

*Report by a Panel of the*  
**NATIONAL ACADEMY OF  
PUBLIC ADMINISTRATION**  
*For the U. S. Environmental Protection Agency*

**July 2003**

**ADDRESSING COMMUNITY CONCERNS:  
HOW ENVIRONMENTAL JUSTICE  
RELATES TO LAND USE PLANNING AND ZONING**



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The views expressed in this report are those of the Panel. They do not necessarily reflect the views of the Academy as an institution.

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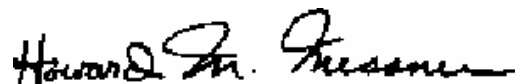
## FOREWORD

In February 2000, the Board of Directors of the National Academy of Public Administration (the Academy) created the Standing Panel on Social Equity in Governance. The Academy believes that good governance must be fair, just, and equitable, and must ensure “the equitable distribution of public services and implementation of public policy.” To that end, a Panel of Academy Fellows has undertaken three studies since 2001 that examine the roles of federal, state, and local governments in responding to public concerns about environmental justice issues.

The Academy Panel has found that achieving environmental justice is integral to the effective administration of public policies and programs. Environmental justice means that all citizens receive fair treatment and that government should offer them meaningful involvement in decisions affecting their health, environment, and neighborhoods. Working to resolve these issues has forced public administrators to do business differently because our past approaches have left some communities without adequate protection for health, welfare, and environment and has deprived some citizens of opportunities for effective civic engagement.

There are many encouraging signs that governments at all levels are beginning to tackle these challenges and are starting to address environmental justice concerns in more effective ways. The Panel hopes the lessons identified in this study -- like those identified in our two environmental justice studies that have preceded it -- will catalyze actions by federal, state, and local governments to improve conditions for those who reside in people-of-color and low-income communities.

While conducting this study, the Panel has received very helpful assistance from officials with the participating local governments, state managers, staff at the U.S. Environmental Protection Agency’s headquarters and regional offices, and representatives from various community and environmental organizations. We thank all of the people whom we interviewed and who gave so generously of their time and expertise to assist Academy researchers. The Academy also thanks EPA’s Office of Environmental Justice for its financial support, and our Panel members and our staff who have devoted so much of their time and careful, creative thinking to this very important project.



Howard M. Messner  
President  
National Academy of Public Administration

## ACRONYMS

APA	American Planning Association
AQMD	(South Coast) Air Quality Management District
ATSDR	Agency for Toxic Substances and Disease Registry
CAN	Community Action Network
CBE	Communities for a Better Environment
CDC	Centers for Disease Control and Prevention
CIS	Community Impact Statement
CEAC	Chester Environmental Action Council
CEQA	California Environmental Quality Act
CHA	Chicago Housing Authority
CRCQL	Chester Residents Concerned for Quality Living
DoE	(Chicago) Department of Environment
DPD	(Chicago) Department of Planning and Development
EIS	Environmental Impact Statement
ELI	Environmental Law Institute
EPA	U.S. Environmental Protection Agency
FHA	Federal Housing Authority
GAO	General Accounting Office
GIS	Geographic Information System
HUD	U.S. Department of Housing and Urban Development
IDPH	Illinois Department of Public Health
IEPA	Illinois Environmental Protection Agency
LDEQ	Louisiana Department of Environmental Quality
LEAN	Louisiana Environmental Action Network
MATES II	Multiple Air Toxics Exposure Study II
MWRD	Metropolitan Water Reclamation District of Greater Chicago
NEPA	National Environmental Policy Act
NHANES	National Health and Nutrition Examination Survey
NPDES	National Pollutant Discharge Elimination System
NPL	National Priorities List (Superfund)
PADEP	Pennsylvania Department of Environmental Protection
PCBs	Polychlorinated biphenyls
PODER	People Organized in Defense of Earth and her Resources
SCPDC	South Central Planning Development Commission
SELA	Southeast Los Angeles
TCEQ	Texas Commission on Environmental Quality
TRI	Toxics Release Inventory
VOCs	Volatile Organic Compounds

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## EXECUTIVE SUMMARY

In June 2002, the Office of Environmental Justice at the U.S. Environmental Protection Agency (EPA) asked the Standing Panel on Social Equity of the National Academy of Public Administration (the Academy) to study the relationship between environmental justice and local land use planning and zoning. This study complements the Academy's two previous environmental justice studies. The first study focused on EPA's programs for issuing air, water, and waste permits; and the second examined various state models for addressing environmental justice, with a particular focus on the permitting function. The current study focuses on how local government decisions on land use planning and zoning have—or have not—been used to address environmental justice issues in five selected communities where concerns about inequities have been raised.

In conducting the three studies, the Academy Panel has used EPA's definition of environmental justice:

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, education, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. *Fair treatment* means that no group of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of negative consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal environmental programs and policies. *Meaningful involvement* means that: (1) potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public's contribution can influence the regulatory agency's decision; (3) the concerns of all participants involved will be considered in the decision-making process; and (4) the decision-makers seek out and facilitate the involvement of those potentially affected.<sup>1</sup>

The Panel has found a number of themes that are common to all three studies:

- Addressing environmental justice concerns is a basic duty of good government because protecting the health and welfare of the public is the primary responsibility of effective public administrators.
- Leadership and accountability for reducing risks and enhancing meaningful public engagement are needed at every level of government to develop solutions to environmental justice problems.
- Government at every level has not always been proactive in addressing environmental justice concerns and citizen protest has often been the catalyst that prompted government action.

- There are many legal and regulatory authorities for federal, state, and local officials to use when addressing environmental justice concerns, but they are not being fully or creatively utilized.
- More effective coordination is needed between all three levels of government because each level can contribute legal authorities, technical expertise, and practical administrative tools needed to address current environmental justice problems and prevent future ones.
- Environmental and land use planning agencies at federal, state, and local levels must integrate achieving environmental justice into their missions and make implementation a part of their core program activities.

The Panel's first study, *Environmental Justice in EPA Permitting: Reducing Pollution in High-Risk Communities Is Integral to the Agency's Mission*, recommended that solutions to environmental justice issues be incorporated into the decisions and procedures for air, water, and waste permits. The Panel found that EPA has developed a solid policy foundation for addressing environmental justice, but must now focus on integrating these policies into core program activities and holding headquarters program and regional offices accountable for making progress. The Panel also found that EPA should examine its existing legal authorities for ensuring that integration does take place, because these authorities offer many additional mechanisms that EPA officials could use to address environmental justice concerns.

The Panel's second study, *Models for Change: Efforts by Four States to Address Environmental Justice*, examined four states' various approaches to environmental justice. The Panel found these states offered encouraging evidence of their commitment to achieving environmental justice—by variously adopting legislation, executive orders, or other directives designed to address the public health and environmental concerns of low-income and people-of-color communities. To improve state efforts to address environmental justice, the Panel recommended actions to strengthen state leadership, ensure accountability for progress, integrate policies into the core programs of state agencies, and enhance public involvement in permitting processes.

The Panel's current study, *Addressing Community Concerns: How Environmental Justice Relates to Land Use Planning and Zoning*, examines that relationship in five localities. The case studies represent communities from around the country where citizens have raised environmental justice concerns. They are: Huntington Park, California; Austin, Texas; Chester, Pennsylvania; Altgeld Gardens in Chicago, Illinois; and St. James Parish, Louisiana.

This third study is designed to help the public understand how land use planning and zoning relate to environmental justice, both in terms of resolving current issues and preventing future problems. It also highlights opportunities for engaging the public in the local planning and zoning decisions that affect their communities.

The Panel's recommendations, based on the research detailed in the body of this report, can be summarized as follows:

- State and local executive and legislative branches of government must demonstrate leadership to address environmental justice concerns. They should use their full legal authorities to enact appropriate legislation, issue policies, develop guidance, and develop accountability measures to ensure that, at both levels of government, core government functions are authorized and required to address environmental justice. They should also enhance opportunities for meaningful public participation in all government decisions that have environmental and public health impacts; and each level of government should improve public access to information about land use planning, zoning, siting, and permitting.
- All levels of government should conduct thorough examinations of their respective legal and regulatory authorities—including common law authorities for protecting the general welfare of citizens—to develop creative solutions for environmental justice problems.
- Federal, state, and local levels of government should work in concert to ensure that their actions for responding to environmental justice issues are compatible and mutually reinforcing. They should share information, coordinate programs, and develop comprehensive rules that will ensure consideration and mitigation of localized environmental and public health impacts, especially in low-income and people-of-color communities.
- National associations of local governments should disseminate information and offer training on best practices in land use planning and zoning that are currently used by cities and counties to ensure fair treatment, as well as meaningful involvement, of all people in decisions that affect public health and the environment.
- City and county governments should incorporate consideration of potential environmental and public health impacts of land use decisions into the fabric of their planning and zoning activities. They should actively explore how they can use current authorities to prevent excessive levels of pollution and mitigate environmental and other impacts like noise, odor, and traffic—especially in low-income and people-of-color communities.
- State, county, and city officials who are responsible for planning, zoning, public health, and environmental protections should take immediate action to determine whether their residents in low-income and people-of-color neighborhoods are exposed to excessive levels of environmental and health hazards. If so, they should initiate appropriate actions to reduce risks and communicate to the public when and how these risks will be reduced or eliminated.

In Chapter Two of this report, the Panel details the lessons learned from this study. It also includes the full set of findings and recommendations for making local land use planning and zoning more responsive to environmental justice concerns.

## ENDNOTE

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<sup>1</sup> U.S. Environmental Protection Agency, Office of Environmental Justice, *Guidance to Assessing and Addressing Allegations of Environmental Injustice*, Working Draft, 7 (January 10, 2001).

## CHAPTER ONE

### INTRODUCTION, METHODOLOGY, AND FRAMEWORK

#### BACKGROUND

This report is the third in a series of studies on environmental justice conducted by the National Academy for Public Administration (the Academy) for the Office of Environmental Justice (OEJ) of the U.S. Environmental Protection Agency (EPA). It builds on the Academy's two prior studies, *Environmental Justice in EPA Permitting: Reducing Pollution in High-Risk Communities* (December 2001) and *Models for Change: Efforts by Four States to Address Environmental Justice*, (June 2002). This study examines the land use planning and zoning laws, policies, and practices of local governments to determine how they may relate to environmental justice issues.

The first report of this Academy Panel, *Environmental Justice in EPA Permitting*, analyzed key public administration issues at EPA. It focused on how EPA could address the widely recognized fact that some low-income and people-of-color communities are exposed to disproportionate amounts of pollution and public health hazards. The Panel's recommendations for how EPA could more effectively address environmental justice concerns focused on a four part analytic framework: leadership and accountability, permitting programs, setting priorities and reducing risk, and public participation. The Panel recommendations were also designed to help community residents and other stakeholders gain a better understanding of how they can be more successful in bringing environmental justice problems to the attention of EPA's permitting and other programs.

For the first study, OEJ asked the Academy Panel to focus on EPA's permitting programs, while recognizing that most permits are prepared by state and local agencies under delegated authority. Even so, the first report was important for determining whether and to what extent EPA has integrated environmental justice into its core operations, and in helping EPA to become a model for demonstrating how these concerns can be addressed effectively by other environmental agencies.

Along with its request for the first Academy study, OEJ also commissioned a study by the Environmental Law Institute (ELI). ELI's report, *Opportunities for Advancing Environmental Justice: An Analysis of U.S. EPA* (November 2001), reviewed "the provisions contained in the principal federal environmental laws administered by EPA, in order to identify authorities that potentially could be used to advance a variety of environmental justice goals in the agency's programs."<sup>1</sup> ELI's examination of existing federal statutes provided a useful foundation for the Panel's work on environmental justice. ELI found that "all of EPA's sources of authority—environmental statutes, mission-expanding and cross-cutting laws, and general discretion—give the agency substantial and wide-ranging powers to pursue environmental justice."<sup>2</sup> ELI also found that state environmental agencies might have considerable latitude to respond to these issues as part of their delegated federal programs. These findings suggest that state and local

agencies may have environmental or administrative authorities comparable to those at the federal level that they could use to address environmental justice issues.

In the Academy's second report requested by OEJ, *Models for Change: Efforts by Four States to Address Environmental Justice*, the Panel documented the ways that Indiana, Florida, New Jersey, and California are addressing environmental justice and how these efforts relate to their permitting programs. By focusing on state programs, the Academy study expanded the prior analysis of environmental justice and recognized the key role that states play in protecting public health and the environment. The four states selected for study represent different demographics, and have programs offering different approaches in how states can initiate responses to environmental justice problems. The Panel analyzed the states' programs using the same four-part framework used in the first study: leadership and accountability, permitting programs, setting priorities and reducing risk, and public participation. The second report stressed setting goals, achieving tangible and clear results, and fully integrating environmental justice principles into core state planning and permitting programs. Environmental justice problems raise basic concerns about health, informed and meaningful public participation, the community's right-to-know, and fairness. The Panel found that performance-based administration of public programs is best suited to ensuring that these important issues are appropriately addressed by state agencies.

For this third report, OEJ asked the Academy to explore environmental justice from the local government perspective by examining its relationship to planning and zoning. As part of this effort, the Academy was asked to conduct case studies in five localities. As in the previous two reports, this report examines laws, policies, and practices as they relate to environmental justice concerns.

## **ROLE OF THE ACADEMY PANEL**

The seven-member Panel of Academy Fellows who guided the first two studies has continued to guide the research for this third study.<sup>3</sup> The Panel provided analysis and insights and developed recommendations based on the extensive research conducted by Academy researchers over a 12-month period. In addition to reviewing documents and written materials, the researchers also conducted in-depth interviews with many government officials, community group leaders, and business representatives.

For the purpose of this third study, as with the earlier two, the Panel relied on EPA's definition of environmental justice:

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, education, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. *Fair treatment* means that no group of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of the negative consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and



tribal environmental programs and policies. *Meaningful involvement* means that: (1) potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public's contribution can influence the regulatory agency's decision; (3) the concerns of all participants involved will be considered in the decision-making process; and (4) the decision-makers seek out and facilitate the involvement of those potentially affected.

## **FRAMEWORK**

As noted, all three of the Panel's reports have used the same four-part framework to analyze all three levels of government, exploring how they play out at each level:

- Leadership and Accountability;
- Permitting and Other Authorities;
- Setting Priorities and Reducing Risks; and
- Public Participation.

Through that exploration, the Panel has been able to analyze differing roles, responsibilities, and actions of federal, state, and local agencies in responding to the challenge of achieving environmental justice.

## **LOCAL LAND USE PLANNING AND ZONING**

In this report, the Academy Panel has examined ways that planning and zoning in five localities implicitly or explicitly address, create, resolve, or exacerbate environmental justice problems. The communities are: Huntington Park, California; Chester, Pennsylvania; Austin, Texas; Altgeld Gardens in Chicago, Illinois; and St. James Parish, Louisiana.

Through the five case studies, the Panel has identified issues and possible solutions for addressing environmental justice problems at the local level, including ways that all levels of government can work together more effectively. Local public administrators, state and federal policy-makers, business leaders, and community representatives can all use this report as a tool to understand local land use planning and zoning policies and practices, and to find practical approaches for their own communities to implement. The report also explains to state and federal officials how local governments need their help to address environmental justice problems effectively and shows how state and federal programs, like environmental permitting, can be adapted to meet the concerns of both local governments and community residents.

## METHODOLOGY

The Panel and its researchers used several methods to investigate environmental justice from the local perspective. They examined the literature regarding the current status of land use planning and zoning laws; how past local planning and zoning were used to foster racial segregation and the location of undesirable facilities in low-income or people-of-color communities; and how planning and zoning tools can now be used to reduce the disproportionate health and environmental hazards these communities, as well as to prevent such impacts in the future.

The Panel's investigation for each of the five case studies included the following three components:

- Laws and Policies: Academy researchers studied the texts, actual implementation, enforcement efforts, flexibility, and adaptability of local land use plans and zoning ordinances. They examined a range of local documents including comprehensive land use plans, zoning ordinances and maps, proposed future land use plans and maps, emergency response plans, and local zoning and permitting ordinances.
- Practices/Processes: Academy researchers asked about coordination across agencies and functions within local governments, the extent to which local resources have been explicitly dedicated to addressing environmental justice issues, and collaboration between local agencies and community groups or regional and state environmental justice efforts. They also examined ways that state programs support or enforce land use or zoning practices and the effects of local and state regulations, and they explored any local environmental justice issues in the context of larger economic and community development objectives.
- People: To understand the practical impacts and effects of local policies, practices, and processes on the public, Academy researchers spoke with community leaders and explored local agencies' outreach efforts, as well as attempts, if any, to understand local citizens' concerns about environmental justice.

Academy researchers visited all five communities and interviewed a diverse set of stakeholders for each case study. They asked about:

- State authorities and practices and local responses to them;
- The organization of local government and any inter- and intra-agency coordination;
- Types and complexity of local programs for addressing environmental justice problems;
- Information about community health and environmental conditions and health services, as well as pollution monitoring and enforcement efforts;
- Public outreach and communication methods and their effectiveness;

- Citizens' responses to local initiatives and their perceptions about environmental justice issues in their communities; and
- Citizen engagement in land use planning, zoning, environmental decisions, and community development initiatives.

## **ORGANIZATION OF THIS REPORT**

Chapter Two contains the lessons learned from the five case studies along with the Panel's overall findings and recommendations. Chapter Three provides a brief history and background on land use planning and zoning and their relationship to environmental justice issues. Chapter Four considers the current state of planning and zoning and the opportunities they present for addressing environmental justice concerns. Chapters Five through Nine are case studies of the five communities. Each case study includes the Panel's findings and recommendations for the specific community as well as information about the community's environmental setting; environmental justice problems; structure of local agencies and their authorities for zoning, planning, environmental permitting; and public participation. The Panel's Conclusion, followed by several appendices and the bibliography, completes the report.

## ENDNOTES

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<sup>1</sup> Environmental Law Institute, *Opportunities for Advancing Environmental Justice: An Analysis of U.S. EPA Statutory Authorities* (November 2001).

<sup>2</sup> *Ibid.*, 3.

<sup>3</sup> Two Fellows joined the Panel between the second and third reports because two others were not able to continue due to pressing demands on their time. However, the Panel's leadership and management of the Academy research staff remained the same for all three studies.

## CHAPTER TWO

### LESSONS LEARNED: FINDINGS AND RECOMMENDATIONS

The Panel's two previous studies of environmental justice programs focused on the U.S. Environmental Protection Agency (EPA) and state environmental agencies and, in particular, on how both levels of government can use their permitting processes to understand and address community concerns about the impacts facilities have on public health and the environment. However, local governments generally make the initial land use and zoning decisions that determine where various kinds of facilities can be sited. So, in this third report, the Panel has examined local land use planning and zoning authorities, how they may help to create or resolve inequities among different communities' exposures to environmental and public health threats, and the interplay among multiple levels of government often needed for taking action to address environmental justice issues.

In this third study, the Panel finds that, while local governments can play a unique and important role by considering the environmental justice implications of their planning and zoning decisions, effective solutions to environmental justice problems require coordination and cooperation among all levels of government—federal, state, and local. Each level of government brings unique legal authorities, expertise, technical tools, and other resources that are needed to prevent and mitigate localized impacts from pollution sources. Working together, they can enhance public participation, improve citizens' access to information, and foster greater public involvement in local land use and zoning decisions, especially by residents of people-of-color and low-income communities who have rarely been engaged in past decisions directly affecting their health and quality of life.

The Panel's first report—*Environmental Justice in EPA Permitting: Reducing Risk in High-Risk Communities Is Integral to the Agency's Mission*—discussed various ways that EPA can promote environmental justice. The second study—*Models for Change: Efforts by Four States to Address Environmental Justice*—identified many actions that state agencies can take to address environmental justice concerns. In this study, the Panel finds that some cities and counties have begun to use their local land use planning and zoning authorities to prevent or resolve community environmental and public health problems, and there are some useful models for other local governments that may just be starting to address these issues.

The Panel has also found that grassroots community activists are usually the catalysts for action, bringing environmental justice problems to the attention of local governments. By raising these important issues—working with, and sometimes prodding governments at all levels to address environmental justice issues—citizen groups have been a critical force in identifying problems and developing new, more effective solutions to environmental justice concerns. The Panel strongly urges governments at all levels to launch proactive efforts that will effectively engage local residents in planning, implementing, and evaluating actions designed to prevent or correct threats to public health and the environment, especially in low-income and people-of-color neighborhoods.

In this study of local governments and environmental justice problems at the local level, the Panel has used the same analytical four-part framework as for the EPA and state studies. The Panel has determined that effective governance to address environmental justice issues must include efforts in four major areas: leadership and accountability; setting priorities and reducing risk; permitting and other authorities; and public participation. Accordingly, the Panel's findings and recommendations are grouped into these same four categories.

## **LEADERSHIP AND ACCOUNTABILITY**

### **Findings on Leadership and Accountability**

**Finding 1:** Efforts to resolve and prevent environmental justice problems by reducing exposures to pollution and enhancing public involvement are most effective when federal, state, and local governments coordinate their actions and make them mutually reinforcing.

**Finding 2:** State policy and legislation can set a foundation for state and local efforts to ensure the fair treatment and meaningful involvement of all people in decisions that affect public health and the environment. State-level legislation, executive orders, or policies can help to ensure local governments' accountability and to promote progress toward improved outcomes, as well as increase the authority of state environmental and planning agencies to provide technical and other support for the environmental justice initiatives of local governments. Through legislation, policy, guidance, or example, states can institutionalize responsibility and accountability for responding effectively to the environmental concerns of people-of-color or low-income communities.

**Finding 3:** Some state and local agencies are exercising leadership on environmental justice by making effective use of existing legal authorities, developing new authorities, effectively coordinating with other levels of government, and working with community groups or environmental organizations. However, other state and local governments have not yet taken action to address environmental justice problems, while some began promising initiatives that were never implemented or missed valuable opportunities to resolve the environmental and public health concerns of low-income or people-of-color communities.

**Finding 4:** When local governments work effectively with their state and regional environmental agencies that have demonstrated a commitment to addressing environmental justice concerns, there is a greater likelihood of reducing environmental hazards, providing better public access to information, and gaining more effective participation by community residents in local decisions affecting their health and environment.

**Finding 5:** Local governments have a variety of mechanisms that can potentially be used to address public health and environmental conditions in communities where residents are raising environmental justice concerns. In particular, local land use planning and zoning authorities may be useful in tackling problems at existing sources of pollution, such as by enforcing current zoning codes more effectively. Zoning codes can be especially valuable in preventing or mitigating the potential impacts of new or expanding commercial or industrial development by,

for example, requiring compatibility with adjacent land uses. Local governments can revise their comprehensive land use plans, rezone incompatible land uses, adopt overlay ordinances, and initiate rollback zoning. They can also implement better controls on city-owned properties that pose environmental hazards or emit pollution.

**Finding 6:** In each of the five communities studied here, community-based organizations provided the leadership that brought attention to environmental justice problems and prodded local or state agencies to address them.

### **Recommendations on Leadership and Accountability**

**Recommendation 1:** Governors and other state executive branch leaders should commit to achieving environmental justice through fair treatment and meaningful involvement of all people in decisions that affect public health and the environment. By executive order or other appropriate means, they should direct their agencies to use each state's full range of legal authorities for advancing these goals and integrate them into the core missions of state agencies through specific action plans and accountability requirements. They should also establish clear milestones to measure progress in addressing environmental justice issues for state agencies and for local governments where the state has authority to do so. Information on progress should be made easily available to the public, as well as to agency heads and local governing bodies, so that responsible parties can be held accountable for producing results.

**Recommendation 2:** State legislatures should adopt laws requiring state agencies to integrate into their core programs the procedures and practices necessary to address environmental justice problems. Where states already have such legal authority, the laws should also require local governments to incorporate environmental justice considerations into their operations, especially local land use planning and zoning. Such legislation should define environmental justice and link it to the primary missions of state and local agencies for preserving public welfare, reducing risk, protecting human health, and reducing pollution. State legislation should also clarify the respective roles and responsibilities of state and local agencies, and should establish appropriate ongoing accountability mechanisms.

**Recommendation 3:** State and local agencies should develop environmental justice policies, action plans, and accountability processes. They should ensure full public access to data that are relevant and necessary for local officials and the public to understand current environmental conditions and to determine whether progress is being made to improve conditions that raise concerns.

**Recommendation 4:** City and county leaders should actively work to incorporate consideration of environmental justice issues into the fabric of their land use planning and zoning authorities. Additionally, they should actively utilize existing regulatory and common law authorities to prevent or reduce pollution; mitigate environmental impacts on nearby neighborhoods; and address related issues like noise, odor, and traffic. Local agencies should also work closely with the public, environmental justice groups, and neighborhood organizations to ensure that they fully understand the environmental issues in their communities and have a voice in local officials' decisions on addressing these problems.

**Recommendation 5:** State and federal agencies should provide leadership, technical assistance, training, and information to help local officials develop and implement policies and procedures for ensuring that all people are fairly treated by, and can participate in, environmental decisions. They should further provide local officials with access to reliable information and sound science, and help to build their capacity for incorporating this information into appropriate local plans, ordinances, and regulations.

**Recommendation 6:** National associations of local governments should disseminate information on environmental justice, including model authorities and examples of best practices, that cities and counties can use to ensure fair treatment and meaningful involvement of all people in decisions that affect community health and environmental conditions. A national on-line database could be set up for local governments to adopt smart growth and sustainable development initiatives, highlighting the relationship between local land use controls and environmental justice concerns. This database could include best practices and examples of local government policies and procedures for addressing environmental justice problems, model language to incorporate into local plans and zoning ordinances, and sample checklists for local officials to use in ensuring compliance with environmental justice principles. Other topics might include coordination with EPA and state environmental agencies, effective community outreach, and mechanisms for achieving sustainable and equitable economic development.

## **Discussion of Leadership and Accountability**

### **Examples of State Executive Leadership**

**Pennsylvania.** In June 2000, the Governor of Pennsylvania signed Executive Order 1999-1 that identifies sound land use policies and objectives to guide state agencies when making decisions that can affect land use.<sup>1</sup> The “Growing Smarter” initiative, developed through a series of forums on land use reform held across the state and backed by a \$3.6 million budget from the Governor’s office, is a substantial investment in local state land use planning efforts.<sup>2</sup> Additionally, recent amendments to the Municipalities Planning Code direct the Pennsylvania Department of Environmental Protection (PADEP) to “consider and [possibly] rely upon comprehensive plans and zoning ordinances when reviewing applications for the funding or permitting of infrastructure or facilities.”<sup>3</sup> Based on this authority, the PADEP has directed that staff must consider all local ordinances—like the ordinances adopted by the Chester local government that require no net increases in emissions for new heavy industrial facilities—as part of the state’s permitting process.<sup>4</sup>

**Louisiana.** In 1998, the Governor of Louisiana issued an Executive Order establishing the Mississippi Corridor Task Force, which was charged with making recommendations about environmental justice. The Task Force included representatives of the Governor; Secretaries of the Departments of Environmental Quality, Economic Development, Agriculture and Forestry, and Health and Hospitals; the Task Force on Environmental Protection and Preservation; the Presidents of the state and two local branches of the National Association for the Advancement of Colored People; and four residents of the Industrial Corridor. In 2000, this Task Force recommended:



- Establishing a state review process modeled on the National Environmental Policy Act and related guidance issued by the Council on Environmental Quality;
- Creating a regional organization to coordinate regional issues such as sustainability of environmental resources, quality of life, and economic self-sufficiency;
- Adopting a pre-permitting process to provide an opportunity for dialogue among industry, the community, and government on issues of siting, expansion, and other permitting requests;
- Reviewing the concepts of zoning and land use planning, possibly setting minimum state siting standards for new industrial development, and developing legislation to require buffer zones between communities and proposed industrial facilities; and
- Studying the relationship between emissions of air pollutants and discharge of waste by facilities located in or near residential areas.<sup>5</sup>

These Task Force recommendations provided a solid foundation for action that, if properly implemented, could help Louisiana to start addressing environmental justice issues more effectively. Unfortunately, to date, no state or local agency has taken action to implement the recommendations.

#### Examples of State Legislative Leadership

California. California provides an excellent example of a fully authorized and articulated program for state, county, and local agencies to work together on addressing environmental justice problems—largely because the state legislature established a framework for action and accountability. The California Assembly’s six laws on environmental justice set clear performance expectations for all state agencies, and place responsibility for coordinating environmental justice efforts in the Governor’s Office of Planning and Research. Under the state laws, environmental justice must be incorporated into the state’s general planning guidelines for cities and counties by July 2003, so that integrating environmental justice into the fabric of local planning will help to prevent future problems. The legislation also specifically directs the California Environmental Protection Agency to consider environmental justice in all of its programs, policies, and standards.<sup>6</sup>

As the result of the new laws, several California agencies have established policies, programs, and tools to assist local governments in responding to environmental justice concerns. The South Coast Air Quality Management District’s 1999 study on air toxic emissions in Southeast Los Angeles was the catalyst for action by the City Council in Huntington Park. In addition, the District is developing air quality guidance for its local governments to use in their current land use planning and future development initiatives.

Louisiana. In 1993, the Louisiana legislature passed an act requiring the state’s Department of Environmental Quality to hold statewide hearings and solicit recommendations about how to address environmental justice issues. The resulting recommendations, formally presented to the legislature in 1994, included establishing guidelines for facility siting, strengthening

requirements for land use planning, regulating transportation of toxic materials, building emergency response capacity, improving procedures for public notices and hearings, strengthening enforcement in highly industrialized areas, and reporting annually to the legislature on progress in addressing environmental justice issues. However, despite this valuable effort to engage the public, state leaders have never implemented these recommendations.

### Example of State Environmental Agency Leadership

Illinois. In Illinois, a draft Interim Environmental Justice Policy developed by the Illinois Environmental Protection Agency (IEPA) is currently under public review. It has a more limited scope than the California legislation because it does not apply to all state agencies and departments. However, under the draft policy, the IEPA would be responsible for ensuring that its decisions do not disproportionately impact local communities and that every community receives an equitable share of environmental protection and benefits. IEPA's draft policy also would strengthen public involvement in the agency's decisions.

### Examples of Local Government Leadership

People-of-color or low-income communities often are concerned about pollution exposures that result from local planning or zoning decisions that allow sources of pollution to locate near residential areas. Some state environmental agencies also acknowledge that incompatible placement of facilities in proximity to residential areas is a problem. A few local officials are beginning to recognize that incompatible zoning and land use planning—or the lack of planning—often results from failing to understand the impacts of certain facilities on the citizens whom the localities are responsible for protecting. Some of the local governments analyzed in this study have taken action to correct these problems and to prevent future mistakes that expose local residents to nearby pollution sources; in other localities, however, more effective mechanisms are just starting to take hold.

- Huntington Park, California revised its zoning ordinance for commercial/office/mixed - use zones to authorize imposing conditions in building/operating permits based on proximity to residential areas and the potential for adverse environmental impacts. The city focused particular attention on reducing diesel emissions after determining that they pose the most significant health risk for its residents. The revised ordinance now enables the city to include conditions in permits requiring advance mitigation and reduction of diesel emissions that may be generated by any expanded or new buildings, operations, or facilities.
- Chester, Pennsylvania adopted an ordinance that prohibits any new heavy industrial facility from producing a net increase in environmental pollution. The city also adopted a series of performance measures to mitigate environmental impacts from new facilities, including noise, glare, and air pollution. The city's planning department also completely revised its planning code to facilitate implementation of their new comprehensive land use and development plan.
- Austin, Texas created the East Austin Overlay District in 1997. Any new facility in the District with operations more intense than a commercial use must obtain a special use permit

and conduct an extensive process to notify local residents. When current industrial owners close their facilities, the zoning is then changed to a less intense use as authorized by another city ordinance.

- Chicago, Illinois is completely revamping its local zoning code, with the express purposes of improving neighborhoods and encouraging environmentally sound economic development.

### Examples of State and Local Coordination and Leadership

While local governments have primary responsibility for land use planning and zoning, the Panel's research has shown that state environmental or planning agencies can play important roles, particularly by assisting localities in understanding the environmental and human health consequences of their land use decisions. Local officials sometimes have difficulty addressing these impacts, however, because reducing localized impacts may require coordinated actions across jurisdictional boundaries and regulatory approaches that are beyond the scope of local authorities. State agencies can provide valuable technical assistance to local governments in assessing local conditions and evaluating the impacts of proposed permits or redevelopment initiatives. State environmental and other agencies can also gain a better understanding of how localized impacts may significantly affect a community and develop appropriate additional strategies to address them.

The relationship between the South Coast Air Quality Management District and the government of Huntington Park, California illustrates the benefits of coordination. The District has demonstrated leadership and accountability by adopting a policy and implementing a clear agenda to address environmental justice concerns. The agenda includes three major components: reducing risk, providing greater community access and involvement, and developing economic incentives for accelerated mitigation.

The District's monitoring and evaluation of air pollution in the Southeast Los Angeles area raised the awareness of Huntington Park's City Council members about the health implications of air emissions for their community, thus prompting action by the Council to reduce diesel emissions. The District's Multiple Air Toxics Exposure Study (MATES II), which produced the monitoring results, is a good example of coordination that has produced results. The District also listened to feedback from city officials, as well as from local and regional community groups. As a result, the District crafted measures to address cumulative impacts, revamp currently inadequate rules, reduce localized air emissions, enhance public involvement, and provide public access to more information. The District is currently developing guidance on land use and air quality that can be incorporated into the land use plans of localities throughout the District.

### Examples of Leadership by Community Groups

In each of the five case studies, local community-based organizations have been important catalysts for government action. In Huntington Park, citizen complaints made the City Council aware that a polluting facility was violating the terms of its special use permit. Perhaps more importantly, these citizen complaints served as the beginning of an educational process for local

officials about the adverse environmental and health impacts that their decisions had on nearby residents. Local officials realized that a facility's compliance with federal or state permit requirements does not necessarily ensure protection of public health and the environment, because these permits may not adequately address localized environmental impacts.

Similarly, in Austin, People Organized for the Defense of Earth and her Resources (PODER) has driven change. The group's efforts have resulted in closing a petroleum tank farm and removal by the city of some unwanted land uses that were sources of pollution near residential areas. The city is also now building neighborhood associations as a mechanism citizens can use to help ensure their concerns are considered by local officials.

In Chicago, residents of Altgeld Gardens have waged a long battle to bring attention to the multiple environmental and public health threats created by the industrial and waste disposal facilities near their homes. Using community education, applying political pressure, and sometimes by staging public protests, People for Community Recovery has prompted city, states, and EPA officials to launch enforcement actions against a facility violating air emission requirements, remove PCB contamination at the housing project, impose a moratorium on new landfills in south Chicago, and clean up nearby contaminated sites.

In Pennsylvania, Chester Residents Concerned for Quality Living (CRCQL) worked to stop the siting of waste facilities near their homes. In addition to bringing legal actions to address problems at existing facilities, CRCQL and the Public Interest Law Center of Philadelphia drafted an ordinance, adopted by Chester City Council, which prohibits new industrial facilities from increasing net pollution levels in the city.

In Louisiana, St. James Citizens for Jobs and the Environment stopped the construction of a chemical facility in their community. The organization also brought national and international attention to environmental justice problems in St. James Parish.

