



# The Call for Environmental Justice Legislation: An Annotated Bibliography

By Jennifer Bisgair and Jennifer Pollan (PRRAC Law & Policy Interns, Summer 2018)

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Communities of color have long argued that there is a need for stronger environmental and health protections that adequately serve all people and that advance their rights to fair participation. Since the modern environmental justice movement began in the 1980s, a series of reports as well as lawsuits and administrative complaints also have documented the ways in which people of color and low-income communities are disproportionately affected by decisions regarding the siting of hazardous facilities as well as other environmental issues. People of color are more likely to live near coal plants and landfill sites, and experience higher rates of asthma, heart disease, lung problems, and other adverse health outcomes.

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Many of these harms have direct roots in a long history of government policies such as redlining, which initiated and perpetuated housing segregation. Environmental justice legislation is critical to prevent the continuing effects of these harms. In recent years, local, state, and federal policies and practices have continued to greatly contribute to disparities in outcomes. Municipalities have failed to provide essential services, such as running water, to non-white communities. Freeway construction has often either destroyed minority and low-income neighborhoods, or placed nearby communities at high risk of pollution and pedestrian fatalities. Industrial zoning allowed for landfill sites to be placed near non-white communities, lowering land values and increasing health risks.

Racial disparities in the siting and permitting of hazardous facilities continue today. Recent longitudinal studies have found that in the 20 years since the seminal “Toxic Waste and Race Study,” environmental policy has not significantly mitigated racial disparities. Additionally, racial disparities persist in the enforcement and clean-up of environmental hazards. Data indicates that the federal government imposes lower penalties on violations of environmental laws that occur in communities of color than in majority white neighborhoods. Further, clean-up of environmental hazards in communities of color on average takes longer and is less thorough than in white neighborhoods. Because environmental laws are designed to be generally applicable, they are not well positioned to prevent vulnerable populations from disparate



environmental hazards and to the protect from discrimination. Further, current civil rights laws do not provide protection because following the decision in *Alexander v. Sandoval*<sup>1</sup> there is no private right of action for individuals to bring claims of disparate impact under Title VI of the Civil Rights Act of 1964.

Executive Order 12898<sup>2</sup> (EO 12898), which was aimed at combating these disparities, has not been meaningfully implemented by federal and local agencies. EO 12898 required agencies to bring considerations of equity and environmental justice into all levels of environmental decision making. However, there were no clear guidelines for how to implement the Order, and thus implementation has been piecemeal and inadequate. Further, executive orders are not enforceable by the public in court. To date, the EPA has not fulfilled one of the key mandates of the Order: to present a clear plan for measuring and mitigating the disproportionate environmental burdens communities of color face.

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However, despite the existence of clear data documenting these disparities, communities who experience disparate environmental burdens have no real recourse. For example, the EPA Office of Civil Rights, which is charged with investigating charges of environmental racism under Title VI of the Civil Rights Act of 1964, has made a preliminary finding of a civil rights violation only once in its entire history. Further, independent reports of the Office have found that the agency routinely fails to process complaints in a timely manner, has a back log of cases that spans several years, and has routinely rejected complaints of egregious environmental racism. Thus, the EPA has not provided any meaningful enforcement of environmental justice principles.

Due to the inadequacy of current environmental laws and environmental justice plans, advocates and scholars have recommended that the EPA promulgate robust procedures for Office of Civil Rights investigations and implement formal civil rights reviews of all programs receiving federal funding. In addition, however, the ongoing severity of environmental injustice problems in our country demands legislative intervention. Current environmental and civil rights protections are failing to keep all of us healthy and safe. The existing body of rights simply falls short. And even while the civil rights community currently fights against rollbacks, we nonetheless believe firmly in the potential for such change and in an affirmative vision, one that encompasses full and fair environmental protections for all people.

This research compilation features materials written by environmental activists, scholars, journalists, and government bodies over the years, and supports the call for environmental justice legislation to address the disproportionate harms faced by low-income communities of color, in particular. This research will demonstrate the following: First, continuing racial

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1 532 U.S. 275 (2001).

2 Exec. Order 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994), available at <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>



disparities in environmental hazards support the need for more protection than current legislation provides. These disparities are manifested in adverse health outcomes for communities of color, and in numerous regional case studies of disparate impact. Second, comprehensive environmental justice legislation is needed to remedy the continuing effects of these past harms. These harms continue because of the legacies of government supported housing segregation, that continue to shape housing patterns and therefore the siting of environmental hazards. Third, such legislative is needed to prevent future environmental harms. Current research indicates that disparate siting and enforcement of environmental hazards continue unabated today. Fourth, current environmental and civil rights laws provide inadequate protection for vulnerable communities. Further, The EPA's office of Civil Rights, agency environmental justice plans, and piecemeal state solutions have not filled this void.

## I. THE CURRENT LANDSCAPE: FACTUAL HARMS AND DISPARITIES IN ENVIRONMENTAL EXPOSURES & HEALTH OUTCOMES.

### 1. Environmental justice communities require more protection than current legislation provides.

#### A) *Nationwide findings and statistics*

**U.S. Gov't Accountability Off., GAO/ RCED-83-168, Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities (1983), <https://www.gao.gov/assets/150/140159.pdf>.**

In 1983, the GAO examined the siting of four hazardous waste landfills located in EPA region IV comprising eight southeastern states. The agency found that three out of four landfills were located in majority-black communities and that at least 26% of the population in all four communities fell below the poverty line.

**David Pace, *Minorities Suffer Most From Industrial Pollution*, NBCNews.com (Dec. 14, 2005), [http://www.nbcnews.com/id/10452037/ns/us\\_news-environment/t/minorities-suffer-most-industrial-pollution/#.WwhKakgvzyQ](http://www.nbcnews.com/id/10452037/ns/us_news-environment/t/minorities-suffer-most-industrial-pollution/#.WwhKakgvzyQ).**

Under the Freedom of Information Act, the Associate Press obtained a federal environmental health database and mapped the risk scores to neighborhoods from the 2000 census. The study indicated that Black Americans are 79% more likely than whites to live in neighborhoods where the greatest health danger is suspected to be industrial pollution. In some states, Hispanics and Asians are also overrepresented in high-risk areas. The analysis suggests that little changed in the two decades since the GAO study, as well as the decade since Clinton's environmental justice order.

