

CHAPTER 5

Environmental Justice

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Joe Lyou, California Environmental Rights Coalition

View from St. Anthony Catholic School overlooking the Chevron refinery in the town of El Segundo. The refinery is among the largest sources of industrial air pollution in Los Angeles County, with direct impacts on community health. Because of CEQA, Chevron implemented additional measures to reduce emissions affecting the community.

CEQA Promotes Environmental Justice

By Alan Ramo

The environmental justice movement arose out of grassroots resistance to a pervasive pattern of siting the most dangerous, polluting facilities in communities with predominantly low-income residents and minorities. This trend is driven in large part by zoning requirements, low property costs, and the fact that many low-income communities lack the political clout to effectively oppose these projects.

Policies relating to the siting of polluting facilities are facially race neutral. However, in practice they result in low-income communities and communities of color bearing a disproportionate share of the burden of environmental degradation, with direct and sometimes tragic results. The effort to integrate environmental justice concepts into the decision-making process requires recognizing and remediating the disparate impact of these policies on California's most vulnerable communities.

The environmental justice movement, which began to gain momentum at the grassroots level in the mid-1980s, achieved federal recognition through President Clinton's 1994 Executive Order on environmental justice.

This Executive Order established a national policy of addressing disproportionately high and adverse human health or environmental

ing minority populations and low-income populations of the state."

CEQA is unquestionably the most useful legal tool for the environmental justice advocate in California to implement California's environmental justice policy; just as NEPA, CEQA's federal model, is one of the principal legal mechanisms for accomplishing environmental justice at the federal level.

Environmental Justice practitioners have also utilized other laws. For example, an array of pollution specific laws like the Federal Clean Water Act is available. However these laws usually address pollution problems after they have begun. They also systematically fail to address the problem of cumulative impacts and the interaction of social and environmental effects that underlie most environmental justice problems in communities of color.

Unlike NEPA, CEQA does not address environmental justice explicitly. However, CEQA takes direct aim at cumulative impacts, the interaction of physical and social impacts and the

need for alternatives that avoid significant impacts. And it does so with a rich set of guidelines and

human health or the environment in a manner that ensures the fair treatment of people of all races, cultures, and income levels, includ-



Residents of Strategic Alliance for a Just Economy (SAJE) march against the loss of affordable housing. Read about SAJE and CEQA on page 44.

CEQA, at its heart simply demands that a government agency fully contemplate and disclose the foreseeable consequences of its actions and avoid unnecessary environmental risks. This has turned out to be the primary weapon against environmental injustice in California.

case law that define how these concepts work in practice.

These CEQA concepts also provide the substantive information that underlies any claim of discrimination under civil rights laws. The alternatives analysis is crucial. Federal civil rights law makes it clear that demonstrating the availability of a nondiscriminatory alternative is a key to rebutting any claim that impacts affecting a particular low-income neighborhood or ethnic or racial group are necessary.

Finally, CEQA supports the environmental justice movement's insight that an environmental decision making process that allows full public participation will more surely avoid injustice. CEQA encourages public hearings. It requires that documents be drafted so that they are useful to the public. CEQA provides that comments and information be available as early as possible and that agencies respond to comments. CEQA ultimately requires that environmental impact reports include a full discussion of environmental impacts, as well as mitigation and alternatives. A court has also required environmental documents to be in the language of those affected by a project, assuring that public disclosure is not mere lip service. All of these requirements provide the basis for a truly informed community.

Other doctrines are coming into the forefront to advance environmental justice, such as the precautionary

principle. This principle requires putting the risk upon those seeking to affect the environment and requires a search for alternatives that avoid risks. This approach works hand in hand with CEQA.



Activists using CEQA have achieved victories stopping or mitigating impacts from incinerators, hazardous waste facilities, power plants, port and refinery expansions, and other projects affecting low-income communities and communities of color.