## **PERMITTING, PLANNING, AND ZONING AUTHORITIES**

### **Findings on Permitting, Planning, and Zoning Authorities**

**Finding 7.** For all five case studies in this report, low-income or people-of-color communities are adjacent to or mixed into areas that have manufacturing and industrial uses, resulting in many potential threats to public health and the environment. While the origins of these situations vary, local planning and zoning authorities could be used to reduce adverse impacts where industrial and residential areas are located near each other.

**Finding 8.** In most cases, the major environmental permits for air emissions, water discharges, or land disposal are issued by state agencies, not by local governments. However, states can take steps to engage local governments in the permit process. Through active involvement, local governments can help ensure that proposed environmental permits contain the conditions necessary to protect public health and the environment at the community level.

**Finding 9:** Basic procedures for processing environmental permits have not changed in the five states covered by our local case studies—not even in California, the only state that has enacted environmental justice legislation. However, some state agencies have adopted tools and practices to help them assess and address local environmental justice problems and to improve public participation in permitting decisions.

**Finding 10.** If state and local officials make creative and aggressive use of existing legal authorities, it may be possible to resolve the environmental and public health concerns of community residents.

**Finding 11:** Some state programs—such as air emission trading programs—may not adequately take into account and safeguard against localized impacts, particularly in low-income or people-of-color communities.

### **Recommendations on Permitting and Planning and Zoning Authorities**

**Recommendation 7:** Local governments should use existing land use planning and zoning authorities to promote and ensure environmental justice. They should also take steps to eliminate existing nonconforming uses that present public health and environmental hazards, and they should adopt more flexible zoning techniques, such as:

- Setting up conditional uses that impose restrictions on certain uses that may affect environmental justice issues;
- Establishing overlay zones that impose additional requirements to provide for additional environmental protections;
- Using performance zoning to regulate the adverse impacts of nuisance-like activities, such as noise and odor; and
- Establishing buffer zones in transitional areas between incompatible land uses, especially for industrial uses adjacent to residential areas.

**Recommendation 8:** Local planning and zoning agencies should train their staffs on how to conduct effective community outreach and how to analyze the environmental justice impacts of proposed land use plans and zoning ordinances.

**Recommendation 9.** Local government officials should establish working relationships with the permitting staffs of state environmental agencies to ensure that local officials receive notice—at the earliest stage possible—about permit applications in their area and can become actively involved in the permitting process. Local officials should also ensure that state agencies adequately assess and address localized adverse impacts and that the state agencies solicit perspectives of community residents and address their concerns before approving permits.

**Recommendation 10:** State, county, and city officials should thoroughly review their respective legal authorities to understand the full scope of their powers for addressing particular issues of

concern to low-income and people-of-color communities, and they should ensure that the citizens who are affected by environmental decisions receive fair treatment and are involved in a meaningful way.

### **Discussion of Permitting and Planning and Zoning Authorities**

State governments issue most major environmental permits under authority delegated to them by the federal EPA. In some instances, states have, in turn, delegated permitting authority to local governments. In all cases, however, coordination and cooperation among all three levels of government is essential. Each level of government has unique resources, authorities, expertise, and information that can be used to help ensure that permits adequately consider and address potential health and environmental impacts for residents of affected communities.

Authorities that may be available to address a particular situation include state environmental protection statutes, state environmental review laws (“little NEPAs”), and delegated federal authorities under the various national environmental laws. The Environmental Law Institute’s recent report, *Opportunities for Advancing Environmental Justice: An Analysis of U.S. EPA*, explains how these and other authorities in federal statutes can be used to address environmental justice problems.<sup>7</sup> Where more specific authorities are not appropriate, general welfare or nuisance authorities under common law may be available to address particular problems.

The South Coast AQMD adopted a three-pronged approach to addressing environmental justice problems: setting quantifiable goals for reducing risks, providing for greater community access to information and involvement in decisions, and creating economic incentives for accelerated mitigation of air pollution. The risk reduction strategy addresses the most important local environmental justice issue—high levels of toxic air emissions. Huntington Park and the District are working closely together on permitting issues, and city officials have asked the District to notify them in advance about permit applications that may impact their community.

State permit writers in Pennsylvania now have authority to consider local land use ordinances as they develop environmental permits—such as the Chester ordinance, adopted in response to environmental justice concerns, which prohibits net emission increases from new heavy industrial facilities. Other local and county governments in the state can use the Chester ordinance as a model when performing their concurrent reviews of environmental permit applications.

However, state permitting and other programs may not adequately consider localized impacts. For example, Huntington Park found that California’s Regional Clean Air Incentives Market (RECLAIM) program for trading air emissions does not require emission credits to be purchased from local sources. The failure to require local credit purchases for RECLAIM trading creates the prospect that communities like Huntington Park, which have particularly high levels of toxic emissions, may not achieve emission reductions while another locality in the region may benefit.

## **SETTING PRIORITIES AND REDUCING RISK**

### **Findings on Setting Priorities and Reducing Risk**

**Finding 12:** Local governments can play a primary role in identifying neighborhoods where residents face multiple environmental and public health risks. However, they need help from the other levels of government to develop and implement strategies for reducing risks, taking advantage of each level’s unique authorities and expertise.

**Finding 13:** Local governments often need—but have not always received—leadership, technical expertise, resources, training, or information from state and federal agencies to help them understand and address environmental justice issues.

### **Recommendations on Setting Priorities and Reducing Risk**

**Recommendation 11:** State and local planning and zoning agencies and environmental agencies should gather data to determine whether people-of-color or low-income communities are exposed to excessive environmental hazards and, if so, they should initiate appropriate actions to reduce these risks. Complete information about local risks should be communicated to the residents of these neighborhoods. Federal, state, and local agencies should develop and implement strategies for reducing pollution, with appropriate measures of progress, accountability mechanisms, and deadlines for producing results.

**Recommendation 12:** Federal and state agencies should provide technical assistance, resources, training, and information on sources and levels of pollution that will help local governments identify neighborhoods that face disproportionate health and environmental hazards and develop appropriate risk reduction strategies that make effective use of all available tools and legal authorities.

### **Discussion of Setting Priorities and Reducing Risk**

Among the five localities in this report, the South Coast AQMD was the only agency that had adopted a risk reduction strategy for environmental justice. Its plan applies to all of Southeast Los Angeles and was adopted in response to a monitoring and evaluation study for implementing its 1997 commitment to examine air quality at local levels. The study showed that diesel emissions are the greatest health risks for neighborhoods in the District. The District then developed a toxics control plan for the South Coast Basin that committed “to reduce air toxics by an additional 31 percent beyond what would be expected by 2010 under existing local, state, and federal control programs.”<sup>8</sup>

The 1997 study also enabled Huntington Park officials to determine that the city’s environmental priority should be reducing diesel emissions and that they needed to be more mindful about their local responsibilities to reduce air pollution when making land use decisions. To that end, they changed the city’s zoning ordinances to include consideration of compatible land uses, passed an ordinance that limits idling of motor vehicles, made better use of their existing authorities under

the California Environment Quality Act, and required mitigation plans before approving new businesses that might produce additional diesel emissions.

## **PUBLIC PARTICIPATION**

### **Findings on Public Participation**

**Finding 14:** Local governments often have broad authorities for involving the public in land use planning and zoning decisions, but efforts to engage the public are not always effective in reaching residents of low-income and people-of-color communities.

### **Recommendations on Public Participation**

**Recommendation 13:** Local officials should work to improve opportunities for meaningful, early, and effective community involvement in land use planning and zoning, siting, and permit decisions. The public should be engaged in all steps of the process, not simply invited to participate in public hearings after plans have been essentially completed.

**Recommendation 14:** Local governments should help residents of low-income and people-of-color communities participate in planning and zoning decisions and ensure that their concerns are integrated into planning and zoning documents. This help may include translating relevant materials into other languages, using different places and times for public meetings to facilitate public participation and enable citizens to keep their regular work-day commitments, taking extra steps for outreach to communities unaccustomed to participating in government decisions, establishing ongoing partnerships with community organizations, facilitating dialogues on a continuing basis, and placing notices in publications or other media formats that are more likely to reach residents of low-income or people-of-color communities.

**Recommendation 15:** Local governments should make formal commitments to engage all citizens in their planning and zoning processes and should adopt measures to ensure they are making progress in addressing community concerns about public health and the environment. As a sign of this commitment, they should be sure to appoint individuals who represent the local community to land use planning and zoning boards.

### **Discussion of Public Participation**

Each of the communities in the five case studies here has experienced vigorous public engagement on environmental justice issues. Unfortunately, much of this citizen participation has involved protests over specific problems created by past land use decisions rather than early engagement in developing local land use plans and zoning ordinances.

The American Planning Association encourages local planning and zoning officials to adopt collaborative approaches that create citizen support and help agencies to adopt plans or ordinances that meet public expectations.<sup>9</sup> Some local officials recognize they need more



effective ways to involve local citizens earlier and in more meaningful ways when developing land use plans and zoning ordinances.

- The new planning process for East Austin is organized at the neighborhood level. Neighborhood residents are working closely with city planners to determine how best to zone and plan for each neighborhood. In neighborhoods covered by the East Austin Overlay Zone, public notice requirements have been expanded to ensure broad public awareness of any changes that may affect each neighborhood.
- As part of its ongoing Neighborhood Improvement Project, Huntington Park plans to establish neighborhood commissions. Once these commissions are established, city officials believe they will be effective mechanisms for more effective civic engagement on all issues, including environmental justice.
- Citizens commenting on Chicago's current zoning reform initiative have recommended expanded public participation in zoning decisions. In particular, they have asked that written notices of proposed zoning changes be sent to anyone, including renters, who has expressed an interest in projects in particular neighborhoods or of a certain size, not just to property or home owners located within 250 feet of the proposed project. If adopted, this approach will help to ensure that citizens will have an opportunity to raise environmental and public health concerns and to advocate for appropriate mitigation measures.
- The Illinois Environmental Protection Agency (IEPA) has a long-standing, active community relations program that works with community groups and promotes public participation generally. About a year ago, an IEPA environmental justice coordinator was appointed to oversee the agency's work on environmental justice issues, and a draft environmental justice policy that will apply to the agency's permitting and other programs is currently under public review. IEPA already employs some of the public participation techniques called for in the draft policy. Of particular interest is IEPA's use of what the agency calls "living room" public hearings. These small, informal sessions have been successful in engaging citizens who might otherwise not feel comfortable participating in a regular public hearing. IEPA also sometimes holds its hearings at a location right in an affected community. For example, about 250 people attended a hearing held at Altgeld Gardens regarding renewal of waste treatment facility permits.

## ENDNOTES

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<sup>1</sup> Governor Thomas J. Ridge, *Executive Order 1999-1*, Commonwealth of Pennsylvania, (January 7, 1999).

<sup>2</sup> Pennsylvania Department of Community and Economic Development, Governor's Center for Local Government Services, *Pennsylvania Growing Smarter*, website, <<http://www.landuseinpa.com>> (visited October 2002). See also Office of the Governor, "Gov. Ridge Unveils Dramatic Environmental Budget—Implements 'Growing Greener' Call for 'Growing Smarter,'" Press Release (February 8, 2000). Available at <[www.landuseinpa.org/default.asp?content=news\\_press\\_020800](http://www.landuseinpa.org/default.asp?content=news_press_020800)> (visited July 2003).

<sup>3</sup> 53 P.S. section 10619.2 (West Supp. 2002).

<sup>4</sup> Pennsylvania Department of Environmental Protection, Policy Office, *Policy for Consideration of Local Comprehensive Plans and Zoning Ordinances in DPE Review of Permits for Facilities and Infrastructure*, DEP ID#012-0200-001 (June 8, 2002).

<sup>5</sup> Louisiana Department of Environmental Quality, Community/Industry Relations Group, Summary and minutes of the Mississippi Corridor Task Force (undated).

<sup>6</sup> National Academy of Public Administration, *Models for Change: Efforts by Four States to Address Environmental Justice*, 89-91 (June 2002).

<sup>7</sup> Environmental Law Institute, *Opportunities for Advancing Environmental Justice: An Analysis of U.S. EPA Statutory Authorities* (November 2001).

<sup>8</sup> National Academy of Public Administration, *Models for Change*, 107-108.

<sup>9</sup> Stuart Meck, gen. ed., *Growing Smart Legislative Guidebook*, xlvii (American Planning Association, 2002).

## **CHAPTER THREE**

### **HISTORY AND BACKGROUND: LAND USE PLANNING AND ENVIRONMENTAL JUSTICE**

#### **INTRODUCTION**

Local land use planning and zoning decisions have had an important influence on environmental justice problems. Zoning and land use planning have been described by some scholars as not only “a root enabling cause of disproportionate burdens [and] environmental injustice,”<sup>1</sup> but also “the most fundamental and potentially most powerful of the legal weapons deployed in the cause of racism.”<sup>2</sup>

The disproportionate exposures that often trigger environmental justice concerns are many and complex. They have been described as including “racism, inadequate health care, low quality housing, high hazard workplace environments, limited access to environmental information, ... simple lack of political power,”<sup>3</sup> and noncompliance with environmental laws, among others. There is also significant evidence showing that not only are people-of-color or low-income residents likely to live close to polluting industries with the resulting unequal distribution of environmental exposures,<sup>4</sup> but also that local zoning has sometimes created these disparities, and that local decision-makers were often fully aware of the likely outcomes.<sup>5</sup>

The history of land use planning and zoning in this country helps to explain how this unequal distribution of environmental burdens has occurred, and why these historical patterns have been the source of many environmental justice problems that confront people-of-color or low-income communities today. The case studies that follow in Chapters Five through Nine of this report further illustrate how some localities are using planning, zoning, and improved coordination with other entities—including state and county environmental departments and communities – to implement initiatives designed to address current environmental justice concerns more effectively.

A number of scholars have written comprehensively about the relationship of planning and zoning to environmental justice. To provide a historical context for the five case studies and the Panel’s recommendations, this chapter briefly summarizes some relevant milestones in the history of planning and zoning and their intersection with environmental justice issues.

#### **ORIGINAL GOALS OF ZONING**

When first developed, zoning promised something far different than the actual result of some localities’ decisions relegating certain communities to serve as “dumping grounds.” Zoning was originally designed to improve the aesthetics of towns and cities and to:

“ensure sufficient light and air at street level so cities would not be labyrinths of dark and dreary canyons; ...prevent incompatible uses from locating cheek by jowl so residential neighborhoods would be protected from factories; ...[ensure] density controls...; guarantee congestion-free central business districts and [enable] the...municipal infrastructure to keep pace with growth.”<sup>6</sup>

While zoning “began as a means of improving the blighted physical environment in which people lived and worked, [it] was transformed into a device for protecting property values and excluding...[segments of the population described as] undesirables.”<sup>7</sup> One of the earliest examples of the exclusionary use of “proto-zoning ordinances” was San Francisco’s 1885 prohibition against laundries in residential areas in order to prevent Chinese immigrants from settling in white neighborhoods.<sup>8</sup>

## FEDERAL INFLUENCE ON LOCAL PLANNING AND ZONING

Federal policies played a significant role in establishing the basic legal framework and authority for cities to zone, and have helped to shape the concept of local zoning as a tool that cities could use to exclude or segregate the poor and people-of-color from certain areas.<sup>9</sup> The passage of the Standard State Zoning Enabling Act of 1922, under the sponsorship of the U.S. Department of Commerce, served as the basic model for state zoning acts from that date forward.<sup>10</sup> Among other things, the 1922 Act granted states the power to regulate land use for the “health, safety, morals, or the general welfare of the community.”<sup>11</sup> This authority included regulating and restricting “the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population and the location and use of buildings, structures and land of trade, industry, residence or other purposes.”<sup>12</sup>

Federally-insured mortgages provided by the Federal Housing Authority (FHA) and the Veterans Administration (VA) also helped to shape exclusionary practices by subsidizing the suburbs at the expense of America’s urban areas, thus propagating race-based housing policies that continued well into the 1960s.<sup>13</sup> The FHA’s *Underwriting Manual*, in use between 1934 and 1947, advised against “the infiltration of inharmonious racial and national groups,” “a lower class of inhabitants,” and “the presence of incompatible racial elements” in new housing.<sup>14</sup> FHA also supported the use of racial covenants in real estate and prevented African-Americans from obtaining mortgage insurance in “redlined”<sup>15</sup> black or integrated communities.<sup>16</sup> Although equal opportunity policies began in the 1950s, FHA acquiesced in the discriminatory practices of private lending institutions until 1968 by continuing to provide mortgage insurance for segregated residential areas.<sup>17</sup> The long-term impacts of discriminatory practices by both FHA and VA have been significant, because together they subsidize half of all home mortgages.<sup>18</sup> Also, the U.S. Department of Housing and Urban Development did not adopt regulations to ensure that new, integrated housing was built in decent neighborhoods until 1972; and federal highway projects as well as urban renewal policies have often displaced and segregated African-Americans into limited areas.<sup>19</sup>

In many instances, local decisions that allowed for industrial and other land uses incompatible with low-income and people-of-color communities were made “not in violation of, but in compliance with, local zoning ordinances.”<sup>20</sup> Thus, for many years, federal policies reinforced local practices that limited housing for African-Americans to less desirable areas adjacent to polluting facilities.

## **THE *EUCLID* DECISION**

The inauguration of zoning at the beginning of the 1900s brought changes described as a “revolution in American land use regulation and planning.”<sup>21</sup> Los Angeles launched this country’s first “use” zoning ordinance in 1908 “to protect its expanding residential areas from industrial nuisance.”<sup>22</sup> In 1915, the U.S. Supreme Court approved the “exercise of a city’s police power over land use” in *Haddacheck v. Sebastian*,<sup>23</sup> which upheld the Los Angeles zoning ordinance. In 1916, New York “enacted the first comprehensive zoning ordinance, separating and protecting residential uses from incompatible commercial and industrial uses.”<sup>24</sup> Local police powers for zoning were then affirmed in the landmark 1926 Supreme Court decision, *Village of Euclid v. Ambler Realty Corporation*.<sup>25</sup>

The implications of *Euclid* have been described as follows:

*Euclid* upheld the general principle of using the police power to separate incompatible uses and to protect residential uses and residential environments from the pressures of growth and industrialization. Relying on analogies to nuisance doctrine, Justice Sutherland declared, “[a] nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard.” Thus, the concerns over health, safety, and the general welfare that are embodied in the police power were properly extended through the device of zoning to protect single-family residences from the encroachment of commerce and industry.<sup>26</sup>

However, the racial dimensions of zoning and planning in some localities suggest that officials thought pigs were still appropriate for certain parlors, depending on who owned the parlors.

While zoning serves to regulate land uses, it can also serve exclusionary purposes. This use was reinforced by “social reformers” who viewed zoning as a tool “to [not only] exclude incompatible uses from residential areas but also to slow the spread of slums into better neighborhoods.”<sup>27</sup> This could justify excluding immigrants, African-Americans, and other people-of-color or low-income groups from white residential areas.<sup>28</sup> Zoning, in the service of such policies, was well suited for promoting racial segregation because, at least until the 1950s, “the protection of property values...[and segregation] were...mutually reinforcing objectives.”<sup>29</sup>

## ZONING'S UNFULFILLED PROMISE

Baltimore, Maryland established the first racial zoning ordinance in 1910. Within a few years, other jurisdictions throughout the south and as far west as Texas adopted similar racial zoning. While the ordinances differed in some respects, they shared the common objective of creating “separate residential areas for blacks and whites and prohibit[ing] members of either race from occupying residential property in the district set aside for the other.”<sup>30</sup> When the Mayor of Baltimore signed that city’s racial zoning ordinance in 1910, it isolated African-American residents in slums to reduce the “incidents of civil disturbance, to prevent the spread of communicable disease into the nearby white neighborhoods, and to protect property values among the white majority.”<sup>31</sup>

Although the U.S. Supreme Court rejected racial zoning in 1917 in *Buchanan v. Warley*,<sup>32</sup> its decision was based on interference with the rights of a white property owner. The Court found that Louisville, Kentucky’s ordinance restricting where one could live based on race violated the rights of a white property owner to dispose of his property to a buyer of his choice, who in this case was a black man. While the Supreme Court clearly addressed the “inviolability of property rights” in this case, it did not address the “white supremacist underpinnings of racial zoning.”<sup>33</sup>

Despite invalidating racial zoning, the *Buchanan* decision did not end racially exclusionary zoning ordinances. They continued to be adopted by cities, only to be struck down by appropriate state courts.<sup>34</sup> Following the *Buchanan* decision, cities began employing professional planners to develop “racially informed zoning”<sup>35</sup> plans and utilizing land use planning as a means to create completely separate African-American communities.<sup>36</sup> This use of planning in “the service of apartheid ... helped to create the racially bifurcated social geography of most contemporary American cities.”<sup>37</sup>

Utilizing this tactic, Baltimore officials again were the first to adopt a comprehensive zoning ordinance in 1923, assisted by New York planning consultant Robert Whitten, who advised a number of cities on such ordinances. The previous year, Whitten had counseled Atlanta officials that “home neighborhoods had to be protected from any further damage to values resulting from inappropriate uses, including the encroachment of the colored race.”<sup>38</sup> As a result, “the south and southeast of Baltimore tenement districts which housed first-generation immigrants, and the alley districts which housed poor blacks, were placed in industrial districts so as to encourage their displacement by factories.”<sup>39</sup> Professor Yale Rabin, of the Massachusetts Institute of Technology, has called this phenomenon “expulsive zoning.”<sup>40</sup> Low-income or people-of-color residents who were not displaced eventually found their homes were next to “a junk yard, an incinerator, a factory, or truck depot..., [while] white neighborhoods were consistently protected from intrusive traffic, noise, and pollution generated by such nonresidential uses.”<sup>41</sup>

Professor Rabin has further described the failure of zoning to fulfill the expectations set forth in *Euclid* as “an impermissible use of police power, in violation of the rights of those who are thus adversely affected.”<sup>42</sup> He also found evidence that, even after the Supreme Court’s 1917 rejection of racial zoning, some cities continued throughout the 1930s, and possibly much later, to zone the neighborhoods of low-income or African-American residents for industrial or commercial uses.<sup>43</sup> In addition to industrial or high-density designations, many African-

American or low-income residential areas were given “inferior municipal facilities, ...[and the residents were] ...denied a meaningful role in the deliberations that produced the policies, plans, and practices.”<sup>44</sup> As a result:

Neighborhoods in which blacks and other minorities live have been systematically denied the protection that the Court in *Euclid* found so important and that has been commonplace in white neighborhoods. The readily observable mixed-use conditions, so common in low-income black neighborhoods, appear to support the latter hypothesis.<sup>45</sup>

Professor Rabin has studied African-American communities for many years. While examining various kinds of discriminatory public actions, he has discovered that discrimination in zoning practices is widespread and needs further study.<sup>46</sup> He has concluded that:

zoning has been frequently employed in ways that have undermined the character, quality, and stability of black residential areas; that zoning not only has been used to erect barriers to escapes from the concentrated confinement of the inner city, it has been used to permit—even promote—the intrusion into black neighborhoods of disruptive incompatible uses that have diminished the quality of life and undermined the stability of those neighborhoods.<sup>47</sup>

While there is no definitive documentation that racial zoning ordinances have been directed at other communities-of-color, there is evidence that discriminatory covenants have been used to exclude Hispanics, particularly in the West and Southwest.<sup>48</sup> Other studies have documented that Hispanic communities are disproportionately burdened by environmental hazards and are often located in areas zoned for industrial uses. For instance, a 1994 national assessment of the demographics of over 500 communities where hazardous waste treatment, storage, or disposal facilities are located found facilities that began operating between 1970 and 1990 were not disproportionately located in African-American communities, but the “Hispanic population of an area was statistically significant...in predicting sitings from 1970-1990.”<sup>49</sup> While African-American neighborhoods “bore the burden of [treatment facility] sitings prior to 1970, Hispanics assumed that role between 1970-1990.”<sup>50</sup> Moreover, in addition to being subject to “the disparate siting of environmentally degrading uses,” Hispanics have also been subject to “government-induced gentrification,” sometimes caused by urban renewal projects funded by the U.S. Department of Housing and Urban Development.<sup>51</sup>

Underscoring the role of racism in the siting process, Robert Bullard, an expert on environmental justice and Director of Clark-Atlanta University’s Environmental Justice Center, found that “exclusionary zoning, rezoning, and granting of variances have been used by government authority and power to foster and perpetuate discriminatory practices.”<sup>52</sup> Even without some of these tools, other discriminatory practices have produced environmental justice problems in African-American communities. Bullard cites the example of Houston, Texas where, even without any zoning, eight out of ten solid waste facilities were sited in predominantly African-American communities between the 1920s and 1970s, although African-Americans constituted only 25 percent of Houston’s population during the same period.<sup>53</sup> These sitings made black

neighborhoods undesirable places to live, and they quickly became the hosts for other polluting operations such as salvage yards, recycling operations, and automotive “chop shops.”<sup>54</sup>

## **ENVIRONMENTAL JUSTICE AND FACILITY SITING**

Zoning has significant implications for shaping the environment of a community, because it defines where sources of pollution and other potentially noxious uses can legally be sited. Because they generate pollution and other hazards, industrial zones generally carry a higher environmental burden than purely residential neighborhoods. These impacts stem directly from industrial processes, as well as from associated heavy truck traffic, and can include releases of toxic substances to air, soil, and water; visual blight; odors; and illegal dumping of hazardous wastes.<sup>55</sup>

Local decisions on where to site hazardous waste facilities and landfills are frequently the subject of environmental justice complaints. In fact, the national environmental justice movement first formed began in the mid-1980s to protest the siting of a landfill in a largely African-American community.<sup>56</sup> Overall, the fight for environmental justice has been an extension of “the struggle against institutionalized racism and...the quest for social justice,”<sup>57</sup> reflecting the anger and frustration of African-American and low-income residents about local siting decisions that they believe are discriminatory.

## **BEGINNING OF THE NATIONAL MOVEMENT**

The national environmental justice movement began in the early 1980s as a continuation of civil rights struggles, when people-of-color and low-income residents sought relief from disproportionate environmental burdens. This activism culminated years of local opposition to siting decisions that community groups viewed not only as discriminating against poor people and people-of-color residents, but also as part of an ongoing pattern of “dumping” noxious land uses in their neighborhoods.<sup>58</sup>

In 1982, the first national environmental justice protest occurred in North Carolina, when Warren County was selected “as the burial site for more than 32,000 cubic yards of soil contaminated with highly toxic PCBs (polychlorinated biphenyls)”<sup>59</sup> in a landfill in the predominantly African-American community of Afton. Residents of Afton were 84 percent African-American; Warren County had the largest percentage of blacks in North Carolina and was one of the state’s poorest counties.<sup>60</sup> The soil came from the largest spill ever documented in this country: more than 30,000 gallons of PCB-contaminated oil that had been dumped on several hundred miles of roadways in North Carolina over a four-year period.<sup>61</sup> The site selected for the landfill was problematic because the water table in the area was only five to 10 feet below the surface. The community drew its drinking water from wells in the area, and residents feared the future prospect of PCBs contaminating their wells.<sup>62</sup>

The county’s selection for this landfill led to protests that marked the start of the national environmental justice movement. The protests brought together national civil rights leaders,



black elected officials, environmental activists, and labor leaders. Demonstrators tried to prevent trucks from taking the soil to the landfill by lying across the road. More than 500 demonstrators were arrested, and the environmental justice movement received its first nationwide attention.<sup>63</sup>

## RESEARCH PROVES DISPROPORTIONATE SITINGS

Although the Afton demonstration was unsuccessful in stopping the Warren County landfill, the issue of environmental justice captured the interest of the civil rights community, resulting in a study by the U.S. General Accounting Office (GAO) and a national study on siting of hazardous waste facilities by the United Church of Christ's Commission on Racial Justice. Both studies pointed to a strong correlation between racial demographics and sites chosen for these facilities.

In 1983, at the request of Congressman Walter Fauntroy, the GAO was asked to "determine the correlation between the location of hazardous waste landfills and the racial and economic status of the surrounding communities...in eight southeastern states."<sup>64</sup> GAO's report found that, at the four landfills studied, African-Americans made up the majority of the population in three of the communities where the landfills were located.<sup>65</sup>

In 1987, the United Church of Christ's Commission for Racial Justice published *Toxic Wastes and Race in the United States: A National Report on the Racial and Socioeconomic Characteristics of Communities Surrounding Hazardous Waste Sites*. This report showed that race was the most significant factor nationwide in the siting of hazardous waste facilities. It found three out of five African-Americans or Hispanics lived in a community adjacent to uncontrolled waste disposal sites. African-Americans also were heavily over-represented in the populations of the metropolitan areas containing the greatest number of uncontrolled waste sites.<sup>66</sup>

Other studies buttressed these findings, as summarized in a recent law review article:<sup>67</sup>

- A study of New Jersey communities found that communities with the greatest number of hazardous waste sites tended to have more poor, elderly, young, and African-American residents than other communities.
- A Texas study of municipal incinerators and municipal and private landfills revealed that, although African-Americans made up only 28 percent of Houston's population in 1980, six of the city's eight incinerators, five of the six municipal landfill sites permitted by the state, and all five of the un-permitted municipal landfill sites were located in predominantly African-American neighborhoods.
- A Louisiana study of hazardous waste incineration facilities in the Baton Rouge area found that minority communities had an average of one such site for every 7,349 residents, while white communities had only one site per 31,110 residents.

- A study of three counties surrounding Detroit found that people-of-color neighborhoods were almost four times more likely to be located within one mile of a waste facility than white neighborhoods.

## **DIFFERENTIAL ENFORCEMENT**

Compounding the potential problems created by proximity to these polluting facilities were concerns about differential enforcement of federal environmental laws by EPA. In 1992, “Unequal Protection: The Racial Divide in Environmental Law, A Special Investigation,” published by *National Law Review Journal*, found:

- Penalties under hazardous waste laws at sites having the greatest nearby white populations were about 500 percent higher than penalties at sites with the greatest nearby minority populations.
- Penalties in white communities were 46 percent higher than in minority communities for all federal environmental laws aimed at protecting citizens from air, water, and waste pollution.
- Under the Superfund program, abandoned hazardous waste sites in minority areas took 20 percent more time to be placed on the National Priorities List than those in white areas.
- EPA action on Superfund cleanups began 12 to 42 months later at sites in minority communities than at sites in white communities.
- EPA chose containment (the capping or walling off of hazardous dump sites) seven percent more often at sites in minority communities than the permanent treatment cleanup method preferred under the law to eliminate the waste or eliminate its toxins. At sites in white communities, EPA ordered treatment 22 percent more often than containment.<sup>68</sup>

Concerns about unequal enforcement remain today. For example, a recent news report found that Massachusetts compares poorly with other states with regard to assuring industry compliance with environmental laws, especially in people-of-color communities.<sup>69</sup> Only 27 percent of major industrial sources in Massachusetts with environmental permits have been inspected during the past two years, and the number of inspections for similar sources is only 15 percent in minority communities. While state officials expressed concern about the findings and vowed to look into the matter, some community members view it as proof that those with the least power do not receive adequate protection.<sup>70</sup>

## LEARNING FROM THE PAST AND PLANNING FOR THE FUTURE

The American Planning Association has acknowledged some current inadequacies of zoning for preventing these problems. They found, among other concerns, that zoning has:

- Failed to deliver on its loftier promises of producing high quality working and living environments;
- Been misused by suburban communities to exclude low-income and minority families;
- Engendered corruption, because the basic concept of uniform treatment within and among districts has been frequently undercut by issuance of variances, exceptions, and special permits; and
- Not dealt adequately with regional problems, because zoning is viewed as a strictly local power and opportunities for intelligent regional solutions to planning problems have been missed.<sup>71</sup>

Environmental justice presents many challenges and many opportunities for local planning and zoning officials. The concerns of people-of-color and low-income communities challenge local governments to find ways to prevent and solve problems that create disproportionate impacts. In a few localities, tools and techniques have emerged for reducing risk, achieving informed and effective community participation, and providing access to information. These initiatives will enable federal, state, and local authorities to provide better health and quality of life to their citizens.

Although land use planning and zoning are not the only reasons for the environmental problems that currently exist in people-of-color and low-income communities, they have, in some instances, continued to be significant barriers to addressing environmental justice concerns. Planning and zoning are also important tools for making positive local changes, and some states and local governments are trying to do just that. As one expert has noted, “the distribution of environmental benefits and burdens needs to be an explicit and well-considered element of the environmental policy debate.”<sup>72</sup> These issues also need to be discussed and addressed explicitly and effectively when localities undertake land use planning and zoning. In Chapter Four, this report analyzes how localities can use planning and zoning authorities to help resolve current and prevent future environmental justice problems.

## ENDNOTES

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- <sup>1</sup> Juliana Maantay, "Zoning Law, Health, and Environmental Justice: What's the Connection?" *Journal of Law, Medicine & Ethics*, 6 (December 22, 2002).
- <sup>2</sup> Yale Rabin, "Expulsive Zoning: The Inequitable Legacy of Euclid," in *Zoning and the American Dream: Promises Still to Keep*, eds. Charles M. Haar and Jerold S. Kayden, 107 (American Planning Association, 1989).
- <sup>3</sup> Richard J. Lazarus, "Pursuing 'Environmental Justice: The Distributional Effects of Environmental Protection,'" *Northwestern University Law Review*, 4 (Spring 1992).
- <sup>4</sup> *Ibid.*, 4.
- <sup>5</sup> Maantay, 6.
- <sup>6</sup> Haar and Kayden, eds., *Zoning and the American Dream*, ix.
- <sup>7</sup> Rabin, 105.
- <sup>8</sup> Maantay, 5.
- <sup>9</sup> Jon C. Dubin, "From Junkyards to Gentrification: Explicating a Right to Protective Zoning in Low-Income Communities of Color," *Minnesota Law Review*, 4 (April 1993).
- <sup>10</sup> See U.S. Department of Commerce, *A Standard State Zoning Enabling Act, Under Which Municipalities May Adopt Zoning Regulations*, 1 (1926).
- <sup>11</sup> *Ibid.*
- <sup>12</sup> *Ibid.*
- <sup>13</sup> Gerald E. Frug, "Rethinking the Local," *Boston Review*, 1 (April/May 1998). Available at <<http://bostonreview.net/BR23.2/frug.nclk>> (visited July 2003).
- <sup>14</sup> Dubin, 3.
- <sup>15</sup> "Redlining" is the practice of refusing to serve a particular geographical location because of the race or income of the area's residents.
- <sup>16</sup> Dubin, 4.
- <sup>17</sup> *Ibid.*
- <sup>18</sup> *Ibid.*
- <sup>19</sup> *Ibid.*, 4-5.
- <sup>20</sup> Yale Rabin, *Testimony*, EPA National Environmental Justice Advisory Committee, I-165 to I-168 (November 30, 1999).
- <sup>21</sup> Christopher Silver, "The Racial Origins of Zoning in American Cities," in *Urban Planning and the African American Community: In the Shadows*, eds. June Manning Thomas and Marsha Ritzdorf, 23 (Sage Publications, 1997).
- <sup>22</sup> *Ibid.*
- <sup>23</sup> *Ibid.*
- <sup>24</sup> Dubin, 3.
- <sup>25</sup> *Ibid.*
- <sup>26</sup> *Ibid.*, 1-2, quoting the *Euclid* decision.
- <sup>27</sup> Silver, 24.
- <sup>28</sup> *Ibid.*
- <sup>29</sup> Rabin, "Expulsive Zoning," 106.
- <sup>30</sup> *Ibid.*
- <sup>31</sup> Silver, 27.
- <sup>32</sup> *Buchanan v. Warley*, 245 U.S. 60 (1917). Available at <http://www.usembassy.de/usa/etexts/crights/scdec/buchanan.htm> (visited July 2003).
- <sup>33</sup> Dubin, 3.
- <sup>34</sup> *Ibid.*
- <sup>35</sup> Silver, 26.
- <sup>36</sup> *Ibid.*
- <sup>37</sup> *Ibid.*
- <sup>38</sup> Rabin, 107-108.
- <sup>39</sup> *Ibid.*
- <sup>40</sup> *Ibid.*, 101.
- <sup>41</sup> Rabin, *Testimony*, I-165 to I-168.
- <sup>42</sup> Rabin, "Expulsive Zoning," 101.