**Robert D. Bullard et al., *Toxic Wastes and Races at Twenty, 1987–2007* (2007), <https://www.nrdc.org/sites/default/files/toxic-wastes-and-race-at-twenty-1987-2007.pdf>.**

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In 1987, the United Church for Christ (“UCC”) released a report investigating the location of hazardous waste sites. The report found a clear pattern of siting environmentally harmful facilities in communities of color across the United States. Communities with at least one hazardous facility had twice the average percentage of people of color as communities without any facilities. According to the report, 60% of all Black and Hispanic Americans lived in communities with uncontrolled toxic waste sites and approximately 50% of all Asian Americans/Pacific Islanders and American Indians lived in communities with uncontrolled toxic waste sites. Blacks were overrepresented in the populations of metropolitan areas with the largest number of toxic waste sites. Furthermore, race was deemed to play a more significant role than socioeconomic status even when controlling for urbanization and regional differences. In 2007, the UCC released an update to the 1987 report and found that racial disparities persist in the distribution of commercial hazardous waste facilities. The updated report found that neighborhoods hosting hazardous facilities have more people of color (56% vs. 30% for non-host neighborhoods) and higher rates of poverty. The updated report found significant racial disparities in nine out of ten EPA regions, forty out of forty-four states with hazardous waste facilities, and in metropolitan areas. The report concluded that race continues to be a strong predictor of where hazardous waste is located and that communities of color are disproportionately burdened by hazardous waste facilities.

**Irwin Weintraub, *Fighting Environmental Racism: A Selected Annotated Bibliography*, *Electronic Green J.* (1994), <https://escholarship.org/content/qt1qx663rf/qt1qx663rf.pdf>.**

Weintraub’s bibliography provides an overview of environmental justice views and activities. Weintraub organizes the bibliography based on minority/ disadvantaged group, including African Americans, Hispanics, Native Americans, farmworkers, and multi-ethnic populations.

## **2. This lack of protection has severe consequences for health and welfare.**

### ***A) Public health information/statistics***

**Martine Vrijheid, *Health Effects of Residence Near Hazardous Waste Landfill Sites: A Review of Epidemiologic Literature*, *10B Envtl. Health Persp.* 101, 110 (Supp. March 2000), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1637771/pdf/envhper00310-0106.pdf>.**

This review assesses the health effects of individuals living in residences near landfill sites. Vrijheid analyzes both single-site and multisite studies, noting that the former are important in responding to community concerns while the latter are crucial to drawing conclusions about general risks. Self-reported health symptoms include headaches, sleepiness, respiratory problems, psychological conditions, and gastrointestinal problems. Other health risks include



adverse pregnancy outcomes such as low birth weights, birth defects, and chromosomal changes; abnormalities in liver function; renal disease; and cancer. Vrijheid notes that while further research is needed, the studies suggest there are “real risks” in living close to landfill sites.

**Adrian Wilson et al., Coal Blooded: Putting Profits Before People 15–17 (Monique W. Morris, ed., 2010), [http://naacp.3cdn.net/ab160002359dc4e863\\_mlbleopn9.pdf](http://naacp.3cdn.net/ab160002359dc4e863_mlbleopn9.pdf).**

Coal power plants are linked to a wide range of health problems through the emission of pollutants such as sulfur dioxide, nitrogen oxides, and fine particle pollution. These pollutants cause coughing, wheezing, and nasal inflammation in the short term, as well as asthma and heart disease in the long term. Lung cancer rates in the top ten coal-energy-producing were 19% above the national average.

**Clean Air Task Force, The Toll from Coal 4 (2010),**

**[http://www.catf.us/resources/publications/files/The\\_Toll\\_from\\_Coal.pdf](http://www.catf.us/resources/publications/files/The_Toll_from_Coal.pdf).**

Coal plants are responsible for 13,200 premature deaths and 9,700 hospitalizations every year. Minority groups located downwind from power plants are likely to be disproportionately affected by the fine particle pollution.

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**Barbara Gottlieb et al., Coal Ash: The Toxic Threat to Our Health and Environment (2010), <https://www.psr.org/wp-content/uploads/2018/05/coal-ash.pdf>.**

Coal ash dump sites are located in most of the 50 states. Coal ash contaminants reach nearby communities by spilling into streams and lakes, leaching into groundwater, contaminating fish, and blowing through the air (“fugitive dust”). Rural, low-income communities are more susceptible to living near a disposal facility. Prolonged exposure to ash is linked with cancer, heart damage, lung disease, kidney disease, reproductive problems, birth defects, and other health problems.

### ***B) Specific case studies in various regions***

**Environmental Justice Atlas, <http://ejatlas.org/> (last visited June 6, 2018).**

The Environmental Justice Atlas records environmental justice conflicts (2450 total reported cases as of June 6, 2018) across the world through an interactive map. When site users click on a conflict, they are taken to a page with detailed information regarding the size of the population effected, dates, relevant government actors, and organizations involved.

**Yue Qiu & Talia Buford, *Decades of Inaction*, The Center for Public Integrity (Aug. 3, 2015), <https://www.publicintegrity.org/2015/08/03/17726/decades-inaction>.**

Qui and Buford’s article graphically displays data pertaining to EPA complaints, highlighting how most discrimination complaints go unaddressed for years. The EPA’s Office of Civil Rights rejects or dismisses over 90% of complaints made.

## NORTH CAROLINA

Vann R. Newkirk II, *Fighting Environmental Racism in North Carolina*, *New Yorker* (Jan. 16, 2016), <https://www.newyorker.com/news/news-desk/fighting-environmental-racism-in-north-carolina>.

In the 1970s, Warren County residents protested the siting of polychlorinated biphenyl (PCB) landfills in their community, which was predominantly African American. The protest is viewed as the genesis of the environmental justice movement. Today in North Carolina, residents continue to fight for safe drinking water.

Jennifer M. Norton et al., *Race, Wealth, and Solid Waste Facilities in North Carolina*, 115(9) *Envtl. Health Persp.* (2007), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1964896/>.

This 2007 study indicates that North Carolina solid waste facilities are located disproportionately in communities of color. These facilities present numerous public health concerns, including poor birth outcomes, respiratory conditions, cancer, and malodors.

## LOUISIANA

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Lauren Zanolli, *'Cancer Alley' Residents Say Industry is Hurting Town: 'We're Collateral Damage,'* *Guardian* (June 6, 2017), <https://www.theguardian.com/us-news/2017/jun/06/louisiana-cancer-alley-st-james-industry-environment>; Reid R. Frazier, *How One Woman Took On Shell To Save Her La. Town*, *Allegheny Front* (Nov. 8, 2013), <http://archive.alleghenyfront.org/story/how-one-woman-took-shell-save-her-la-town.html>.

In the late 1970s, epidemiological studies demonstrated cancer clusters near industrial plants along a stretch of Mississippi River north of New Orleans. These studies led to the nickname "Cancer Alley." Recently, residents in St. James, Louisiana, a town that is majority poor and African American, began demanding residential buyouts for those who cannot sell their homes.