Only CEQA provides that a full environmental review is required if a project “may” cause a significant environmental effect. Only CEQA requires a set of alternatives devoted to avoid significant impacts and prevents a project going forward that cannot mitigate to

insignificance. Only CEQA finds that cumulative impacts are significant if a project contributes to such effect even though their individual contribution is insignificant.

Activists using CEQA have achieved victories stopping or mitigating impacts from incinerators, hazardous waste facilities, power plants, port and refinery expansions and other projects affecting low-income communities and communities of color. CEQA, at its heart simply demands that a government agency fully contemplate and disclose the foreseeable consequences of its actions and avoid unnecessary environmental risks. This has turned out to be the

primary weapon against environmental injustice in California.

Alan Ramo is a Professor at the Golden Gate University School of Law, and is the Director of the Environmental Law and Justice Clinic.

Editor's Note:

As Professor Ramo points out in this article, CEQA has become the primary weapon for combating environmental injustice in the state of California. In this chapter, we have compiled some of the landmark environmental justice victories in the history of the movement.

But these are by no means the only environmental justice “success stories” you'll find in the pages of our report. From fighting for parks in underserved communities, to ensuring that community well-being is not neglected in the planning and execution of major development projects, to protecting community health in the face of incinerators, ports, mega-dairies, and other industrial facilities, environmental justice issues are central to the CEQA stories found in virtually every chapter of this report.

Hazardous Waste Incinerator in Kettleman City

By Luke Cole

In 1988, Chemical Waste Management, Inc. (Chem Waste) proposed the construction of a toxic waste incinerator 3.5 miles from Kettleman City, a predominantly Latino community of 1,100 residents in Kings County, in California's San Joaquin Valley. Though none knew it at the time, this proposal would spark one of the defining struggles of the early days of the Environmental Justice movement, in which a small farm-worker town ultimately used CEQA provisions to take on the largest toxic waste company in the world—and won.

Since the 1970s, Kettleman City has been host to one of the largest toxic waste dumps in the U.S., owned and run by Chemical Waste Management, Inc (Chem Waste). It was built without the community's knowledge or consent. It was not until the early 1980s—after multimillion-dollar environmental fines were levied against the Chem Waste facility—that residents became aware of its existence. At that late date, they saw few ways in which they could challenge the dump. Things changed, however, when they learned of the proposed incinerator.

Perhaps unsurprisingly, the residents of Kettleman City heard about this proposal not from Chem Waste, nor from Kings County or state officials, but from a Greenpeace organizer in San Francisco. They were shocked to learn that the incinerator would burn up to 108,000 tons—216,000,000 pounds—of toxic waste each year. This translates to 5,000 truckloads of waste per year *in addition* to the hundreds already passing through their community daily.

A new community group, El Pueblo para el Aire y Agua Limpio (People for Clean Air and Water), quickly organized and involved itself in the permitting process. However, Kettleman City is 95 percent

translated into Spanish so they could participate in the environmental review process. The county, however, was unresponsive. After significant pressure, Chem Waste issued a scant, five page executive summary in Spanish.

About 200 Kettleman City residents attended the sole public hearing on the incinerator proposal. Hoping to testify before the Planning Commission, they brought their own translator. However, the Commission refused their request, stating that translation was only allowed in the far back of the room and not during testimony. Residents testified anyway, in Spanish, from the front of the room.

“I think they thought we would go away. But it was too dangerous to let an incinerator come in here. We had to do something about it.”

– Mary Lou Mares, KC housewife and leader of El Pueblo.

The Planning Commission voted to approve the incinerator, and an appeal of this decision to the Kings County Board of Supervisors also failed. It seemed that the

Latino, with 70 percent speaking Spanish at home, and 40 percent monolingual in Spanish. Thus, language became a critical issue.