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- <sup>43</sup> *Ibid.*, 102.
- <sup>44</sup> *Ibid.*, 115.
- <sup>45</sup> *Ibid.*, 119.
- <sup>46</sup> *Ibid.*
- <sup>47</sup> *Ibid.*, 101.
- <sup>48</sup> Dubin, 9.
- <sup>49</sup> Craig Anthony Arnold, "Planning Milagros: Environmental Justice and Land Use Regulation," *Denver University Law Review* 9 (1998).
- <sup>50</sup> *Ibid.*
- <sup>51</sup> Dubin, 9.
- <sup>52</sup> Robert D. Bullard, "Building Just, Safe, and Healthy Communities," *Tulane Environmental Law Journal*, 14-15 (Spring 1999).
- <sup>53</sup> *Ibid.*
- <sup>54</sup> *Ibid.*
- <sup>55</sup> *Ibid.*, 2.
- <sup>56</sup> Marsha Ritzdorf, "Locked Out of Paradise," in *Urban Planning and the African American Community: In the Shadows*, June Manning Thomas and Marsha Ritzdorf, eds., 45 ( Sage Publications, 1997).
- <sup>57</sup> Bullard, 6.
- <sup>58</sup> Robert D. Bullard, *Dumping in Dixie: Race, Class, and Environmental Quality*, 6 (Westview Press, 1990).
- <sup>59</sup> *Ibid.*
- <sup>60</sup> *Ibid.*, 6-7.
- <sup>61</sup> *Ibid.*, 7.
- <sup>62</sup> *Ibid.*
- <sup>63</sup> Deborah M. Robinson, "Environmental Racism: Old Wine in a New Bottle," *Echoes*, 2, (2000). Available at <<http://www.wcc-coe.org/wcc/what/jpc/echoes/echoes-17-02.html>> (visited 3/5/03).
- <sup>64</sup> U.S. General Accounting Office, *Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities*, GAO/RCED-83-168, 1 (June 1, 1983).
- <sup>65</sup> *Ibid.*
- <sup>66</sup> United Church of Christ, Commission for Racial Justice, *Toxic Wastes and Race in the United States: A National Report on the Racial and Socioeconomic Characteristics of Communities Surrounding Hazardous Waste Sites* (1987).
- <sup>67</sup> Vicki Been, "What's Fairness Got to Do with It? – Environmental Justice and the Siting of Locally Undesirable Land Uses," *Cornell Law Review* 4 (1993).
- <sup>68</sup> Marianne Lavelle and Marcia Coyle, "Unequal Protection: The Racial Divide in Environmental Law – A Special Investigation," *The National Law Journal*, 2 (September 21, 1992).
- <sup>69</sup> David Arnold, "Pollution Checking Said to Lag in Mass," *Boston Globe*, B1 (January 21, 2003).
- <sup>70</sup> *Ibid.*
- <sup>71</sup> *Ibid.*, x-xi.
- <sup>72</sup> Lazarus, 22.

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## CHAPTER FOUR

### CURRENT STATE OF LAND USE PLANNING AND ZONING

#### INTRODUCTION

As noted in a recent analysis of the importance of local land use laws to achieve sustainability, environmental justice goes to the core of traditional land use decisions, such as:

- Choosing sites for locally unwanted land uses (geographic equity);
- The process for deciding where to site these unwanted land uses, including the location and timing of public hearings (procedural equity); and
- Sociological factors, including which groups hold the political power inherent in land use decisions (social equity).<sup>1</sup>

As Chapter Three explained, even after the enactment of the Civil Rights Act of 1964, “the property regulation, planning, and zoning policies of many cities around the country had what must be called a negative impact on environmental justice.”<sup>2</sup> One researcher points out that “zoning tends to act as the ‘gatekeeper’ in terms of where noxious uses can be legally sited within a municipality, but the ramifications of zoning on environmental health and equity have been somewhat hidden.”<sup>3</sup> Yet, planning and traditional land use control laws—including coordinated environmental review with these local government actions—can serve as more proactive measures to address environmental justice concerns.<sup>4</sup> Another scholar has noted: “The next frontier for both the movement and the focus of environmental justice scholarship...is land use planning.”<sup>5</sup>

For more than 80 years, local officials have held the power to control the uses of land by making decisions about what can be located where in a given area. The *Euclid* decision,<sup>6</sup> followed by the Standard City Planning Enabling Act in 1922, set the foundation of state and local authority over planning and zoning.<sup>7</sup> Because, in almost every state, decisions on land use planning and adoption of land use laws to implement these plans is entirely a function of local government, it is critical to examine the relationship between the legal and regulatory schemes within which these decisions are made and their relationship to environmental justice issues.<sup>8</sup> Commenting on Justice Sutherland’s passing distinction in *Euclid* between the “general public interest” and “the interest of the municipality,” Alfred Bettman noted almost 40 years ago:

This passage in the opinion is noteworthy in that it presents the conflict not as one between the individual and the community, but rather as between different communities, different social groups, or social interests, which is, when profoundly comprehended, true of all police power constitutional issues.<sup>9</sup>

This chapter explains there are very few mandates and little guidance by state agencies to local governments that would trigger a local environmental justice review as part of the planning and

zoning actions.<sup>10</sup> However, in pointing out these shortcomings, this chapter also demonstrates that there are many significant opportunities for meaningful local reforms and for training and educating the large number of citizen volunteers who serve on local planning and zoning boards. These reforms can provide all levels of government with low-cost and no-cost opportunities to integrate environmental justice principles into the fabric of local land use plans and zoning ordinances. There are also strategies to encourage citizen participation in local decisions and representation on local decision-making bodies. Further, this chapter highlights the continued movement toward merging local environmental regulation with local land use and zoning laws. By examining environmental justice issues, it becomes clear that these two traditionally distinct disciplines have now become inextricably intertwined.<sup>11</sup> As a result, land use planning and zoning can be used effectively by local officials to avoid imposing additional environmental stresses on already burdened communities, assuming localities care to do so.<sup>12</sup>

## **STATE AUTHORITIES FOR PLANNING AND ZONING**

The U.S. Constitution defines the federal government's relationship to the states, but the Constitution does not refer to local governments because local governments are considered to be "creatures of state government." Thus, they derive their authority from the laws of the states where they are located; and they possess only those powers given to them by the state, either through state constitutions or state statutes, or both. The power of localities to control the uses of land within their borders derives from state statutes and, like many other areas of the law, states have not uniformly granted broad authorization for local governments to engage in land use planning and zoning. There are, however, a number of recent trends worth noting.

In 1999, the American Planning Association (APA), as part of its multi-year Growing Smart effort, surveyed state laws on local land use planning to determine how many states continue to authorize planning based on the 1928 Standard City Planning Enabling Act.<sup>13</sup> The survey found that almost half of the states (24) had not updated their local planning statutes since 1928, and only 11 states had adopted substantial updates of their laws.<sup>14</sup> Seven states had slightly updated their planning enabling acts, and eight states were classified as having made moderate updates.<sup>15</sup> Other findings from this survey are discussed below in the section on comprehensive land use planning.

The long history of state and local roles in land use planning and zoning has been an important influence on current opportunities for reforms to address environmental justice issues. The nation was clearly in a different place in the 1920s when the cities were grappling with myriad social and environmental stresses.<sup>16</sup> But today, even with the technological revolution, newer and perhaps even more complex social and environmental issues are being confronted as the nation strives to achieve some level of sustainable development and as the economic, environmental, and equity challenges are no longer contained within cities, but are now spread throughout suburban and rural communities as well.

The American Planning Association has identified many factors to consider in reforming state planning statutes, including:



- Ongoing problems of housing affordability,
- Lack of housing diversity,
- Exposure of life and property to natural hazards, and
- The obligation to promote social equity—“the expansion of opportunities for betterment, creating more choices for those who have few”—in the face of economic and spatial separation.<sup>17</sup>

Various planning and zoning enabling statutes have had an impact on the ability of local governments to consider and address environmental justice concerns by controlling land use.<sup>18</sup> At the start of the 21<sup>st</sup> century, there is a renewed interest in modernizing and reforming many states’ outmoded planning and zoning laws. This interest presents a unique opportunity for environmental justice advocates to provide leadership by securing the passage of revised state enabling statutes that will empower local governments to address these issues more effectively through land use planning and zoning.

## **COMPREHENSIVE LAND USE PLANS**

Although zoning is one of several legal techniques for controlling the use of land within a municipality, it is usually based on a comprehensive plan. Such a plan is generally defined as “an official public document, preferably (but often not) adopted as law by the local government, [that serves] as a policy guide to decisions about the physical development of the community.”<sup>19</sup> The process of developing a locality’s comprehensive land use plan “provides a chance to look broadly at programs a local government may initiate regarding housing, economic development, provision of public infrastructure and services, environmental protection, and natural and manmade hazards and how they relate to one another.”<sup>20</sup>

The language of the early federal model—the Standard State Zoning Enabling Act—allowed, rather than mandated, planning. Due to its influence, some states required that local zoning be implemented in accordance with a local comprehensive plan. However, many of these state laws failed to provide specific statutory guidance to local governments about what a comprehensive land use plan is or should be. States often failed also to provide a statutorily prescribed process for adopting a local comprehensive plan.<sup>21</sup> In fact, the majority of states maintain that adoption of a comprehensive plan is not necessarily a prerequisite for adopting and enforcing local zoning.<sup>22</sup>

Although the 1928 Standard City Planning Enabling Act did set forth certain “elements” of comprehensive plans, this Act made plans optional and did not define the legal relationship between plans and zoning ordinances.<sup>23</sup> Yet, this first step in local control over land use is critical for achieving environmental justice. Ideally, during the initial community visioning or planning stages, citizens can come together to decide how and where they want their community to grow. Then through the goals and vision articulated in the planning process, localities can

adopt other legal requirements and zoning ordinances to implement the plan in ways that will promote environmental justice.

Beginning in the 1950s, under the auspices of the U.S. Department of Housing and Urban Development’s Section 701 Program, state, regional, and local governments were influenced to craft local land use plans that met minimum considerations.<sup>24</sup> To qualify for federal funds for urban renewal and other community development initiatives over a span of almost three decades, local governments have been required to prepare and adopt comprehensive plans that contain the following elements: land use, housing, circulation, public utilities, and community facilities.<sup>25</sup>

State governments typically leave the detailed contents of comprehensive plans to individual local governments. But suggestions or guidelines about the elements of a plan may be adopted by state statute. This approach, together with a requirement that localities adopt zoning districts that comply with their comprehensive plans, is finding its way into more recent state statutory reforms.<sup>26</sup>

The APA’s *Growing Smart Legislative Guidebook* offers model state legislation for adopting comprehensive plans, and provides for both required and optional elements of a local plan.<sup>27</sup> Some of these elements can be important for ensuring that local officials at least consider environmental justice principles when crafting the content of comprehensive land use plans.

Figure 4-1 is adapted from the *Growing Smart Guidebook’s* table of proposed comprehensive plan elements.

*Figure 4-1*

<b><i>Mandatory Elements</i></b>	Issues and Opportunities Land Use Transportation Community Facilities Housing Program Implementation
<b><i>Mandatory with Opt-Out Alternative Elements</i></b>	Economic Development Critical and Sensitive Areas Natural Hazards
<b><i>Optional Elements</i></b>	Agriculture, Forest, and Scenic Preservation Human Services Community Design Historic Preservation Subplans (as needed)

Source: American Planning Association, *Growing Smart Legislative Guidebook* (2002).

New York recently enacted another approach by offering topical guidance to local officials in the development of comprehensive land use plans. Specifically, New York's three enabling acts provide that comprehensive plans may include the following topics, at the level of detail appropriate for the requirements of each locality:

- a) General statements of goals, objectives, principles, policies, and standards to form the basis of proposals for the immediate and long-range enhancement, growth, and development of the town;
- b) Consideration of regional needs and the official plans of other local government units and agencies within the region;
- c) The existing and proposed location and intensity of land uses;
- d) Consideration of agricultural uses, historic and cultural resources, coastal and natural resources, and sensitive environmental areas;
- e) Consideration of population, demographic, and socio-economic trends, as well as future projections;
- f) The locations and types of transportation facilities;
- g) Existing and proposed general locations of public and private utilities and infrastructure;
- h) Existing housing resources and future housing needs, including affordable housing;
- i) The present and future general locations of educational and cultural facilities, historic sites, health facilities, and facilities for emergency services;
- j) Existing and proposed recreation facilities and parkland;
- k) The present and potential future general locations of commercial and industrial facilities;
- l) Specific policies and strategies for improving the local economy in coordination with other plan topics;
- m) Proposed measures, programs, devices, and instruments to implement the goals and objectives of the various topics within the comprehensive plan;
- n) All or part of the plan of another public agency; and
- o) Any and all other items that are consistent with the orderly growth and development of the town.<sup>28</sup>

In keeping with the APA's guidance, one specific goal of planning for smart growth should be to incorporate environmental justice concerns into any list of factors and/or topics that should be or may be addressed in local comprehensive plans. This goal can easily be accomplished through training, education, and technical assistance for local planners and other officials. For example, in California, recent legislation requires the Governor's Office of Planning and Research to adopt guidelines by July 1, 2003, for local agencies to follow when addressing environmental justice issues in their general plans.<sup>29</sup> At the time of this writing, draft guidelines have been distributed for public comment.<sup>30</sup> But some local governments, including the City of Los Angeles, have not waited for the state to act. The General Plan for Los Angeles already establishes "physically balanced distribution of land uses"<sup>31</sup> as a goal of its land use policies, thus providing a foundation for the city to ensure that its future zoning ordinances take into account environmental justice issues.

### **CITIZEN PARTICIPATION CAN PLAY A MEANINGFUL ROLE IN DEVELOPING COMPREHENSIVE PLANS**

One barrier to ensuring consideration of environmental justice concerns in local decisions can be removed by making certain that local officials provide traditionally under-represented populations with a meaningful role in the future development of their neighborhoods and communities through active citizen participation in the development of comprehensive land use plans. For most localities, municipal officials are already empowered to ensure that effective citizen participation can occur, because state enabling statutes usually give local officials broad authority to develop their plans. However, the laws give them little or no guidance, other than often minimal references to the process by which such plans are developed and adopted.

Traditionally, however, citizen participation in the development of comprehensive plans and in the process for adopting zoning ordinances has been limited to participation in the single public hearing that is typically required by state law prior to the local legislative body's official adoption of the plan or zoning ordinances.<sup>32</sup> The APA's *Growing Smart Legislative Guidebook* urges local officials to do more:

The processes for engaging the public in planning are not made clear in many planning statutes. Requirements for public notice, public hearings, workshops, and distribution and publication of plans and development regulations are often improvised. Consequently, the public may find its role and the use of its input uncertain, and it may be suspicious of plans and decisions that emerge. Planning should be doing the opposite; it should be engaging citizens positively at all steps in the planning process, acknowledging and responding to their comments and concerns. Through collaborative approaches, planning should build support for outcomes that ensure that what the public wants indeed will happen.<sup>33</sup>

While APA's observations are certainly true, environmental justice issues require an even more careful and proactive approach to ensuring effective participation by all citizen interest groups. Otherwise, "ensuring what the public wants" may not offer a level playing field for local low-

income and people-of-color communities, who are often disillusioned—and sometimes actually disenfranchised—by most local decision-making processes.

States have taken varied approaches when adopting statutes to encourage or require effective citizen participation in local land use planning. Maine and Arizona offer two examples of these laws. Maine's statute provides:<sup>34</sup>

In order to ensure citizen participation in the development of a local growth management program, municipalities may adopt local growth management programs only after soliciting and considering a broad range of public review and comment. The intent of this subsection is to provide for the broad dissemination of proposals and alternatives, opportunity for written comments, open discussions, information dissemination and consideration of and response to public comments. (30-A Me. Rev. Stat., sec. 4324(3)(1995)).

When preparing a general land use plan, local planning agencies in Arizona are required to:

(S)eeK maximum feasible public participation from all geographic, ethnic, and economic areas of the municipality and consult and advise with public officials and agencies, public utility companies, civic, educational, professional and other organizations, and citizens generally to the end that maximum coordination of plans may be secured and properly located sites for all public purposes may be indicated on the general plan. (Az. Rev. Stat. sec.9-461.05(e) (1996)).

Moreover, the APA's *Growing Smart* study proposed the following model state statute on public participation and public hearings for comprehensive plans.

The public participation procedures shall provide for the broad dissemination of proposals and alternatives for the local comprehensive plan or such part or other amendments in order to ensure a multidirectional flow of information among participants in advance of and during the preparation of plans. Examples of measures contained in such procedures may include, but shall not be limited to:

- a) Surveys and interviews of the local government's residents and business owners, operators, and employees;
- b) Communications programs and information services, such as public workshops and training, focus groups, newsletters a speaker's bureau, radio and television broadcasts, and use of computer-accessible information networks;
- c) Opportunity for written comments on drafts of the plan or such part or other amendment;
- d) Appointment of a person to serve as a citizen participation coordinator for the planning process; and/or

- e) The creation of advisory task forces.<sup>35</sup>

Ideally, a requirement to ensure meaningful citizen participation by all cross-sections of the local population should be included in all state planning and zoning enabling statutes. Providing for active involvement by people-of-color and low-income residents in developing the goals of a locality's comprehensive plan, at least as it relates to their own neighborhoods, will help to ensure that local zoning laws or ordinances are developed and/or amended to reflect the desires of these communities. Once their concerns are part of the comprehensive plans, contrary local zoning ordinances will run the risk of being invalidated if they do not accomplish the goals of the comprehensive plans for addressing the environmental justice concerns.<sup>36</sup>

## **ADOPTING LOCAL ZONING LAWS OR ORDINANCES**

When a local government is ready to implement its plan or vision, it typically does so by enacting a zoning law or ordinance. Zoning is a process whereby land in a locality is organized into any number of districts. These districts are then labeled, and the text of the zoning law describes what uses are allowable within each district. Localities can have multiple districts with the same label, e.g., three R-1 (residential one family) districts or two M-1 (light manufacturing) districts. In these cases, the zoning requirements for districts with the same label must be uniform. However, regulations may vary from one type of district to the next, e.g., the R-1 district may differ from the R-2 (residential two-family) or R-3 (multi-family) districts.

This form of zoning—also called “Euclidean zoning” from the famous Supreme Court case upholding the constitutionality of zoning<sup>37</sup>—is designed to separate different land uses that are believed to be incompatible. What has emerged, however, is a pattern of land uses that has produced neighborhoods where different groups live, often identifiable based on race or socio-economic status. Specifically, the “haves” who can afford the proverbial American Dream of owning a single-family detached home are able to live next door to others similarly situated. Likewise, those who rent, because they cannot afford to own their own homes, rarely live next door to single-family homeowners. Rather, lower income families tend to live among those of similar economic status and are concentrated together in the same areas, because Euclidean zoning has separated single-family residential use into one or more zoning districts that are separate from the multi-family or apartment housing in other districts.

To overcome these unfortunate effects of traditional approaches to zoning, state zoning reforms must include methods for environmental justice principles to be adequately addressed as part of the process for revising and adopting local zoning laws. Disparate environmental impacts often develop even in the absence of any intent to create those effects. One author explains the potential promise of effective coordination among local zoning, comprehensive land use plans, and environmental justice concerns:

First, an owner or operator of a prospective LULU [*sic* Locally Unwanted Land Use] would have much more difficulty obtaining approval for siting the LULU in a minority or low-income neighborhood, if the comprehensive plan and zoning ordinances prohibited the LULU in that neighborhood than if they allowed the

LULU, either by right or conditionally...Second, land use planning and regulation create greater certainty about what land uses will or will not be allowed in a neighborhood...Third, land use planning and [zoning] regulations improve the community's capacity to achieve its goals....<sup>38</sup>

Typically, the only state statutory mandates that govern local rezoning or amendments to zoning simply require that any reforms be enacted by following the same process as adoption of the original local zoning ordinances or laws, and that any changes in the zoning be consistent with the current local comprehensive plan.

Amendment of zoning ordinances offers another significant opportunity to address environmental justice concerns.<sup>39</sup> Because planning, by definition, requires prospective thought and future vision, rezoning consistent with updating a plan is essential for a locality to achieve its articulated goals and to remedy any ongoing environmental justice problems that are allowed or were caused by current zoning.<sup>40</sup> As one author has recently explained:

Low-income and minority neighborhood groups will be more successful in achieving valid rezoning of neighboring properties from more intensive to less intensive uses if they follow four guiding principles: (1) seek rezoning before controversial specific land use proposals arise; (2) carefully document the incompatibility of existing high-intensity use designations and their impact or potential impact on the health and safety of local residents, as well as community character; (3) seek rezoning for all neighboring parcels with similar use designations and similar impacts (do not leave a landowner the argument that only his or her property has been downzoned while neighboring parcels remain zoned for more intensive uses); and (4) do not downzone so greatly that the landowner suffers a substantial diminution in the property's value (leave the owner some economically viable use—for example, downzone from industrial use to a commercial use, instead of all the way to a single-family use).<sup>41</sup>

## **ELIMINATING NONCONFORMING USES**

When localities adopt zoning codes, they often “grandfather” existing uses that were allowed prior to the adoption or amendment of new zoning laws. These nonconforming uses typically include facilities that are no longer consistent with the current land use goals for the future of the community and may represent operations that pose significant environmental and health hazards.<sup>42</sup> There is little statutory authority for addressing nonconforming uses; most states and local governments usually follow common law or case law on this subject. Nevertheless, unwanted nonconforming uses can often be eliminated in one of two ways: through adopting a local amortization law to eliminate the use,<sup>43</sup> or through a local finding that the use constitutes a public nuisance and obtaining a court order to cease operations. One strategy to address environmental justice issues would be for states to require that localities “survey their nonconforming uses and determine whether any of them pose such health and environmental problems that they should be targeted for closure.”<sup>44</sup> Local governments can then effectively amortize the use, thereby beginning the process of improving conditions in people-of-color

or low-income communities and starting to create neighborhood-based solutions to environmental justice problems.

## **RELATIONSHIP BETWEEN ZONING AND ENVIRONMENTAL REVIEW**

The APA has noted that state environmental policy acts “bring a new dimension to land use planning and regulation.”<sup>45</sup> Its *Growing Smart Legislative Guidebook* for model statutes to reform state planning and zoning laws devoted an entire chapter to discussing the need for integrating state environmental policy acts - called “little NEPAs” after the National Environmental Policy Act (NEPA) - local planning, as well as advocating environmental reviews for key elements of proposed comprehensive plans prior to their adoption.<sup>46</sup> The *Guidebook* emphasizes strategies for streamlining environmental impact reviews and combining them with local land use planning and zoning decisions so these considerations are integrated and duplication of the two review processes is avoided.

### **Little NEPAs and Local Land Use Actions That Could Trigger Environmental Review**

Only 15 states, the District of Columbia, and the Commonwealth of Puerto Rico have adopted state environmental review laws (little NEPAs) requiring advance environmental reviews of projects that may have significant environmental impacts.<sup>47</sup> These “state environmental policy acts bring a new dimension to land use planning and regulation” because these acts require an environmental review of certain types of proposed land uses, facilities, or developments.<sup>48</sup> States have adopted these policies “in part, because planning failed to consider the environmental effects of the role of planning in evaluating environmental impacts.”<sup>49</sup>

Although less than half of the states have enacted specific statewide authorities for local governments to conduct local environmental impact assessments, localities in other states may find authority under state municipal home rule laws or planning and zoning enabling acts to adopt their own locally developed environmental impact laws.<sup>50</sup> As one leading environmental lawyer has said: “It is unrealistic to expect many municipalities that do not now require environmental impact statements (EIS) to start doing so in order to address environmental justice concerns.... [but] where EISs are already prepared, they could be required to address demographics and other environmental justice matters in a manner similar to what is now required under NEPA.”<sup>51</sup> However, because comprehensive planning by its nature does not usually include site-specific development proposals, state-level legislation to expand the scope of planning and require effective local environmental reviews, particularly in those states that do not yet have little NEPAs, would enable community residents to have greater influence on proposed uses that may cause adverse environmental impacts.<sup>52</sup>

### **Community Impact Statements**

One variation on local environmental reviews is the community impact statement (CIS).<sup>53</sup> A CIS provides a mechanism for local officials to formulate their own statement of what they believe impacts will be if a particular use is newly approved or allowed to expand.<sup>54</sup> Local reliance on the CIS process could be authorized by state legislatures or, in some cases, local governments



may already possess the necessary power to adopt local laws or ordinances authorizing the CIS process. One potential benefit of preparing a CIS is that it can be a stand-alone review, totally separate from an environmental impact review, which may not always be conducted under the control of the impacted community. If conducting CIS reviews becomes a routine part of local zoning reviews, local officials could be required take the results of a community group's CIS into consideration, to hold one or more public hearings on the document, and to use the CIS as a vehicle for negotiating on behalf of residents of the impacted community with the applicant for a new or expanded facility.<sup>55</sup> A state requirement that CISs be prepared and used in local zoning decisions could be an important tool for protecting adversely impacted community residents who might not otherwise have access to, or influence over, local decision-makers and the results of other environmental reviews.

## **OTHER OPPORTUNITIES TO ADDRESS ENVIRONMENTAL JUSTICE CONCERNS**

### **Local Level**

There are numerous other opportunities to utilize existing land use planning and zoning techniques to address environmental justice concerns. Professor Craig Anthony Arnold has catalogued these options in a recent article discussing, among other things, flexible zoning techniques:<sup>56</sup>

- ***Conditional uses***—imposing certain restrictions on uses that could create environmental justice concerns.
- ***Overlay zone***— imposing further requirements over an existing zoning district to ensure, for example, additional environmental protections, and could be used, for example, to impose a variety of specific requirements on industrial and commercial activities in predominantly low-income and minority neighborhoods.
- ***Performance zoning***—a technique used not to regulate the land use but rather to regulate the impacts of land uses by, for example, providing standards to limit certain nuisance-like activities.
- ***Buffer zone***—usually local zoning districts that buffer or serve as a transitional area between two or more uses that might be considered incompatible. Professor Arnold notes that these zones could address the principal reason industrial and commercial uses were historically located next to low-income or people-of-color communities, rather than siting of undesirable uses near moderate or middle-income single-family housing. However, he also notes that buffer zones could include physical screening, landscaping, significant setbacks, open spaces, and even other lower-intensity commercial uses that might serve as better transitions from residential neighborhoods to more industrial areas.
- ***Floating zones***—these districts are often described in the text of a zoning ordinance but not specifically placed on the zoning map so they can “float” until they are placed in a specific location based on the presence of certain identified criteria and a request from a

landowner to locate that type of district at a specific site for a particular development or facility. Professor Arnold warns, however, that community advocates need to keep careful watch over these floating districts because it can be difficult to predict where they will land.

- ***Exactions and mitigation fees***—localities can assess fees on developers to reimburse the costs associated with their new developments and thus fund, subject to constitutional limitations, important public infrastructure needs in low-income or people-of-color communities.

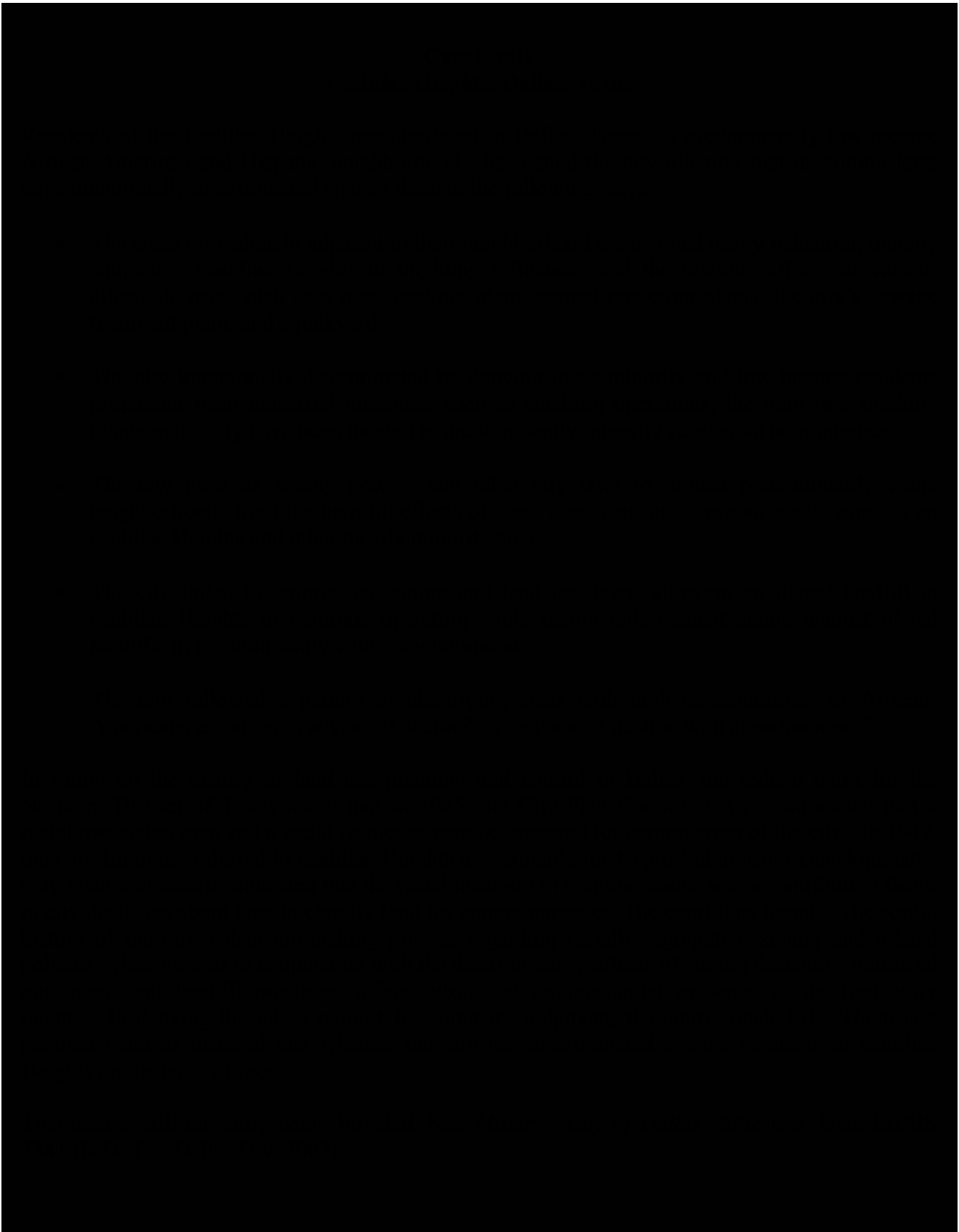
Most of these tools are not specifically authorized by state statute, but have been recognized over the years by the courts as valid exercises of local police power, enabling these techniques to be used by localities with little statutory guidance.

In most states, many other decisions about planning and land use requirements that could address environmental justice concerns are left to the discretion of local officials. They include: membership on planning commissions, planning boards, and zoning boards; investments in training for zoning officials, planners, and other local decision-makers; and commitments to conduct more effective community outreach and information sharing.

## **State Level**

### Training for Members of Planning and Zoning Boards

Typically, members of local planning and zoning boards, as well as members of local legislative bodies, such as city councils or county commissioners, are not required to receive any specific training on planning and zoning laws. Yet, scholars have documented the fact that zoning and other land use controls—such as large lot zoning, minimum floor area requirements, large setbacks, low density zoning and restrictions on manufactured housing and multi-family housing—have been used to exclude certain populations from settling in a particular area through exclusionary zoning.<sup>57</sup> These uses may be purposeful or unintentional. The fact remains, however, that exclusionary zoning is illegal and a violation of civil rights, often resulting in legal judgments or costly settlements against local governments. Some of the local decisions that produced these court rulings could have been avoided by proper training for members of local land use planning and zoning boards.



Access to important environmental information is also key for local regulators. To address environmental justice issues effectively, local officials must have access to reliable information and sound science. They also need the capacity to incorporate this information into carefully designed land use plans, zoning ordinances, and regulations.<sup>58</sup> In part, this need relates to training because, in some instances, the information exists if local officials know where and how to find and use it. But in other respects, it is a separate issue that calls for state and federal agencies to provide local officials with access to meaningful data on public health and environmental impacts so they can make better-informed land use and zoning decisions. One proponent of local environmental law offers the following suggestions:

- 1) Follow the example of environmental impact assessment laws in California and New York, which “require local governments with actions subject to these review laws to obtain the necessary expertise and information and to assure that it is paid for – often by project proponents in the case of privately initiated projects,”<sup>59</sup>
- 2) Provide special funding to local governments when they seek and use high quality environmental information;
- 3) Incentivize or require local officials to acquire good environmental information; and
- 4) Establish statewide clearinghouses of geographic information systems (GIS) that can supply local governments with significant environmental information prior to adopting local zoning laws and land use plans, thereby also enabling states to play a more meaningful role in improving the quality of local land use decisions.<sup>60</sup>

However, because local governments are likely to vary widely in their indigenous technical capacity and access to environmental information, “the states and federal government will need to play major roles in assuring that they have the information they need to make local environmental law an effective—indeed central—partner in the effort.”<sup>61</sup>

#### Appointment of Individual Community Representatives to Planning and Zoning Boards

In most localities, environmental justice considerations will be factored into local land use planning, zoning, and siting decisions only where the impacted communities are represented on the bodies empowered to make these critical decisions. A 1987 APA survey on the composition of planning commissions revealed that:

- Nearly eight out of 10 members of planning boards were men;
- More than nine out of 10 members were white, although in some larger cities the number was closer to seven out of ten;
- Almost eight out of ten were 40 years of age or older; and
- Most board members were professionals, such as businesspeople, lawyers, engineers, educators, and real estate agents.<sup>62</sup>

This survey confirmed the findings of planning consultant Harvey S. Moskowitz, who examined the characteristics of New Jersey's planning boards between 1981 and 1982. He concluded that the members of these boards differed from the general population and were drawn from more elite groups.<sup>63</sup> Specifically, Moskowitz found that board members were predominantly white professional males whose family incomes were considerably higher than the median family income of the general population. They were also married, owned their own homes, and had dependent children at home.<sup>64</sup> This arguable elitism in the composition of local boards is thus a major barrier to addressing environmental justice concerns and promoting effective citizen participation for all communities in local planning and zoning decisions. These data also explain and substantiate the fact that marginalized citizens are not sufficiently empowered to impact community decisions on environmental problems or economic development.<sup>65</sup>

To address this situation, states could advocate or require that localities appoint board members who represent the diversity of the entire community population with regard to race, gender, income, home owners, and renters, and age. There is also precedent for states to authorize, but not require, that municipalities appoint individuals to planning boards to serve in a representative capacity. For example, New York statutes authorizing the creation of planning boards provide that, in certain situations (where there is a locally established agricultural district pursuant to state law), municipalities may appoint one or more members of local planning boards who derive a certain threshold of their income from agricultural pursuits in the same municipality.<sup>66</sup>

The APA's *Growing Smart Legislative Guidebook* also offers states an option for modernizing their planning statutes in this regard by recommending appointment of at least one member "who lives [or who will represent the viewpoint of those who live] in rental, affordable, or multi-family housing."<sup>67</sup> The *Guidebook* stops short, however, of identifying any other members who should be appointed to serve in other representative capacities. Examples might include specifically selecting a board member to represent any ethnic or cultural groups that comprise a certain percentage of the local population, appointing board members who could represent the interests of community residents with incomes below a certain level, or selecting a board member to represent the interests of residents in a neighborhood or area that already suffers serious environmental exposures from nearby facilities or land uses.