## TEXAS

Victoria R. Danta, Comment, *VX in TX: Chemical Weapons Incineration and Environmental Injustice in Port Arthur, Texas*, 21 *Fordham Env'tl. L. Rev.* 415, 417 (2010); Matthew Tresaugue, *Port Arthur incinerator set to burn toxic PCBs*, *Chron* (June 13, 2008), <https://www.chron.com/news/houston-texas/article/Port-Arthur-incinerator-set-to-burn-toxic-PCBs-1758876.php>; Bretin Mock, *Zoned for Displacement*, *City Lab* (Sept. 13, 2017), <https://www.citylab.com/equity/2017/09/climate-changes-inevitable-displacement-of-most-vulnerable/539232/>.

In 2007, the U.S. Army decided to incinerate a potentially lethal VX nerve agent derivative ("CVXH") in Port Arthur, Texas, a small Gulf Coast town that has a median income of \$35,000. The residents of Port Arthur sued in *Sierra Club v. Gates*, but the District Court dismissed their motion for a preliminary injunction and granted the government's motion to



limit judicial review of the allegations. Today, the incinerator, along with other chemical facilities and landfills, remain in Port Arthur and the Houston Ship Channel, along which live the heaviest concentration of Latino and African American families.

## CALIFORNIA

**Louis Sahagun, *The Mother of East L.A. Transform Themselves and Their Neighborhood*, L.A. Times (Aug. 13, 1989), [http://articles.latimes.com/1989-08-13/local/me-816\\_1\\_east-los-angeles](http://articles.latimes.com/1989-08-13/local/me-816_1_east-los-angeles).**

In 1987, a Latino grassroots organization, Mothers of East L.A., organized in opposition to the siting of a hazardous waste incinerator in the City of Vernon, adjacent to a Latino neighborhood. The project was ultimately abandoned four years later.

**Robin Meadows, *Living in California's San Joaquin Valley May Harm Your Health*, News Deeply (July 5, 2017),**

**<https://www.newsdeeply.com/water/articles/2017/07/05/living-in-californias-san-joaquin-valley-may-harm-your-health>.**

San Joaquin Valley residents, who are disproportionately poor and Latino, face contaminated drinking water due to nitrate, pesticides, and wastewater from unlined pits used by the oil industry. Nitrates may lead to lethargy dizziness, and death, and are a possible human carcinogen.

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## MICHIGAN

**Letter from Lilian S. Dorak, U.S. EPA Office of General Counsel, External Civil Rights Compliance Office Director, to Heidi Grether, Michigan Department of Environmental Quality Director (Jan. 19, 2017) (in reference to EPA File No. 01R-94-R5), <https://www.epa.gov/sites/production/files/2017-01/documents/final-genesee-complaint-letter-to-director-grether-1-19-2017.pdf>.**

In a letter to the Michigan Department of Environmental Quality (MDEQ) director, the EPA describes how it has found MDEQ treated African Americans discriminatorily in the public participation process for the Genesee Power Station (GPS) permit between 1992 and 1994. Discriminatory treatment included refusing to allow African-American state representatives to speak in advance of hearings; limiting time for African American community members to review materials and provide comments; and failing to consider African American opposition to the permit's issuance.

## NEW MEXICO

**Douglas Meiklejohn, *Representing New Mexico Communities: The Struggle for Economic Justice*, 30 ABA Human Rights Magazine 4 (2003), [https://www.americanbar.org/publications/human\\_rights\\_magazine\\_home/human\\_rights\\_vol30\\_2003/fall2003/irr\\_hr\\_fall03\\_newmexico.html](https://www.americanbar.org/publications/human_rights_magazine_home/human_rights_vol30_2003/fall2003/irr_hr_fall03_newmexico.html).**

Meiklejohn highlights how minority communities in New Mexico lack the political power to fight environmental degradation in their communities, looking at two examples. First, in the 1980s, community members in Sunland Park, New Mexico objected to the issuance of permits

to place an incinerator and landfill near the community, and ultimately succeeded in blocking the permits from getting issued. One problem that community members highlighted was that the New Mexico Environment Department (NMED) conducted proceedings in English, a language that many members did not speak. Second, in the communities of Crownpoint and Church Rock, a mining company sought to inject a chemical solution into the groundwater to extract uranium. The Eastern Navajo Diné Against Uranium Mining (ENDAUM) continue to pursue judicial remedies to revoke the mining company's license, but face regulatory agency bias in favor of industrial interests.

## II. EJ LEGISLATION IS NEEDED TO REMEDY THE CONTINUING HARMS OF PAST UNCONSTITUTIONAL CONDUCT.

### 1. Connection of current harms to residential segregation.

#### A) *De jure segregation and its lingering effects in government-sponsored housing segregation; this continues to shape current residential patterns.*

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**Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (2017).**

Federal, state, and local government policies played a pivotal in racially segregating cities across American in the twentieth century. This segregation is *de jure* (caused by law and public policy) rather than *de facto* (caused by private action). While private actors played a role in residential segregation through practices and factors such as private prejudice, white flight, real estate steering, bank redlining, income difference, and self-segregation, state-led initiatives actively promoted and perpetuated these problems.

**Paul Jargowsky, *Architecture of Segregation* (2015),**

**<https://tcf.org/content/report/architecture-of-segregation/>.**

Exclusionary zoning policies continue to perpetuate racial segregation and concentration of poverty in cities and metropolitan areas across the country. Since 2000, the number of people living in high-poverty neighborhoods has drastically increased, from 7.2 million to 13.8 million. The percentage of the population living in high-poverty neighborhoods is far higher for black and Hispanic poor than for the white poor.

**Jon C. Dublin, *From Junkyards to Gentrification: Explicating a Right to Protective Zoning in Low-Income Communities of Color*, 77 Minn. L. Rev. 739, 759–68 (1993).**

Discriminatory zoning practices not only perpetuated physical segregation of whites and blacks, but also devalued black interests. Because black communities have less resources, they are more susceptible to becoming the sites of locally unwanted land uses such as landfills and industrial facilities.



**Erica Hashimoto, *Compelling Responsibility: A Summary of Litigation Establishing the Federal Government's Liability for Racially Segregated Housing Patterns* (PRRAC 1997), [http://prrac.org/pdf/Compelling\\_Responsibility.pdf](http://prrac.org/pdf/Compelling_Responsibility.pdf).**

Public and assisted housing programs have a long history of segregation. Litigation establishes liability while aiming to undo this segregation by providing housing opportunities and economic improvement to neighborhoods with low-income or minority concentration. Section 8 mobility counseling, the Moving to Opportunities Program, and the position of Deputy General Counsel for Civil Rights and Litigation at HUD are all examples of changes made due to lawsuits. However, far more litigation is needed to undo established segregated housing patterns.

