

## NOT IN MY BACKYARD: THE UNITED STATES' STRUGGLE TO FIND APPROPRIATE HAZARDOUS AND TOXIC WASTE DUMP SITES

### Introduction

Consumption is accompanied by waste. Some individuals try to create as little waste as possible by recycling, reusing, or buying products with environmentally friendly packaging. On the other end of the spectrum, there are people who do not care about the waste they create and simply throw their trash in garbage, hoping someone else will take of the problem. Whichever side you more closely identify with, the fact is everyone produces toxic and hazardous waste. While "toxic" and "hazardous" may conjure thoughts of nuclear weapons, these types of wastes are used in an average day. The Environmental Protection Agency (EPA) lists common items such as pesticides, fertilizers, x-ray waste, home-cleaning products, and dry cleaning chemicals as toxic waste.<sup>1</sup> Additionally, EPA classifies ordinary businesses such as hospitals, automobile repair shops, exterminators, and chemical refineries as hazardous waste generators.<sup>2</sup> The public generates such waste directly by using these goods, or indirectly by using products that were manufactured or assembled with hazardous or toxic waste. Toxic and hazardous waste has potentially been linked to cancer, cardiovascular diseases, and central nervous system disorders.<sup>3</sup> Additionally, the long-term effects of being around such waste are not yet fully understood, but the consequences could include death.<sup>4</sup> With unknown long-term effects and potential deadly effects, the proper location for toxic and hazardous waste disposal is an issue that has sparked heated debates between socioeconomic classes, races, and political parties.

### I. History

The debate over where state and national officials place toxic and hazardous waste disposal sites can be traced back to the birth of the modern environmentalist movement in the 1960s.<sup>5</sup> During this time, wealthy American groups such as the National Audubon Society and The Boone and Crockett Club began a movement to preserve the environment for recreational purposes such as hunting, fishing, and sailing.<sup>6</sup> These groups comprised some of the most powerful Americans with political and military connections.<sup>7</sup> Additionally, members of these groups were generally white males, who wanted to preserve the environment for recreational reasons, not necessarily for the welfare of the world.<sup>8</sup> In addition to these elite groups, middle-class Americans began grassroots movements for preservation of land and clean air in the 1980s.<sup>9</sup> These middle-class Americans had the same agenda as the wealthy groups: preserve the environment.<sup>10</sup>

In order to preserve wildlife, the government had to place our toxic and hazardous waste in areas that were not being preserved for their natural beauty or recreational purposes. The wealthy groups and the grassroots middle class both opposed placing disposal sites in their neighborhoods.<sup>11</sup> As a result, toxic and hazardous waste was shoveled into low-income neighborhoods populated with people of color.<sup>12</sup> Not coincidentally, the majority of the wealthy American groups of the 1960s were not low-income individuals of color.<sup>13</sup> The grassroots movements of the 1980s lacked people of color and low-income individuals, as well.<sup>14</sup> Low-income people of color were focused on fixing epidemics in their communities such as drugs, violence, and crime--not the environment.<sup>15</sup> By not focusing on environmental issues, low-income areas did not

have a significant voice in environmental issues. As a result, a movement began: “Not In My Backyard”--the groups that fought for environmental protection did not want to deal with the burden that comes with saving certain areas.<sup>16</sup> Instead, they fought to have toxic and hazardous waste put anywhere other than their own communities.<sup>17</sup> Generally, no one wants toxic or hazardous waste in her neighborhood, so it is placed in the communities that have the least political influence at the time: low-income communities of color.<sup>18</sup> Not only did these communities lack political influence, many times they welcomed the garbage dumps because they provided jobs.<sup>19</sup>

## II. Environmental Racism/Environmental Justice

“Shipping toxic waste to communities of color is not green,” says environmentalist Robert D. Bullard, Ph.D. “It’s mean and it’s unjust and some of us think it should be illegal.”<sup>20</sup>

Disposal of toxic and hazardous waste disproportionately affects low-income people of color, because it is in their backyards. Environmental racism occurs when specific race groups are targets of environmental hardships and are stripped of their right to oppose those hardships.<sup>21</sup> As explained in the previous section, affluent and middle-class whites made it clear they wanted specific areas preserved but did not want toxic and hazardous landfills in their communities--the Not In My Back Yard, or NIMBY, syndrome.<sup>22</sup> As a result, these landfills have been placed in low-income areas, in which the majority of people are Hispanic, African-American, or sometimes Asian. While one-third of U.S. residents are non-white, *The L.A. Times* has reported that more than half of people living near hazardous or toxic waste sites are Hispanic, black, or Asian.<sup>23</sup> Other studies have shown that the largest hazardous waste landfills are located in minority neighborhoods:

In communities with two or more commercial hazardous waste facilities or any of the nation’s five largest landfills, the average percentage of minorities in the population was more than three times that of communities without such facilities .... Three out of five of the largest hazardous waste landfills in the U.S. were located in predominantly African American or Hispanic communities.<sup>24</sup>

In the 1980s, the effects of living next to a toxic or hazardous waste landfill were largely unknown. Even today, all the long-term effects are unknown.<sup>25</sup> But it is clear that the rate of cancer, cardiovascular diseases, central nervous system disorders, learning disorders, and birth defects are higher for those living in these areas, as compared to others not living near toxic or hazardous waste sites.<sup>26</sup>

As a result of environmental racism, the concept of environmental justice was developed in the 1980s.<sup>27</sup> The Environmental Protection Agency defines it as providing:

[f]air treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment.<sup>28</sup>

The definition provided by the EPA sounds ideal and fair; unfortunately, according to statistics they have yet to adopt it.<sup>29</sup> The effects of living in a community with a toxic and hazardous waste facilities were examined in 2007 by looking at cleft lip or palate deformities in Kettleman City, California.<sup>30</sup> In this small city, 93% of the population is Hispanic and 44% below the poverty line, with men only earning an average of \$16,619 per year and women earning \$10,179.<sup>31</sup> Over the course of eighteen months, six out of every twenty children born were born with deformed cleft lips or cleft palates.<sup>32</sup> The United States average is one in every 700.<sup>33</sup> Another example is an eighty-five-mile piece of land between the Mississippi River and Baton Rouge, Louisiana, where a quarter of all American-produced petrochemical products are manufactured.<sup>34</sup> There, 40 percent of the population is below the poverty line and 84 percent of the population is black.<sup>35</sup> Not surprisingly, Louisiana’s cancer mortality rate exceeds the U.S. average.<sup>36</sup> As of 2005, the national average is 184 deaths per 100,000; in Louisiana it is 214.9 per 100,000 deaths.<sup>37</sup> Government intervention is needed, but the EPA has been slow to make changes.

## III. Government Intervention

In 2008, President George W. Bush allowed the EPA to change the definition of solid waste disposal under 40 C.F.R. § 261.2 to exclude toxic and hazardous waste that was reclaimed or recycled.<sup>38</sup> The stated goal was to encourage reuse of hazardous waste; in reality the regulation created a loophole.<sup>39</sup> Now, companies with dangerous waste can claim that it is reclaimed or recycled and no longer have to comply with the stricter federal disposal standards.<sup>40</sup> A senior counsel for the nonprofit environmental nonprofit law firm Earthjustice explained that “industries, like the steel, chemical and pharmaceutical industries, that handle 1.5 million tons of hazardous waste a year were no longer required to meet safe operating standards or even report their activities.”<sup>41</sup> With little to no fear of government punishment, companies are disposing hazardous and toxic waste in landfills improperly because it is technically no longer toxic or hazardous-- rather, it is recycled or reclaimed.<sup>42</sup> Instead of placing the waste properly in “safe” underground containers, it is now thrown away in a manner similar to the way citizens place their weekly garbage on the curb.<sup>43</sup> BP, the international oil corporation, was recently in the headlines for disposing the crude oil from the Gulf of Mexico leak in landfills located in low-income communities of color.<sup>44</sup> The EPA has not intervened because the crude oil is no longer classified as toxic or hazardous, and budget cuts have left them understaffed. Yet no one knows the long-term effects of the crude oil leaking into the ground. (Short-term effects are skin irritation and respiratory problems.)<sup>45</sup>

The Obama administration is looking to change the loophole in 40 C.F.R. § 261.2 by eliminating the reclaim or recycle exclusion.<sup>46</sup> While reclaiming and recycling waste seem like optimal ways to keep waste out of unfairly placed landfills, “under the Bush administration, hazardous waste recycling plants had a free pass to process more than 1 million pounds of toxic material without federal oversight.”<sup>47</sup> If all goes as planned, and Congress accepts the proposed changes, the reclaim and recycle exclusion loophole will be eliminated in December 2012.<sup>48</sup> While this proposed change by the Obama administration is a start, it is necessary that the EPA implement changes and finally adhere to its definition of environmental justice.

## Conclusion

Equality for all races and socioeconomic statuses needs to include the equality of environment. Los Angeles is one of the most diverse cities in the United States, a place where 1.2 million people live within two miles of a hazardous or toxic disposal site.<sup>49</sup> We should recognize that injustice is present when 1.1 million of those 1.2 million people are African-American, Hispanic, or Asian.<sup>50</sup> Lead poisoning, birth deformities, cancer, central nervous system disorders, and even learning disabilities are just a few of the effects of living near a toxic or hazardous waste plant<sup>51</sup>--and since the long-term effects have not been seen there are other potential undiscovered dangers. The EPA and other agencies and departments of the government need make many changes to ensure the environmental justice they preach.