Because the studies documenting membership on planning boards are now 15 to 20 years old and did not include examination of membership on zoning boards of appeal or other local land use bodies, a new nationwide study is needed to determine the current extent to which low-income or people-of-color residents are under-represented among the members of local planning and zoning bodies. A new survey would not only yield updated data, but it could also include an explanation of environmental justice concerns and how they relate to the planning and zoning process, thus providing another opportunity for educating local officials about how they can address these issues.

## **Federal Level**

Although land use planning and zoning authority and decisions rest with state and local governments, various federal agencies have had an increasing influence on land use reforms, through myriad regulations, funding incentives, and other agency-level technical assistance

programs.<sup>68</sup> More than 10,000 units of local government across the country have authority for planning and zoning decisions, so the challenges that confront the federal government are enormous. After all, local officials cannot begin to address their environmental justice problems unless they understand them.<sup>69</sup>

One expert has suggested that local regulators are in great need of information regarding “best practices” by their counterparts in other jurisdictions and that “national internships, training sessions, fellowships, and awards programs should be established.”<sup>70</sup> Furthermore, the federal government should, from agency to agency, reinforce the nation’s commitment to environmental justice by requiring state and local governments to adopt policies or commitments to address environmental justice issues through local planning and zoning decisions as a pre-requisite for obtaining federal funds under any land use, transportation, or environmental grant program.

### Engaging the Nonprofit Sector

It is essential to launch outreach programs and targeted policy initiatives that will sensitize local planning and zoning officials about environmental justice principles. These programs can be developed by working in partnerships and collaborations with national and statewide associations and organizations that represent or work with constituencies of local officials. The following examples are initiatives that could be undertaken by the nonprofit sector to accomplish sustained training and education of local planning, zoning, and land use officials regarding how community environmental justice concerns can be addressed.

- **Educational programs for state officials about the role, impacts, and opportunities presented through local land use planning, zoning, and other land use controls to address environmental justice concerns.** The National Governors’ Association and the National Conference of State Legislatures would make ideal partners for this initiative. Presentations at national and regional meetings of these organizations, articles in their publications, sponsored research or policy guidebooks, and links from these organizations’ websites to federal environmental justice resources are all possible outlets for educating state executive and legislative leaders. The existing network<sup>71</sup> of statewide environmental justice coordinators can also serve as another point of entry to access state executive branch decision-makers.
- **Educational programs for local officials about the relationship between environmental justice problems and local land use controls and decisions.** Developing partnerships with national associations of local officials to educate their membership about these issues is important. Such organizations include the National Association of Counties, the National League of Cities, the U.S. Conference of Mayors, the League of Cities, the National Conference of Black Mayors, the National Association of Towns and Townships, the International Municipal Lawyers’ Association, the International City/County Management Association, and the American Planning Association. Collectively, these organizations cover a wide array of individuals at the local level who make decisions about developing and adopting comprehensive land use plans, designing

zoning laws or ordinances and other land use controls, siting new or expanded facilities, decisions, and selecting individuals to serve on local planning or zoning boards and other bodies that make land use decisions. The federal government should consider developing a training curriculum that could be offered at national and regional meetings of these organizations, as well as an on-line tutorial that individual officials could retrieve from the Internet.

- **National environmental justice awards for zoning and planning.** National and statewide associations of local governments should consider developing a recognition program for states and municipalities that amend or adopt state or local statutes, plans, ordinances, or regulations designed to address environmental justice issues. These actions could then become national models for others to emulate, and case studies of how they accomplished effective results could be posted on the Internet. Citizen activists and others could nominate their state or local governments for recognition. The formal awards could range from a simple citation and visit by an appropriate high visibility official, to small planning grants that fund targeted local efforts to implement further the plans, laws, or ordinances recognized as model approaches.
- **On-line clearinghouse for environmental justice planning and zoning.** A nationwide on-line clearinghouse could complement local smart growth, sustainable development, or livable community initiatives by specifically highlighting the interplay between local land use controls and environmental justice principles. The federal government and several states that have assumed leadership roles in addressing environmental justice concerns at state levels have already established their own valuable websites with a wealth of information on environmental justice. However, current government websites contain very few resources explaining how local governments' land use planning, zoning, and other decisions may affect environmental justice issues. Advocacy organizations should also be encouraged to provide examples of the connection between environmental justice and local land use planning and zoning on their websites, and those sites should be linked to the government sites. In addition, the clearinghouse should publish model language that can be incorporated into local plans and zoning ordinances, as well as a sample checklist of issues to be addressed at the local level, to help local officials work toward achieving environmental justice.

### Passing the Community Character Act and Related Initiatives

Potential partners for more formally incorporating environmental justice considerations into land use policies are the Congressional task forces and caucuses that have been created to address smart growth, livable communities, and improved community development.<sup>72</sup> Federal legislation has been recently proposed to start addressing sprawl, community development, and smart growth.<sup>73</sup> The legislation would encourage or require federal agencies' siting decisions to be consistent with local zoning and comprehensive plans, and would provide funding for state and local governments to modernize their land use plans. The Community Character Act of 2000

and 2001 is one example of proposed legislation. This Act has not yet been passed, but in 2002, it was reported out of the Senate committee. If this bill is re-introduced in this or future Congresses, it could provide an opportunity for environmental justice principles to be incorporated into state and local land use plans by offering financial incentives for planning.<sup>74</sup> Many national and statewide advocacy organizations have already testified at Congressional hearings on the bill and have participated in drafting legislation and lobbying Congress to support these initiatives, even though environmental justice issues have not been their main focus.

## **CONCLUSION**

Planning experts, professors of environmental and land use law, and community advocates have only recently started to write about the critical connections between environmental justice problems and local land use planning and zoning decisions. While there are significant challenges to incorporating environmental justice principles into the nation's planning and zoning system, in large part due to the fragmented nature of local land use decisions, there are many opportunities to do so and the potential rewards are great. Given the magnitude of local land use planning and zoning efforts, environmental justice advocates should not ignore this critical step in community decision-making and economic development.

Professor Arnold argues that "land use planning and regulation foster choice, self-determination, and self-definition for local neighborhoods, not paternalism that insists that there is a single correct environmental justice goal."<sup>75</sup> From a timing perspective, the opportunity has never been better for obtaining changes that address environmental justice concerns, due to the currently active national movement for modernizing state planning and zoning statutes. Significant investments in training and education through a network of partnerships are necessary, but they can yield substantial returns by enabling local officials to address environmental justice problems. There is already a growing network of public, private, and nonprofit interests all committed to ensuring that environmental justice issues are taken into account through local planning and zoning. Increasing collaboration, cooperation, sharing resources, and working on joint efforts will help to remedy past environmental justice problems and prevent their repetition in the future.



## ENDNOTES

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<sup>1</sup> Patricia E. Salkin, "Land Use," in *Stumbling Towards Sustainability*, ed. John Dernbach, 374 (Environmental Law Institute 2002), citing Robert R. Kuehn, "A Taxonomy of Environmental Justice," *Environmental Law Review*, 10681 (September 2001); Robert Bullard, "Leveling the Playing Field Through Environmental Justice," *Vermont Law Review*, 453 (1999). See also, Paul M. Hendrick, "Racism in American Land Use Decisions: The Slicing of the American Pie," *Florida Coastal Law Journal*, 395 (2001); and Craig Anthony Arnold, "Land Use Regulation and Environmental Justice," *Environmental Law Review*, 10395 (June 2000).

<sup>2</sup> Michael B. Gerrard, "Environmental Justice and Local Land Use Decision-Making," in *Trends in Land Use Law from A to Z: Adult Uses to Zoning*, ed. Patricia Salkin (American Bar Association, 2001).

<sup>3</sup> Juliana Maantay, "Zoning Law, Health, and Environmental Justice: What's The Connection?" *Journal of Law, Medicine and Ethics*, 572 (December 2002).

<sup>4</sup> Clifford Rechtschaffen and Eileen Gauna, *Environmental Justice: Law, Policy & Regulation*, 297 (Carolina Academic Press 2002).

<sup>5</sup> Craig Anthony Arnold, "Planning Milagros: Environmental Justice and Land Use Regulation," *Denver University Law Review*, 1 (1998).

<sup>6</sup> *Village of Euclid v Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114, 71 L.Ed. 303 (1926).

<sup>7</sup> U.S. Department of Commerce, Advisory Committee on City Planning and Zoning, *A Standard City Planning Enabling Act* (Government Printing Office (GPO), 1928); and U.S. Department of Commerce, Advisory Committee on City Planning and Zoning, *A Standard Zoning Enabling Act* (GPO, 1926 revised edition).

<sup>8</sup> Maantay, "Zoning Law," 572.

<sup>9</sup> Richard F. Babcock, *The Zoning Game: Municipal Practices and Policies*, 145-6 (University of Wisconsin Press, 1966), citing Alfred Bettman, *City and Regional Planning Papers*, 55 (Harvard University Press, 1946).

<sup>10</sup> For example, the January 2002 report of the Environmental Justice Advisory Group in New York, entitled *Recommendations for the NYS Department of Environmental Conservation's Environmental Justice Program*, ends with a strong recommendation for New York to follow the lead of California in adopting legislation and/or executive orders to get the local governments more involved with environmental justice. Available at <[www.dec.state.ny.us/website/ej/ejfinalreport.pdf](http://www.dec.state.ny.us/website/ej/ejfinalreport.pdf)>.

<sup>11</sup> Salkin, "State Enabling Statutes That Move Beyond Traditional Zoning," in *New Ground: The Advent of Local Environmental Law*, 170.

<sup>12</sup> Glen T. Bruening, "Environmental Justice May be Coming to a Planning or Zoning Board Meeting Near You," *New York Zoning Law and Practice Report* (March/April 2002).

<sup>13</sup> Advisory Committee of the U.S. Department of Commerce drafted the Standard City Planning Enabling Act. See, Rodney L. Cobb, "Toward Modern Statutes: A Survey of State Laws on Local Land use Planning," *Planning Communities for the 21<sup>st</sup> Century* (American Planning Association, December 1999).

<sup>14</sup> *Ibid.*, 9.

<sup>15</sup> *Ibid.*

<sup>16</sup> Stuart Meck, gen. ed., *Growing Smart Legislative Guidebook* (American Planning Association 2002) xxviii.

<sup>17</sup> *Ibid.*, xliii.

<sup>18</sup> Professor Craig Anthony Arnold has extensively studied the relationship between local land use planning and zoning and environmental justice and offers details on the following five case studies of grassroots environmental justice land use strategies: (1) rezoning to limit industrial and commercial uses in neighborhoods of East Austin, Texas; (2) rewriting Denver, Colorado's industrial zoning code by a North Denver community group; (3) St. Paul, Minnesota, West Side Citizens Organization's successful efforts to pass a citywide ordinance banning metal shredders; (4) adoption of a comprehensive land use code and development code by the Confederated Tribes of the Colville Reservation in Washington; and (5) involvement of grassroots groups from San Antonio, Texas, barrios in the formulation of overlay zoning to protect the Edwards Aquifer. See, Craig Anthony Arnold, "Land Use Regulation and Environmental Justice," *Environmental Law Review*, 10395, 10408, et. seq. (June 2000).

<sup>19</sup> Julian Jurgensmeyer and Thomas Roberts, *Land Use Planning and Control Law*, 26 (West Group 1998).

<sup>20</sup> Meck, *Smart Growth*, 7-6.

<sup>21</sup> Jurgensmeyer and Roberts, *Land Use Planning*, 30.

<sup>22</sup> Meck, "The Legislative Requirement that Zoning and Land Use Controls Be Consistent with an Independently Adopted Local Comprehensive Plan: A Model Statute," *Washington University Journal of Law and Policy*, 305 (2000).

<sup>23</sup> Jurgensmeyer and Roberts, *Land Use Planning*, 30.

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- <sup>24</sup> See generally, Meck, *Growing Smart*. Chapter 7 at 7-58 discussing the history of local comprehensive planning and citing for a history of the HUD 701 planning program. See also, Carl Feiss, “The Foundations of Federal Planning Assistance,” *Journal of the American Planning Association* 175 (Spring 1985).
- <sup>25</sup> *Ibid.*
- <sup>26</sup> Meck, “The Legislative Requirement,” 306. Meck reviews revised statutes in 12 states that have attempted to overcome the ambiguous language in the Model State Zoning Enabling Act that provides that zoning be adopted “in accordance with a comprehensive plan.”
- <sup>27</sup> Meck, *Growing Smart*, 7-61.
- <sup>28</sup> N.Y. Town Law Section 272-a (3) (McKinneys 2002); N.Y. Village Law Section 7-722(3) (McKinneys 2002); and N.Y. Gen. City Law Section 28-a (4) (McKinneys 2002).
- <sup>29</sup> Chapter 762 of the California Laws of 2001.
- <sup>30</sup> Governor’s Office of Planning and Research, *California Planning Guidelines* (2002). Available at <[http://www.opr.ca.gov/planning/PDFs/GPG\\_2002.pdf](http://www.opr.ca.gov/planning/PDFs/GPG_2002.pdf)>.
- <sup>31</sup> *Ibid.*
- <sup>32</sup> Meck, *Growing Smart*, 7-195.
- <sup>33</sup> *Ibid.*, xlvii.
- <sup>34</sup> Salkin, “Collaborative Processes for Preparing and Adopting a Local Comprehensive Plan,” in *The Growing Smart Working Papers*, Planning Advisory Service Report No. 480/481 (American Planning Association, 1998).
- <sup>35</sup> *Ibid.*, 151-152.
- <sup>36</sup> Arnold, “Planning Milagros.”
- <sup>37</sup> See *Euclid*, supra, note 6.
- <sup>38</sup> Arnold, “Land Use Regulation,” 10407-8.
- <sup>39</sup> Arnold, “Planning Milagros.”
- <sup>40</sup> Arnold, “Land Use Regulation,” 10404.
- <sup>41</sup> Arnold, “Planning Milagros,” reprinted in part in Rechtschaffen and Gauna, *Environmental Justice*, 299.
- <sup>42</sup> Gerrard, “Environmental Justice,” 148.
- <sup>43</sup> See, Margaret Collins, “Methods of Determining Amortization Periods for Non-Conforming Uses,” *Washington University Journal of Law & Policy*, 215 (2000).
- <sup>44</sup> Gerrard, “Environmental Justice,” 148.
- <sup>45</sup> Meck, *Growing Smart*, 12-3.
- <sup>46</sup> Meck, *Growing Smart*, Chapter 12.
- <sup>47</sup> See, Daniel R. Mandelker, “Melding State Environmental Policy Acts with Land use Planning and Regulations,” *Modernizing State Planning Statutes: The Growing Smart Working Papers*, Planning Advisory Service Report No. 480/481 (American Planning Association 1998). Professor Mandelker identifies the following states as having little NEPAs: California, Connecticut, Georgia, Hawaii, Indiana, Maryland, Massachusetts, Minnesota, Montana, New York, North Carolina, South Dakota, Virginia, Washington, and Wisconsin.
- <sup>48</sup> Meck, *Growing Smart*, 12-3.
- <sup>49</sup> *Ibid.*, 12-4.
- <sup>50</sup> Kathryn C. Plunkett, “The Role of Local Environmental Impact Review,” in *New Ground: The Advent of Local Environmental Law*, 299.
- <sup>51</sup> Gerrard, “Environmental Justice,” 147.
- <sup>52</sup> Meck, *Growing Smart* 12-7.
- <sup>53</sup> Sara Pirk, “Expanding Public Participation in Environmental Justice: Methods, Legislation, Litigation and Beyond,” *Environmental Law and Litigation*, 207, 235 (2002).
- <sup>54</sup> *Ibid.*
- <sup>55</sup> *Ibid.*
- <sup>56</sup> Arnold, “Land Use Regulation,” 10415-10420.
- <sup>57</sup> *Ibid.*
- <sup>58</sup> James M. McElfish, Jr., “Learning from the Past and Looking Towards the Future,” in *New Ground: The Advent of Local Environmental Law*, 404.
- <sup>59</sup> *Ibid.*, 406.
- <sup>60</sup> *Ibid.*, 404-406.
- <sup>61</sup> *Ibid.*, 406.

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<sup>62</sup> Meck, *Growing Smart*, Chapter 7, citing Welford Sanders and Judith Getzels, *The Planning Commission: Its Composition and Function*, Planning Advisory Service Report No. 400 (American Planning Association 1987), 4-6 (based upon 4,380 nationwide questionnaires).

<sup>63</sup> *Ibid.*, Chapter 7, citing Harvey S. Moskowitz, *Planning Boards in New Jersey: Current Realities and Historical Perspectives*, ii (unpublished. Ph.D. dissertation, Rutgers University, 1983).

<sup>64</sup> *Ibid.*

<sup>65</sup> See, for example, Ora Fred Harris, Jr., “Environmental Justice: The Path to A Remedy That Hits the Mark,” *Little Rock Law Review*, 797 (University of Arkansas, Summer 1999).

<sup>66</sup> N.Y. Town Law Section 271(11) (McKinneys 2002); and N.Y. Village Law Section 7-718(11) (McKinneys 1996).

<sup>67</sup> Meck, *Growing Smart*, 7-32. The *Guidebook* notes that the bracketed language is “targeted to those small communities where the number of persons who live in rental, affordable, or multifamily housing is limited and where residents may not be willing to volunteer.”

<sup>68</sup> Salkin, “Smart Growth and Sustainable Development: Threads of a National Land Use Policy,” *Valparaiso Law Review*, 381 (Spring 2002).

<sup>69</sup> Gerrard, “Environmental Justice,” 147.

<sup>70</sup> Michael Allen Wolf, “Earning Deference: Reflections on the Merger of Environmental and Land Use Law,” in *New Ground: The Advent of Local Environmental Law*, 360.

<sup>71</sup> Salkin, “Congress Misses Twice With the Community Character Act: Will Three Times Be A Charm?” *Real Estate Law Journal*, 167 (2002).

<sup>72</sup> Salkin, “Smart Growth,” 403, discussing the Senate Smart Growth Task Force, the House Sustainable Development Caucus and the House Livability Communities Task Force.

<sup>73</sup> *Ibid.* See also, Salkin, “State Enabling Statutes.”

<sup>74</sup> Salkin, “Congress Misses Twice,” 167.

<sup>75</sup> Arnold, “Land Use Regulation,” 10427.

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## CHAPTER FIVE

### HUNTINGTON PARK, CALIFORNIA

#### FINDINGS

**Finding 1:** Past zoning decisions set the foundation for current environmental justice concerns in Huntington Park, California, because they did not prohibit residences from being built in manufacturing zones, and the city did not correct this problem until the 1960s. By that time, residences and manufacturing facilities coexisted in the areas zoned for manufacturing. Over time, the demographics of the area changed from predominately white to predominantly Hispanic; the public, state agencies, and local governments became increasingly aware of the health consequences of pollution; and by the mid-1990s, citizens in Huntington Park became organized to seek remedies for the adverse impacts of excess pollution.

**Finding 2:** Huntington Park has used its general zoning authority to respond to environmental justice concerns. The city revised the zoning ordinance for its commercial/office/mixed use zones to enhance the city's ability to condition environmental permits based on the proximity of a facility to residences and the level of adverse impact it presents. As part of this effort, the city has taken action to reduce risks from diesel emissions because they present the greatest health risk to residents in the area. Additionally, the city developed an air quality task force to develop strategies to reduce air toxics. The task force developed recommendations for federal, state, county, and city agencies that emphasize the need for cross-jurisdictional problem-solving to address the area's air quality issues, including establishing a stronger working relationship between the city and the South Coast Air Quality Management District (AQMD) to make better use of its technical expertise.

**Finding 3:** South Coast AQMD has responsibility for issuing air permits in Huntington Park. Although the District has not changed its basic permitting procedures, it has a demonstrated commitment to environmental justice, as evidenced by implementing a robust set of measures to reduce risk; improve community access to information and public participation, and develop tools to address concerns raised by people-of-color and low-income communities, as well as other communities that may have high levels of exposure to pollution.

**Finding 4:** Effective problem-solving to address air quality concerns in Huntington Park required integrated strategies that include cross-jurisdictional coordination and assistance from government at all levels: federal, state, county, and city.

**Finding 5:** Community activism by Huntington Park residents was the initial catalyst that focused the attention of local officials on the need to address environmental justice concerns.

*(reserved for map)*

## INTRODUCTION

In the mid-1990s, environmental justice concerns came to the attention of local officials in Huntington Park in much the same way it has happened in other communities—through the repeated and persistent complaints of citizens concerned about potential health effects and the erosion of their quality of life as a result of the impacts of adjacent industrial operations. Although the initial reaction of city officials was that of discomfort when confronted with the air pollution incident that prompted citizen activism, they quickly came to understand that the concerns about impacts to their health and environment were legitimate, that they went beyond the immediate incident, and that the city had to act.

As the city decided how it would tackle the problem of the effects of its siting decisions on its citizens, 95 percent of whom are Hispanic, it found it had a tremendous resource and partner in the regional air district. In 1999, the South Coast Air Quality Management District (AQMD) provided Huntington Park with an air quality assessment that further convinced the local City Council of the seriousness of the problems and the need to take action. The District also provided valuable technical support to the city and the community because the District had a clear environmental justice policy. The District recognized the concerns about localized impacts and understood that providing improved community access to information as integral to its job of protecting public health and the environment. Moreover, the District already had an agenda that included activities to reduce risk, improve means of interacting with the public, and provide better public access to important environmental information. The District's agenda also included developing tools to improve air quality, such as guidance for local governments on air quality that they could incorporate into their general plans to begin addressing siting concerns.

Citizens, the city, and South Coast AQMD officials all now recognize that coordinated strategies are needed to resolve the air quality issues in the area, while also enhancing economic development. This chapter examines how these roles emerged in Huntington Park and what resulted from the city's and the air district's efforts. The Academy's previous study, *Models for Change: Efforts by Four States to Address Environmental Justice*, also features California programs, including the South Coast AQMD; and Appendix C of the current report contains the California Environmental Protection Agency's (CAL/EPA) environmental justice policy.

## BACKGROUND

Los Angeles County is marked by extremes in political power and wealth that are perhaps most apparent in Southeast Los Angeles (SELA).<sup>1</sup> The county is the largest industrial center in the nation with over 880,000 manufacturing jobs; approximately 61,000 jobs are located in SELA, employing almost 40 percent of the residents.<sup>2</sup> In addition to a significant industrial base, SELA is a densely populated area with a large Spanish-speaking immigrant population.<sup>3</sup> SELA makes up approximately one percent of the county's area, but contains six percent of the manufacturing facilities—including many



high polluting industries, such as over 11 percent of the county's chemical producers and almost 19 percent of the primary metal industries.<sup>4</sup> The concentration of these industries in SELA is 18 and 32 times more, respectively, than in the rest of the county.<sup>5</sup>

Incorporated as a city in 1906,<sup>6</sup> Huntington Park is located in the SELA area, six and a half miles southeast of downtown Los Angeles.<sup>7</sup> SELA also includes seven other cities: Bell, Bell Gardens, Commerce, Cudahy, Maywood, South Gate, and Vernon.<sup>8</sup>

Huntington Park is three square miles in size and has a population of slightly more than 60,000, 95.6 percent of whom are Hispanic.<sup>9</sup> Huntington Park has a median household income of \$28,941, an unemployment rate of 6.5 percent, and a poverty level of 25.2 percent.<sup>10</sup> The area is densely populated and largely residential, although it also contains a strong industrial base<sup>11</sup> that includes fabricated metal, aircraft parts, and oil field equipment manufacturers.<sup>12</sup> More recently, some national retail chain outlets have expressed an interest in locating in the city.<sup>13</sup> The city is also currently marketing a \$259 million plan for redeveloping 90 acres of brownfields and underutilized property into a retail center to be called El Centro that will be occupied by major national tenants.<sup>14</sup>

During the early 1930s and 1940s, SELA was a predominantly white, suburban area that provided stable, unionized factory jobs for tens of thousands of workers.<sup>15</sup> White flight from the region began in 1965, encouraged by the riots in Watts and the closure of 10 major factories, including steel, tire, and automobile manufacturers that either relocated or closed due to global competition. In total, 204,000 whites left the region between 1965 and 1990; and 50,000 well-paying factory and trucking jobs disappeared.<sup>16</sup>

By the 1990's, the region had recovered from these initial losses, regaining approximately 80 to 85 percent of its previous high employment from the 1970s. This growth was accomplished by attracting smaller industrial sources, including waste handlers that were attracted by the lower costs of leases, city tax incentives, and the growing low-wage immigrant work force, among other reasons.<sup>17</sup>



## ENVIRONMENTAL SETTING

### Geography

Reducing air pollution in the Los Angeles basin is a challenging process because the area is ringed by mountains and has weather conditions that concentrate air pollution in the basin, even without the millions of vehicles that clog area highways.<sup>18</sup> Local lore is that “early inhabitants referred to the San Gabriel Valley as the ‘Valley of Smokes.’” That description remains apt, even though many emission control efforts have resulted in substantial air quality improvements over the past 30 years.<sup>19</sup>

### Multiple Air Toxics Exposure Study (MATES II)

Los Angeles County is not only a nonattainment area for ozone, carbon monoxide, and particulate matter, but it also has some of the worst air quality in the nation in terms of number of days it exceeds federal standards.<sup>20</sup> The area of the county where Huntington Park is located has air quality that is even worse than the county overall. These localized air problems were documented in November 1999, when South Coast AQMD released the results of the Multiple Air Toxics Exposure Study II (MATES II), which monitored more than 30 toxic air pollutants and assessed their potential risk at various locations in the SELA area.<sup>21</sup> The study concluded that diesel emissions were the greatest health risk for the greater Los Angeles area, which includes Huntington Park, and that there were also significant risks attributable to benzene and 1,3-butadiene, both of which are found in gasoline.<sup>22</sup> Although “monitoring did not identify air emissions that exceeded health standards at most of the 14 locations evaluated, [it did document] that local hot spots may exist.”<sup>23</sup>

In response to the MATES II study, the city council convened the Huntington Park Air Quality Improvement Task Force to develop a comprehensive plan to reduce air toxics.<sup>24</sup> The Task Force noted:

The average cancer risk from toxic air pollutants, when continuously exposed over a 70-year lifespan, in the entire South Coast Air Basin is approximately one (1) in 715 people. For comparison, the risk to residents specifically in the Southeast Los Angeles County area is approximately one (1) in 589.<sup>25</sup>

The Task Force produced over 40 recommendations for federal, state, county, and city agencies, and they were all adopted by the Huntington Park City Council.<sup>26</sup> The recommendations to other agencies emphasized the need for greater cooperation and collaboration for regional problem solving. The recommendations included using consistent approaches, improving communication among organizations and with the public, increasing the monitoring of all existing stationary sources, implementing a variety of measures to reduce mobile emissions, targeting resources to address high risk areas, and improving data sharing.<sup>27</sup>

The city recommended that South Coast AQMD “implement a more comprehensive review process with stricter regulations (i.e., a model air quality ordinance) for stationary sources emitting pollution, for all cities in the Southeast Los Angeles area ... [that would] be

implemented equally on a regional basis.”<sup>28</sup> Regional consistency is very important for the city because individual cities that may take stricter measures to address what is a regional air quality problem may lose badly needed development opportunities if potential businesses decide to shop for cities in the region that are not as strict.<sup>29</sup>

The Task Force recommended that cities and South Coast AQMD consider:

- Various permit review changes.... with the assistance of South Coast AQMD, such as providing for longer public notice periods and use of additional noticing methods for projects or businesses that would emit toxics;
- Stricter zoning requirements;
- Bilingual notices of public meetings when relevant;
- More detailed environmental reviews and conditional use requirements for certain types of businesses;
- Use of the California Environmental Quality Act as a base tool for additional review procedures;
- Use of environmental checklists that include questions about emissions from diesel vehicles;
- Monetary fines for gross polluters;
- Swift and strong enforcement methods; and
- Prohibiting idling by diesel vehicles.

Additionally, South Coast AQMD should:

- Provide cities with a list of all establishments requiring South Coast AQMD permits, primarily potential toxic air emitting establishments so that cities can designate them in appropriate zones; and
- Adopt a more stringent rule to lower the threshold of air toxics risk per facility to one in a million cancer risk and a hazard index of one.<sup>30</sup>

See Appendix D for complete Task Force recommendations.

## Alameda Corridor Project

Both the Alameda Corridor project and the expansion of the Port of Los Angeles have significant environmental implications for Huntington Park. The \$2.4 billion Alameda Corridor project will improve rail transportation of goods to and from the area's major ports.<sup>31</sup> Huntington Park is one of nine communities along the original Alameda Corridor, which contained an above-ground rail line parallel to Alameda Street, a major artery for thousands of trucks that travel daily to and from the Ports of Long Beach and Los Angeles.<sup>32</sup> Other communities along this corridor are Los Angeles, Vernon, South Gate, Lynwood, Compton, Carson, Wilmington, and Long Beach.<sup>33</sup> The ports and related activities support a significant number of secondary industries and businesses along the route that also produce pollution in the region.<sup>34</sup>

The ports of Los Angeles and Long Beach are not only important to the area, they are also important to the national economy. Nearly one-quarter of all products arriving in the United States moves through these ports, which are the two busiest container ports in the country.<sup>35</sup> By 2020, the cargo volume through these two ports is expected to triple, to an equivalent of 24.3 million containers a year.<sup>36</sup>

To keep the region's competitive advantage, the Alameda Corridor Transportation Authority (ACTA) initiated the Alameda Corridor project to move cargo entering the United States and goods being exported to overseas markets more efficiently.<sup>37</sup> The project is the first rail link of its kind that consolidates the ports' access lines into a single, 20-mile express cargo railway.<sup>38</sup> The railway begins at street level in the southern end of the Corridor (Long Beach, Wilmington, and Carson); moves into a 33-foot deep, 50-foot wide trench through the mid-corridor section (Compton, Lynwood, South Gate, Huntington Park, and Vernon); and emerges at street level at the north end, in downtown Los Angeles.<sup>39</sup>

For the ten-mile trench between Compton and the borders of Vernon and Los Angeles, the tracks are beneath the street, thus reducing congestion, emissions, and noise. The new railway also increases safety by removing rail crossings from public access and facilitates the mobility and access of emergency response vehicles. The trench accommodates two sets of railroad tracks and a service road, with the possibility of accommodating a third set of tracks in the future.<sup>40</sup> Bridges now carry vehicles over the mid-portion of the Corridor, resulting in a complete separation of rail and motor vehicle traffic.<sup>41</sup> Additionally, the project widened Alameda Street to six lanes, with intersection improvements.<sup>42</sup>

Environmental impact statements for the Corridor estimated that it would:

- Reduce emissions from idling automobiles, trucks, and buses by 54 percent, by eliminating over 200 train/traffic crossings;
- Reduce emissions from trains by up to 28 percent;
- Decrease noise pollution by 90 percent along the Corridor, since 10 miles of the project lies underground and trains no longer have to blow the train horns to signal their arrival; and

- Reduce traffic congestion at crossings and greatly improve public safety.<sup>43</sup>

In addition, over one million tons of hazardous waste along the right-of-way was removed.<sup>44</sup>

The project also included a job training and development element.<sup>45</sup> The job-training program has graduated 880 Alameda Corridor residents from the pre-apprenticeship training program and another 401 residents have graduated from the non-trade training program. ACTA also agreed to hire at least 30 percent of its new construction workers from low-income communities surrounding the Corridor.<sup>46</sup>

Huntington Park officials acknowledge that the Corridor project has reduced traffic congestion and improved current air quality.<sup>47</sup> A resident from the community, who has lived there for more than 38 years within a few blocks of the Corridor, affirmed that there have also been tremendous improvements in noise reduction, such that he can no longer hear the trains.<sup>48</sup> Concerns remain, however, that the volume of rail traffic alone could increase by six-fold over the next ten years.<sup>49</sup> Further, truck traffic associated with the expanded activity generated by the Corridor and the expansion of the Port of Los Angeles could increase, which could present challenges to communities like Huntington Park that are also near major interstate highways.<sup>50</sup>

Another concern is that the new below-grade rail lines accommodate double-decker trains carrying twice as much cargo as the former above-grade rail lines.<sup>51</sup> Communities for a Better Environment (CBE), a California-based “environmental health and justice non-profit organization that promotes clean air, clean water, and the development of toxin-free communities,”<sup>52</sup> has objected to the amounts and types of materials these trains will be carrying and what that may mean for potential risks associated with derailments, hazardous material spills, or other accidents.<sup>53</sup> CBE has also noted the increased traffic generated by the growth of the ports and related plans for expansion of nearby highways, such as Interstate 710.<sup>54</sup> An additional worry is that clean fuel for the diesel-operated trains will not be available until 2020. Thus, combined with the increased train traffic, the railway will subject neighboring communities to high levels of diesel emissions.<sup>55</sup>

### **Los Angeles Port Expansion**

In 1994, the Port of Los Angeles initiated a multi-year, multi-phased expansion project to dramatically expand its ability to handle containerized cargo, which has increased over 50 percent in recent years.<sup>56</sup> One phase of the project, begun in 2001, was the construction of a 174-acre container complex.<sup>57</sup> The Port development hit a snag in 2001, when Los Angeles was sued by environmental and community groups near the Port for “failing to assess the environmental impact of the expansion.”<sup>58</sup> In March 2003, the parties reached a establishing “a \$50 million fund to address impacts of Port operations in the community, fully evaluate and mitigate the impacts of the proposed terminal, and commit to specific steps to address terminal pollution.”<sup>59</sup>

Impacts on the local community of Wilmington, California will be reduced by:

- Providing electric power for ships berthed at the China Shipping terminal so they do not run their diesel engines while docked;
- Requiring the use of cleaner alternative fuel heavy-duty yard trucks at the terminal; and
- Developing and implementing a traffic plan for the terminal and other Port operations.<sup>60</sup>

Ten million dollars of the total \$50 million mitigation fund will also be used for incentives to clean up independently owned diesel trucks serving the Port.<sup>61</sup> Court documents noted that “as many as 250 of the world’s largest container vessels would call at the terminal—with cargo to be moved by as many as one million trucks every year.”<sup>62</sup> Many of those trucks may also be using highways and streets adjacent to Huntington Park, which is approximately 18 miles from Wilmington.<sup>63</sup>