**Rachel D. Godsil, *Viewing the Cathedral from Behind the Color Line: Property Rules, Liability Rules and Environmental Racism*, 53 *Emory L.J.* 1807, 1841–49 (2004), <https://ssrn.com/abstract=594066>.**

In the 1910s, land use suits challenging the presence of black families in white neighborhoods were largely unsuccessful. However, in the 1940s, real estate boards used racially restrictive covenants to prevent owners from selling or leasing to black or Hispanic families. Though the Supreme Court ruled that these covenants were invalid in 1948, many owners continued to honor them. Additionally, following World War II, federal government loan programs began “redlining” predominantly black and Hispanic neighborhoods, marking them as high-risk and unworthy of receiving loans. Federal highway programs also harmed these neighborhoods by literally destroying them to make way for freeways and thus displacing the residents.

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***B) These residential patterns are drivers of disinvestment and disparities in the distribution of environmental benefits and burdens.***

**Rachel D. Godsil, *Viewing the Cathedral from Behind the Color Line: Property Rules, Liability Rules and Environmental Racism*, 53 *Emory L.J.* 1807, 1826–29 (2004), <https://ssrn.com/abstract=594066>.**

Godsil focuses on the city of Camden, New Jersey, which experienced a deterioration in housing stock in the 1950s due to redlining policies and block busting by real estate agents. In the following decades, Camden became the site for sewage treatment facilities and waste incinerators.

**Rachel D. Godsil, *Remedying Environmental Racism*, 90 *Mich. L. Rev.* 394, 399–400 (1991).**

Segregated housing patterns are a potential cause of environmental injustice, as minorities (particularly blacks) live in highly concentrated areas of poverty. These patterns perpetuate, as whites are reluctant to move into minority neighborhoods. The presence of hazardous waste facilities further lowers land values in these areas.

**Robert D. Bullard, *Dumping in Dixie: Race, Class, and Environmental Quality* 26–27 (1990).**

The South has experienced uneven development due to lack of representation in political office, policy-making boards and commissions, and industrial and environmental legislative bodies. Originally, civil rights activists focused on jobs and the need to improve economic conditions, but because of underlying structural inequality, this unfortunately came at the expense of health and the environment. As a result, polluting industries have taken root in minority communities across the South, often with no oversight to deter pollution violations

**2. Drivers of environmental justice burdens and disparities are rooted in segregation and racially discriminatory policies and practices.****A) *Municipal incorporation/fragmentation – service hoarding*****Kennedy v. City of Zanesville, Ohio, 505 F. Supp. 2d 456 (S.D. Ohio 2007).**

67 residents of a primarily black community sued the city for denying public water service to their neighborhood, Coal Run, based on race. In ruling on cross motions for summary judgment, the District Court held that genuine issues of material fact existed regarding the plaintiffs' request for services, and the plaintiffs had standing to sue the city and county. A year after this decision, a jury ruled in favor of the plaintiffs, awarding them nearly \$11 million in damages.

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**Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (1985), Christopher Lehmann-Haupt, *Books of the Times*, N.Y. Times (April 17, 1986), <https://www.nytimes.com/1986/04/17/books/books-of-the-times-835586.html>.**

Jackson examines the New Deal's contributions to home ownership, concluding, "the result, if not the intent, of the public housing program of the United States was to segregate the races, to concentrate the disadvantaged in inner cities, and to reinforce the image of suburbia as a place of refuge for the problems of race, crime, and poverty."

**B) *Transportation system: highway routing*****Raymond A. Mohl, *The Interstates and the Cities: Highways, Housing, and the Freeway Revolt* 27 (2002), <http://www.prrac.org/pdf/mohl.pdf>.**

In the 1950s, urban policies promoted the destruction of black neighborhoods to develop interstate highways. While housing projects absorbed some displaced families, others had to relocate to low-income areas. These changes led to larger, hyper-segregated ghettos.

**Thomas W. Sanchez et al., *Moving to Equity: Addressing Inequitable Effects of Transportation Policies on Minorities* 19–2 (2003), <https://www.racialequitytools.org/resourcefiles/sanchez-moving-to-equity-transportation-policies.pdf>.**

Freeway construction destroys thousands of residential units for minority and low-income families, thus displacing entire communities. Families may also be indirectly displaced by gentrification that



the improved transportation brings. Air pollution caused by the increased traffic causes high rates of asthma for nearby communities. Personal safety is also a problem; pedestrian fatality rates are far higher for minority populations than white populations. This disparity is exacerbated by the fact that minorities are far less likely to own a car and therefore have to walk long distances on busy roads.

### **C) *Industrial zoning***

**Claire Hasler, *The Proposed Environmental Justice Act: I Have a (Green) Dream*, 17 U. Puget Sound L. Rev. 417, 428–30 (1994)**

**<https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1423&context=sulr>**

In Wallace, Louisiana, a predominantly black town located within the state's "Cancer Alley," the Wallace Parish Council rezoned the area from residential property to industrial property to allow Formosa Plastics Corporation to build a rayon pulp processing plant. The plans were cancelled when the Council faced extreme opposition from environmentalists and local residents.

### **D) *Access to economic drivers that do/do not pollute.***

**Rebecca Gordon, *Environmental Justice vs. Economic Development*, U. Mich. Taubman C. of Architecture and Urb. Plan.,**

**<http://www.umich.edu/~econdev/environmentaljustice/index.html> (last modified December 12, 2005).**

Gordon assesses case studies in Covert, Louisiana, as well as the San Diego, California and Tijuana, Mexico border region. In Covert, a chemical company abandoned its plans to construct a factory, which would have created 2000 jobs, after local opposition. In California and Mexico, border residents experienced health issues from the relocation of manufacturing plants as a result of the North American Free Trade Agreement (NAFTA). Gordon concludes by noting the tensions and tradeoffs that occur between economic development and environmental justice, as well as the importance of local residents' awareness.

**Timothy Capri, *Community Economic Development and Environmental Justice*, Duke University School of Law Community Enterprise Clinic (May 1, 2013),**

**<https://law.duke.edu/sites/default/files/clinics/cec/capria.pdf>**

Capri assesses two case studies, in Covert, Louisiana and New York, New York, in which the goals of Community Economic Development groups and Environmental Justice advocates seemingly conflict. Capri then analyzes Moore County, North Carolina, where the two groups worked together to fight municipal underbonding, a practice in which minority neighborhoods do not receive services as municipalities grow. Capri argues that Community Economic Development and Environmental Justice leadership should work together to proactively address local issues, rather than react to problems as they arise.