## Footnotes

<sup>1</sup> *Household Hazardous Waste*, U.S. Env'tl. Protection Agency (Sept. 22, 2011), <http://www.epa.gov/osw/conservation/materials/hhw.htm>.

<sup>2</sup> *Id.*

<sup>3</sup> Robert D. Bullard, *Poverty, Pollution and Environmental Racism: Strategies For Building Healthy And Sustainable Communities* (discussion paper for the National Black Environmental Justice Network Environmental Racism Forum World Summit on Sustainable Development Global Forum, Johannesburg, South Africa, July 2, 2002), *available at* <http://www.ejrc.cau.edu/PovpolEj.html>.

<sup>4</sup> Lesley Rushton, *Health Hazards and Waste Management*, 68 *Brit. Med. Bull.* 183, 288 (2003), *available at* <http://bmb.oxfordjournals.org/content/68/1/183.full>.

<sup>5</sup> Stacy J. Silveira, *The American Environmental Movement: Surviving Through Diversity*, 28 *B.C. Env'tl. Aff. L. Rev.* 497, 504-05 (2004).

6 *Id.* at 502.

7 *Id.* at 501.

8 *Id.*

9 *Id.* at 509.

10 *Id.*

11 *Id.* at 512.

12 *Id.* at 502.

13 *Id.*

14 *Id.* at 508.

15 *Id.* at 522.

16 *Id.* at 512.

17 *Id.* at 514-15.

18 *Id.*

19 *Id.*

20 Amy Littlefield, EPA Vows to Examine Impact of Hazardous Waste on Poor Communities, L.A. Times (July 22, 2009), <http://latimesblogs.latimes.com/greenspace/2009/07/hazardous-waste-environmental-justice-epa.html>.

21 Silveira, *supra* note 5, at 504-05.

22 *Id.*

23 Janet Wilson, *California Has Largest Number of Minorities Near Hazardous Waste*, L.A. Times, Apr. 12, 2007, available at <http://articles.latimes.com/2007/apr/12/local/me-toxic12>.

24 Marsha L. Greer & Anna K. Harding, *The Health Impact of Hazardous Waste Sites on Minority Communities; Implications for Public Health and Environmental Health Professionals*, 55 J. Envtl. Health 6, (1993).

25 Rushton, *supra* note 4, at 288.

26 Bullard, *supra* note 3.

27 *Environmental Justice*, U.S. Env'tl. Protection Agency, [http:// www.epa.gov/environmentaljustice/](http://www.epa.gov/environmentaljustice/) (last visited Feb. 17, 2012).

29 Wilson, *supra* note 23.

30 S.E. Smith, Kettleman City, California: Low Income, Cleft Palates, and "Nothing Usual", Forward: FWD (Feminists for a Way Forward) (March 4, 2010), <http://disabledfeminists.com/2010/03/04/kettleman-city-california-low-income-cleft-palates-and-nothing-unusual/>.

31 *Id.*

32 *Id.*

33 *Id.*

34 Heidi Ledford, *Prevention by Numbers*, Nature (April 8, 2009), <http://www.nature.com/naturejobs/2009/090409/full/nj7239-792a.html>.

35 Paul E. Rosenfield & Lydia Feng, Risk of Hazardous Wastes 61 (2011).

36 Ledford, *supra* note 34.

37 *Id.*

38 40 C.F.R. § 261.2.

39 *Frequent Questions for Definition of Solid Waste 2011 Proposed Rule*, U.S. Env'tl. Protection Agency (last visited Feb. 17, 2012); *Environmental Justice*, U.S. Env'tl. Protection Agency, [http:// www.epa.gov/environmentaljustice/](http://www.epa.gov/environmentaljustice/) (last visited Feb. 17, 2012).

40 Lisa Evans, *The Secret Life of Toxic Waste*, Env'tl. Prot. Blog (Sept. 19, 2011, 12:02 AM), <http://eponline.com/blogs/environmental-protection-blog/2011/09/earthjustice.aspx>.

41 *Id.*

42 *Id.*

43 *Id.*

44 S.E. Smith, *Crude Violations: BP Is Dumping Toxic Waste in Low Income Communities of Colour*, Forward: FWD (Feminists for a Way Forward) (Aug. 4, 2010), <http://disabledfeminists.com/2010/08/10/crude-violations-bp-is-dumping-toxic-waste-in-low-income-communities-of-colour/>.

45 *Id.*

<sup>46</sup> Evans, *supra* note 40.

<sup>47</sup> Littlefield, *supra* note 20.

<sup>48</sup> *Frequent Questions for Definition of Solid Waste 2011 Proposed Rule*, *supra* note 39.

<sup>49</sup> Wilson, *supra* note 23.

<sup>50</sup> *Id.*

<sup>51</sup> Silveira, *supra* note 5, 504-05.

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