When Kings County published a 1,000 page, CEQA-mandated Environmental Impact Report (EIR), city residents urged that the highly technical document be

County—already receiving \$7 million dollars per year in revenue from Chem Waste's existing dump—had too much to gain from the project. The incinerator promised to almost double the tax revenue that the County received from the toxic waste dump. With the incinerator, the County would have ended up receiving about one-

sixth of its annual revenue from this single company.

Finally, the residents filed a lawsuit under CEQA. The lawsuit ulti-

by this time, the press had picked up the story and Kettleman City's struggle had become a national struggle, and part of the growing national Environmental Justice

“The residents of Kettleman City, almost 40 percent of whom were monolingual in Spanish, expressed continuous and strong interest in participating in the CEQA review process for the incinerator project at the Kettleman Hills Facility, just four miles from their own homes. Their meaningful involvement in the CEQA review process was effectively precluded by the absence of Spanish translation.”

– Judge’s ruling in the Kettleman City CEQA suit.

mately succeeded. The presiding judge ruled that the EIR had not sufficiently analyzed the toxic waste incinerator’s impacts on air quality and on agriculture in the San Joaquin Valley. Just as importantly, the judge ruled that the residents of Kettleman City had not been meaningfully included in the permitting process.

As the Court eloquently stated, “The residents of Kettleman City, almost 40 percent of whom were monolingual in Spanish, expressed continuous and strong interest in participating in the CEQA review process for the incinerator project at the Kettleman Hills Facility, just four miles from their own homes. Their meaningful involvement in the CEQA review process was effectively precluded by the absence of Spanish translation.”

Rather than go back and do the environmental study right, Chem Waste appealed the decision. But

Movement. Finally, in September of 1993, Chem Waste announced that it was withdrawing its application. The town’s residents had come together to protect the community welfare and, with the aid of the California Environmental Quality Act, had won.

Luke Cole is an environmental justice and civil rights lawyer, and Director of the Center on Race, Poverty & the Environment in San Francisco. Mr. Cole has represented Kettleman City residents in various environmental justice disputes for the past fifteen years, including their successful struggle against the toxic waste incinerator.

Principles of Environmental Justice

Delegates to the First National People of Color Environmental Leadership Summit held in Washington DC in 1991, drafted and adopted 17 principles of Environmental Justice. The first five principles are:

1) **Environmental Justice**

affirms the sacredness of Mother Earth, ecological unity and the interdependence of all species, and the right to be free from ecological destruction.

2) **Environmental Justice**

demands that public policy be based on mutual respect and justice for all peoples, free from any form of discrimination or bias.

3) **Environmental Justice**

mandates the right to ethical, balanced, and responsible uses of land and renewable resources in the interest of a sustainable planet for humans and other living things.

4) **Environmental Justice**

calls for universal protection from nuclear testing, extraction, production and disposal of toxic/hazardous wastes and poisons, and nuclear testing that threaten the fundamental right to clean air, land, water, and food.

5) **Environmental Justice**

affirms the fundamental right to political, economic, cultural and environmental self-determination of all peoples.

LANCER and the Vernon Incinerator: Protecting Communities from the Projects that “Have to Go Somewhere”

By Joel R. Reynolds

Los Angeles lies in the dirtiest air basin in the country, with climatic conditions and air inversions that trap air pollution. Thus, Los Angeles would seem an unlikely location for siting large-scale commercial incinerators for the burning of solid waste and toxics. But during the 1980s, that is precisely the proposal that confronted the low income, minority communities of South Central and East Los Angeles.

As an “answer” to the mountains of garbage generated each day by the residents of Los Angeles, the city’s Bureau of Sanitation proposed a series of mass burn incinerators, beginning construction in the community of South Central Los Angeles.

At almost the same time, California’s Department of Health Services was proposing to site the state’s first large-scale toxic waste incinerator in the city of Vernon, only blocks from the residential neighborhoods, schools, and churches of East Los Angeles.

In both cases, CEQA was the first and primary, though not exclusive, line of defense for communities in developing and implementing their strategies of opposition.