## **ENVIRONMENTAL JUSTICE CONCERNS**

### **Health Issues**

The major environmental health concerns for Huntington Park residents are associated with air pollution. Interviews with city officials, community members, and research done by an area environmental organization also confirm that air pollution is the top environmental justice concern.<sup>64</sup>

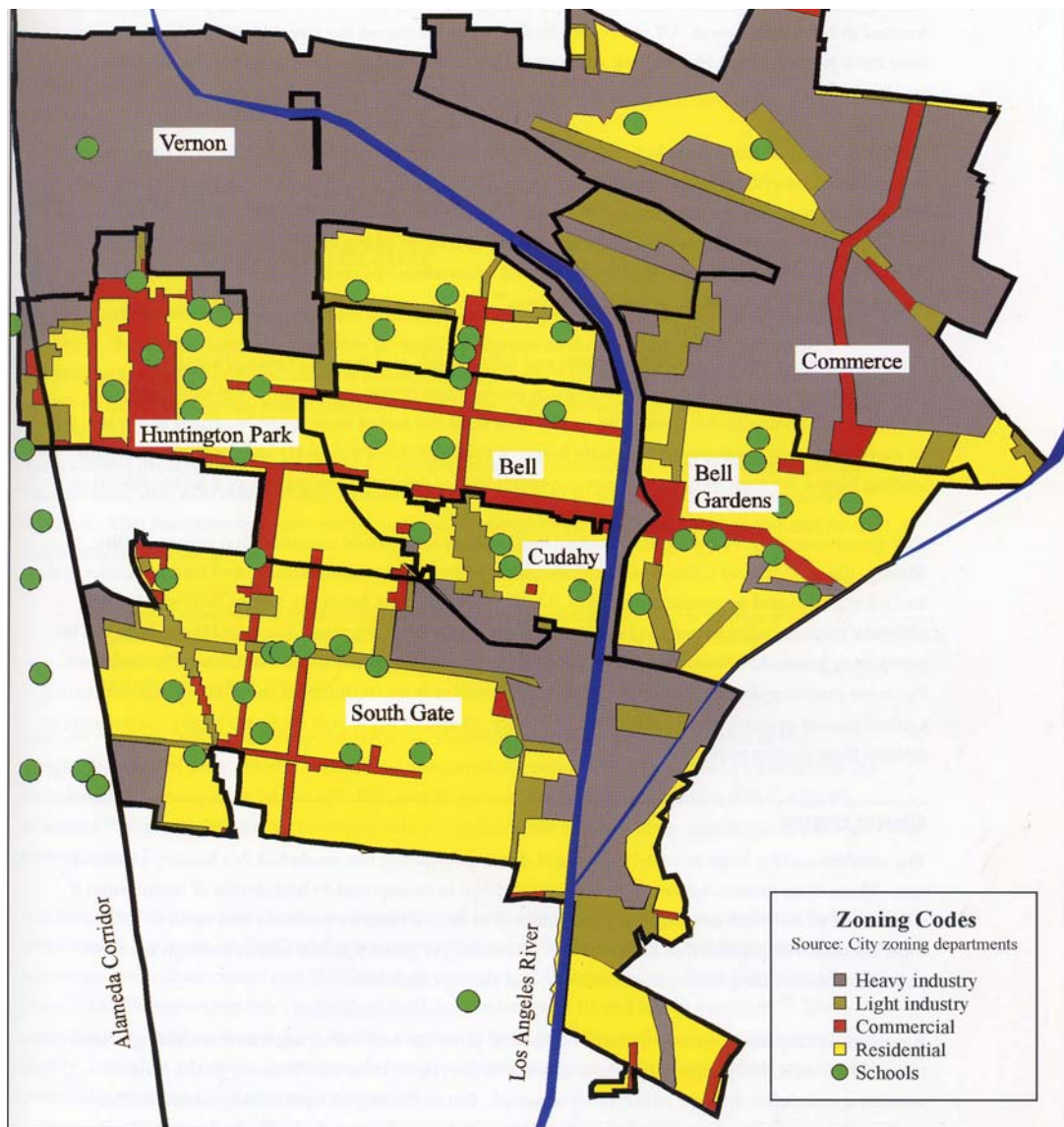
As noted earlier, the MATES II study identified diesel emissions as the major health risk for this area. According to a recent EPA health assessment on diesel emissions:

Long-term (i.e., chronic) exposure to DE [diesel exhaust] is likely to pose a lung cancer hazard as well as damage the lung in other ways depending on exposure. ... Short-term (i.e., acute) exposure can cause transient irritation and inflammatory symptoms, although the nature and extent of these symptoms are highly variable across the population. ... [E]vidence is emerging that diesel exhaust exacerbates existing allergies and asthma symptoms.<sup>65</sup> ... [S]hort-term exposure can cause acute irritation (e.g., eye, throat, bronchial), neurophysiological symptoms (e.g., lightheadedness, nausea), and respiratory symptoms (cough, phlegm).<sup>66</sup>

Given existing evidence, the EPA assessment notes it is a “prudent health choice [to presume] a cancer hazard for [diesel exhaust] at environmental levels of exposure.”<sup>67</sup> For these reasons, the South Coast AQMD took a number of actions to reduce air toxics in response to the results of MATES II, including:

- Focusing more on reducing diesel emissions;
- Adopting a new source review program for sources of air toxics;
- Developing an air toxics control plan that is likely to use existing legal authorities to adopt a series of new rules addressing dry cleaning solvents, the film cleaning industry, and methylene chloride emissions; and
- Initiating a program to assess cumulative risks at large facilities and require them to go on an “air toxic diet” if their total health risks exceed 25 in 1,000,000.<sup>68</sup>

Figure 5-3



Source: Communities For A Better Environment

The study also prompted South Coast AQMD to develop an air toxics control plan “to reduce toxics by an additional 31 percent beyond what would be expected by 2010 under existing local, state, and federal control programs.”<sup>69</sup> In addition to the measures noted above, the plan includes:

- Implementing the proposed new source review program for toxics and strengthening the facility-wide permitting program for toxic air contaminants;
- Developing new rules to control air toxics from chrome plating and dry cleaning, and new permitting guidelines for stationary source diesel generators;
- Increasing controls of toxic air emissions from consumer products;
- Developing a bus fleet rule that will encourage transit operations to retire dirtier buses or purchase alternative fuel buses; and
- Developing more stringent emission standards for new bus engines.<sup>70</sup>

Because Huntington Park is in an ozone (O<sub>3</sub>) nonattainment area, city residents are exposed to the health effects associated with ozone exposure. A recent EPA report about short-term (less than eight hours) exposures to ozone concluded:

Recent epidemiology studies addressing the effects of short-term ambient exposure to O<sub>3</sub> in the population have yielded significant associations with a wide range of health outcomes, including lung function decrements, aggravation of preexisting respiratory disease, increases in daily hospital admissions and emergency department visits for respiratory causes, and increased mortality.<sup>71</sup>

Additionally, “available data indicate that exposure to O<sub>3</sub> for months and years causes structural changes in several regions of the RT [respiratory tract];” and “the apparent lack of reversal of effects during periods of clean air exposure raises concern that seasonal exposures may have a cumulative impact over many years.”<sup>72</sup>

Another study on the health effects of long-term exposure to ambient air pollution found:

Areas...[where] either ozone or particulate matter levels are high...[are] associated with substantial morbidity including possible development of asthma, development of chronic bronchitis, and retardation of lung development in children. High daily ambient concentrations of ozone and/or particulate matter were associated with increased school absenteeism, acute reductions in lung function and increases in symptoms, and increased hospitalization rates.<sup>73</sup>

Los Angeles County is also a nonattainment area for carbon monoxide. A recent EPA report notes more research is needed to understand more reliably chronic exposure “to low

concentrations from either ambient population-exposures studies or from occupational studies.”<sup>74</sup> However, health effects of exposure to carbon monoxide may include:

- Decreased exercise performance in healthy individuals;
- Increased cardiovascular hospital admissions and daily mortality, especially for individuals over 65 years of age;
- Increased cerebral blood flows in healthy subjects, even at very low exposure levels; and
- Reduction in birth weight at high levels, though pregnant women and developing fetuses have been identified as being at risk to ambient levels.<sup>75</sup>

Although most studies show that air pollution does not appear to cause asthma directly, asthma in children is exacerbated by air pollution.<sup>76</sup> There is currently no tracking system for asthma in California, so the exact number of children who have the illness is unknown.<sup>77</sup> However, the prevalence of self-reported asthma, especially among children, has risen dramatically in the United States over the past 20 years.<sup>78</sup> A University of Southern California Children's Health Study showed that children with asthma develop more symptoms of bronchitis (cough and phlegm) as levels of particulate air pollution increase.<sup>79</sup> As a result, the National Institute of Environmental Health Sciences, the South Coast AQUM, EPA, and others are supporting research on health effects associated with air pollution for this region of the country.<sup>80</sup>

### **Environmental Justice Assessment—Los Angeles County and Huntington Park**

Research by Communities for a Better Environment has cited a number of studies on Los Angeles County that mirror assessments in other areas of the country documenting correlations between people-of-color communities and the location of large polluting facilities. A 1993 study “concluded that the per capita income and the percentage of people-of-color have a statistically significant relationship with the number of TRI [Toxics Release Inventory] facilities in a census tract” in Los Angeles County and that “Latinos were the group most likely to be disproportionately exposed” to these facilities.<sup>81</sup> In that same year, researchers at the University of California at Santa Cruz came to similar conclusions when their research demonstrated that “race was statistically more important than income in relation to toxic emissions.”<sup>82</sup> A 1997 study by researchers at Occidental College also demonstrated that the two most important demographic variables in the location of hazardous treatment and storage facilities in Los Angeles County were the percentage of minority residents and the percentage of land dedicated to industrial use.<sup>83</sup> The study also noted “that minorities are more than twice as likely to live in a census tract located within one mile of a [hazardous treatment and storage facility] than whites....”<sup>84</sup>

Huntington Park drew the attention of CBE, which has studied the city as an example of environmental injustice in SELA, because of the health risks posed by polluting facilities combined with impacts from mobile sources<sup>85</sup> and the disproportionate impacts in many people-



of-color and low-income communities.<sup>86</sup> CBE's 1998 report  *Holding Our Breath*, featured Huntington Park as a cumulative risk case study and found that:

- There are severe data gaps with regard to facility data;
- Despite regulation, some facilities are exposing people to unacceptable health hazards; and
- Even facilities that do not individually present high health risks collectively produce significant health hazards in the surrounding community.<sup>87</sup>

Non-cancer risks are characterized by the hazard index, and a hazard index of 1.0 “corresponds to the maximum level determined to be safe by the state of California.”<sup>88</sup> CBE examined the emissions from a number of permitted and non-permitted facilities emitting toxics in Huntington Park and found that hazard levels of the various facilities, combined with background levels of pollution in some areas of the city, resulted in hazard indices ranging from 1.8 to 74—with no values below 1.0.<sup>89</sup> They also found that none of the facilities presented a “significant health impact individually,” but cumulative impacts from three facilities produced a cancer risk of ten in one million. California state law (Proposition 65) requires that the affected public be notified at these risk levels.<sup>90</sup> However, because the risk came from three individual facilities, rather than from a single source, the public had not been notified. The 1998 CBE study argued for a cumulative approach to risk assessment to account for impacts from multiple sources.<sup>91</sup> South Coast AQMD has responded to these concerns about the need to do cumulative assessments and is currently investigating regulatory options for addressing cumulative impacts from air toxic emissions.<sup>92</sup>

### **“Asthmatown”**

In the 1980s, residents of Huntington Park began describing the northernmost area of the city, which is zoned industrial with scattered residential areas, as “Asthmatown” because so many of the neighborhood’s children suffered from asthma.<sup>93</sup> This neighborhood also borders the adjacent jurisdiction of Vernon, which is a predominantly industrial area that includes large and highly toxic manufacturing facilities and very few residents. Vernon’s city motto—“Exclusively Industrial”—emphasizes this reality.<sup>94</sup> Residents are often separated from industrial operations by only a chain link fence or a sheet metal divider.<sup>95</sup> According to Huntington Park sources, this area was zoned for manufacturing early in the city’s history, but the zoning ordinances did not prohibit residential development until the 1960s. The result was housing interspersed with industry.<sup>96</sup>

### **“La Montaña”**

It was not until the mid-1990s that Huntington Park residents began an organized effort to address environmental justice concerns. The impetus for this organization began in 1993, when a company was granted a Conditional Use Permit by the Huntington Park City Council to operate a heavy processing recycling facility for concrete and asphalt materials in an industrially zoned area adjacent to residences.<sup>97</sup> The conditions of the permit included “processing of

## **PLANNING, ZONING, AND GOVERNANCE IN CALIFORNIA**

### **California Planning Laws**

Responsibility for land use planning and control rests primarily with the cities and counties in California.<sup>112</sup>

#### State Plan and/or Policy

While the state's Office of Planning and Research is responsible for "developing state land use policies, coordinating planning of all state agencies, and assisting and monitoring local and regional planning,"<sup>113</sup> the Office is not vested with "any direct operating or regulatory powers over land use, public works, or other state, regional or local projects or programs."<sup>114</sup>

#### Local Planning Requirements

For each city and county in California, the planning agency is required to prepare, and its legislative body is required to adopt, a comprehensive, long-term general plan for the physical development of the city or county and for any land outside its boundaries that bears relation to its planning.<sup>115</sup> Huntington Park's last general plan was prepared in 1991.<sup>116</sup>

The general plan may be adopted in a variety of formats (i.e., a single document or as a group of documents), but it must address the following elements, to the extent that the subject of the element exists in the planning area:<sup>117</sup> land use; circulation (the general location and extent of existing and proposed major thoroughfares, etc.); housing; conservation; development and utilization of natural resources; open-space; noise; and safety.<sup>118</sup> In addition to the above seven required elements, cities and counties may include any other elements and address any other subjects that relate to the physical development of the municipality.<sup>119</sup>

#### Approval of Local Comprehensive Plans and Zoning Ordinances

While the development and adoption of local comprehensive (general) plans is purely local in California, the planning agency is directed, but not required, to refer the proposed plan to all abutting cities and counties in the area covered by the proposed plan, any special district that may be significantly affected by the adoption of the proposed plan, all school districts within the area covered by the plan, the local agency formation commission, any area wide planning agency that may be significantly affected by the plan, federal agencies who have operations or lands within the jurisdiction covered by the plan, public water districts, and any local air quality management district.<sup>120</sup> These entities have 45 days within which to comment.<sup>121</sup>

#### Consistency Requirements

Zoning ordinances must be consistent with the adopted general plan.<sup>122</sup> In addition, no local public works project may be approved, and no tentative map or parcel may be approved, if they are not consistent with the plan.<sup>123</sup> Local governments in California may adopt "specific plans or

other plans” in addition to the general plan, but these other plans must be consistent with the general plan.<sup>124</sup> Furthermore, although regional plans may be developed and adopted by the regional planning districts, such plans are “advisory only and shall not have any binding effect on the counties and cities located within the boundaries of the regional planning district for which the regional plan is adopted.”<sup>125</sup>

In an effort to facilitate “effective and harmonious” planning, all city, county, and other local planning agencies are required to submit their general plans and/or master plans, zoning ordinances, and subdivision regulations to the regional planning board; a similar filing requirement, for informational purposes, exists for the state agencies with respect to the regional planning boards.<sup>126</sup> Cities and counties may submit local planning and zoning proposals to the regional planning board for advice; and such advice “shall consist of a report as to the conformance of such proposals to the regional plan, the possible effect of such proposals on other portions of the region, and any other matters which in the judgment of the board may be of assistance to the body requesting such advice.”<sup>127</sup>

### Public Participation Requirements for Localities

The California Assembly has specifically recognized the importance of public participation in land use planning, declaring state policy to be that “each state, regional and local agency concerned in the planning process involve the public through public hearings, informative meetings, publicity and other means available to them, and that at such hearings and other forums, the public be afforded the opportunity to respond to clearly defined alternative objectives, policies and actions.”<sup>128</sup> Specifically in the area of local plan development, the enabling statute requires that that the planning agency provide opportunities for the involvement of citizens; public agencies; public utility companies; and civic, education, and other community groups.<sup>129</sup>

### Reporting Requirements for Localities

City and county planning agencies are required to report annually to the City Council, the state’s Office of Planning and Research, and the state’s Department of Housing and Community Development.<sup>130</sup> The regional planning board is also required to report annually to the legislative bodies and to the planning agencies of all of the counties, cities, and other governmental agencies within the region for the purpose of reporting on the status of the regional plan, notifying recipients of amendments and revisions within the past year, and providing a report of other major activities.<sup>131</sup>

### Updates of Plans

Local planning agencies are required to “periodically review, and revise, as necessary” local general plans.<sup>132</sup> There is no specified statutory timeframe for such periodic review, although the Office of Planning and Research is required to notify cities and counties that their plans have not been revised within eight years, and the Attorney General is to be notified when plans are not revised within 10 years.<sup>133</sup> The only other timeframe for plan revisions relates only to the housing element, and requires updates to that element at least every five years.<sup>134</sup>

## Coordination with Environmental Justice

The Office of Planning and Research is California's state agency responsible for coordinating environmental justice programs.<sup>135</sup> No later than July 1, 2003, the Office is required to incorporate environmental justice guidelines into the next edition of the general plan guidelines for cities and counties.<sup>136</sup> See Appendix E for the general plan guidelines. The guidelines recommend that general plans include methods for:

- Planning for the equitable distribution of new public facilities and services that increase and enhance community quality of life throughout the community, given the fiscal and legal constraints that restrict the siting of these facilities;
- Locating industrial facilities and uses (if any) containing or producing materials that pose a significant hazard to human health and safety (even with the best available technology) because of their quantities, concentrations, or physical or chemical characteristics in a manner that seeks to avoid over-concentrating these uses in proximity to schools or residential dwellings;
- Locating new schools and residential dwellings in a manner that seeks to avoid locating their proximity to industrial facilities and uses that containing or producing material that poses a significant hazard to human health and safety because of their quantities, concentrations, or physical or chemical characteristics; and
- Promoting more livable communities by expanding opportunities for transit-oriented development so that residents minimize traffic and pollution impacts from traveling for purposes of work, shopping, schools, and recreation.<sup>137</sup>

See Appendix F for more details on California State planning requirements.

## **Local Governance, Planning, and Zoning in Huntington Park**

### Governance

Huntington Park, like most California cities, is a general law city. It is incorporated and functions under the general laws of the state, most of which are found in California's Government Code.<sup>138</sup> The city has a five-member City Council comprised of a Mayor, Vice Mayor, and three council members who are elected at large by registered voters of the city. Each council member serves a four-year term and the terms are staggered.<sup>139</sup> In the 2003 General Municipal Election, voters limited council members to three consecutive terms, with a proviso that a member could hold office again after being out of office for at least one general municipal election.<sup>140</sup> The city currently has only 12,000 registered voters.<sup>141</sup>

The city manager is appointed by the City Council to carry out their policies and is responsible for the overall city administration of the city.<sup>142</sup>

## Planning and Zoning

The Huntington Park planning division is responsible for implementing the city's goals and objectives, as outlined in the general plan, including reviewing development requests and their impacts on the environment and compatibility with neighboring uses.<sup>143</sup> The division provides information and support to the Planning Commission and the City Council.<sup>144</sup> Elements of the Huntington Park general plan include land use, housing, circulation, open space, conservation, safety, noise, public facilities, and urban design.<sup>145</sup> The Planning Commission is made up of five members from the community, who are appointed by the City Council.<sup>146</sup> The city currently has three planners and a manager for its planning and development activities, which are a high priority for the City Council.<sup>147</sup>

Huntington Park's zoning codes were updated in October 2001.<sup>148</sup> The new code, which revised a code from the 1980s, includes specific changes designed to address the concerns that have led to the city's environmental justice problems. The new code now includes language in the section on commercial/office/mixed use zones to enhance the city's ability to condition permits based on a facility's proximity to residential areas and the level of adverse impacts.<sup>149</sup> The city has also adopted a limited idling ordinance for diesel vehicles, and is currently studying its primary manufacturing zone to determine what will be the best use for this area, given the city's desire for more commercial development.<sup>150</sup>

When combined with the city's existing authority under the California Environmental Quality Act (CEQA) to consider environmental impacts, the city believes it has effective tools within its current authorities to address environmental justice concerns.<sup>151</sup> State and local agencies have, in fact, been required to utilize CEQA since its enactment in 1970. The law was designed to improve and maintain the quality of the environment by instituting a system of "checks and balances for land use development and management decisions in California."<sup>152</sup> It requires agencies to:

- Identify the significant environmental effects of their actions;
- Avoid those significant environmental effects where feasible; or
- Mitigate those significant environmental effects, where feasible.<sup>153</sup>

If an action will have significant impacts, the state or local agency with the lead must revise the project to mitigate those impacts. While there is no precise definition of "significance," general guidelines are provided to assist agencies in making determinations.<sup>154</sup>

In the past, Huntington Park officials would have more automatically approved a manufacturing function for a manufacturing zone, without regard for what the local impacts might be. Now they evaluate projects more closely for site-specific impacts, like diesel emissions from truck traffic, before making a determination on a siting proposal.<sup>155</sup> Also, South Coast AQMD permit approval does not automatically mean approval for siting. The city may grant approval with conditions for mitigation of impacts.<sup>156</sup> The community activism around the cement recycling

facility and the 1999 results of the MATES II study educated local government officials to the need to address more localized impacts.

Where formal means and authorities do not exist, the city has attempted to use informal avenues for resolving environmental justice problems. A case in point concerns a neighboring jurisdiction where there are plans to build a gas-fired electric power plant. The City Council authorized the planning division to recommend mitigation measures for the plant because the city is not in attainment for particulate matter, and the plant would produce particulates equivalent to 15-20 idling trucks.<sup>157</sup> The City Council further authorized a letter to the California Energy Commission requesting: 1) that there be a net overall reduction in pollution if the facility is built; 2) that the reduction be made in the local impact area; and 3) that there be no deferred acquisition of credits, although otherwise permitted by California's Regional Clean Air Incentives Market (RECLAIM) program for emissions trading.<sup>158</sup>

City officials think the project will probably be approved because South Coast AQMD found the project had met all regulatory concerns, and there is no requirement for reductions in the local impact area. Huntington Park officials have informally appealed to officials in the adjacent city who have committed to trying to reduce local impacts. A city official offered this as an example of the need for regional approaches. This example also illustrates that existing rules and programs often do not take localized impacts into consideration.<sup>159</sup>

Huntington Park has not instituted any formal changes in its relationship with South Coast AQMD. The city's continuing understanding of the problems created by air pollution and their concern about improving the health of their community's air has lead them to seek the District's technical assistance more than they had in the past. According to a city official, the District has, in turn, been very responsive to city concerns.<sup>160</sup>

## **ENVIRONMENTAL PERMITTING**

### **California's Requirements for Environmental Justice**

Between 1999 and 2001, the California Legislature passed six bills dealing with environmental justice, creating the foundation for state agency responsibility for the issue. These bills:

- Defined the term "environmental justice;"
- Authorized the state Office of Planning and Research, located in the governor's office, to coordinate environmental justice initiatives;
- Required the California EPA to consider environmental justice issues when designing and operating its own programs and those of its boards, departments, and offices;
- Required California EPA to convene an interagency working group and advisory council on environmental justice to provide information and recommendations to the working group;

- Required the South Coast AQMD, based on the results of the MATES II study, to spend not less than 50 percent of the funding appropriated through the year 2007 for three diesel mitigation programs “in a manner that directly reduces air contaminants or the public health risk associated with air contaminants, in communities with the most significant exposure to air contaminants or localized air contaminants, in communities with the most significant exposure to air contaminants or localized contaminants...including communities of minority populations or low-income populations or both;” and
- Required the Office of Planning and Research to include guidelines for addressing environmental justice matters in city and county general plans in its next edition, no later than July 1, 2003.<sup>161</sup>

### **South Coast Air Quality Management District**

South Coast AQMD has responsibility for environmental permitting within its boundaries, which include Huntington Park. The District adopted environmental justice principles in 1997, two years before the legislative mandate, and adopted a set of ten initiatives to ensure environmental equity.<sup>162</sup> They also developed a series of action items, the first set of which were accomplished. Progress on these items is routinely reported to the District’s governing board and made available to the public through their website.<sup>163</sup>

The District provides critical technical resources for local governments because of its overall commitment to environmental justice, its concrete actions to develop and refine rules to further risk reduction, its development of tools for District staff and local officials, and its efforts to improve communication with the public. Progress on the District’s environmental justice efforts is reported in three categories: further reduced health risks; greater community access and involvement; and economic incentives for accelerated mitigation.

Figure 5-4 contains excerpts from the April 2003 update on the District’s progress and illustrates the level of thoroughness with which the agency has pursued its environmental justice mandate. The District’s performance-based approach has made it an important asset for Huntington Park and other cities in the area.

### **Public Participation**

Huntington Park officials have made some efforts to improve public participation, like working with South Coast AQMD on their town hall meetings with the community; but they acknowledge that more could be done.<sup>164</sup> One community resident suggested that one way to improve outreach would be to conduct door-to-door distribution of information.<sup>165</sup> The city is working to develop neighborhood commissions as part of an ongoing neighborhood improvement program. The neighborhood commissions could help to engage more residents in civic issues by providing organized vehicles for them to work with the City Council. These commissions could also serve as another mechanism for raising environmental justice issues.<sup>166</sup>

**South Coast AQMD  
Progress Update on Environmental Justice—2003 (excerpts)**

**Further Reduced Health Risks**

- Concluded an MOU with a refinery to enhance its existing safety systems and reduce volatility and aerosol formation of hydrogen fluoride
- Continued developing an enhanced model air quality element for use by local governments in their general plans.
- Continued working on a “subregional analyses” model to address and mitigate significant air quality impacts in specific areas; Alameda Corridor is identified as the next project.
- Refined a proposal for localized significance thresholds for subregions; projects over the threshold would need to consider mitigation to reduce localized impacts.
- Approved allocation of 70 percent of air pollution penalty revenues in 2003 for the clean school bus program. For settlements greater than \$200,000, 70 percent of the penalty will go toward the purchase of clean school buses or retrofit control devices at a school district near or downwind of the facility paying the penalty. Ten percent of the penalty fees collected during the first six months of the fiscal year will go to establish the Asthma and Outdoor Air Quality Consortium and another 10 percent will go to the Brain Cancer and Air Pollution Foundation
- Reviewed low-cost, small devices for outdoor residential monitoring of air contaminants; developed recommendations to purchase commercially available monitors to pursue further research.

**Greater Community Access and Involvement**

- Continued evaluating a feasible least-toxic alternative for all rules that require California Environmental Quality Act alternatives.
- Continued to train staff on risk communication.
- Trained executives and managers on environmental justice and had them take a community toxics tour.
- Improved AQMD’s data regarding risk assessments for “hot spots” by providing information on power plants, refineries, metal finishers, aerospace/electronic, and chemical plants to the California Air Resources Board for inclusion in the Community Health Air Pollution Information System. The data includes facility name, address, Standard Industrial Code, and the results of the approved Health Risk Assessment, such as cancer risk values.
- Launched an Internet-based system, which allows the public to find out whether specific facilities have received air pollution violation notices; the database includes a description of the violation.
- Conducted a survey of the website information needs of community-based organizations and other stakeholders for future enhancements to the website.
- Established community “clean air data depositories” (to be updated monthly) at eight locations accessible to community stakeholders, school organizations, and librarians; assessing potential for on-site computer access.
- Identified low- or no-cost media outlets to expand notice of community meetings and permitting actions, including notices of air pollution permits.
- Prepared outline for user-friendly public guidance handbook on air quality.
- Prepared summary of environmental justice accomplishments for an annual summary.
- Initiated plans to provide on-site school outreach to teachers, PTA, and students on various air issues.
- Partnered with community groups to provide air quality information.
- Routinely advised the AQMD Board of CEQA projects with possible environmental justice concerns.
- Initiated a pilot process for a “Neighborhood Environmental Justice Council” to harness the power of neighborhood cooperation.
- Translated relevant documents into Korean and Spanish.

**Economic Incentives for Accelerated Mitigation**

- Began developing a low-emission and clean-equipment control measure for off-road intermodal equipment.
- Established a working group to expedite CEQA analysis of any major project implementing “Super Mitigation” actions.

Source: South Coast Air Quality Management District



## ANALYSIS AND RECOMMENDATIONS

### Leadership and Accountability

Community organizations, city officials, and the South Coast AQMD officials have all demonstrated leadership to address environmental justice problems in Huntington Park.

Leadership began with community groups, whose persistent efforts to educate local government officials about the implications of siting decisions prompted local government to respond to some immediate concerns. The community group's actions also led government officials to understand the importance of paying attention to possible local impacts that could exacerbate the health of a community already subject to poor air quality. Concerned citizens of Huntington Park continue to work on both local and regional issues, in conjunction with Communities for a Better Environment, who provided them with initial technical support.

The Huntington Park City Council also demonstrated leadership when they received the results of the MATES II study of the potential health impacts of pollution on their community. The Council formed a Clean Air Task Force that included representatives from the community; a regional environmental organization; the district air quality organization; business, health and science, and transportation organizations; and city government, including the Mayor and City Council representatives. The Council adopted all of the task force's more than 40 recommendations affecting all responsible levels of government: federal, state, and local. These recommendations included:

- Placing greater emphasis on regional coordination for problem-solving, e.g., targeting efforts and resources of all responsible organizations to reduce toxic air emissions in SELA;
- Establishing priorities based on inventorying all toxic air emitting sources in SELA;
- Implementing stricter standards where needed;
- Increasing efforts to reduce diesel emissions;
- Improving monitoring; and
- Improving communication with the public and local government.

The city also revised its policies and processes to address environmental justice concerns by:

- Changing the zoning ordinance to enhance authority for considering environmental impacts on adjacent land, based on proximity to residential neighborhoods and level of adverse impact;
- Conditioning permits approved by South Coast AQMD with further environmental mitigation measures based on additional local emissions impacts;

- Instituting an ordinance limited diesel vehicle idling;
- Improving the city’s relationship with South Coast AQMD, especially by utilizing the technical services they provide more effectively; and
- Working informally with adjacent jurisdictions to reduce emission impacts from sources outside city boundaries.

Additionally, the City Council has attempted to influence decisions by adjacent jurisdictions to prevent further local impacts. The result is an informal agreement to develop trading credits locally so they can reduce impacts on Huntington Park.

South Coast AQMD officials have demonstrated leadership by adopting a policy and implementing an agenda for environmental justice. The District’s agenda includes three major categories of effort:

- Risk reduction;
- Greater community access and involvement; and
- Economic incentives for accelerated mitigation.

Moreover, the District has made itself accountable by:

- Developing quantifiable measures for progress;
- Reporting progress routinely to its governing board;
- Making information on its activities available to the public through its website and “clean air data depositories” located at eight community sites in the district; and
- Using a stakeholder advisory group and otherwise engaging the community and other stakeholders in critical projects, such as a current project on assessment of cumulative risks.

South Coast AQMD has also been a willing, effective partner for Huntington Park and has provided it with technical support. The city and the District have also conducted joint town hall meetings.

### **Permitting and Planning and Zoning Authorities**

Nothing has changed about the permitting process as administered by South Coast AQMD. The District has, however, enhanced other activities that support this process by:

- Enhancing monitoring, including purchasing new equipment and exploring technical innovations that show promise for future application in monitoring local impacts;

- Initiating guidance for local governments on air quality to assist them in making better local decisions;
- Beginning to conduct an evaluation of a feasible least-toxic alternative for all rules that require California Environmental Quality Act (CEQA) alternatives;
- Conducting environmental justice training for staff;
- Improving the availability of data to the public on “hot spot” risk assessments, Notices to Comply, and Notices of Violation;
- Enhancing public notification procedures;
- Surveying stakeholders to identify their website information needs; and
- Improving outreach techniques, including developing new partnerships with community organizations and translating information into other languages.

Huntington Park officials have also made several notable changes in how the city approaches permitting. A South Coast AQMD approved permit is no longer automatically a “green light” that allows permit holders to locate in an appropriately zoned area. Using its authority under CEQA and its revised zoning code, the city now considers localized impacts, particularly from diesel emissions, and may require mitigation measures before it approves a permit.

### **Setting Priorities and Reducing Risk**

Huntington Park officials now recognize the air quality risks affecting city residents and are committed to reducing these hazards with local initiatives such as:

- Revising zoning ordinances to address localized impacts;
- Instituting an ordinance limiting idling by diesel vehicles;
- Requiring mitigation measures, particularly for diesel emissions, because they represent the greatest health risk for the region; and
- Reviewing permits approved by South Coast AQMD for local impacts, and requiring mitigation before issuing final siting permits.

The city has also issued a set of recommendations to other local, regional, and federal agencies to coordinate solving air quality problems on a regional basis, so that no one jurisdiction will appear more stringent than the other and each jurisdiction will make maximum efforts to reduce risk. South Coast AQMD is now working to address the city’s recommendations.

## **Public Participation**

Public participation in Huntington Park has been critical for educating city officials about their responsibility for addressing localized impacts of polluting activities.

City officials acknowledge they need to continue improving how the city engages the public on environmental justice and other issues. While the city has participated with South Coast AQMD in town hall meetings, the city hopes to set up neighborhood commissions that will enhance opportunities for citizens to participate in local decisions.

The South Coast AQMD continues to improve its ability to engage and inform the public by conducting better community outreach, building partnerships, enhancing its website, and making information available at local information depositories.

## **Integration and Coordination**

The Huntington Park case study highlights the importance of coordination to address localized impacts. Acting alone, the city cannot fully address the air quality issues that are the major environmental justice concern for both the city and the region. The South Coast AQMD, which develops local regulations and enforces federal requirements for the region, cannot resolve air quality problems affecting environmental justice communities without the help of local jurisdictions, because they make the siting decisions.

Thus, South Coast AQMD has begun to develop air quality guidance that will help local jurisdictions make more informed air quality decisions in their general plans. Huntington Park has begun coordinating its efforts with the South Coast AQMD more effectively. Solving the air quality problems in the region will require the coordinated efforts of other localities, state agencies, and federal authorities.

## **RECOMMENDATIONS**

- The Huntington Park city government should continue to improve public participation and share information on environmental and health impacts. Local officials have recognized the need for additional work in this arena, and their efforts to date with the South Coast AQMD and their plans to establish neighborhood commissions could serve as a good foundation for further progress.
- South Coast AQMD should consider how the policies, implementation strategies, accountability measures, and tools the District has developed could be shared more widely with other state air planning and local government agencies. Practical tools, such as the air quality land use planning guidance that is being developed and the District's work in response to the MATES II study, could be used as models for other state, county, and local organizations to address local sources of air pollution in people-of-color or low-income neighborhoods.

## ENDNOTES

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- <sup>1</sup> Shipra Bansal and Sam Davis, *Holding Our Breath: Environmental Injustice Exposed in Southeast Los Angeles*, 17 (Communities for a Better Environment, July 1998).
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## CHAPTER SIX

### AUSTIN, TEXAS

#### FINDINGS

**Finding 1.** Mandated racial segregation, historic zoning patterns, and changing economies have created many of the environmental justice problems that East Austin faces today. In the past, segregation required non-whites to live in East Austin; and cumulative industrial zoning focused economic growth in East Austin, allowing homes to be built next to factories so that workers could walk to work. Strong community pressure in the early 1990s, spearheaded by People Organized in Defense of Earth and her Resources, motivated the city to address environmental justice.

