies and empty promises.

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