LANCER and the Concerned Citizens of South Central LA

The Bureau of Sanitation proposed LANCER, an enormous three incinerator, mass-burn complex in

the most densely populated and highly polluted area of the city. It would produce or emit nearly 5 million tons of ash—most destined for landfills—of which over 8 million pounds would be spewed into adjacent neighborhoods from its 280 foot main stack, as well as an additional 150,000 pounds of cooling tower particulate matter emissions.

All of its emissions would contain a wide variety of hazardous emissions, including heavy metals, toxic organic compounds, and other

Meanwhile, city-wide opposition to mass burn incineration continued to grow, fueled by heightened concern about potential health impacts, not just in the surrounding communities but throughout the South Coast Air Basin.

carcinogens, totally apart from the air pollution generated by the 600 to 700 garbage truck trips per day to and from the facility. During its design life, the project would consume over 12 billion gallons of water and discharge over 2 billion gallons into the city’s already overburdened sewer system.

Led by a group called Concerned Citizens of South Central Los Angeles, community residents began to visit City Hall, asking questions, demanding answers, and poring over documents, including the project’s Environmental Impact Report (EIR). What they found was disappointing: an environmental review process that understated the potential risks, relied on outdated

information, ignored reasonable alternatives, and served as a post hoc rationalization for a decision that appeared already to have been made to proceed with this project because the trash “has to go somewhere”

Concerned Citizens organized a broad coalition of groups from around the city, including, among others, an activist group in Westwood called Not Yet New York, lawyers at the Center for Law in the Public Interest, and scientific experts at the UCLA

School of Public Health. They held rallies, visited city offices, and testified at city hearings, demanding a full and objective analysis of alternatives to mass burn incineration in the

heart of their community. And the tide began to turn as the coalition gained strength.

CEQA played a pivotal role by providing an accessible and relatively understandable legal basis for community education, organization, and, ultimately, effective action.

CEQA mandated that an EIR be prepared and made available to the public. Its process incorporated public hearings that served as a focus for community organization and enabled the public to learn about the project and express their views to public officials. And it ultimately provided a right of action in court, should the city decide to proceed with the project.

In this case, litigation proved unnecessary. Faced with new information about the potentially hazardous byproducts of the mass burn incineration process, the city directed that a Supplemental EIR and Health Risk assessment be prepared and circulated. Meanwhile, city-wide opposition to mass burn incineration continued to grow, fueled by heightened concern about potential health impacts, not just in the surrounding communities but throughout the entire South Coast Air Basin.

In the summer of 1987, Mayor Tom Bradley withdrew his support, and LANCER was abandoned. Backing for incineration dissipated, replaced by a renewed resolve to focus seriously on more sustainable alternatives, like recycling. Although their focus had been protecting their own community, Concerned Citizens of South Central Los Angeles created a city-wide movement that changed solid waste disposal policy in LA for decades to come.

The Vernon Incinerator and the Mothers of East Los Angeles

At the same time, incineration was being promoted as a promising alternative for the disposal of toxic waste in California. Leading the way, and proposed by a company called California Thermal Treatment Systems (CTTS), the Vernon Incinerator project would involve two large-scale commercial hazardous waste incinerators, to be constructed in the heart of the South Coast Air basin, in the city of Vernon, within 7,500 feet of homes, schools, churches, hospitals, and food processing facilities. The first of its kind in California, the incinera-

tor would receive, store, and burn a wide variety of hazardous wastes, including solvents, mixed oil, and paint sludge.

As byproducts of incineration, the proposed facility would produce some 19,000 tons per year of ash, dust, and other hazardous waste, all of which would be transported to hazardous waste landfills. The incinerator would continuously emit heated gases at the rate of over 83,000 cubic feet per minute from a 75-foot high, six-foot diameter smokestack. Many of the compounds contained in the gases had been designated by state and federal agencies as toxic air contaminants and proven carcinogens, mutagens, and/or teratogens.