**Finding 2.** Using its planning and zoning responsibilities, the city of Austin responded to environmental justice concerns of its citizenry by rezoning incompatible uses in East Austin, adopting a neighborhood approach to planning, enacting overlay ordinances, expanding public participation, and addressing environmental and public health risks at city-owned properties.

**Finding 3.** The Texas Commission on Environmental Quality (TCEQ) has responsibility for environmental permits for all facilities located in Austin. TCEQ does not believe it has authority to consider environmental justice concerns in the permitting process. Additionally, TCEQ and the city of Austin do not communicate regarding their separate duties (siting and pollution permitting) where they overlap, namely with regard to protection of public health and welfare.

**Finding 4.** Solving the problems of declining air quality as well as possible future water scarcity in Austin and the central region of Texas will require cross-jurisdictional coordination among municipalities, counties, and the state.

**Finding 5.** Organized and dedicated community activism, coupled with a local government that is willing to be responsive, can bring about mutually beneficial change and progress.

*reserved for map*

## INTRODUCTION

In this case study of Austin, Texas, persistent pressure by community groups—specifically People Organized in Defense of Earth and her Resources (PODER)—brought environmental justice concerns, such as proximity to hazardous land uses, unequal exposure to environmental pollution, and lack of community consultation and advice, to the attention of the local government. Faced with these concerns, the city of Austin, in time, choose action over indifference. The collaborative effort that resulted is somewhat unique, and has been beneficial to both the city and the citizenry.

Working with a local government that is willing to be responsive allows community groups to direct their energies towards creating beneficial change, rather than having that same energy used less purposefully and/or drained through constant conflicts. The collaborative relationship between citizens and Austin officials has created opportunities to mitigate or remove some locally unwanted land uses, for local community groups to be further involved in the decisions of local government, and for on-going high levels of citizen participation and local officials' awareness of environmental justice concerns.

In 1995, a committee of 22 citizens chosen by the Austin City Council presented the Council with its *Citizens Planning Committee Report*.<sup>1</sup> The report detailed 12 recommendations, followed by several actions for implementation that "...represent the most useful set of actions that need to be undertaken at this time in order to begin to improve the livability of [Austin]." The Committee believed Austin was on the "wrong road," and that their recommendations were crucial for Austin to "follow another way" towards growth and prosperity.<sup>2</sup>

In the context of this Academy study, two of the Committee's recommendations are especially relevant. The Committee's seventh recommendation was that "reinvestment, redevelopment, and remediation in East Austin must be encouraged and facilitated by the city's planning and development process. Austin cannot sustain growth and will become less attractive unless the total conditions are corrected and the quality of life for East Austin communities is improved."<sup>3</sup>

The eighth recommendation read: "consideration needs to be given to the disproportionate impact of negative environmental facilities on low-income neighborhoods and communities of color."<sup>4</sup> The Committee then outlined four actions that Austin should take to achieve this recommendation:

- Municipal governments, in conjunction with neighborhood residents, need to conduct land use compatibility assessments, with rollback zoning as an option to address land use incompatibility.
- Cumulative impacts of emissions from pollution sources/facilities need to be considered in the siting, location, and permitting of facilities.



- The city should inventory all city-owned land, check for potential environmental pollutants, and remediate—with priority given to areas with the greatest potential for harm.
- Potentially hazardous or nuisance-generating development initiatives need to include environmental and public health provisions, such as environmental impact statements and site demographic statements, to provide the community and governmental decision-makers with a factual basis to consider the human impacts of a proposed development.<sup>5</sup>

The *Citizens' Planning Committee Report* proposed both the vision and action necessary to guide Austin to a strong and vibrant future. The report firmly tied the resolution of environmental justice issues to forward-looking city planning, directly linking planning and zoning with the achievement of environmental equity.

This chapter analyzes how Austin is moving toward this vision, as well as where it has failed, and vividly illustrates how addressing environmental justice is neither simple, nor insurmountable. This analysis also shows how history lives as changes in planning concepts, race relations, and economies, among other influences, continue to mold the growth or decay of modern cities in this country.

## **BACKGROUND**

### **About Austin**

Austin, the capital of Texas, lies just southeast of the center of the state in Travis and Williamson Counties. Austin occupies 272 square miles, but the city has extraterritorial jurisdiction for planning and zoning in unincorporated areas up to five miles outside the city borders, so the city's entire jurisdictional area covers 355 square miles.<sup>6</sup>

In the 1970s and 1980s, urban core population declined, but the 1990s saw that trend reversed—with growth in almost every part of the city. The U.S. Census for 2000 measured the population at 656,562. Over half are renters,<sup>7</sup> due to the fact that Austin is home to the University of Texas and its many students.<sup>8</sup>

The U.S. Census for 2000 also reports that Austin's major industries are: education, health and social services (17.6 percent); professional, scientific, management, administrative, and waste management services (13.8 percent); manufacturing (12.6 percent); retail trade (10.9 percent); and all other categories at less than ten percent each.<sup>9</sup> The top five employers are the city of Austin, the state of Texas, the University of Texas at Austin, Motorola, and Dell.<sup>10</sup> High-technology industries are increasingly drawn to Travis County to tap into its young (average age is 30),<sup>11</sup> highly educated, non-unionized workforce.<sup>12</sup> Austin is very automobile-dependent; only seven percent of all workers take public transportation or walk to work regularly.<sup>13</sup>

The city operates several revenue-generating facilities, including water and electric utilities, a hospital, an airport, and waste hauling operations. These revenues expand the city's general fund, enhancing the city's ability to provide a high level of services through its 12,000 city employees.<sup>14</sup>

Austin is a multi-racial city. As shown in Figure 6-1, whites comprise 65 percent of the population; Hispanics (any race) 30 percent, African-Americans 10 percent, and 16 percent identify themselves as "some other race."<sup>15</sup> One-third of Austin's residents speak a language other than English.<sup>16</sup> Educational attainment is generally high: 40 percent of residents have earned a bachelor's degree, while 83.4 percent of the population has earned high a school diploma or higher.<sup>17</sup> The median household income is \$42,689 per year, but pockets of poverty coexist alongside relative affluence, with approximately 20 percent of households making less than \$25,000 per year.<sup>18</sup> Roughly 14 percent of the general population (16.5 percent of children) lives below the poverty line.<sup>19</sup>



Today, Austin is still largely segregated, with the east side home predominately to Hispanics and African-Americans, and the west side home predominantly to whites. For example, while only 16 percent of Austin's population lives in East Austin, 46 percent of the total African-American population and 29 percent of the total Hispanic population reside there.<sup>20</sup> East Austin also has a 30 percent poverty rate, more than double the city's overall rate.<sup>21</sup>

## **Economic History**

Texas was annexed by the United States in 1845. In 1871, the railroad linked Austin to Houston and the Gulf of Mexico, bringing the industrial boom to Austin, and in 1872, Austin was permanently designated the capital of Texas. For many years, Austin's economy relied heavily on government, agriculture, the University of Texas (founded in 1881), and music, which made it possible for Austin "...to ride out the inconsistent economic activities, and avoid the inhuman living conditions, that the Industrial Era brought with it."<sup>22</sup> In fact, the railroad actually brought culture and an increase in the standard living in Austin, culminating in "massive economic growth" and an "unprecedented governmental and private sector building boom" starting in the 1880s.<sup>23</sup>

Austin's ability to attract industry was hampered by limited supplies of electricity. Although, the Colorado River was dammed in 1893 to produce electricity and industrial opportunities, the dam

was swiftly destroyed by flood in 1900. Between the dam's construction and destruction, steel and iron companies opened and operated successfully. After the flood and loss of electricity, the industries left; and Austin fell back upon its strong government and education economies.<sup>24</sup>

The 1920s were marked by national highway construction and an oil discovery at the University of Texas, which briefly delayed the economic impact of the Great Depression. Although delayed, the Depression did arrive in Austin. After struggling economically, not unlike most of the country, Austin's economy gained jobs and vitality with President Roosevelt's New Deal. Specifically, the New Deal and many programs such as the Public Works Administration brought funds to the University and state government.<sup>25</sup>

## **Environmental Setting**

Austin lies amidst a network of canyons that have the potential to cause localized flash floods and erosion damage even during small, two-year storms.<sup>26</sup> Whereas East Austin has many small watersheds, West Austin has few watersheds and becomes very flat and level, exacerbating runoff and its environmental impacts. West Austin is also the location of the Edwards Aquifer—a water supply source—in addition to several vulnerable species of amphibians and birds. In recent years, to protect the water supply and vulnerable species, Austin has strictly limited, through conservation plans and their supporting ordinances, commercial and industrial development in West Austin.<sup>27</sup>

### Air Quality

The air quality in central Texas has been declining due to the growing number of polluting activities in the area.<sup>28</sup> Higher ozone levels are driven by increases in vehicle traffic and an expanding regional population.<sup>29</sup> In 1999, the Central Texas Air Quality Region exceeded the eight-hour ozone standard for ground-level ozone. For this violation, the region was designated as a nonattainment area by the EPA.<sup>30</sup>

## **ENVIRONMENTAL JUSTICE CONCERNS**

### **Environmental Justice Organizations**

Austin has a politically active citizenry, with many community groups and neighborhood associations. The pre-eminent citizens' group is People Organized in Defense of Earth and her Resources (PODER).<sup>31</sup> The organization's mission is to "redefine environmental issues as social and economic justice issues, and collectively set their own agenda to address these concerns as basic human rights. They seek to empower their communities through education, advocacy and action."<sup>32</sup> PODER and other community groups have forced the city to address environmental justice issues in East Austin neighborhoods. The efforts of PODER and other groups helped move the city of Austin and Travis County to address a series of environmental justice problems.

## Health Concerns

Two investigations regarding the possible exposure of Austin residents to toxics have been conducted over the last several years. In 1993, the county probed contamination from the local tank farm; and in 1999, Austin's Health and Human Services Department (HHS) worked with the Texas Department of Health (TDH) to study impacts of the Holly Street Power Plant. Tests at the tank farm found evidence of contamination, while no urgent hazards at the power plant were found.<sup>33</sup>

The state health department has also collaborated with the Community Action Network (CAN)<sup>34</sup> on a recent health assessment looking at gaps in services and the present state of health in Travis County and Austin.<sup>35</sup> In April 2001, CAN released *Prescription for Wellness: Physical, Mental Health, and Substance Abuse* to provide "credible data on the community's physical health, mental health, and substance abuse status for the purpose of future planning, policy recommendations, issue solutions, and resource allocations."<sup>36</sup> That study found:

The health of most Austin and Travis County residents is good; however this good health is not shared equally by all citizens...the leading causes of death vary among age groups and by race/ethnicity. In fact, significant disparities exist between racial/ethnic populations, with minorities having higher rates of disease incidence for many physical health problems in comparison to whites. For example, the Travis County ten-year average (1989-1998) age-adjusted mortality rates for stroke in Blacks is 65.3 percent higher than that of white non-Hispanic and that of Hispanics is 19.4 percent higher than that of whites.<sup>37</sup>

The report also considered health effects related to water quality, solid waste, sewage/wastewater disposal, and air quality. The report did not find significant problems with regard to water quality, solid waste, or sewage/wastewater disposal; but the report did raise several questions about air quality.<sup>38</sup>

The Austin/Travis County Health Department<sup>39</sup> operates health clinics throughout low-income and minority neighborhoods. Austin and Travis County fund medical assistance programs to give underserved populations access to regular, preventative, and urgent health care services. The health department is also working with the Community Action Network to address gaps in services for different communities.

The Health Department is further collaborating with the Centers for Disease Control and Prevention (CDC) on a local version of CDC's program, Healthy People 2010.<sup>40</sup> The Department is working with the private sector, planners, and hospital administrators to promote the program. All concerns and complaints about industrial issues are funneled through the Health Department, which determines the most appropriate follow-up measures, including contacting appropriate state authorities. As part of this project, the Department is also undertaking a health study on the impacts of various industrial exposures.<sup>41</sup>



## Impacts of Zoning

### Segregation Through Zoning Laws

When the city's first comprehensive plan and zoning laws were passed in 1928 and 1931, respectively, segregation in Austin was mandatory.<sup>42</sup> Public services were set up for non-white residents in East Austin, thus reducing the need to duplicate structures and services—one for whites and one for non-whites—such as schools, libraries, and parks.<sup>43</sup> The public housing authority segregated Anglos, African-Americans, and Mexican-Americans into different housing projects.<sup>44</sup> Additionally, restrictive covenants were placed on the deeds for many parcels of land in the white areas, prohibiting people-of-color (predominantly African-Americans and Mexican-Americans) from buying there.<sup>45</sup> These actions directed African-Americans and Mexican-Americans to settle in East Austin.

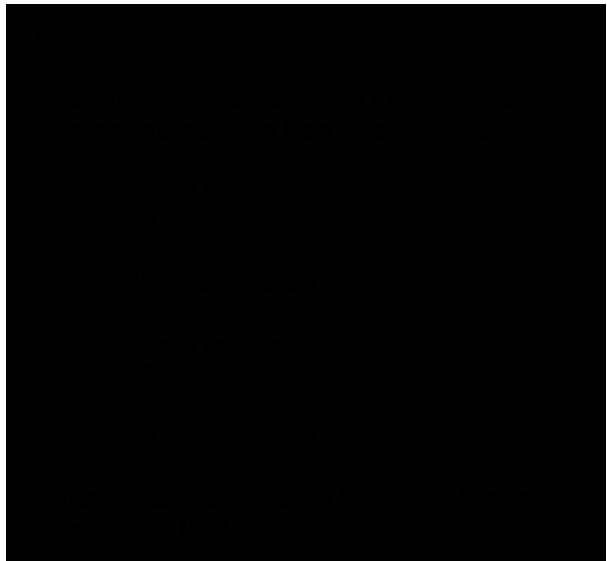
In 1931, the zoning regulations required industrial uses to be placed in East Austin, where the workers lived. Placing residents near employment was a common planning principle of the time. Residents in these non-white communities could either walk to their industrial jobs, or take a bus to domestic jobs in West Austin.<sup>46</sup> This racial, ethnic, and industrial segregation was physically reinforced when Austin was bisected by the construction of Interstate 35 in the 1950s, creating both a physical and visual barrier between East and West Austin.

The Civil Rights Act of 1964 made such zoning and segregationist policies unenforceable. Nevertheless, many of the same racial patterns that existed prior to 1964 remain in Austin today.<sup>47</sup> It is this history of racial segregation and past planning techniques that gave rise to today's environmental justice issues in Austin. People-of-color neighborhoods continue to host contaminated sites and sources of industrial pollution, just as they did prior to 1964.

### Cumulative Zoning

While historic zoning practices created the base for many other environmental justice problems, such as unwanted land uses and disproportionate pollution, Austin's move from cumulative zoning to restrictive zoning was problematic.

Prior to 1986, the Austin planning ordinance called for cumulative zoning. Cumulative zoning allows any use "lower" than that defined in the category to be built; the basic zoning categories, ranked from highest to lowest use, are industrial, commercial, and residential. Under cumulative zoning, residential homes could be built on land zoned industrial, but an industrial facility could not be built on land zoned residential.



In 1997, the *East Austin Land Use/Zoning Report* found:

The cumulative nature of the old zoning ordinance allowed residential development in areas zoned for commercial and industrial uses. In some cases street layout and orientation of lots also encouraged the confusion between residential and non-residential uses. These and other factors led to a deterioration of neighborhoods, which abutted the commercial and industrial districts. Residential areas in the eastern portion [of East Austin] of the study are freely mixed with large scale and industrial uses.<sup>48</sup>

Over the years, many homes were built in East Austin on property zoned commercial or industrial (see Figure 6-2). After 1986, the city abandoned the cumulative zoning ordinance for a restrictive zoning ordinance. Restrictive zoning allows for only the use as defined (*i.e.*, only industrial uses can be built on property zoned industrial, only commercial uses can be built on property zoned commercial, etc.). When the zoning ordinance was changed, the cumulative designations became restrictive designations, resulting in many properties where the current use and the zoning designation were no longer compatible.

Changing the zoning ordinance from cumulative to restrictive negatively impacted some residents of East Austin by restricting their access to home improvement equity loans. Some homeowners in East Austin were unable to obtain these loans because their current, existing use of the property (residential) was not consistent with the new local zoning ordinance (restrictive industrial). Likewise, homeowners whose houses burned down could not rebuild because their properties were now excluded from residential use. To resolve these problems, two local community groups, PODER<sup>49</sup> and El Pueblo,<sup>50</sup> worked together to encourage the first “Green” City Council, headed by Mayor Kirk Watson, to establish an East Austin Overlay area allowing the land to be rezoned consistent with its existing use and to minimize incompatible uses.<sup>51</sup>

The East Austin overlay ordinance, approved in July 1997, requires LI [light industrial], CS (commercial) and CS-1 (...liquor stores...) property owners to get a conditional-use permit before they can develop or redevelop any of 14 different types of uses, even though the zoning normally permits all. (A conditional-use permit is generally required to do something that is not allowed by the zoning....)<sup>52</sup>

However, some members of the East Austin community did not want to see their properties down-zoned for a lower use. The city’s legal department has received petitions from property owners and community organizations to keep the current zoning status of specific properties.<sup>53</sup> Some residents want to keep their industrial status because they may have an existing, small industrial use on the property, and others may believe that at a future date their property would be more valued if zoned as industrial. In at least one instance, PODER researched comparative values and found that, on a per square foot basis, a residential family unit was worth more than an industrial unit.<sup>54</sup> On a broader level, any new future industrial use would have to achieve specified setback limits, and achieving such limits in a pre-existing, mixed-use neighborhood would be very difficult.<sup>55</sup>

## Addressing Unwanted Land Uses

Strong community pressure and a responsive city government have worked together to address many of the existing unwanted land uses in East Austin, although some solutions have not been completely successful. Some recent examples follow.

- A fuel tank farm was closed. In 1993, community groups led by PODER and Travis County successfully closed a 52-acre fuel storage tank area that encroached on East Austin.<sup>56</sup> The farm contained large above-ground tanks used by six oil companies, with some of the pipes running under nearby houses.<sup>57</sup> Local residents believed they were experiencing chronic illnesses due to toxics being emitted from the tank farm. In 1992, the Travis Central Appraisal District reduced the value of about 600 adjacent homes by 50 percent or more, citing fears of pollution.<sup>58</sup> In 1993, environmental tests showed that the farm left contaminated groundwater on the site.<sup>59</sup> Since the tank farm closed, the property has been downzoned from light industrial to community commercial-mixed-use-conditional<sup>60</sup> while the city and residents consider future uses and zoning patterns for the property.<sup>61</sup>
- Pollution from a power plant was mitigated, and the plant is slated to close. The Holly Street Power Plant, a natural gas-fired plant built in East Austin in the 1950s, is owned and operated by the city. In 1994, the Texas Department of Health (TDH) was contacted by East Austin residents concerned about possible adverse health effects from living in close proximity to the plant.<sup>62</sup> TDH investigated the concerns and determined that there was no public health hazard; but when evidence of noise pollution, short-term sulfur dioxide exposure, and polychlorinated biphenyls was found, mitigation measures were instituted to reduce or eliminate them.<sup>63</sup> Recently, the City Council adopted an ordinance to close the Holly Street facility by 2009.<sup>64</sup>
- The municipal airport was moved, but noise still affects many residents. The Robert Mueller Municipal Airport in East Austin brought noise and pollution from cargo planes and other aircraft into East Austin. The city closed Mueller Airport and moved it to the former Bergstrom Air Force Base south of town, reopening it as the Austin-Bergstrom International Airport. This relocation has reduced the number of residents who live in the airport's noise area from over 30,000 to approximately 1,500.<sup>65</sup> However, the flight paths to the new airport are substantially similar to those for the old Mueller Airport.<sup>66</sup> Additionally, East Austin roads are being used as a cut-through for vehicular traffic, despite the city's efforts to re-route traffic for Austin-Bergstrom International Airport.<sup>67</sup>

Three years before the new airport opened for air cargo operations in 1997,<sup>68</sup> the city enacted compatibility zoning ordinances requiring that *new* noise sensitive land uses cannot be established within the airport's noise impact area.<sup>69</sup> Homeowners whose homes lie within the "noise impact area" are now considered a non-compatible use and are restricted from building new or expanding current "noise sensitive" land uses by the city's compatibility zoning ordinance.<sup>70</sup> These non-compatible land uses include residences and churches north of the east and west runways. To PODER, the relocation of the Mueller Airport did not solve the environmental justice problem: "it just moved it from a poor African-American community to a poor Hispanic community."<sup>71</sup>

- The city purchased and moved a recycling center. The city of Austin bought and moved Browning Ferris Industries' recycling center to a location close to the Austin-Bergstrom International Airport. The recycling center had been bringing extensive truck traffic, refuse, and rats into East Austin.
- The city bought a distribution center for city functions and eliminated truck traffic. Austin purchased a beer distribution center that brought heavy truck traffic into East Austin and replaced the business with city functions for which it had been leasing space elsewhere. The facility now houses a uniform shop for parks and recreation staff, storage for police evidence, maintenance and repair equipment, a utility bill drop-off center, and community meeting rooms.
- A highway will be lowered to remove a barrier between East and West Austin. Austin's transportation department is planning to drop Interstate 35 below grade over the next ten years to remove that physical barrier between East Austin and West Austin.

### **Unequal Protection of Communities**

Most of Austin's environmental protection resources have been devoted to improvements on the west side of the city, and have primarily been designed to protect the Edwards aquifer and vulnerable wildlife species in the area. Protecting the Edwards aquifer is a high priority because it is a source of drinking water for all of Austin. Thus, on the west side, the city government bought large tracts of land, put easements on deeds, and re-sold the parcels to the original owners or to land trusts in order to protect the aquifer and wildlife. Consequently, fewer funds were available to reduce the pollution affecting people in East Austin.<sup>72</sup>

#### City Intervention in Longhorn Pipeline Case

On April 22, 1998, property owners joined the Barton Springs-Edwards Aquifer Conservation District in filing suit under the National Environmental Policy Act of 1969<sup>73</sup> (NEPA), seeking injunctive relief requiring the federal government to perform a full review of the environmental consequences of the Longhorn Pipeline project.<sup>74</sup> The City of Austin and the Lower Colorado River Authority were allowed to intervene as plaintiffs.

The pipeline was constructed in 1950s, running through East and West Austin shipping crude oil until around 1995. The pipeline was purchased and extended in 1997 by a partnership of pipeline and energy companies (Longhorn Partners L.P.) to ship gasoline from Houston to El Paso. The reactivation of this pipeline was a concern for East Austin residents because proposed investments in improvements and safety measures on the pipeline to protect of water resources and vulnerable species in West Austin were not going to be mirrored with similar protections for the health and safety of residents in East Austin.<sup>75</sup>

The court found that the defendants—U.S. Department of Transportation (DOT), EPA, and U.S. Department of the Army—had not fulfilled their obligations under NEPA. On March 1, 1999, the parties entered into a stipulated settlement, in which EPA and DOT agreed to prepare an environmental assessment of the pipeline. The environmental assessment was conducted,

contested, and made final. The court then upheld the “Finding of No Significant Impact,” relying on certain mitigation measures to reduce environmental impacts. However, the portions of the pipeline in West Austin are now receiving more upgrades, replacements, and security mitigation measures than pipeline sections that run through East Austin.<sup>76</sup>

### New Pipeline Ordinance

In a broader effort to ensure public safety, on April 10, 2003, Austin’s City Council adopted an ordinance to limit new development around pipelines transporting hazardous materials, such as the Longhorn Pipeline.<sup>77</sup> Highlights of the ordinance include the following:

- A use requiring evacuation assistance [i.e. convalescent services, hospital, education facilities, etc.] is prohibited within 500 feet of a hazardous pipeline.
- No one may build new construction within 200 feet of a hazardous pipeline.
- No structure can be built and no excavation can occur within a restricted pipeline area (25 feet from a hazardous pipeline plus any area within a hazardous pipeline easement).
- Proximity to a hazardous pipeline does not cause a structure or area to be non-complying.

This city ordinance reflects a commitment to minimize future conflicts between incompatible uses while protecting citizens from possible environmental hazards.

### **Concerns About High Technology Industry**

Austin is fast becoming the second Silicon Valley, with many high technology firms firmly established in Austin.<sup>78</sup> While the city is concentrating on bringing less heavy industry into the area by recruiting high technology firms, PODER is concerned about locating them in East Austin. PODER contends that the limited number of jobs created by high technology companies predominantly utilize highly skilled and well-educated employees, and do not provide opportunities for those under-skilled East Austin residents who need employment.<sup>79</sup> Also, they argue that these industries are not really as low polluting as they claim to be, as evidenced by Toxics Release Inventory statistics.<sup>80</sup>

While there is less concern about emissions from high technology industries as compared to traditional heavy industries, there are strong concerns about high technology’s use of water resources:

By the time the high tech industry migrated to Austin.... the risks associated with contamination of groundwater were already well known. Mechanisms to mitigate this were put into place, though groundwater contamination is still occurring. The greatest form of cost externalization related to water in these newer areas are much more complex.... They come in the form of water price subsidies, water delivery

and treatment infrastructure subsidies, and restricted access to traditional and low-income water uses caused by the massive water use by this industry.<sup>81</sup>

In this case, it is clear that PODER's concerns over high technology in Austin have broad environmental justice implications that affect local employment, local toxic pollution, and local water availability.

### **Concerns About Gentrification**

Gentrification in East Austin is being fueled by rising property taxes. Property values, as well as property taxes, are being driven skyward by a very competitive housing market, limited availability of land for development, and "historic" home tax exemptions. The demand for housing continues to grow, as does the value of real estate in Austin. Smart growth planning in Austin has restricted development in West Austin, while encouraging development in East Austin. Finally, historic designations for homes entitle the owner to a lifetime exemption from property taxes.<sup>82</sup> The direct result of these economic forces is rising real estate values and rising property taxes.<sup>83</sup>

Rising property taxes are a substantial burden for the low-income and people-of-color communities in East Austin. Texas has no personal income tax. "State revenues come largely from sales, excise, and property taxes—all of which weigh heavily on low-income people."<sup>84</sup> Additionally, as a means to provide some economic relief, Austin cannot limit the upward value or taxing of properties, as such actions are prohibited by Texas law.<sup>85</sup> The result is East Austin residents with low or fixed incomes, and an increasing number of people-of-color, are being priced out of their neighborhoods.<sup>86</sup>

Community groups, such as PODER, have asked the city to impose a moratorium on new historic designations pending further exploration of the unintended consequence. Meanwhile, the city has convened a task force from the Community Development and Housing Department to investigate gentrification issues in Austin.<sup>87</sup>

## **PLANNING, ZONING, AND GOVERNANCE IN TEXAS**

### **Texas Planning and Zoning Laws**

#### State Planning Laws

Although Texas did not adopt comprehensive planning regulations until 1997, the state has had subdivision laws since the late 1920s.<sup>88</sup> Municipal governing bodies may adopt comprehensive plans for long-range development,<sup>89</sup> define the relationship between comprehensive plans and development regulations, and provide standards for consistency.<sup>90</sup> If a comprehensive plan is adopted, however, then municipal zoning regulations must be adopted in accordance with it.<sup>91</sup>

Local comprehensive plans may include, but are not limited to, the following elements:

- Land use, transportation, and public facilities;
- Plan(s) organized by subject and geographic area; and
- Coordinate and guide the establishment of development regulations (concurrency).

Municipal plans do not require state approval and may be adopted or amended by ordinance, following a public hearing and review by the local planning commission, if one exists.<sup>92</sup> Thus, the at-large Austin City Council has full responsibility for adopting and/or modifying Austin's plan.

While they are not required to create them, counties have authority to adopt comprehensive plans for certain areas.<sup>93</sup> As with municipalities, county-zoning regulations must be adopted in accordance with the county comprehensive plan. Authority to create county comprehensive plans and zoning ordinances rests with the County Commissioner's Court.<sup>94</sup> The County Commissioner's Court is comprised of four commissioners and one county judge. "In addition to assuring that county roads are maintained, commissioners vote with the county judge to set the budget for all county departments and adopt a tax rate."<sup>95</sup>

- State Guidelines and Incentives for Planning

Texas' Local Government Code addresses several aspects of planning. It authorizes planning for housing and other structures, including authority to secure substandard buildings, preserve historic buildings, adopt energy conservation measures, control rent, and adopt fair housing ordinances.<sup>96</sup> Municipal Urban Renewal provides for the improvement of slum or blighted areas.<sup>97</sup> Neighborhood Empowerment Zones may be created by municipal governing bodies to serve the following purposes: create and rehabilitate affordable housing; increase economic development; improve the quality of social services and education; or provide public safety to residents.<sup>98</sup> In addition, the North American Free Trade Agreement (NAFTA) Impact Zone promotes opportunities for developers, local businesses, and residents of the zone and requires certain businesses to hire NAFTA displaced workers.<sup>99</sup> Austin has taken advantage of Municipal Urban Renewal, but not of Neighborhood Empowerment Zones or NAFTA Impact Zones.<sup>100</sup>

Various state agencies and departments offer incentives for local planning. Through local enterprise zones, the Texas Department of Economic Development offers incentives for capital improvement and job creation.<sup>101</sup> The Office of Community and Rural Development offers grant programs, such as the *Colonia* Planning Fund,<sup>102</sup> to promote the development of viable communities through affordable housing and increased economic opportunities for persons of low to moderate income.<sup>103</sup> Also, the Texas Historical Commission provides technical assistance and preservation grant priority for localities participating in Commission programs,<sup>104</sup> and Austin has obtained technical assistance from the Texas Historical Commission.<sup>105</sup>

## State Zoning Laws

Under state law, the governing body of a Texas municipality must establish procedures for adopting, amending, and enforcing zoning regulations, after holding public hearings and providing public notice in a local newspaper.<sup>106</sup> Municipalities without a zoning commission must provide notice to appropriate property owners. The municipal board of adjustment hears zoning appeals.<sup>107</sup> County zoning procedures are similar to those set forth for municipalities, although counties may zone only in specific areas as allowed by the Local Government Code.<sup>108</sup>

- Municipal Management Districts

In Texas, municipal management districts are created to supplement the services provided by a municipality.<sup>109</sup> They provide funding for metropolitan areas to preserve, maintain, and enhance economic health and vitality; assistance for public transport and pedestrian facilities; and help in restoration, preservation and enhancement of scenic and aesthetic beauty.<sup>110</sup> Provisions for “disadvantaged businesses” are also included.<sup>111</sup> Municipal management districts may be created only in areas devoted to commercial development and business activity.<sup>112</sup>

Before municipal governments create such a district, they must petition the Texas Natural Resource Conservation Commission,<sup>113</sup> and must also give public notice and hold a public hearing.<sup>114</sup> The Commission or municipal governing body then chooses a board of directors to govern the district.<sup>115</sup> Board members must have experience in one or more of the following areas: energy matters, commercial banking, real estate development, finance and insurance matters, retail services, and utilities.<sup>116</sup>

- Regional Planning Commissions

Any combination of counties and/or municipalities may agree to establish a regional planning commission. The planning commission may develop regional planning recommendations, which participating local governing bodies may adopt by ordinance.<sup>117</sup> Where there is a regional planning commission, it must advise the local governing body if a proposed project is regionally significant<sup>118</sup> and, if so, the commission will review the proposed project and determine if the project conflicts with the regional plan or policy.<sup>119</sup>

Municipalities, counties, and other local governments in Texas may impose impact fees to finance new capital improvements or public facility expansions.<sup>120</sup> Within the North American Free Trade Impact Zone or a Neighborhood Empowerment Zone, a municipality may waive or adopt fees (including impact fees) related to the construction of buildings.<sup>121</sup> No impact fees are collected in Austin, because Austin does not currently participate in either program.<sup>122</sup>

See Appendix G for more details on planning requirements under Texas statutes.



## **Local Governance in Austin**

### Structure

Austin has a council-manager form of government, with a mayor and six council members elected at large. The City Council appoints the city manager and two assistant city managers, whose responsibilities are divided according to departments.<sup>123</sup>

One distinguishing feature of Austin's government is its success in retaining management personnel. Many department heads have worked in Austin's government for many years, serving in various departments. This results in tremendous institutional knowledge in the city government, and its managers have a broad cross-functional understanding of the city government.

### At-Large Election System

Austin is one of only a few large cities that still uses an at-large election system.<sup>124</sup> PODER is campaigning to remove the system and to replace it with one based on geographic representation. They believe that the at-large elections make it very difficult for citizens to be fairly represented on the City Council.<sup>125</sup> This difficulty is well known:

The major characteristic of multi-member at-large elections, in contrast to single member district elections, is that a spatially concentrated group of voters—economic groups, party supporters, racial and ethnic groups—may not be able to elect candidates of their choice because their votes are “swamped,” “absorbed,” “submerged,” or “diluted”...by votes cast outside their area for competing candidates. This major feature of at-large elections has long been recognized.<sup>126</sup>

### Vision of Environmental Justice

The city of Austin has articulated a vision of environmental justice and is working toward equitable service delivery. Each fiscal year, the City Council adopts a theme. Three years ago, the city council adopted “Social Fabric” for its budget process, to focus the city government on social equity and environmental justice. The theme for the 2002-2003 fiscal year is “Bridging the Gap,” addressing the city's budget deficit as well as the gap in the provision of services and resource allocation among different socio-economic groups and neighborhoods.<sup>127</sup>

## **Austin Planning and Zoning**

### Austin Planning Commission

The Austin Planning Commission is composed of nine members appointed by the Austin City Council, each serving two-year staggered terms. The Commission exists to:

...make and amend a master plan, recommend approval or disapproval of proposed zoning changes and control land subdivision within neighborhood planning areas and submit, annually, a list of recommended capital improvements.<sup>128</sup>

### Environmental Board

Austin's Environmental Board was established by city ordinance to promote close cooperation between the city, its citizens, and institutions and agencies interested in or conducting environmental activities. The board advises the City Council, city manager, and planning and watershed departments on all policies, projects, and programs affecting quality of life.

The City Council appoints the nine-member Board. Four members with expertise in geology, hydrology, civil engineering, land planning, or ecology serve two-year staggered terms. The Board reviews policy and decisions as they pertain to the environment and makes recommendations to the Council. The Board appoints an environmental officer to investigate citizen complaints and to report to the city manager and Council. Although the Board can make recommendations to the Council, it does not have any implementation authority.<sup>129</sup>

### Austin Plans

- Comprehensive Plans

Austin developed a comprehensive plan in 1982, which tended to be very general and concentrated heavily on watershed conservation and historic preservation.<sup>130</sup> City staff now recognizes the need for more specific planning goals and standards. The plan did not include zoning changes or recommendations for development.<sup>131</sup> As a result, planning has been decentralized over several departments, and each produces its own plan. They include the Watershed Protection and Development Review Department's Watershed Protection Master Plan plus the Transportation, Planning and Sustainability Department's Transportation Plan, Pedestrian Plan, and Bicycle Plan. The Neighborhood Planning and Zoning Department also develops separate neighborhood plans for each of the 54 neighborhoods in East and West Austin. These plans are described in more detail below.