**E) *Land values are impacted by past unconstitutional conduct, and this influences where environmental burdens are sited today.***

Rachel D. Godsil, *Environmental Justice and The Integration Ideal*, 49 N.Y.L. Sch. L. Rev. 1109, 1129 (2005), <http://www.nylslawreview.com/wp-content/uploads/sites/16/2013/11/49-4.Godsil.pdf>.

Godsil reviews literature on the interaction between the housing market, racial segregation, and environmental burden siting. Siting decisions often ignore the preferences of minority and low-income communities.

**F) *FHA municipal services caselaw***

**Hawkins v. Town of Shaw, Miss., 437 F.2d 1286 (5th Cir. 1971), on reh'g, 461 F.2d 1171 (5th Cir. 1972).**

In this class action suit, the Court ruled that a local government was obligated to take affirmative steps to undo deeply entrenched patterns of discrimination and ensure all residents had equal access to basic amenities. Black residents sued Shaw for discriminating in the distribution of municipal services, including street paving, street lights, sewers, and water services. The Court of Appeals held that the plaintiffs had been denied equal protection, requiring the town to submit a plan to reverse its history of segregation.

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**Jon Izak Monger, *Thirsting for Equal Protection: The Legal Implications of Municipal Water Access in Kennedy v. City of Zanesville and the Need for Federal Oversight of Governments Practicing Unlawful Race Discrimination*, 59 Cath. U. L. Rev. 587, 609–11 (2010).**

The significant disparity in water services for Coal Run (a primarily African American community) versus the rest of the city, the history of discriminatory decision-making, as well as racially charged statements allegedly made by government officials all indicate discriminatory intent.

**Robert G. Schwemm, Cox, Halprin, And Discriminatory Municipal Services Under the Fair Housing Act, 41 Ind. L. Rev. 717 (2008).**

Schwemm analyzes two FHA cases to assess whether the statute should be interpreted to outlaw discrimination in the provision of services by local governments. In *Cox v. City of Dallas*, plaintiffs alleged that the city discriminated regarding an illegal dump site in the predominantly black neighborhood of Deepwood. The District Court ruled for the city in 2004, holding that the evidence failed to demonstrate intent to discriminate. The Fifth Circuit affirmed the decision in 2005. In *Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n*, a couple sued a homeowners' association for anti-Semitic harassment under § 3604(a) of the FHA. Judge Posner of the Seventh Circuit ruled that this section applies to "access to housing" and the couple had no claim because they had not been prevented from acquiring the property. Schwemm concludes that both judgements misconstrue the FHA, which guarantees nondiscrimination in housing-related "privileges" and "services" in § 2604(b), and should be rejected by other courts.



### **G) *Role of (implicit?) bias in siting decisions and enforcement***

**Shea Diaz, *Getting to the Root of Environmental Injustice*, Georgetown Environmental Law Review Syndicate (Jan. 29, 2016),**

**<https://gelr.org/2016/01/29/getting-to-the-root-of-environmental-injustice/>.**

The Cerrell Report, a document developed by Cerrell Associates, suggests polluting firms target communities with less political clout and capital when making siting decisions. Once sites are established, communities may fall victim to “compliance bias,” a phenomenon in which regulators fail to detect violations in low-income and minority communities and thus wrongly believe firms are complying with the law. Low-income neighborhoods are less likely to be monitored and inspected than high-income neighborhoods.

**Daniel C. Wigley & Kristin S. Shrader-Frechette, *Environmental Racism and Biased Methods of Risk Assessment*, 7 RISK 55 (1996),**

**<https://scholars.unh.edu/cgi/viewcontent.cgi?article=1266&context=risk>.**

Based on analysis of a risk assessment for a proposed Louisiana uranium enrichment facility, the authors argue that environmental injustice occurs when assessors’ scientific methods cause de facto discrimination.

### **3. Exposure to cumulative impacts is a significant problem for the health of EJ communities, and includes impacts seeded in the past by this unconstitutional conduct.**

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#### **A) *Past siting decisions***

**Robert D. Bullard, *Dumping in Dixie: Race, Class, and Environmental Quality* 33–36 (1990).**

In 1987, four landfills in minority zip codes contained 63% of the South’s total hazardous waste disposal capacity. At the time, blacks constituted just 20% of the South’s total population. Across the country, three of the five largest commercial hazardous-waste landfills were located in minority areas. In Los Angeles, 60% of the city’s Hispanics lived in waste-site areas, compared with 35.3% of the city’s whites.

**Robert D. Bullard et al., *Toxic Wastes and Races at Twenty, 1987–2007* (2007),**  
**<https://www.nrdc.org/sites/default/files/toxic-wastes-and-race-at-twenty-1987-2007.pdf>.**

As part of the report, the authors highlight siting victories over the past two decades. In 1993, in Kettleman City, California, a predominantly Latino community successfully prevented the siting of a toxic waste facility near their neighborhood. In 2000, residents in Macon County, North Carolina stopped the siting of a mega landfill near Tuskegee University, a historically black university. One year later, in Ward Valley, California, Native American protests prevented the siting of a nuclear waste dump.

**U.S. Gov't Accountability Off., GAO/ RCED-83-168, Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities (1983), <https://www.gao.gov/assets/150/140159.pdf>.**

This 1983 report found that three out of the four sites examined (Chemical Waste Management in Sumter County, Alabama; Industrial Chemical Company in Chester County, South Carolina; and Warren County PCB Landfill in North Carolina) were in areas in which the majority of the population was black and below the poverty level.

***B) Other burdens connected to racial segregation: lead exposure; asthma; etc.***

**Rachel Morello-Frosch et al., *Environmental Justice and Southern California's 'Riskscape': The Distribution of Air Toxics Exposures and Health Risks Among Diverse Communities*, 36 Urb. Aff. Rev. 551, 551-78 (2001).**

The authors employ recent advances in air emissions inventories and modeling techniques to consider a broad range of outdoor air toxics in Southern California and to calculate the potential lifetime cancer risks associated with these pollutants. They find that such risks are attributable mostly to transportation and small-area sources and not the usually targeted large-facility pollution emissions. Multivariate regression suggests that race plays an explanatory role in risk distribution even after controlling for other economic, land-use, and population factors. This pattern suggests the need for innovative emissions reduction efforts as well as specific strategies to alter the spatial and racial character of the environmental "riskscape" in urban centers.

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**Pastor et al., *Who's Minding the Kids? Pollution, Public Schools, and Environmental Justice in Los Angeles*, 83 Soc. Sci. Q. 263, 263-80 (2002).**

The authors find that minority students, especially Latinos, are more likely to attend schools near hazardous facilities and face higher health risks associated with outdoor air toxics exposure.

