Environmental Justice in Louisiana

By Adam Babich

If you want to be a frontline soldier on environmental protection, social justice or environmental racism, come to Louisiana.
— Gary Groesch, 2002

The phrase "environmental justice" has the power to inspire, anger, unify or polarize. On one hand, how can anyone be against environmental justice? The idea that no one should shoulder more than a fair share of pollution and environmental risk, without regard to race or income level, is hardly more controversial than motherhood or apple pie. On the other hand, the embrace of environmental justice as a goal implies that, to at least some extent, injustice and racism now infect environmental decisions. Facing up to the racial and economic inequities in Louisiana's allocation of pollution burdens raises questions with no easy answers. How equal must environmental burdens be? Is greater attention to fairness worth the possible costs of making the system more just? It may be tempting to turn away from such hard questions, but to work toward solutions we must put the issues on the table and talk about them.

Releasing pollution into public air, waters and lands is a way for companies to "externalize" waste-disposal costs. In other words, instead of paying the full price of conducting their businesses, polluting companies transfer some costs to surrounding communities in the form of environmental degradation. A permit to pollute is, therefore, a type of subsidy. But unlike some subsidies — such as Louisiana's 10-year industrial tax exemptions — the costs of pollution permits are not spread among taxpayers at large. Instead, facilities' neighbors bear those costs by living with excess environmental burdens. Of course, pollution can never be entirely eliminated, and few of us wish to give up the amenities of living in an industrial age. But residents of the communities that neighbor pollution sources — who subsidize our enjoyment of those amenities — should be treated with respect, invited to participate fully in permit decisions, and offered the assurance that facilities near their communities will, at a minimum, install state-of-the-art pollution controls. And no community should be saddled with a disproportionate share of pollution because of its racial composition or the income level of its residents.

Is environmental injustice really a problem in Louisiana? In a word: yes. We cannot let the privi
We will lose economic opportunities if we fail to overcome Louisiana’s reputation for environmental degradation and political corruption.

leage of living in a great nation and a great state [sic] as in society’s shrinking pie. Racism was built into the U.S. and Louisiana Constitutions and has been a shaping force in our history. As wonderful as it would be if the legacy of slavery and racism had ended with the stroke of a pen or a handshake, reality is that overcoming this aspect of our heritage remains a fundamental challenge for all Americans. Racism’s legacy persists in almost every aspect of our society and economy, including education, employment, income, housing and injustices.

Despite well-meaning attempts to be color-blind, economic and government institutions distribute benefits disproportionately to white and upper-income or middle-class people, and allocate burdens disproportionately to racial minorities and the poor. It has become painfully clear that conscious discrimination “is not required to produce a disproportionate result.” In fact, given the pervasive and unequal distribution of benefits and burdens in our society, it would be a surprising stroke of luck if environmental burdens were distributed fairly. One reason for racial disparities in society’s allocation of benefits and burdens is that African-Americans are overrepresented among the poor and minorities.

For example, many industrial facilities in Louisiana were built bordering pre-existing communities that lived slaves had established on the margins of plantations. At the time many of these facilities were established, neighboring residents had little ability to protect the ‘usual character of their communities’ because African-Americans were effectively excluded from voting. Areas in and around many of these communities were zoned for industrial use. Now, as huge, polluting facilities neighboring these communities expand, it may seem easy to dismiss environmental justice concerns with the statement that it is an ‘unfortunate’ fact that a predominately African-American community exists in a so-called ‘troubled zone.’ But it is more than unfortunate; it is part of racism’s legacy.

Regardless of whether government officials intend to discriminate by race, environmental decisions in Louisiana reflect disturbing contrasts. For example, the I-10 expressway destroyed “the main avenue of a thriving black neighborhood” in New Orleans, circa 1968, while another proposed location “was effectively fought off by residents of more affluent white areas of the city.” When Whole Foods recently proposed opening a huge grocery store in a mostly white New Orleans neighborhood, government officials responded to local activists’ concerns, first with community meetings and finally by insisting on a smaller store more in keeping with the neighborhood’s character.