- Neighborhood Plans

To remedy existing zoning problems and to improve community outreach and communication, Austin embarked on a program to develop neighborhood plans. The Neighborhood Planning and Zoning Department identified 54 urban core neighborhoods, and the Department works with residents on a zoning and development plan for each one. Plan development takes about a year, with several plans underway at the same time. As of August 2002, the Department had finished 12 of 54 plans and was currently working on eight more. Each neighborhood plan represents about 10,000 citizens. Of these, between 30 and 100 citizens are actively engaged in the planning process. Transportation and design guidelines, future land use maps for planned growth, and appropriate zoning are developed concurrently with neighborhood plans.<sup>132</sup>

Additionally, local neighborhoods can organize and form neighborhood associations, which can then register with the city. Registered associations within a specified radius of a property to be rezoned must be notified by the city of the proposed change. Austin boasts over 300 such organizations, and the number is expanding as PODER works to organize neighborhood associations where none existed previously.

- Smart Growth

Austin's Smart Growth Initiative encourages downtown development and discourages recruitment of more polluting industry.<sup>133</sup> Its goals are to:

- Determine how and where to grow by identifying a desired development zone and drinking water protection zone;
- Improve quality of life by preserving and enhancing neighborhoods, protecting environmental quality, improving accessibility and mobility, and strengthening our economy; and
- Enhance the city's tax base through strategic investments, efficient use of public funds, and regional partnerships.

The Smart Growth Matrix is a tool to assist the City Council in analyzing development proposals within a particular development zone. The matrix measures how well a development project meets Austin's smart growth goals regarding:

- Location of development;
- Proximity to mass transit;
- Urban design characteristics
- Compliance with nearby neighborhood plans;
- Increases in tax base; and
- Other policy priorities.<sup>134</sup>

Austin also uses several incentives—such as road construction and improvement and extension of utilities—to attract business, as do many other cities. However, unlike most cities, Austin is adamant about not offering tax abatements.<sup>135</sup>

### Zoning Changes in Austin

Austin originally developed zoning regulations in 1936, revised them in 1953, and removed gender-specific references in 1985. In 1986, Austin amended its zoning laws to eliminate cumulative zoning. All of the municipal laws pertaining to comprehensive planning and the land development process, including zoning regulations, were rearranged and re-numbered to create the Land Development Code of the City of Austin of 1994. The Land Development Code purports to achieve “reverence to the dignity and enrichment of all people . . . [and] to assure economic, environmental, and cultural prosperity throughout our community.”<sup>136</sup>

- Impetus for Zoning Reforms

In 1995, Austin officials received the *Citizen's Planning Committee Report*.<sup>137</sup> The report explained how *status quo* planning would affect the long-term growth of Austin. The Committee rejected existing planning efforts, and offered 12 recommendations, along with multiple implementation actions, as essential parts of a comprehensive strategy “to introduce a different way of looking at the city, its form, and the forces that shape it.” In April 1996, the Committee issued a second report, *From Chaos to Common Ground: A Blueprint for Austin*. The report reiterated the previous 12 recommendations and proposed “dozens of detailed actions for re-engineering the city’s development and planning process to inject more predictability, accountability, and local responsibility for future projects.”<sup>138</sup>

In 1996, the City Council directed planners to conduct a study of land use patterns in East Austin, “noting the present zoning of all land parcels within the area and the location, size, and ownership of the property zoned.”<sup>139</sup> The study revealed that:

Over-zoning affects a majority of the East Austin community, but each area has been affected in different ways....<sup>140</sup> Significant portions of the study area can be characterized as industrial and residential decline. Little new construction has occurred for any major land use category over the last five years. Earlier efforts attempted to eliminate perceived conflicts in land use by promoting industrial activity along the Southern Pacific Railroad at the expense of adjacent neighborhoods.<sup>141</sup>

Many changes in the industrial zoning of East Austin have resulted from that study. Instead of changing all of the zoning at one time, however, the city has tried to rezone and implement land use plans on a neighborhood-by-neighborhood basis. Current industrial uses are grandfathered in with limits on expansion, and zoning is changed with plan approval. When new plans are made, zoning is adopted at the same time, because the plan is not enforceable without a corresponding zoning ordinance.<sup>142</sup>

- East Austin Overlay District

In 1997, the city created the East Austin Overlay District. In the overlay district, a new use that is more intense than commercial use requires a special use permit and extensive notification of local residents. When current industrial owners leave, the zoning is changed to a less intense use through a City Council ordinance. Additionally, the City Council placed a temporary moratorium on permitting in the overlay area. As each neighborhood plan is approved by the City Council, that neighborhood is removed from the overlay area because the requisite zoning changes have been made. PODER argues that certain aspects of the overlay requirements should stay in place, even after the neighborhood plan is finished—such the requirement that city planners must notify residents of any proposed new use—to keep the community informed about local development.<sup>143</sup>

## Sustainable Communities Initiative

Austin's Sustainable Communities Initiative was created in 1996 to achieve economic prosperity, social justice, and ecological health. Programs and policies are designed to make the city more sustainable and livable over the long term. Activities have included conducting sustainability workshops for city staff, sponsoring community workshops and seminars, initiating a pilot sustainability assessment of city departments, and participating in green economic development efforts.<sup>144</sup>

## Smart Housing

Austin's Neighborhood Housing and Community Development Office and the Austin Housing Finance Corporation oversees the "Safe, Mixed-income, Accessible, Reasonably-priced, Transit-oriented" (SMART) housing program to develop better housing for Austin's low and moderate income population. The program assists developers who include subsidized housing in their developments by offering fee waivers, expedited permitting, and zoning changes where needed. According to city staff, developers have been willing to comply with SMART housing standards to take advantage of these incentives. When the program began, the city had hoped to add 600 new affordable housing units per year; but the program has been so successful that, in the first year, 6,000 new units were in the review or inspection process.<sup>145</sup>

Recently, the City Council allocated an additional \$3 million for acquiring property to be set aside for future SMART housing construction.<sup>146</sup> This allows the city to acquire land before developers are ready to begin building housing, whereas housing construction must begin immediately with any land purchased using U.S. Housing and Urban Development funds. The city is also aggressively working to develop affordable housing with several nonprofit organizations. Some of these partners include the Community Development Corporation, Habitat for Humanity, American Youth Works, Community Partners, Volunteers for America, and Foundations Communities. Since April 2000, the Austin Neighborhood Housing and Community Development Office has offered a \$1 million annual Housing Trust Fund to provide gap financing for developers who construct new multi-family housing that serves families at or below 50 percent of the median family income. The Department also completes impact statements assessing any new regulation's impact on affordable housing so they can stop any provision that will have a negative impact.<sup>147</sup>

## **ENVIRONMENTAL PERMITTING**

### **Local Permitting Agencies**

The city of Austin does not have authority to issue pollution control permits; that authority rests with the Texas Commission on Environmental Quality. However, Austin does have authority over local land use decisions and building permits.

Approval of building permits in Austin requires, among other things, compliance with zoning and neighborhood plans as well as compliance with utility and site plans. The application must:

- Demonstrate compliance with zoning requirements;
- Contain a utility plan review to assure appropriate access to utilities, etc.; and
- Contain a site plan for any building or improvement greater than 999 square feet, including impervious surfaces, which is checked against neighborhood plans for compliance.

### **State Permitting Agencies**

The Texas Commission on Environmental Quality (TCEQ) administers pollution control programs and issues pollution control permits in the State of Texas.<sup>148</sup> TCEQ officials do not believe the agency has the legal authority to consider environmental justice when reviewing permit applications.<sup>149</sup> Additionally, TCEQ is not involved in environmental justice issues related to planning and zoning at the local level. Within TCEQ, the Environmental Equity Program and the Office of the Public Interest Counsel offer the best opportunities to vet claims of environmental inequity.

#### Environmental Equity Program

In 1993, TCEQ's Office of Public Assistance established the Environmental Equity Program for the purpose of helping to avoid the development of hostilities between industry and/or facilities and people in "low-income and minority communities [who] often believe that they are burdened with a disproportionate share of environmental risks."<sup>150</sup> The program concentrates on fostering communication and effective dialogue between industry, a specific facility, TCEQ, and the affected community.

#### Office of the Public Interest Counsel

The Office of the Public Interest Counsel is an independent program within the TCEQ; the Counsel does not report directly to TCEQ's Executive Director. The Texas Legislature created this Office to "...ensure that the Commission promotes the public's interests and is responsive to citizens' concerns regarding environmental quality and consumer protection."<sup>151</sup>

The Public Interest Counsel has a full-time, permanent staff that is hired by TCEQ. The Office assists citizens by providing technical and legal explanations covering the TCEQ's procedures, state law, and public participation procedures. The Counsel cannot provide legal representation to individuals but is party to, and may comment on, all TCEQ proceedings, including rulemaking and permitting. Given the breadth of its responsibilities, the Counsel sets priorities for its caseload, giving particular priority to protection of public participation procedures.<sup>152</sup>

## **ANALYSIS AND RECOMMENDATIONS**

### **Leadership and Accountability**

Action by the city of Austin is still driven by community pressure. The presence of organized community pressure, exemplified by PODER, has been a key factor in getting some environmental justice problems in Austin resolved, such as the tank farm, the power plant, and the recycling center.

The city has shown leadership on environmental justice with regard to some of its planning processes. Over the last ten years, Austin has actively investigated and reviewed its planning goals and initiatives.<sup>153</sup> The city has pressed ahead to prepare neighborhood plans with active community involvement and is investigating gentrification in East Austin. Most importantly, the city agrees there are valid environmental justice concerns that need to be addressed. However, there appears to be no mechanisms for holding city planning or zoning officials accountable for progress.

### **Permitting and Zoning**

Austin's permitting process and development fees can be simplified and reduced by participating in a city-sponsored program that supports environmental justice, such as the SMART housing program.

However, the success of many of the city's planning programs will be constrained by Austin's ability to enforce existing regulations. Due to the cumbersome and expensive nature of permit applications, citizens often choose not to apply for the proper permits.<sup>154</sup>

Lastly, officials in TCEQ and Austin apparently do not communicate effectively regarding their separate duties (siting, pollution permitting) where they overlap, namely with regard to the protection of public health and welfare.

### **Setting Priorities and Reducing Risk**

Austin does not appear to have a priority list for reducing risks to public health or the environment. The city has set a strong priority for protecting the drinking water supply, but this commitment does not seem to extend to issues beyond drinking water. Overall, risk reductions have occurred throughout East Austin, as evidenced by the relocation of the airport and recycling station and closing of the tank farm. However, the city took these actions in response to community pressure; they were not initiated on the basis of an overall plan to reduce risks, starting with the most serious risks first. Finally, the city's lack of an active relationship with the Texas Commission on Environmental Quality means there may be lost opportunities for cooperating to control future pollution sources.

## **Public Participation**

The citizenry of Austin is very active and drives change in the city's operations. The East Austin Overlay District requires more extensive neighborhood notice of proposed zoning changes than are required in other areas of the city. Additionally, registering neighborhood associations empowers local neighborhoods in the planning and zoning process.

The city offered a program, the Neighborhood Academy, "to provide education to citizens and neighborhood groups that they can be more knowledgeable of city services and other factors affecting the quality of life in their neighborhoods."<sup>155</sup> A sample of the free courses included "Zoning 101," "How to Get Complaints Resolved," "Effectively Representing Your Neighborhood before [City] Council and [Texas] Commission [on Environmental Quality]." Unfortunately, this innovative program has recently been cancelled due to budget constraints.<sup>156</sup>

Austin also has an extensive website where meetings are announced; meeting agendas and minutes are posted; and city publications, city ordinances, and other information is readily available. This is a great source for citizens who have Internet access. Nevertheless, regular City Council meetings last an entire day. Although the long sessions may allow more time for discussion of issues, it can be difficult for working people to attend the meetings.

## **RECOMMENDATIONS**

- Austin has made commendable progress in addressing some environmental justice issues. However, the city needs a clearly articulated policy, program, and priorities for addressing environmental justice problems to ensure that, in the future, no group of citizens has to bear a disproportionate share of environmental burdens and that all citizens will have opportunities to be meaningfully involved in decisions that affect their environment and health.
- TCEQ should look broadly at its existing legal authorities for addressing environmental justice concerns, including those related to environmental permitting. TCEQ's environmental justice program should include commitments to reduce risk, improve communication, and provide greater public access to information. TCEQ should consider working with other state environmental agencies that have developed environmental justice programs and tools so it can benefit from their successful experiences.
- TCEQ should also provide guidance and other assistance to local Texas governments to help them understand and address the potential public health and environmental implications of their land use decisions.



## ENDNOTES

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- <sup>2</sup> *Ibid.*, 1.
- <sup>3</sup> *Ibid.*, 19.
- <sup>4</sup> *Ibid.*, 21.
- <sup>5</sup> *Ibid.*
- <sup>6</sup> Austin City Connection, "Demographics with Census 2000 Data, Maps and Analysis," website, <[www.ci.austin.tx.us/census](http://www.ci.austin.tx.us/census)> (visited May 2003).
- <sup>7</sup> U.S. Census Bureau, "American Fact Finder," website, <<http://factfinder.census.gov/servlet/BasicFactsServlet>> (visited May 2003).
- <sup>8</sup> Stuart Hersh, Development Services Manager, City of Austin, Interview (August 15, 2002).
- <sup>9</sup> U.S. Census Bureau, "American Fact Finder."
- <sup>10</sup> Austin City Connection, *City of Austin--Austin's Major Employers in 2000, The Top 40* (July 2000), website, <[www.ci.austin.tx.us/growth/majoremp.htm](http://www.ci.austin.tx.us/growth/majoremp.htm)> (visited May 2003).
- <sup>11</sup> U.S. Census Bureau, "American Fact Finder."
- <sup>12</sup> Stuart Hersh, Interview.
- <sup>13</sup> U.S. Census Bureau, "American Fact Finder."
- <sup>14</sup> Alice Glasco, Director, Neighborhood Planning and Zoning Department; Ricardo Soliz, Manager, Neighborhood Planning Program; and Greg Guernsey, Manager, Zoning Changes, City of Austin, Interviews (August 15, 2002).
- <sup>15</sup> U.S. Census Bureau, "American Fact Finder."
- <sup>16</sup> *Ibid.*
- <sup>17</sup> *Ibid.*
- <sup>18</sup> *Ibid.*
- <sup>19</sup> *Ibid.*
- <sup>20</sup> U.S. Environmental Protection Agency (EPA), "Brownfields Cleanup Revolving Loan Fund Pilot Fact Sheet," website, <<http://www.epa.gov/brownfields/html-doc/rlf/austin.htm>> (visited May 2003).
- <sup>21</sup> *Ibid.*
- <sup>22</sup> John Blunt, Brett Walker, and Christopher Frye, *City of Austin Planning Project*, (Community and Regional Planning Program, University of Texas at Austin, February 2002). Available at <<http://www.ar.utexas.edu/Courses/parmenter/gis/spring/austin/documents/introduction.htm>> (visited May, 2003).
- <sup>23</sup> *Ibid.*
- <sup>24</sup> *Ibid.*
- <sup>25</sup> *Ibid.*
- <sup>26</sup> Mike Heitz, Director of Watershed Protection and Development, City of Austin, Interview (August 15, 2002). See also, Austin City Connection, "City of Austin--Watershed Master Plan," website, <[www.ci.austin.tx.us/watershed/masterplan.htm](http://www.ci.austin.tx.us/watershed/masterplan.htm)> (visited April 2003).
- <sup>27</sup> Alice Glasco, Ricardo Soliz, and Greg Guernsey, Interviews.
- <sup>28</sup> The area measured is the Austin-San Marcos Metropolitan Statistical Area which includes Bastrop, Caldwell, Hays, Travis, and Williamson counties. Community Action Network (CAN), *Prescription for Wellness: Physical Health, Mental Health, Substance Abuse*, 34 (April 2001). Available at <[http://www.caction.org/CAN\\_Presc/PrescriptionForWellnessTOC.htm](http://www.caction.org/CAN_Presc/PrescriptionForWellnessTOC.htm)> (visited June 2003).
- <sup>29</sup> Community Action Network (CAN), *Prescription for Wellness: Physical Health, Mental Health, Substance Abuse*, Executive Summary, 1, (April 2001). Available at <[http://www.caction.org/CAN\\_Presc/PrescriptionForWellnessTOC.htm](http://www.caction.org/CAN_Presc/PrescriptionForWellnessTOC.htm)> (visited June 2003).
- <sup>30</sup> *Ibid.*
- <sup>31</sup> People Organized in Defense of Earth and her Resources (PODER), "[About] People Organized in Defense of Earth and her Resources," website (visited March 2003, unavailable July 2003).
- <sup>32</sup> *Ibid.*
- <sup>33</sup> Details about the tank farm and the Holly Street power plant are discussed in the section on "Addressing Unwanted Land Uses."
- <sup>34</sup> Community Action Network (CAN) is composed of 14 major community organizations. For more information see the organization's website, <<http://www.caction.org>> (visited July 2003).
- <sup>35</sup> CAN, *Prescription for Wellness: Physical Health, Mental Health, Substance Abuse*, Executive Summary.

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- <sup>36</sup> *Ibid.*, Chapter II, 1.
- <sup>37</sup> *Ibid.*, Executive Summary, 1.
- <sup>38</sup> *Ibid.*, Chapter VI, 31-37.
- <sup>39</sup> The City of Austin/Travis County Health department is a combined department. The City of Austin actually provides the function on behalf of the Travis County. Trish Young, Chief Executive Officer, Austin/Travis County Community Health Centers, E-mail (May 16, 2003).
- <sup>40</sup> *Ibid.*
- <sup>41</sup> Trish Young, E-mail.
- <sup>42</sup> Stuart Hersh, Interview.
- <sup>43</sup> *Ibid.*
- <sup>44</sup> "This plan began the segregation of three ethnic groups; Chalmers Court for Anglos, Rosewood for African Americans and Santa Rita Courts for Mexican Americans." Susana Almanza, "Racism in Austin" (Austin Chamber of Commerce, October 1993).
- <sup>45</sup> Stuart Hersh, Interview.
- <sup>46</sup> *Ibid.*
- <sup>47</sup> *Ibid.*
- <sup>48</sup> City of Austin, Planning, Environmental and Conservation Services Department, *East Austin Land Use/Zoning Report* (February 20, 1997). Available at <[http://www.ci.austin.tx.us/landuse/ea\\_text.htm](http://www.ci.austin.tx.us/landuse/ea_text.htm)> (visited July 2003).
- <sup>49</sup> "People Organized in Defense of Earth and her Resources (PODER), whose name means "power" in Spanish. The organization was formed in 1991 by a group of East Austin Latino activists and community leaders, after a national meeting with SEMATECH, a non-profit research consortium funded by the U.S. government and the superconductor industry. Local participants attending this meeting organized to address the social, economic and environmental impacts and health hazards of industries on communities of color in East Austin." PODER, "People Organized in Defense of Earth and her Resources."
- <sup>50</sup> El Pueblo is a network of East Austin neighborhood groups. Leadership for a Changing World, "2002 Award Recipients: People Organized in Defense of Earth and her Resources (PODER), Austin, TX" (2002). Available at <<http://leadershipforchange.org/awardees/awardee.php3?ID=60>> (visited March 2003).
- <sup>51</sup> PODER, "Accomplishments," website, (visited March 2003, unavailable July 2003), and Susana Almanza, Executive Director, PODER, Interview (April 23, 2003).
- <sup>52</sup> Mike Clark Madison, "East Austin is Fighting Its Way Out of Industrial Zone Heavy Mettle," *Austin Chronicle*, (March 1999). Available at <[www.austinchronicle.com/issues/vol18/issue30/pols.c2c.html](http://www.austinchronicle.com/issues/vol18/issue30/pols.c2c.html)> (visited July, 2003).
- <sup>53</sup> Mitzi Cotton, Attorney, Law Department, City of Austin, and Marty Terry, Attorney, Law Department, City of Austin, Interviews (August 16, 2002).
- <sup>54</sup> Susana Almanza, Interview (April 23, 2003).
- <sup>55</sup> "Because so much of the LI property is actually used for housing, any adjacent industrial project now has to conform to city compatibility standards, which dictate setbacks and buffers so wide as to make many such lots impossible to develop as anything but housing," Madison, "East Austin is Fighting Its Way Out of Industrial Zone Heavy Mettle."
- <sup>56</sup> Susana Almanza, Interview (April 23, 2003).
- <sup>57</sup> Lisa Gordon, Assistant City Manager, City of Austin, Interview (August 16, 2002).
- <sup>58</sup> Susana Almanza, Interview (April 23, 2003).
- <sup>59</sup> "A 1993 study conducted for [Travis County Attorney Ken] Oden found contamination in 71 of 116 water wells tested in the area. One had 7,100 times the federally defined safe level of benzene, a chemical in gasoline....Toxic and carcinogenic chemicals migrated underground from the tank farm property to surrounding residential areas...." Mike Todd, "Oil Companies Go On Trial; Austin Residents Blame Gasoline Tank Farm for Lower Property Values, Health Problems," *Austin American-Statesman*, B1 (January 21, 1996).
- <sup>60</sup> Lauri Apple, "Visualize Whirled Tank Farms," *Austin Chronicle*, (June 7, 2002). Available at <[http://www.austinchronicle.com/issues/dispatch/2002-06-07/pols\\_feature2.html](http://www.austinchronicle.com/issues/dispatch/2002-06-07/pols_feature2.html)> (visited April 2003).
- <sup>61</sup> Susana Almanza, Interview (April 23, 2003).
- <sup>62</sup> Texas Department of Health, "Environmental Health Issues Near Power Plant," *Epidemiology in Texas 1999 Annual Report (1999)*. Available at <[www.tdh.state.tx.us/epidemiology/99annual/reports/powerplant.htm](http://www.tdh.state.tx.us/epidemiology/99annual/reports/powerplant.htm)> (visited July 2003).
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- <sup>65</sup> Austin City Connection, "ABIA (Austin-Bergstrom International Airport) Environmental Initiatives" (March 1998), website, <<http://www.ci.austin.tx.us/austinairport/images/environinits.pdf>> (visited July 2003).
- <sup>66</sup> Susana Almanza, Interview (April 23, 2003).
- <sup>67</sup> *Ibid.*
- <sup>68</sup> The rezoning initiatives occurred in 1994. Austin City Connection, "Milestones for Austin-Bergstrom International Airport," website, <<http://www.ci.austin.tx.us/austinairport/abiamil.htm>> (visited July, 2003).
- <sup>69</sup> Austin City Connection, "ABIA Environmental Initiatives."
- <sup>70</sup> Susana Almanza, Interview (April 23, 2003).
- <sup>71</sup> *Ibid.*
- <sup>72</sup> Alice Glasco, Ricardo Soliz, and Greg Guernsey, Interviews.
- <sup>73</sup> 42 U.S.C. Sections 4321-4370d.
- <sup>74</sup> *Spiller v. Walker*, 2002 LEXIS 13194 (W.D. Tx July 19, 2002).
- <sup>75</sup> Susanna Almanza, Interview (August 15, 2003).
- <sup>76</sup> *Ibid.*
- <sup>77</sup> Ordinance No. 030410-12. *Austin City Code* (adopted April 10, 2003). Available at <[http://www.ci.austin.tx.us/news/02/pipeline\\_ord.htm](http://www.ci.austin.tx.us/news/02/pipeline_ord.htm)> (visited July 2003).
- <sup>78</sup> Austin is home to Dell, IBM, Motorola, Advanced Micro Devices, Applied Materials, Texas Instruments and two major computer industry consortiums: the Microelectronics and Computer Technology Consortium and SEMATECH. In all "more than 350 software companies make their home in Austin. IC2 Institute of the University of Texas, *The Greater Austin Software Industry Report* (1993). Available at <<http://www.austinlinks.com/Business/austinhightech.html>> (visited July, 2003).
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- <sup>82</sup> Neil Carlson, "What Happens When a Neighborhood Starts to Sell Its Soul?" *Ford Foundation Report* (Spring 2003).
- <sup>83</sup> PODER, "Neighborhood Groups to Protest Heritage Homes Tour 2002," Press Release (May 2002).
- <sup>84</sup> *Ibid.*
- <sup>85</sup> Mitzi Cotton and Marty Terry, Interviews.
- <sup>86</sup> Susana Almanza, Interview (April 23, 2003).
- <sup>87</sup> Stuart Hersh, Interview.
- <sup>88</sup> American Planning Association, "*Planning for Smart Growth: 2002 State of States – Texas*" (2002). Available at <<http://www.planning.org/growingsmart/States/Texas.htm>> (visited July 2003).
- <sup>89</sup> *Local Government Code* (LGC), Title 7, Chapter 213.002.
- <sup>90</sup> The "Home Rule Provision" of the *Texas Constitution*, Article 11, Section 5, allows cities to enact and amend ordinances as long as they do not conflict with the state constitution or other state laws.
- <sup>91</sup> LGC, Title 7, Chapter 211.004, and Title 12, Chapter 371.042-.043. If adjacent municipalities have zoning commissions and exercise zoning authority, these municipalities may form a joint planning commission, adopted by participating local governments. The commission would have representatives from each municipality and must complete a master plan with stipulated elements.
- <sup>92</sup> Title 7, Chapter 213.003. A municipality may also enact by charter or ordinance a procedure for adopting and amending a comprehensive plan.
- <sup>93</sup> Title 7, Chapter 231. See Also, Chapters 232 and 242 on the subdivision powers of a county.
- <sup>94</sup> Title 7, Chapter 231.
- <sup>95</sup> "Among other responsibilities, the commissioners court: sets the yearly property tax rate and approves the budget and employment level for the county; establishes long-range thoroughfare, open space, land use, financial and law enforcement/jail needs plans; acquires property for rights-of-way or other uses determined to be in the public's best interest; reviews and approve subdivision platting and wastewater treatment for rural areas; and fills vacancies in

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elective and appointive positions.” Texas Association of Counties, “TAC: About Counties—County Official Information—County Commissioner,” website, <[http://www.county.org/counties/desc\\_office/commiss.asp](http://www.county.org/counties/desc_office/commiss.asp)> (visited July, 2003).“

<sup>96</sup> Title 7, Chapter 214; Title 9, Chapter 302; Title 9, Chapter 318.

<sup>97</sup> Title 12, Chapter 374 and Chapter 375.001 (a) (3).

<sup>98</sup> Title 12, Chapter 378.

<sup>99</sup> Title 12, Chapter 379.005.

<sup>100</sup> Stuart Hersh, E-mail (May 5, 2003).

<sup>101</sup> Texas Department of Economic Development, “Texas Enterprise Zone—Texas Economic Development,” website, <<http://www.tded.state.tx.us/TexasEnterpriseZone/>> (visited July 2003).

<sup>102</sup> Office of Rural Community Affairs, “Texas Community Development Program (TCDP) Application Guide for the *Colonia* Planning Fund,” website, <<http://www.orca.state.tx.us/PDF/cd/2002cfp.pdf>> (visited July, 2003).

<sup>103</sup> *Ibid.*

<sup>104</sup> For more information, see the Texas Historical Commission website. Available at <<http://www.thc.state.tx.us>> (visited June 30, 2003).

<sup>105</sup> Alice Glasco, Director, Neighborhood Planning and Zoning Department, City of Austin, E-Mails. (May 2003).

<sup>106</sup> Title 7, Chapter 211.006, 211.006 (b) and 211.007(c).

<sup>107</sup> Title 7, Chapter 211.008.

<sup>108</sup> Title 7, Chapter 231. See also, Chapters 232 and 242 for further discussion of the subdivision powers of a county that, in some ways, seem similar to traditional “zoning” powers; note extraterritorial jurisdiction, unincorporated municipalities, and the Interlocal Act.

<sup>109</sup> Title 12, Chapter 375.001(a) thru (l).

<sup>110</sup> Title 12, Chapter 375.001 (i) and (j); Impact fees in relation to improvements, including transportation may be imposed; municipalities and counties are exempt unless such fees have been adopted by the particular governmental entity.

<sup>111</sup> Title 12, Chapter 375.003 (4).

<sup>112</sup> Title 12, Chapter 375.021.

<sup>113</sup> Title 12, Chapter 375.003 (3) and 375.002. On September 1, 2002, the Texas Natural Resource Commission or Texas Natural Resource Conservation Commission was renamed the Texas Commission on Environmental Quality (TCEQ) (see <[http://www.tceq.state.tx.us/name\\_change.html](http://www.tceq.state.tx.us/name_change.html)>). TCEQ provides technical assistance to local governments related to permits and environmental issues.

<sup>114</sup> Title 12, Chapter 375.022. Petitions must include signatures of the owners of a majority of the assessed real property value in the proposed district or the signature of 50 persons who own property in the district.

<sup>115</sup> Title 12, Chapter 375.375.064 (f).

<sup>116</sup> Title 12, Chapter 375.064 (f).

<sup>117</sup> Title 12, Chapter 391.004.

<sup>118</sup> Title 12, Chapter 391.008 (c).

<sup>119</sup> Title 12, Chapter 391.008 (d).

<sup>120</sup> Title 12, Chapter 395.

<sup>121</sup> Title 12, Chapter 379.004 and 378.004, respectively.

<sup>122</sup> Stuart Hersh, E-mail.

<sup>123</sup> Alice Glasco, Interview (July 5, 2002).

<sup>124</sup> Susana Almanza, Interview (April 23, 2003).

<sup>125</sup> *Ibid.*

<sup>126</sup> Howard A. Scarrow, *The Impact of At-Large Elections: Vote Dilution, Choice Dilution, and the Voting Rights Act* (Department of Political Science SUNY at Stony Brook, 1999).

<sup>127</sup> Alice Glasco, Ricardo Soliz, and Greg Guernsey, Interviews.

<sup>128</sup> Austin City Connection, “Boards & Commissions--Environmental Board,” website, <<http://www.ci.austin.tx.us/>> (visited July, 2003).

<sup>129</sup> *Ibid.*

<sup>130</sup> Alice Glasco, Ricardo Soliz, and Greg Guernsey, Interviews (August 15, 2002).

<sup>131</sup> *Ibid.*

<sup>132</sup> *Ibid.*

<sup>133</sup> Austin City Connection, “Smart Growth Homepage,” website, <<http://www.ci.austin.tx.us/smartgrowth/default.htm>> (visited June 2003).

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- <sup>135</sup> Alice Glasco, Ricardo Soliz, and Greg Guernsey, Interviews (August 15, 2002).
- <sup>136</sup> Austin City Charter, *Preamble*. Available at <http://www.ci.austin.tx.us/law/>.
- <sup>137</sup> Austin City Council, Citizens' Planning Committee, *Citizen's Planning Committee Report* (January 1995).
- <sup>138</sup> Austin City Council, Citizens' Planning Committee, *From Chaos to Common Ground: A Blueprint for Austin* (April 1996).
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- <sup>140</sup> *Ibid.*
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- <sup>142</sup> Austin City Connection, "Zoninginfo1," website, [www.ci.austin.tx.us/development/zonginfo1.htm](http://www.ci.austin.tx.us/development/zonginfo1.htm) (visited July 2003).
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- <sup>144</sup> Austin City Connection, "City of Austin--Sustainable Communities Initiative," website, <http://www.ci.austin.tx.us/sustainable> (visited June 2003).
- <sup>145</sup> Austin City Connection, "Austin Housing Finance Corporation," website, [www.ci.austin.tx.us/ahfc/smart.htm](http://www.ci.austin.tx.us/ahfc/smart.htm) (Retrieved June 30, 2003).
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- <sup>148</sup> "On September 1, 2002, the Texas Natural Resource Conservation Commissions became the Texas Commission on Environmental Quality." TCEQ, "TNRCC is Now TCEQ," website, [http://www.tceq.state.tx.us/name\\_change.html](http://www.tceq.state.tx.us/name_change.html) (visited June 2003).
- <sup>149</sup> Jim Fernandez, Office of Environmental Equity, Office of Public Assistance, TCEQ, Interview (April 2003).
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- <sup>151</sup> *Ibid.*
- <sup>152</sup> Blas Coy, Public Interest Counsel, TCEQ, Interview (April 2003).
- <sup>153</sup> The Citizen's Planning Committee has published three reports including *Citizen's Planning Committee Report - 1995*, *From Chaos to Common Ground: A Blueprint for Austin* (1996), and *The Challenge for Austin's Future* (1997). Also in 1997, the Planning, Environmental, and Conservation Services Department issued *A Tale of Two Cities: Directions for the Future of Austin*. Available at [www.ci.austin.tx.us/sustainable/reports.htm](http://www.ci.austin.tx.us/sustainable/reports.htm) (visited July 2003).
- <sup>154</sup> Stuart Hersh, Interview. See also, Citizens Planning Committee, *From Chaos to Common Ground*.
- <sup>155</sup> Neighborhood Planning and Zoning Department, "Neighborhood Academy" website, [www.ci.austin.tx.us/academy/neighboracad.htm](http://www.ci.austin.tx.us/academy/neighboracad.htm) (visited June 2003).
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**CHAPTER SEVEN**  
**CHESTER, PENNSYLVANIA**

**FINDINGS**

**Finding 1:** Chester is attempting to prevent future environmental justice situations through more effective land use planning. The city has enacted new zoning ordinances and land use performance standards designed to ensure that new development does not exacerbate existing environmental problems; has adopted a comprehensive land use plan with a positive vision of future economic development; and is courting new, less polluting, economic development consistent with the plan.

**Finding 2:** Chester has not yet tackled the environmental justice issues associated with existing land uses, including inhabited but depressed housing stock located in close proximity to older industrial facilities that have toxic emissions.

**Finding 3:** In response to community pressure, Chester has adopted city ordinances limiting development of new heavy industrial facilities and performance standards designed to minimize environmental impacts; but the city's attempt to control where certain types of facilities are sited is severely limited by lack of enforcement.

**Finding 4:** Chester's plan for economic development, including desired land uses, does not articulate goals for reducing pollution, achieving environmental justice, or reducing risks, except for lead exposures.

**Finding 5:** The 2000 amendments to Pennsylvania's Municipalities Planning Code direct state agencies to consider local land use plans or ordinances when reviewing applications for permits or funding and are potentially important mechanisms for addressing environmental justice issues.

**Finding 6:** Chester lacks a formal process for addressing or tracking citizen concerns about environmental or public health hazards, and has no staff specifically assigned to oversee the environmental health of the community or pollution control efforts. Lack of staffing in these areas limits Chester's ability to respond to residents' complaints about environmental justice problems.

*reserved for map*

## INTRODUCTION

The city of Chester occupies 4.7 square miles of Delaware County in southeastern Pennsylvania. Once a booming industrial center, Chester has experienced strong shifts in its economy and its population over the past 40 years.

In the late 1980s and early 1990s, several waste treatment facilities were located in the city; and Chester's economy continued to falter. Over a period of ten years, the Pennsylvania Department of Environmental Protection (PADEP) approved permits for five facilities in a single census tract of Chester where the population was 73.9 percent African American and 22.8 percent white.<sup>1</sup> During that period, African-American residents of Chester began organizing to fight the increasing number of waste facilities being permitted in their neighborhood. They filed a racial discrimination case under Title VI of the Civil Rights Act of 1964, bringing national attention to environmental problems in Chester.

Today, Chester is a city on the rebound, with a new strategic development plan, *Vision 2000*, and over \$500 million in new investments. The city is moving forward to revive its economy and to make Chester a desirable place to live and work. When considering possible new development, city planners are aware that once a facility or land use is located in a community, it is hard to remove it. Therefore, the intent of Chester's plan is to prevent environmental justice problems in the future; and the city is trying not to exacerbate existing problems. Yet, it is unclear how Chester will be held accountable for this goal. Further, in Chester neighborhoods still close to heavy industrial uses, citizens wonder when and how they might obtain relief from pollution, noise, traffic, and odor problems.