**4. Additional sources**

**U.S. Comm'n on Civil Rights, *The Zoning and Planning Process in Baltimore County and its Effect on Minority Group Residents* (1971)**

**<https://www.law.umaryland.edu/marshall/usccr/documents/cr12z71971.pdf>.**

In 1971, the Commission released a report on Baltimore County's zoning and planning practices. In the report, the Commission noted several times that black residents bore the brunt of the environmental impact of policies. For example, highway construction in Baltimore County repeatedly threatened the very existence of low-income black communities as they destroyed sections of such communities and isolated them from other areas. In another instance the residents of Bengies-Chase, a black community were upset by the county planning board's recommendations to continue a manufacturing zone in the community because of the possibility that it would prevent community growth. Previously, the residents were not notified when a residential area was rezoned for industrial use. Complaints about industrial zoning encroaching on or constraining many other black communities in the country were repeatedly ignored. Generally, black residents of the county expressed concern that the



county council would not accept the planning board's recommendations to rezone commercial or industrial zones to residential use and that the council would not accept recommendations to retain residential zoning in some black areas. The report made clear that it was a constant struggle for black people to remain in the county as they had to repeatedly fight for services and stave off industrial development that could harm their communities.

**La. Advisory Comm. to the U.S. Comm'n on Civil Rights, *The Battle for Environmental Justice... Government, Industry, and the People* (1993),**

**<https://www.law.umaryland.edu/marshall/usccr/documents/cr12en8z.pdf>.**

In September 1993, the Commission released a report on the fight for environmental justice in Louisiana, one of the largest producers of oil, natural gas, and petrochemicals in the country. The report was the first the Commission released that specifically studied environmental policies and racial discrimination. Ultimately, the report concluded that black communities, often located in rural and unincorporated areas and whose residents are of low socioeconomic status, are disproportionately impacted by state and local government systems for permitting and the expansion of hazardous waste and chemical facilities. In particular, communities of color suffered disproportionately from adverse health effects and a subsequent decline in quality of life. Zoning decisions greatly influenced the siting of hazardous facilities. Local zoning boards that often lacked minority representation made most decisions about land-use and therefore communities of color directly impacted by industry are less able to exert influence to direct facilities away from their residential areas. Additionally, several historically black rural communities were bought out by manufacturers to create buffers around their plants.

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**U.S. Comm'n on Civil Rights, *Not in My Backyard: Executive Order 12,898 and Title VI as Tools for Achieving Environmental Justice* (2003),**

**<http://www.usccr.gov/pubs/envjust/ej0104.pdf>.**

The Commission released another report in 2003 that examined the implementation of Executive Order 12989 and Title VI as tools for achieving environmental justice. The second chapter of the report documented the impact of environmental decision-making on communities as well as large disparities in health experienced by such communities including Native American reservations across the country, Chester, Pennsylvania, and Jefferson County, Texas. In particular, the chapter highlighted the effect of historic discrimination in housing and zoning on communities of color. The report also explored the connection between economic opportunity and environmental justice.

**U.S. Comm'n on Civil Rights, *Environmental Justice: Examining the Environmental Protection Agency's Compliance and Enforcement of Title VI and Executive Order 12,898* (2016) [http://www.usccr.gov/pubs/Statutory\\_Enforcement\\_Report2016.pdf](http://www.usccr.gov/pubs/Statutory_Enforcement_Report2016.pdf).**

A 2016 report recognized that racial minorities are disproportionately affected by the siting of waste disposal facilities and often lack the political and financial clout to properly bargain with polluters. Moreover, the percentage of people of color and low-income individuals who live near coal ash disposal facilities is disproportionately high when compared to the national average.

### III. EJ LEGISLATION IS CRUCIAL TO STOPPING AND PREVENTING THESE HARMS

#### 1. Ongoing discretionary enforcement discrepancies

**Marianne Lavelle & Marcia Coyle, *Unequal Protection the Racial Divide a Special Investigation*, 15 Nat'l L.J. 3 (1992), <https://www.ejnet.org/ej/nlj.pdf>.**

In 1992, the National Law Journal analyzed enforcement of environmental laws and found that the federal government systematically imposed lower penalties on violators of environmental laws in minority areas than in predominantly white areas. Moreover, the report found that cleanup at Superfund sites began later at sites located in minority areas than at white areas and that cleanup at minority sites was less likely to be as comprehensive as cleanup at white sites. The lack of political clout of minority communities was cited as a key factor in the imbalance in environmental enforcement.

**Manuel P. Teodoro, Mellie Haider & David Switzer, *U.S. Environmental Policy Implementation on Tribal Lands: Trust, Neglect, and Justice*, 46 Pol'y Stud. J. 37 (2016), <https://onlinelibrary.wiley.com/doi/epdf/10.1111/psj.12187>**

A 2016 study investigating the implementation of U.S. environmental protection laws on tribal lands found that tribal facilities experience less rigorous enforcement of the Clean Water Act and Safe Drinking Water Act and are more likely to violate these laws. The authors suggest that the unique political and legal status of tribes has affected implementation of environmental laws and that the federal government lacks incentives to allocate resources for enforcement on tribal land.

#### 2. Siting and permitting outcomes

**Paul Mohai & Robin Seha, *Which Came First, People or Pollution? Assessing the Disparate Siting and Post-Siting Demographic Change Hypotheses of Environmental Justice*, 10 Env't Res. Letters 11508 (2015), <http://iopscience.iop.org/article/10.1088/1748-9326/10/11/115008/pdf>.**

This study was the first national-level environmental justice study to conduct longitudinal analyses using distance-based methods. The study aimed to: (1) determine whether disparate siting, post-siting demographic change, or a combination of the two created present-day disparities; (2) test related explanations; and (3) determine whether the application of distance-based methods helps resolve the inconsistent findings of previous research. The authors used a national database of commercial hazardous waste facilities sited from 1966 to 1995 and examined the demographic composition of host neighborhoods around the time of siting and demographic changes that occurred after siting. The authors found strong evidence of disparate siting for facilities sited in all time periods. Although the authors found some evidence of post-siting demographic changes, they were mostly a continuation of changes that occurred in the decade or two prior to siting, suggesting that neighborhood transition serves



to attract noxious facilities rather than the facilities themselves attracting people of color and low-income populations. The authors' findings helped to resolve inconsistencies among the longitudinal studies and builds on the evidence from other subnational studies that used distance-based methods. The authors conclude that racial discrimination and sociopolitical explanations (i.e., the proposition that siting decisions follow the 'path of least resistance') best explain present-day inequities.

**Press Release, Cory A. Booker, EPA Closes Alabama Civil Rights Complaint Alleging Environmental Racism (March 6, 2018),**

**<http://www.publicnow.com/view/59AADB48AAAA201B6AFF301CC2268EDA827967B1?2018-03-06-15:30:21+00:00-xxx534>.**

The EPA closed two civil rights complaints filed against the Alabama Department of Environmental Management (ADEM). The complaints alleged that ADEM acted in a racially discriminatory manner by permitting a massive landfill in an overwhelmingly black community, and further failed to protect Uniontown residents from unlawful intimidation in the wake of their initial civil rights claim.