In contrast, earlier this year, the Department of Environmental Quality (DEQ) refused to hold a public hearing before granting ExxonMobil permission to increase emissions at its refinery near the predominately African-American community of Alposé, La. — where the air already violates the federal health-protection standard for ozone pollution. Further, DEQ allows facilities neighboring such communities to avoid installing state-of-the-art air pollution controls by purchasing “credits” from pollution reductions in other communities.

Does environmental justice become a non-issue whenever pollution meets government standards? Of course not. Only six pollutants are governed by the Environmental Protection Agency’s (EPA) “National Ambient Air Quality Standards,” which regulate pollutant concentrations in outdoor air. Of those six standards, EPA is under court order to reconsider one, since it threatens asthatics with “substantial physical effects.” There are no federal ambient standards for most dangerous chemicals, including...
including benzene, mercury, dioxin, hydrogen sulfide and methyl isocyanate — the chemical "which killed more than 3,000 [people] in Bhopal, India" after leaking from a Union Carbide factory in 1984. To protect people from "hazardous air pollutants," the Clean Air Act requires EPA to set emission limits. But EPA has missed legal deadlines for publishing many of these standards. And existing emission limits are not designed to guard against "multiple toxic pollutants emitted by multiple sources." Louisiana residents cannot rely on DEQ to protect them. The state's legislative auditor has reported that:

- DEQ "may not be fully protecting the health and environmental resources of the state because of deficiencies in its monitoring and enforcement activities;"
- Many requisite monitoring reports due to DEQ were either not submitted or could not be located; and
- DEQ had "not collected nearly 75 percent of monetary penalties assessed (in) 1999-2001."

EPA's inspector general has found that:

- DEQ "records were often unorganized, incomplete, missing or incoherent;"
- DEQ "issued multiple permits without providing complete information to the public;" and
- EPA "could not assure the public that Louisiana was protecting the environment."

Recently, EPA demanded that DEQ show progress "in restoring program integrity" to its water discharge permitting system, threatening "withdrawal of program authorization." This situation is bad for business and the environment. In a state with a dysfunctional regulatory system, responsible companies — which invest in compliance — operate at a competitive disadvantage.

What is the danger to residents of predominantly minority and lower-income communities from chemical exposures? The short answer is that we do not know. We know that those most vulnerable to environmental toxins include children, fetuses, the elderly, asthmatics and smokers. But we do not have enough scientific knowledge to determine how many extra deaths result from exposure to chemicals in the environment. By allowing exposures to a wide array of chemicals in the environment despite this lack of knowledge, the government is conducting an experiment of sorts. But nobody does enough monitoring or exposures to allow us to learn much from this experiment. And without accurate emission and exposure data, governmental assurances that community residents enjoy adequate protection are based more on wishful thinking than on scientific fact.

What about the jobs and revenue lost to communities if facilities go elsewhere because of environmental justice concerns? Granted, it is painful to forgo opportunities for economic development and profit. But we should assess those opportunities in light of their effects on our neighbors and future generations, including damage to public health, the character of our communities, and Louisiana's unique and productive environment. A healthy, attractive environment can help draw and retain the educated work force that modern businesses need. Although insisting on health protection and fairness may cause some companies to locate elsewhere, we will also lose economic opportunities if we fail to overcome Louisiana's reputation for environmental degradation and political corruption. A stable regulatory system — governed by transparent, effective and competently administered regulations — will be better in the long run for business than a reputation for shoddy permit reviews, lost files and lax enforcement. Steady insistence on the rule of law creates a level playing field on which responsible businesses can compete fairly.

So how do we reach a solution? Nobody really knows. But we must none-
7. See Kimberly Blanton, “Jobless Rates Rise Among Black Americans,” Time, Pierson, May 23, 2003, at 4; [in every recession, job losses among African-Americans have been disproportionately to those of white Americans.”]
12. See § 40 C.F.R. 70.70a, which requires “an opportunity for a hearing.”
17. See United States v. EPA, 134 F.3d (D.C. Cir. 1999).