This project generated strong opposition from surrounding community residents, led by the Mothers of East Los Angeles. Remarkably, regulators had allowed the project to proceed without requiring an EIR. Before opponents knew what hit them, the thirty-day statute of limitations under CEQA had expired. With construction permits already issued by the South Coast Air Quality Management District and EPA, and with the support of the California Department of Health Services, and the City of Vernon assured, the project looked unstoppable.

The community, however, refused to give up. Aided by then-Assemblywoman Lucille Roybal Allard and others, they pursued a range of tactics, from protest marches, to legislative and administrative advocacy, to legal action. They recruited lawyers from the Center for Law in the Public Interest and, later, the Western Center for Law and

Poverty and the Natural Resources Defense Council (NRDC). Lawsuits were filed under CEQA and NEPA against the Department of Health Services and the U.S. EPA demanding full scale environmental reviews that, in permitting the facility, neither agency had bothered to require.

As the project received more scrutiny, concerns about the health risks it would generate gained traction, including, in particular, significant new information about its potential to generate dioxins and furans too persistent to be destroyed in the burning process. When CTTS applied in 1988 for an extension of its construction permit from the South Coast District, the community opposed it. To the company's surprise, the District, citing the new information, conditioned the extension on the company's agreement to prepare an EIR, incorporate "best available control technology" (BACT), and update its health risk assessment.

When the company challenged the conditions in court, the community intervened on the District's behalf. Although the Superior Court upheld the company's challenge, the Court of Appeal reversed the decision. The company abandoned the project in 1990. Against enormous odds, the Mothers of East Los Angeles had prevailed.

Joel R. Reynolds is a Senior Attorney at the Natural Resources Defense Council and director of its Urban Program. Mr. Reynolds represented Concerned Citizens of South Central Los Angeles and the Mothers of East Los Angeles in their successful opposition to the LANCER and Vernon Incinerator projects.

CEQA: Protecting Communities

By Will Rostov

Communities for a Better Environment (CBE) has been working with people who live in the shadow of industrial facilities for more than 26 years. CBE is a California environmental health and justice nonprofit promoting clean air, clean water, and the development of toxin-free communities. CBE's unique three-part strategy provides grassroots activism, environmental research and legal assistance within low-income communities and communities of color. CBE directly equips residents impacted by industrial pollution with the tools to inform, monitor, and transform their immediate environment.

CBE uses CEQA to help refinery neighbors alleviate the burden of unfair localized pollution. CEQA plays an essential role in CBE's advocacy, because CEQA both informs communities of the environmental impacts that affect them and provides real opportunities for public participation.

CEQA also can inform policy and help stop bad projects. Environmental Impact Report data helped CBE use the Clean Water Act to force 80 to 90 percent cuts in selenium discharge to San Francisco Bay from the Unocal and

ConocoPhillips & Paramount: CEQA and Oil Refinery Expansions

By Richard Drury

ConocoPhillips:

In May 2003, the ConocoPhillips Company proposed to expand its Rodeo Refinery by 10,000 barrels per day and to produce cleaner burning low-sulfur diesel fuel. Production of the new fuel would reduce emissions throughout the State of California, a benefit to all Californians. However, the project would increase emissions in the already polluted community near the refinery due to more extensive refining and increased refinery throughput. This presented a clear environmental justice dilemma.

Contra Costa County issued a Draft Environmental Impact Report (DEIR) under CEQA to analyze the project. Communities for a Better Environment (CBE) and a consortium of five labor unions and their members reviewed the DEIR and proposed additional mitigation measures to reduce the project's impacts.

Expert analysis indicated that the project would increase cancer risk in the surrounding community. Related construction activities would generate high levels of particulate matter and diesel exhaust during project construction. The project would generate significant sulfur-related odor impacts, including significant impacts from the cooling tower and significantly increased emissions from various

refinery process units. The experts proposed feasible mitigation measures to reduce each impact.