#### **IV. THE CURRENT SYSTEM IS INADEQUATE IN PROTECTING PEOPLE OF COLOR AND LOW-INCOME PEOPLE, IN PARTICULAR**

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**1. See also Section III, supra.**

**2. Inadequacy of reliance on government agencies to enforce Title VI**

**Kristen Lombardi et al., Ctr. for Pub. Integrity, Environmental Racism Persists and the EPA is One Reason Why, (August 3, 2015, 4:55 PM)**

**<https://www.publicintegrity.org/2015/08/03/17668/environmental-racism-persists-and-epa-one-reason-why>.**

This report found that the EPA's civil rights office rarely acted on civil rights complaints from communities of color. The complaints were filed under Title VI of the Civil Rights Act of 1964, which prohibits discrimination by entities receiving federal funding. Analysis of Title VI complaints between 1995 and 2013 revealed that the EPA dismissed or rejected nine out of ten civil rights complaints. Furthermore, the civil rights office has never found a Title VI violation in its twenty-two-year history. The report explored the particularly egregious case of Baton Rouge, Louisiana, in which between 2009 and 2012 the EPA rejected four successive complaints about sewer flies in an African American neighborhood. The flies emitted a foul odor, caused businesses in the community to close, and were so pervasive that the city began supplying air freshener and bug killer to residents.



**Deloitte, Evaluation of the EPA Office of Civil Rights (2011),**  
**[https://archive.epa.gov/epahome/ocr-statement/web/pdf/epa-ocr\\_20110321\\_finalreport.pdf](https://archive.epa.gov/epahome/ocr-statement/web/pdf/epa-ocr_20110321_finalreport.pdf).**

Deloitte found that the EPA Office of Civil Rights was failing to properly adjudicate civil rights complaints. More specifically, in 94% of cases the agency did not accept or dismiss cases within the agency's time limit. The agency also had a backlog of cases stretching back to 2001 and had failed to complete mandatory Affirmative Employment and Diversity reviews for the prior three years. Finally, the Agency had not performed its central administration tasks, the processing of complaints, filing of reports and writing of final agency decisions.

**EPA Office of Civil Rights, Angelita C, 42211, Preliminary Finding, OCR, Title Complaint VI 16R-99-R9 (2011), <https://www.epa.gov/sites/production/files/2016-04/documents/title6-c42211-preliminary-finding.pdf>.**

In April 2011, the EPA made a preliminary finding in *Angelita C., et al v. California Department of Pesticide Regulation* that a prima facie violation of Title VI occurred because the agency discriminated against Latino children by renewing the registration for a toxic pesticide without proper consideration of the health impacts that it would have on children attending schools near the area where the pesticide was applied. This was the first time in EPA's history that it concluded a prima facie violation of Title VI had occurred. Ultimately, the case was settled with the State of California in August of 2011.

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### **3. Inadequacy of general environmental laws in protecting vulnerable communities**

**Robert D. Bullard, et al., United Church of Christ Justice & Witness Ministries, Toxic Wastes and Race at Twenty: 1987-2007 (2007),**  
**<https://www.nrdc.org/sites/default/files/toxic-wastes-and-race-at-twenty-1987-2007.pdf>.**

Twenty years after the publication of the UCC Commission for Racial Justice report "Toxic Wastes and Race" the author argued that racial disparities in the siting of hazardous facilities persisted. Since the policies of the last twenty years have not made a dent in racial disparities, the authors along with over 100 environmental justice and civil rights organizations made several policy recommendations. These recommendations included, codifying the Environmental Justice Executive Order into law, instituting a private right of action under the Civil Rights Act of 1964, and holding congressional hearings on the EPA's response to contamination in communities of color.

**Failed Promises: Evaluating the Federal Government's Response to Environmental Justice, (David M. Konisky, Ed., The MIT Press 2015).**

The authors evaluated the success of the EPA in carrying out President Clinton's Executive Order (EO 12898). EO 12898 called on all federal agencies to incorporate equity considerations into their programs, policies, and activities. Each chapter focused on a different area of



environmental decision making, including permitting, standard-setting, economic analysis, public participation, enforcement, and use of the courts. Ultimately, the authors each concluded that the EPA had failed to deliver on the promises articulated in EO 12898. The EPA failed to integrate principles of environmental justice into its decision making when making rules and carrying out programs. The authors identified three main reasons for this failure: 1) the failure to develop clear policy guidance, 2) inadequate coordination across regions, and 3) inconsistent agency leadership.

***Bean v. Sw Mgmt. Corp.*, 482 F. Supp. 673 (S.D. Tex. 1979).**

Although unsuccessful in halting the siting of a landfill in an African American neighborhood in Houston, this case is a rare example of a court discussing the disproportionate impact of environmental decision-making on communities of color. The class-action lawsuit filed in 1979 contended that the decision to issue a permit for the landfill constituted racial discrimination in violation of the Equal Protection Clause of the 14th amendment. The district court in *Bean v. Southwestern Waste Management Corporation* found that the placement of the dump would harm the community but ultimately no relief was granted because of the inability to prove intentional discrimination.

**4. Inadequacy of existing civil rights law to combat environmental racism**

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***Carlton Waterhouse, Abandon All Hope Ye That Enter? Equal Protection, Title VI, and the Devine Comedy of Environmental Justice*, 20 Fordham Env'tl. L. Rev. 51, 63–76 (2009).**

Just as the Kerner commission found that existing civil rights laws were not working to protect African Americans from discrimination, Waterhouse argues that civil rights and environmental laws are not effectively protecting vulnerable communities from “facially neutral” environmental racism. Waterhouse argues that because existing civil rights tools are inadequate new comprehensive legislation is needed. Courts almost uniformly reject “environmental racism” claims under both the Equal Protection Clause and Title VI of the Civil Rights Act of 1964. Waterhouse contends this is because in equal protection cases courts focus on a discrete action of a single government entity rather than on the cumulative acts of past and present government actors that have led to disparate impact. Under the current standards which proscribe a narrow focus, Waterhouse argues it is highly unlikely that courts will find evidence of a constitutional violation. Further, aggrieved parties cannot bring a claim under Title VI because following *Alexander v. Sandoval*<sup>3</sup> there is no private right of action for disparate impact claims. As a result, Waterhouse contends that Title VI should be amended to allow a private right of action under a disparate impact standard that takes into account the cumulative effects of environmental hazards.

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3 532 U.S. 275 (2001).