After extensive proceedings before the County Planning Department, ConocoPhillips, CBE and the unions were able to reach an agreement to implement numerous additional mitigation measures that would reduce the localized impacts of the project while still allowing the project to move forward.

ConocoPhillips agreed to install a high performance drift eliminator on the reactivated cooling tower, which will reduce particulate emissions by over 99 percent. ConocoPhillips also agreed to use ultra-low-sulfur



diesel fuel in construction equipment, which will reduce diesel exhaust emissions dramatically during construction, and to retrofit numerous existing trucks and stationary diesel engines with particulate traps to reduce particulate matter and toxic emissions. The agreement also specified actions to reduce flaring, improve the monitoring system to detect

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odor-causing compounds, and to reduce construction noise from pile driving, among other things.

As a result of the CEQA process, the ConocoPhillips refinery will make cleaner burning fuel, will produce more fuel to meet increasing demand, and will do it in a manner that minimizes impacts on the local community.

Because of CEQA, the ConocoPhillips refinery will make cleaner burning fuel, will produce more fuel to meet increasing demand, and will do it in a manner that minimizes impacts on the local community.

Paramount:

In late 2003, the South Coast Air Quality Management District (SCAQMD) released a DEIR under CEQA for the Paramount Refinery Reformulated Gas Phase 3 and low-sulfur diesel project.

The Paramount Refinery is located in the City of Paramount near Downey and Bell Flower in Southeast Los Angeles County. The refinery currently processes up to 50,000 barrels per day with a workforce of 180. However, since the refinery's gasoline does not meet state requirements, its products are sold to other refineries for further processing or sold out-of-state. Due to its failure to upgrade, many units of the refinery have been idle since 1997.

The project involved the construction of several new refinery units and modifications to existing units to allow the refinery to produce gasoline and low-sulfur

diesel fuel for sale in California. While the project would result in the production of cleaner burning fuel, it would also result in increased emissions in the local community of Paramount.

CBE and a consortium of five labor unions and their members filed extensive CEQA expert and legal comments identifying the

environmental impacts of the project and also proposing feasible mitigation measures to reduce those impacts.

As a result of the CEQA comments, Paramount agreed to implement numerous additional mitigation measures to reduce impacts on the local community, including: the installation "leakless valves" throughout the refinery; the implementation of measures to reduce construction emissions, such as the use of low-sulfur diesel fuel, particulate traps, and natural gas powered equipment; the implementation of measures to reduce emissions of volatile organic compounds (VOCs) from paints and to reduce refinery flaring; moving certain refinery units away from sensitive receptors such as schools and residences; and others.

Richard Drury is an attorney at Adams Broadwell Joseph & Cardozo. The firm represented construction unions in both refinery proceedings.

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Exxon refineries. CBE used CEQA and the Clean Air Act in a campaign that stopped the reopening of a mothballed refinery in residential neighborhoods of Santa Fe Springs.

In the ConocoPhillips settlement, CBE identified the local environmental effects of the project and ensured that mitigations were put in place. When the Paramount refinery in Los Angeles County wanted to retool, CBE provided CEQA comments and achieved a settlement to reduce emissions and risks to the local community. In 2004, CBE won a lawsuit requiring Chevron to study the cumulative impacts of a project at its Richmond refinery.

In a 2004 CEQA settlement, the Bay Area Air District agreed to analyze pollution reduction rules for five air pollution sources at Bay Area refineries including what might become the first refinery flare control rule in the country. The case was an integral part of multi-year organizing campaign to achieve these rules.

CEQA is so important to CBE's work that when Governor Pete Wilson enacted guidelines designed to weaken CEQA, CBE challenged those guidelines. In 2002, the State Court of Appeal ruled in CBE's favor, reversing most of the guidelines.

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