**Claire Hasler, *The Proposed Environmental Justice Act: I Have a (Green) Dream*, 17 U. Puget Sound L. Rev. 417, 439–41 (1994)**

**<https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1423&context=sulr>.**

In numerous cases, courts have found there to be no violation of the Equal Protection Clause or of 42 U.S.C § 1983 when the history of discrimination leading up to siting decisions was not attributable to a specific municipal agency, but rather to a broader history of discrimination. These claims have also failed because environmental racism is difficult to prove, especially for impacted communities who lack political power. While some communities have been able bring successful procedural and zoning challenges to siting proposals, these challenges relied on “technical imperfections” and will not be successful in broadly combatting environmental racism. Due to the failure of these tools, new legislation is needed. However, this legislation should focus on the inequities of environmental burdens, rather than holding claimants to the standard of purposeful discrimination.

## **5. Inadequacy of agency EJ plans to result in meaningful EJ strategies**

**U.S. Comm’n on Civil Rights, *Not in My Backyard: Executive Order 12,898 and Title VI as Tools for Achieving Environmental Justice* (2003),**

**<https://www.usccr.gov/pubs/envjust/ej0104.pdf>.**

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This report examines how well four federal agencies—the Environmental Protection Agency, the U.S. Department of the Interior, the U.S. Department of Housing and Urban Development, and the U.S. Department of Transportation—have implemented Executive Order 12,898 and Title VI. Executive Order 12,898 requires federal agencies to collect data on the health and environmental impact of their activities on communities of color and low-income populations, and develop policies incorporating the principles of environmental justice into their programs and activities.

This report, based on Commission hearings, interviews, research, and a review of relevant literature, reveals that while there has been some limited success in implementing Executive Order 12,898 and the principles of environmental justice, significant problems and shortcomings remain. Federal agencies still have neither fully incorporated environmental justice into their core missions nor established accountability and performance outcomes for programs and activities. Moreover, a commitment to environmental justice is often lacking in agency leadership, communities are not yet full participants in environmental decision-making, and there is still inadequate scientific and technical literature on the relationship between environmental pollutants and human health status.

As a result, the Commission report makes many recommendations; some of the recommendations are directed toward federal agencies while others require congressional action. The report recommends, for example, that federal agencies coordinate and promulgate clear regulations, guidelines, and procedures for investigating, reviewing, and deciding without



unnecessary delay Title VI claims, and that federal agencies implement formal Title VI compliance review programs to ensure nondiscrimination in programs and activities receiving federal funding. In addition, Congress should pass a Civil Rights Restoration Act to provide for a private right of action for disparate impact claims under Title VI, as well as § 1983.

**Office of Inspector Gen., U.S. Env't Prot. Agency, Evaluation Report: EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice (2004), <https://www.epa.gov/sites/production/files/2015-12/documents/20040301-2004-p-00007.pdf>.**

The OIG found that the EPA had not fully implemented Executive Order 12898 (EO 12898). Specifically, the EPA had not developed or implemented a clear plan for measuring and mitigating the disproportionate environmental burdens that minority and low-income populations faced. Since there were no clear guidelines, local attempts at environmental justice initiatives were piecemeal. Thus, protections for vulnerable populations varied considerably from region to region. First, the OIG recommended that the EPA issue a memorandum affirming both that EO 12898 was an agency priority and that low income and minority populations should be the beneficiaries of this order. Second, the OIG recommended that the EPA develop a comprehensive strategic plan, ensure appropriate training is provided, clearly define the mission of the Office of Environmental Justice, determine if adequate resources are being applied to environmental justice, and develop a systematic approach to gathering information related to environmental justice.

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**6. Current state-level protections are also inadequate**

**Inst. for Policy Integrity, N.Y. Univ. Sch. of Law, Irreplaceable: Why States Can't and Won't Make Up for Inadequate Federal Enforcement of Environmental Laws (2017), [http://policyintegrity.org/files/media/EPA\\_Enforcement\\_June2017.pdf](http://policyintegrity.org/files/media/EPA_Enforcement_June2017.pdf).**

In justifying a reduction in funding to the EPA Trump argued that states could pick up the slack of environmental enforcement. This report found that states did not have the means or the will to substitute the robust enforcement of the EPA. First, The report found that the states did not have adequate funding to do this type of enforcement. Second, the report found that even if states did have the funds they faced political barriers to enforcement. States did not penalize industries as vigorously as the EPA because they did not want to punish the states most powerful industries and because the polluters' activity may be principally harming people outside of their states. As a result, the report found that cutting funding to the EPA would negatively affect enforcement of environmental laws.

**Tonya Lewis & Jessica Owley, Symbolic Politics for Disempowered Communities: State Environmental Justice Policies, 29 *BYU J. Pub. L.* 183 (2014).**

The authors argue that New York State's environmental justice policy plan, *Environmental Justice and Permitting* was largely ineffectual, despite being described as "ground breaking" by New York's Department of Environmental Conservation (DEC). Since New York had no

accompanying environmental justice statutes, no state regulations and no executive orders, the authors found that the plan had no teeth. Moreover, while the policy was effective in so far as it identified that low income communities faced disproportionate environmental burdens, it did not mitigate those burdens. A survey of state environmental justice policies revealed that New York was not unique. Though many states had implemented environmental justice plans none had limited the amount of toxic releases in overburdened low-income and minority communities, which research has shown is the most effective way to counter pollution and counter bad health outcomes in these communities.



## ***About the Poverty & Race Research Action Council (PRRAC): Connecting Research to Advocacy***

The **Poverty & Race Research Action Council (PRRAC)** is a civil rights policy organization convened by major civil rights, civil liberties, and anti-poverty groups in 1989-90. PRRAC's primary mission is to help connect advocates with social scientists working on race and poverty issues, and to promote a research-based advocacy strategy on structural inequality issues. PRRAC sponsors social science research, provides technical assistance, and convenes advocates and researchers around particular race and poverty issues. PRRAC also supports public education efforts, including the bimonthly newsletter/journal *Poverty & Race*, and the award-winning civil rights history curriculum guide, *Putting the Movement Back Into Civil Rights Teaching* (co-published with Teaching for Change). At the present time, PRRAC is pursuing project-specific work in the areas of housing, education, and health, focusing on the importance of "place" and the continuing consequences of historical patterns of housing segregation and development for low income families in the areas of health, education, employment, and incarceration. PRRAC's work is informed by an extensive national network of researchers, organizers, attorneys, educators, and public health and housing professionals.



**PRRAC**  
*Poverty & Race  
Research Action Council*

740 15th Street N.W., Suite 300 • Washington DC 20005  
202/906-8023 • Fax 202/842-2885 • [www.prrac.org](http://www.prrac.org)