## BACKGROUND

### About Chester

Chester is located on the Delaware River, across from New Jersey and near the Delaware border. It sits eight miles from Wilmington, 16 miles from Philadelphia, and within 120 miles of both New York City and Washington D.C.<sup>2</sup> Chester is accessible to multiple major transportation arteries, including I-95, I-476, and linkages to the New Jersey and Pennsylvania Turnpikes.<sup>3</sup> The city also has three active rail lines—CSX/Conrail for freight and Amtrak and SEPTA for passengers<sup>4</sup>—and has access to international airports and shipping.<sup>5</sup> In short, Chester is ideally located to be a major East Coast transportation hub.





## History

Chester first developed as a major industrial center, producing ships, engines, tools, textiles, paper, steel, and petroleum products among others.<sup>6</sup> Chester's industrial/manufacturing economy is historical; the city hosted five shipyards as early as 1886. This industrial tradition and Chester's growth continued through the twentieth century, as the city experienced a strong in-migration to support the production needs of World War I and World War II. Manufacturing became so vital to Chester that it is reflected in its city motto: "What Chester Makes Makes Chester."<sup>7</sup>

The city's population peaked in the 1950s at 66,039 people.<sup>8</sup> With changes in production technology and strong international competition, many of Chester's major industrial facilities were too old to compete, so they closed or the companies moved elsewhere. Since then, the out-migration of industry, jobs, and residents has been constant, as major employers—like Ford Motor Company and Pennsylvania Shipbuilding—permanently closed their plants. The local economy collapsed when 32 percent of the jobs in Chester disappeared between 1950 and 1980.<sup>9</sup> The loss of industry and jobs resulted in a population decline from 66,000 to 42,000 people between 1950 and 1990.<sup>10</sup>

Moreover, the ethnic composition of Chester's population has changed substantially since the 1950s. From 1960 to 1990, the city lost 69 percent of its white population, while people-of-color residents increased by 26 percent, resulting in a net population loss.<sup>11</sup> The extensive population flight depressed retail trade, so downtown stores and shops closed,<sup>12</sup> compounding the already poor job market in the city.<sup>13</sup> Additionally, this "demographic shift is indicative of massive white flight in the face of racial blockbusting by real estate speculators—a practice banned in 1968, days after the assassination of Martin Luther King, Jr."<sup>14</sup> There were few job opportunities and fewer people to support the city's already weakened economy.

The economic and social health of Chester has suffered over the last four decades. Based on the 2000 Census, the current population is 36,854 residents. They are 75.7 percent African-American, 18.9 percent white, and 5.4 percent Hispanic. The median family income is \$25,703, and the city has a 9.9 percent unemployment rate.<sup>15</sup>

The largest private sectors in Chester, by U.S. Census class, include: education, health and social services (33 percent);<sup>16</sup> manufacturing (12 percent), retail trade (10 percent); and arts,

entertainment, recreation, accommodation and food services (10 percent).<sup>17</sup> Of Chester residents over the age of 25, 31 percent did not complete high school; and 69 percent have a high school diploma or equivalent. While about 29 percent of adults over 25 have attended at least some college, only 12 percent have earned associate, bachelors, or advanced degrees.<sup>18</sup>

## **ENVIRONMENTAL JUSTICE CONCERNS**

### **Siting of Waste Treatment Facilities**

On the heels of the massive out-migration of residents and industries, Chester became the location for waste disposal facilities. Between 1986 and 1997, the city of Chester approved four of these facilities; and the Pennsylvania Department of Environmental Protection permitted all five of the commercial waste handling facilities in a single census tract inside the city limits (see Figure 6-2). The facilities included a waste transfer station, a waste incinerator, a concrete and construction waste recycling business, and an infectious wastes autoclave.<sup>19</sup>

The impact on Chester neighborhoods was significant. The waste treatment facilities were located as close as 100 feet from more than 200 residential properties,<sup>20</sup> and the majority of the wastes were trucked into Chester from elsewhere.<sup>21</sup> Residents complained that the transportation of waste for the incinerators and sewage treatment plants subjected Chester's neighborhoods to litter, rats, odors, and prostitutes—who serviced the truck drivers.<sup>22</sup>

### **Chester Residents Concerned for Quality Living**

In 1993, residents of Chester organized Chester Residents Concerned for Quality Living (CRCQL, pronounced “circle”) to stop waste facilities from being sited and approved in Chester. Working with the Public Interest Law Center of Philadelphia and others, CRCQL has brought lawsuits against several facilities. As a result of the lawsuits, some facilities have closed, some

decided not to locate in the area, and some had their permits denied. CRCQL and its allies successfully promoted a city ordinance that does not allow a new industrial facility to produce a net increase in pollution. They also successfully pressured EPA and PADEP to conduct a health risk assessment. Several key actions are summarized below.

- Thermal Pure Case. In 1993, CRCQL and the Public Interest Law Center of Philadelphia took the medical autoclave company, Thermal Pure Systems, to court. They claimed the facility was in violation of the state law that requires the route for transporting waste between the waste generator and the disinfecting facility to be as short as possible and to present the least amount of risk.<sup>23</sup> The local court found in favor of Chester residents, but the Pennsylvania Supreme Court overturned that decision on appeal, allowing the facility to continue operating.<sup>24</sup> Following a series of organizational and physical problems at the facility,<sup>25</sup> Thermal Pure closed in 1996.<sup>26</sup>
- No Net Increase in Pollution Ordinance. In 1994, CRCQL and the Public Interest Law Center of Philadelphia drafted a proposed ordinance requiring any new industrial facility that intends to operate in one of Chester's M-3 Industrial Districts to cause no net increase in pollution. The City Council approved the ordinance, and the municipal planning and zoning code was amended on June 23, 1994. It reads as follows:

Authorization as special exception shall require approval by the Zoning Hearing Board in strict compliance with Section 1327.035(a)(2) and after applicant presents convincing evidence to the Board that the construction or operation of a special exception facility covered by this subsection *will not produce a net increase in environmental pollution* as compared to environmental pollution at the time construction of the facility commences [emphasis added].<sup>27</sup>

- Health Risk Assessment. In the same year, CRCQL pressured EPA's Region III and PADEP<sup>28</sup> to initiate a 180-day risk study in Chester City and the nearby borough of Marcus Hook. The June 1995 report found that "both cancer and non-cancer risks from the pollution sources at locations in the city of Chester exceed levels which EPA believes are acceptable."<sup>29</sup> Results of this study are described below in more detail in the section on Health Concerns.
- Soil Remediation Services Case. In 1996, CRCQL and the Public Interest Law Center of Philadelphia sued PADEP opposing a permit for Soil Remediation Services (SRS) to operate a soil combustion facility in Chester.<sup>30</sup> The permit was issued on June 28, 1995, only one month after EPA's risk study found that both cancer and non-cancer risks for Chester residents exceeded acceptable levels.<sup>31</sup>

The SRS suit alleged violations of Title VI of the Civil Rights Act of 1964. One of the main allegations was that "the total permit waste tonnage capacity of facilities in census tracts where African-Americans comprise more than 50 percent of the population is 2.3 times the total permit tonnage capacity of waste facilities in census tracts where white persons comprise more than 50 percent of the population." The suit also alleged that PADEP did not

consider the effects of this disparity when issuing the permit to SRS.<sup>32</sup> The district court found in favor of the defendants.<sup>33</sup> On appeal, the 3<sup>rd</sup> Circuit Court of Appeals ruled in favor of the Chester residents.<sup>34</sup> PADEP petitioned for a *writ certiorari*, and the U.S. Supreme Court agreed to hear the case. At this point, SRS decided to abandon the project and withdrew its permit application. In response, the Supreme Court dismissed the case as moot and vacated the 3<sup>rd</sup> Circuit's decision.<sup>35</sup>

- Delaware County Wastewater Treatment Plant and Sludge Incinerator. In 1997, Chester residents alleged that the Delaware County Regional Water Quality Control Authority's wastewater treatment and sludge incineration plant was not meeting state air quality regulations and violated the state implementation plan. The case was settled by consent decree, resulting in construction and operational changes at the plant, a \$120,000 penalty, and an additional \$200,000 supplemental amount earmarked for funding a program to prevent lead poisoning.<sup>36</sup>
- Kimberly Clark. In 1999, after completing a three-day test burn, Kimberly Clark applied to PADEP for a six-month permit to test the combustion of used tires as fuel at its plant in Chester.<sup>37</sup> Community residents opposed the test because they worried about increased pollution. This concern stemmed, in part, from the knowledge that "from 1991 to 1996, total production-related waste increased at the [Kimberly Clark] facility by 297 percent. The paper plant was the second largest emitter of environmental releases in 1996 and the third largest in 1995."<sup>38</sup> In 2002, the permit for a six-month test was finally denied, in part because of Kimberly Clark's refusal to install, as PADEP had insisted, a pollution control device that would limit any possible increase in toxic emissions.<sup>39</sup>

After these important successes, CRCQL dissolved, in part because its leaders were exhausted and its resources depleted.<sup>40</sup> Currently, local government officials point to a few small groups that are concerned about community issues; but they are not activist organizations.<sup>41</sup>

## **Health Concerns**

### Environmental Risk Study

The health concerns of the Chester community have changed little since the environmental justice fights of the 1990s. In June 1995, EPA Region III's risk study documented what many in the community had alleged; their health was at risk due to so much exposure to environmental hazards.

EPA's 1995 Environmental Risk Study contained five major conclusions that linked increased health risks with environmental exposures in Chester:

- Blood lead levels in the children of Chester are unacceptably high, with over 60 percent of the children's blood samples above the Centers for Disease Control and Prevention's recommended maximum level of ten micrograms per deciliter.

- Both cancer and non-cancer risks (e.g., kidney disease, liver disease, and respiratory problems) from pollution sources in Chester exceed levels that EPA believes are acceptable.
- Air emissions from facilities in and around Chester constitute a large component of the cancer and non-cancer risk to the city's citizens.
- The health risks from eating contaminated fish from streams in Chester and from the Delaware River are unacceptably high.
- Drinking water quality throughout Chester is typical of supplies in other cities throughout the country.<sup>42</sup>

Since completion of EPA's study, no further risk assessments have been conducted in Chester. The city's Health Department is currently undertaking a health profile of the city, fashioned after the National Health and Nutrition Examination Survey (NHANES).<sup>43</sup> The study will be done entirely through interviews and without assessments or screenings.<sup>44</sup> The Health Department expected to begin the survey in November of 2002,<sup>45</sup> but the survey is not designed to determine the health impacts of industrial pollution on Chester residents.<sup>46</sup>

#### Implementation of Risk Study Recommendations

EPA's 1995 risk study included a series of recommended actions, directed at PADEP, for reducing health risks in Chester. Implementation of these recommendations has produced mixed results:

- Recommendation: "Sources of air emissions which impact the areas of the city with unacceptably high risk should be targeted for compliance inspections and any necessary enforcement action."<sup>47</sup>

Response: All major air pollution sources in Chester have Continuous Emissions Monitors, which measure and record real-time pollution emissions from facilities. PADEP receives the data quarterly and reviews it for permit violations. Facilities are assessed fines almost automatically when violations are found. Currently, PADEP reports that facilities within Chester are nearly in 100 percent compliance with their permit limits.<sup>48</sup>

PADEP, with support from EPA, has been conducting an air monitoring project in Chester. The project placed four air monitors in and around Chester to measure ambient air quality and to determine relative exposure risks among local area populations—in Chester, Marcus Hook, and Swarthmore. Over the last six years, the study has shown that air quality is improving, and that relative exposure risks among the local area populations studied are roughly equivalent.<sup>49</sup> The study is also finding that the majority of air pollution exposures are from mobile sources, not from stationary facilities.<sup>50</sup>

- Recommendation: “A voluntary emission reduction program should be instituted to obtain additional emissions reductions from facilities which provide the most emissions in the areas of highest risk.”<sup>51</sup>

Response: A voluntary emissions reduction program has not been instituted.<sup>52</sup>

- Recommendation: “The lead paint education and abatement program in the city of Chester should be aggressively enhanced.”<sup>53</sup>

Response: In 1997, PADEP, EPA, CRCQL, and the DELCORA water treatment and sludge incineration plant reached a settlement agreement over alleged violations at the DELCORA facility. As part of the settlement, DELCORA provided \$200,000 for a lead poisoning prevention program. The parties agreed to appoint a trustee who oversees the allocation of the funds. The program successfully cleaned up some properties, targeting new mothers and babies who live in rental housing with known lead paint. Some properties were thoroughly cleaned and the lead dust removed but, overall, the program did not prove to be very successful.<sup>54</sup>

### Health Study of Minorities in Pennsylvania

In 2002, the Pennsylvania Department of Health completed its *Special Report on The Health Status of Minorities in Pennsylvania*. It analyzed the health status of “racial, cultural, and linguistic minorities” in the state, based on the principles and objectives from the U.S. Department of Health and Human Services’ *Healthy People 2010* initiative.<sup>55</sup>

The Environmental Health section of the report details how minority communities in Pennsylvania are disproportionately exposed to environmental hazards. The report specifically highlights Chester:

The City of Chester...has: the fourth largest garbage-burning incinerator in the nation, burning wastes from New York, New Jersey, Maryland, and Delaware as well as from all over Pennsylvania...and a sewage treatment facility for 90 percent of Delaware County sewage waste and highly toxic industrial sludge from local industries. Sixty-five percent of the city residents are African-American and the poverty rate is 25 percent, more than three times the overall rate in Delaware County.<sup>56</sup>

Looking at Pennsylvania as a whole, the report found minority communities carry more environmental burdens:

- “Communities of minority population are at higher risk to be exposed to environmental hazards.”<sup>57</sup>
- “A higher percentage of minority populations are exposed to poor indoor air quality.”<sup>58</sup>

- “Death rates from asthma are higher in the minority population; higher percentages of the minority population experience asthma.”<sup>59</sup>
- “A higher percentage of minority children are at risk of having a high blood lead level; the cultural background of recent immigrants could play a role in lead exposure.”<sup>60</sup>

## **Other Issues in Chester**

### Housing

Housing is a crucial issue facing Chester. Many of the city’s social service dollars are being directed toward developing new and better housing options. The city is endeavoring to demolish and replace much of its old, poor-quality housing stock and is even assembling lots for developers to build new homes. To keep these new housing options affordable and to move moderate and low-income residents from rental properties to home ownership, the city offers residents five-year deferred loans for down payments and closing costs. If residents stay in their homes for five years, the loans dissolve. Potential homeowners in this program must attend homebuyer classes sponsored by a local financial institution.<sup>61</sup>

To improve existing housing stock, the city has established an early warning system. This hotline enables residents to call and request the city to investigate serious deterioration or dangerous conditions or to assist residents (*e.g.*, elderly or disabled citizens) who are unable to make major repairs.<sup>62</sup>

However, Chester is not relocating residents or buying out any distressed housing.<sup>63</sup> Consequently, the city has not moved people out of the housing that was the focus of environmental justice concerns, and many people still live very close to industrial facilities.

### Economic Development

The city’s economic development staff consider Chester’s greatest asset to be its ideal location at the center of major transportation routes, with proximity to three states and access to air, land, and water transportation. The city is also capitalizing on the growing national appreciation for waterfront property by converting its industrial waterfront to a mix of commercial and recreational uses.<sup>64</sup> Chester has applied and has received support from several state and federal agencies for its community and economic development programs.<sup>65</sup> The volume of funding they have received indicates that the city has an articulate and well-organized plan, because many state and federal grant programs require applicants to demonstrate how work to be undertaken with grant funding fits into larger, comprehensive programs.

To attract development, Chester uses selective tax abatements of up to 100 percent for 12 years on land designated for high impact development, but Chester has not applied for federal brownfield funds to clean up exiting contaminated properties for their redevelopment and reuse. However, some private investors are working with the state voluntary cleanup program—the Pennsylvania Land Recycling Program—that promotes private cleanups of contaminated

property.<sup>66</sup> The city also has not used its authority under state law to impose development fees for transportation improvements.<sup>67</sup>

Chester's efforts to resuscitate its economy appear to be working. Public and private investments in Chester from 1996 to 2002 have exceeded \$500 million, and several developers are now working with the city on preliminary proposals for new projects. The biggest project involves a former power plant, which a private developer is converting to office and commercial space. The power plant and related redevelopment (infrastructure) alone represent a \$50 million investment in Chester's future.<sup>68</sup> The city's efforts to convert industrial properties into commercial and other less intense uses should result in reduced pollution exposures for Chester residents.

Although the city encourages new businesses to hire staff locally, it does not require local hiring; and Chester residents may not have the appropriate work skills and knowledge to fill all of the incoming jobs. The city does not conduct job training, but provides funding for and works with local nonprofit organizations that do, such as the Chester Microenterprise Partnership.<sup>69</sup>

## **PLANNING, ZONING, AND GOVERNANCE IN CHESTER**

The following sections describe the relationships among municipal, county, and state planning and zoning requirements in Pennsylvania, and how these requirements relate to the environmental permitting authorities exercised by PADEP.

### **Pennsylvania Planning and Zoning**

#### Planning in Pennsylvania

Pennsylvania does not have a state land use plan, although Executive Order 1999-1 sets forth requirements for state agencies to:

- Conduct soundly planned growth;
- Promote development in previously developed or locally designated growth areas;
- Understand how land use planning impacts environmental, economic, and social factors;
- Participate in regional cooperation;
- Preserve farmland and open space;
- Preserve property rights and the economic and social vitality of Pennsylvania's communities; and
- Maintain and improve infrastructure consistent with sound land use.<sup>70</sup>



Executive Order 1999-1 also makes the Governor's Center for Local Government Services in the Pennsylvania Department of Community and Economic Development responsible for land use planning assistance. These land use planning programs promote the state's Growing Smarter Initiative and provide resources for communities. There are three primary programs to help communities with planning:<sup>71</sup>

- Land Use Planning and Technical Assistance Program;<sup>72</sup>
- Shared Municipal Services Program, for joint projects between and among municipalities;<sup>73</sup> and
- Community Development Block Grants.<sup>74</sup>

Municipalities are eligible for state funding from the Governor's Center for Local Government Services. However, the state makes a specific effort to work with the 67 counties, and encourages multi-municipality collaboration. If a municipality comes to the state for assistance, state officials generally ask and encourage the entity to work with its county.

Delaware County has taken advantage of state programs for funding the county's comprehensive plan. So has Chester, which recently received two Growing Greener grants.<sup>75</sup> One state official suggested that Chester might benefit from seeking funding for developing programs with other nearby municipalities, especially municipalities facing too much population growth, to cooperate on directing some of that growth into Chester.<sup>76</sup>

Pennsylvania laws delegate state planning authority to local governments through the Municipalities Planning Code (MPC).<sup>77</sup> Adopted in 1968, the MPC has been amended several times, with significant changes in 2000. The MPC requires Pennsylvania's counties to develop comprehensive plans,<sup>78</sup> but local plans are optional.<sup>79</sup> If a municipality does develop a plan, it must be consistent with both the MPC and the county plan.<sup>80</sup> State approval is not required for any plans, but the law provides an opportunity for review and comment among municipalities and counties in order to achieve general consistency among overlapping plans.<sup>81</sup>

Current MPC provisions require all county or local comprehensive plans to contain (although they are not limited to) the following elements:

- Objectives for future development;
- Land use;
- Housing needs;
- Transportation;
- Community facilities and utilities;
- Protection of natural and historic resources;

- Water supply;
- Consistency with county and contiguous municipality plans;
- Short and long range implementation strategies; and
- A statement of relationships among various plan components, such as environmental, economic development and social consequences on the municipality.<sup>82</sup>

Plans may also include an energy conservation element<sup>83</sup> and may identify areas for new growth and development.<sup>84</sup> See Appendix H for more details on Pennsylvania’s state planning requirements.

Implementation of the MPC is left primarily to local governments. The state does not review county or local comprehensive plans, nor does it monitor compliance with the MPC. The Governor’s Center for Local Services does, however, provide incentives in the form of grants, technical assistance, and education and training to encourage local governments to undertake comprehensive planning.<sup>85</sup> The Department of Community and Economic Development also provides grants and financial assistance for municipalities to support community development, community services, housing assistance, infrastructure, municipal services, and neighborhood improvements.<sup>86</sup>

The MPC requires that the Governor’s Center for Local Government Services prepare an informational Land Use and Growth Management Report every five years.<sup>87</sup> The first report is due in 2005. It must “contain information, data and conclusions regarding growth and development patterns in this commonwealth [Pennsylvania] and...will offer recommendations to commonwealth agencies for coordination of executive action, regulation and programs.”<sup>88</sup>

The Chester Economic Development Authority (CEAC) has taken advantage of many public investment programs, including programs from both federal<sup>89</sup> and state<sup>90</sup> agencies for improvements in transportation, housing, economic development, and infrastructure.<sup>91</sup> Chester *Vision 2000* further outlines many of the federal, state, and city programs that Chester may potentially tap for funding.<sup>92</sup>

In June 2000, then-Governor Tom Ridge signed Pennsylvania’s Growing Smarter Initiative into law.<sup>93</sup> This initiative, developed through a series of land use forums held across the state and backed by a \$3.6 million budget from the Governor’s Office, was intended to support and empower local government planning while respecting private property rights, as well as to update the MPC.<sup>94</sup>

The Growing Smarter amendments to the MPC are potentially important tools for Chester and other Pennsylvania localities to use in addressing environmental justice concerns. Acts 67 and 69 direct that “Commonwealth agencies shall consider and may rely upon comprehensive plans and zoning ordinances when reviewing applications for the funding or permitting of infrastructure or facilities.”<sup>95</sup> The actions taken by PADEP to comply with these amendments have environmental justice implications, as discussed below.

## State Zoning

Pennsylvania law authorizes municipalities to adopt zoning ordinances that implement comprehensive plans;<sup>96</sup> protect public health, safety, and the environment;<sup>97</sup> address socioeconomic concerns; and provide for affordable housing and transportation for low to moderate income persons.<sup>98</sup> Zoning ordinances must reflect the community's policy goals and consider the character of the municipality, the needs of citizens, and the special nature of particular parts of the community.<sup>99</sup>

The state does not review local zoning laws or monitor compliance with the state code, except through the five-year Land Use and Growth Management Report. But, as with planning, state statutes contemplate some coordination of planning and zoning among local entities. For example, a county must hold a mediation session with municipalities that believe the county's ordinances will have negative local impacts.

State law does not specifically require public participation in the development of local plans or zoning ordinances, other than traditional due process public notice and hearing requirements prior to their adoption. However, state law limits the ability of municipalities to collect development fees on new development. A municipality may enact development fees, but *solely* for transportation purposes associated with new development [emphasis added].<sup>100</sup>

## **Delaware County's Planning and Zoning**

### County Planning

Pennsylvania counties are granted planning functions in the absence of municipal authority. Counties can adopt zoning or subdivision regulations for the entire county if there are no municipal ordinances, or for as much of the land within the county that is unregulated.<sup>101</sup> Each county has an appointed planning commission,<sup>102</sup> and municipalities wishing to engage in certain planning activities are required to submit their proposed actions to the county planning commission for review.<sup>103</sup>

Although the MPC requires counties to develop a comprehensive plan,<sup>104</sup> municipalities are not required to develop and adopt their own plans.<sup>105</sup> However, if a municipality develops its own comprehensive plan, it must do so in accordance with the MPC, and its plan must be generally consistent with the county comprehensive plan.<sup>106</sup> Delaware County currently operates under a land use plan and is actively developing a comprehensive plan.<sup>107</sup> Chester has a comprehensive plan and is working with Delaware County to revise its plan and make it final.<sup>108</sup>

State law gives the governing body of a county the power to adopt and amend the county comprehensive plan, as a whole or in parts.<sup>109</sup> In reviewing the proposed comprehensive plan, county officials must consider the comments of municipalities and school districts within the county, as well as comments from contiguous school districts, municipalities, and counties. They must also consider comments from the required public meeting and recommendations of the county planning agency.<sup>110</sup>

Municipal comprehensive plans must be generally consistent with the adopted county comprehensive plan.<sup>111</sup> A municipality may amend its comprehensive plan at any time, provided that the local plan remains generally consistent with the county plan and compatible with the comprehensive plans of abutting municipalities.<sup>112</sup> However, final land use authority resides with the municipality and, although municipal plans should be “generally consistent” with the county plan, they are not required to be.<sup>113</sup>

In accordance with MPC Section 10302 (a.1), counties must consider amendments to their comprehensive plans proposed by municipalities that are considering adoption or revision of their municipal comprehensive plans, in order to achieve general consistency between the respective plans.<sup>114</sup> When two or more contiguous municipalities request amendments to a county comprehensive plan, for purposes of achieving general consistency between the municipal plans or a multi-municipal plan and the county plan, the county must accept the amendments unless it can establish good cause for refusal to do so.<sup>115</sup>

### County Zoning

The power of a county to enact, amend, or repeal zoning ordinances is limited to land in municipalities that is located wholly or partly within the county and that has no local zoning ordinance in effect at the time the county zoning is introduced. The county’s power ends when a municipal zoning ordinance is adopted. When a municipality adopts a zoning ordinance, the county zoning ordinance is repealed.<sup>116</sup> Delaware County does not have any county zoning ordinances, but the city of Chester does.<sup>117</sup>

### **Local Governance in Chester**

The Chester City Council is elected at large and is composed of a Mayor and four Council members.<sup>118</sup> All members serve four-year terms, during which each Council member serves as a department head for one of the five municipal departments: Public Safety, Parks and Public Property, Streets and Public Improvements, Accounts and Finance, and Public Affairs (Mayor’s Office).<sup>119</sup>

Chester is classified as a Third Class City. On April 20, 1980, the residents approved Chester as a Home Rule Charter Community. As a Pennsylvania home rule community, the city can act anywhere except where state law limits them, whereas municipalities without home rule can only act where authorized by state law.<sup>120</sup> Therefore, the Chester City Council is “given all the legislative power to create ordinances, rules, and regulations so the city can provide for the health, safety, and well-being of its citizens.”<sup>121</sup>

### **Chester’s Planning and Zoning**

Planning Commission. The Planning Commission has five members who are appointed by the City Council and serve four-year terms.<sup>122</sup> Members of the Commission cannot hold any other office in the municipality, and the Commission elects its own chairman and vice-chairman.<sup>123</sup>

Zoning Hearing Board. Chester's Zoning Hearing Board has three members who are appointed by the City Council; each member serves a five-year staggered term.<sup>124</sup> Members of the Board cannot hold any other office in the municipality, and the board elects its own officers from its membership.<sup>125</sup>

Environmental Advisory Council. Chester's Environmental Advisory Council (CEAC) is an advisory group authorized by PADEP. Members of the seven-member Council represent a range of interests and skills—from technical experts to local citizens. They are selected by the City Council and approved by PADEP. CEAC elects its own officers, and any vacant positions are filled by PADEP. CEAC also receives and investigates citizen complaints about industries in Chester. CEAC offers advice to the City Council, but has no authority to implement its own recommendations.<sup>126</sup>

Bureau of Health. Chester's Bureau of Health reviews and comments on pending PADEP permits, concurrently with review by the City Council and PADEP. Although the Bureau can comment on pending permits, it has no regulatory or enforcement abilities. The Bureau has over 30 full-time staff, including two medical doctors, who oversee four local health programs: childhood lead prevention, injury and violence protection, sexual abstinence education, and dog/animal control. The Bureau offers no clinical services, but has worked hard to develop preventative health programs as well to increase citizens' health literacy.<sup>127</sup> The Bureau does not track citizens' health complaints, but is currently working on a citywide survey to profile the state of health of the city.

### **City Plan—*VISION 2000***

On March 14, 1994, the Chester City Council adopted its *Vision 2000: Comprehensive Plan and Economic Development Strategy*. The Chester Planning Commission, the Delaware County Planning Commission, and the public (by means of one public meeting and one public hearing) reviewed this comprehensive plan, which reaffirmed that poor land use was a problem for Chester:

Chester City presents a mixture of dysfunctional land uses in many areas of the city. The major land uses including residential, commercial, industrial, institutional, and recreation are not working together as they should...in some areas, residential is intermingled with industry and in these cases we often find conflict and deterioration...Other land uses that have created conflict are the numerous auto repairs shops located in residential areas where personal service shops, laundromats or food stores would be more appropriate.<sup>128</sup>

Waterfront Overlay District. Also in 1994, Chester launched its waterfront overlay district.<sup>129</sup> The waterfront overlay district, a “floating zone,” was created to move waterfront land use away from heavy industry towards mixed use. City planners envision the waterfront will have mixed uses, including offices, retail buildings, recreation, high density residential, and other uses. To accomplish this change, the floating zone specifies conditional uses adopted by the City Council. The zone allows existing property owners to down-zone their properties from heavy industrial to a less intensive use, in exchange for a conditional zoning approval. This win-win situation gives

property owners the chance to have their properties rezoned quickly so they can reinvest and reuse them, while the city is able to make zoning changes on existing properties without the complication of takings allegations or having to purchase properties in order to redevelop them.<sup>130</sup>

Other Implementation. Since *Vision 2000* was adopted, the city has moved to make implementation of the plan a reality. City planners began by updating Chester’s administrative code. No changes will be made in the city zoning patterns—with the exception of the waterfront overlay—until the code has been updated and the text has been revised. City and county officials are now reviewing the new code, and once it has been approved, Chester will adopt it as a city ordinance.<sup>131</sup>

## **ENVIRONMENTAL PERMITTING**

### **Chester’s Requirements for Industrial Facilities**

Chester does not have authority to issue pollution control permits; only PADEP can do so. However, permits for building new facilities must be obtained from the city. Both Chester’s Planning Commission and Zoning Hearing Board must approve any construction permits and site plans. Either of these bodies may require further action before making a decision.<sup>132</sup>

In 1994, with the support of the CRCQL and the Public Interest Law Center of Philadelphia, the City Council adopted a zoning ordinance for heavy industry, called M-3 Industrial Districts.<sup>133</sup> The M-3 Industrial District ordinance makes it difficult for polluting industries to open additional facilities in the city. It requires such facilities to obtain a special zoning exception, which will only be granted when the:

“applicant presents convincing evidence to the Board that the construction or operation of a special exception facility...will not produce a net increase in environmental pollution as compared to environmental pollution at the time construction of the facility commences.”<sup>134</sup>

If the applicant does provide the required convincing evidence, the applicant must then also meet the following requirements before opening a new facility in Chester:

- The new facility must be consistent with the comprehensive plan and comply with subdivision, Board of Health, building codes, performance standards, and any other applicable city regulations; and the applicant must also demonstrate that neither the facility nor the traffic it generates will adversely impact adjoining properties.<sup>135</sup>
- As a part of the M-3 special exception, the Zoning Hearing Board has authority to stipulate the volume of hazardous materials used or to require special handling at waste facilities; to approve the design, layout and/or operation of proposed facilities; and to impose additional “reasonable conditions and safeguards” for protecting health, safety and welfare in the community.<sup>136</sup>

- Buffers and landscaping must be provided in M-3 zones between unsightly uses and adjacent properties.<sup>137</sup>
- Finally, the new facility may not locate within 900 feet of commercial, residential, institutional, or recreational areas or within one mile of a facility with the same function or characteristics.<sup>138</sup>

Presumably, this ordinance will now prevent similar facilities from locating close to each other, as happened with Chester's waste processing facilities in the early 1990s.

In 1998, Chester also enacted a Performance Standards ordinance under authority of the MPC. The performance standards apply to all lands within the city for activities that will potentially impact public health, comfort, convenience, and welfare. These minimum standards apply to all uses, unless the activity is subject to more stringent PADEP or EPA standards:

- **Air quality:** There can be “no emission of smoke, ash, dust, fumes, vapors, gases or other matter [that is] toxic [or] noxious to the air which violates the rules set forth by the Environmental Protection Agency and the Pennsylvania Air Pollution Control Laws.”<sup>139</sup>
- **Liquid and solid waste:** “No discharge [may occur] at any public or private sewerage system, or watercourses, or into the ground of any materials in such a way or such a nature as will contaminate or otherwise cause the emission of hazardous materials.”<sup>140</sup>
- **Odors:** “No uses shall emit odorous gases or other odorous matter in such quantities to be offensive at any point on or beyond its lot lines.”<sup>141</sup>

There are additional standards for fire and explosive hazards, glare and heat, noise, vibration, radioactivity or electrical disturbances, and public health and safety. An engineer registered in Pennsylvania must certify in the application that a proposed new industrial use can meet these performance standards; and the city engineer must review the engineer's certification.<sup>142</sup>

These performance standards only apply to existing facilities if they expand, rehabilitate, or redevelop. For facilities already operating, there is no retroactive enforcement of the standards, although the zoning officer, city engineer, building official, health officer or fire commissioner may investigate complaints.<sup>143</sup> This inability to enforce is further compounded by the city's lack of staff.<sup>144</sup>

Although Chester has no authority to control permits for pollution, the city now plays an active role in reviewing permits that are received by the PADEP, as provided for in Acts 67 and 68 and in the 2000 amendments to the MPC. The city's role in reviewing permits is discussed below.

### **State Environmental Permitting**

PADEP receives funding from EPA to operate Pennsylvania's waste programs, and has authority to issue or deny applications for permits to operate waste processing facilities<sup>145</sup> pursuant to the federal Resource Conservation and Recovery Act.<sup>146</sup> PADEP applies federal regulations to

determine whether an applicant meets the requirements for a specific permit. PADEP is also responsible for issuing air, water, and other environmental permits throughout Pennsylvania.

Under recently enacted Pennsylvania law, PADEP “shall consider and *may rely upon* comprehensive plans and zoning ordinances when reviewing applications for the funding or permitting of infrastructure or facilities [emphasis added].”<sup>147</sup> Thus, PADEP clearly is required to consider local comprehensive plans and zoning ordinances in its permitting process. But, under the law, PADEP can only base a permit decision on local land use information in a municipality where:

- The local government has adopted a joint zoning ordinance or has adopted zoning ordinances as part of the implementation of a cooperative agreement (Section 1105 of the MPC); or
- Both a county and a municipal or multi-municipal plan exist, the county or municipality has enacted zoning ordinances; and all three of these elements are generally consistent with each other.

If a county or municipality does not meet these requirements, PADEP cannot rely upon land use plans or zoning information nor on local governments’ comments received on a land use conflict when making a permit decision.<sup>148</sup>

Effective June 8, 2002, PADEP officially issued its “Policy for Consideration of Local Comprehensive Plans and Zoning Ordinances in DEP Review of Permits for Facilities and Infrastructure.”<sup>149</sup> The policy outlines PADEP’s position on how the undefined “may rely upon” language will be interpreted by the agency:

State agencies under the Governor’s jurisdiction, including DEP, interpret the “may rely upon” statutory language to grant DEP discretion as to how to rely upon planning and zoning in its permit decision making. When DEP’s authority exists to rely upon planning and zoning information and conflicts have been identified, DEP has chosen to rely upon this information in several ways. DEP can deny an application, approve the application or put a special condition on a permit.<sup>150</sup>

Therefore, although PADEP is required to consider local comprehensive plans and zoning ordinances in relation to a pending permit application, PADEP has discretionary authority as to how—and if—the agency will use local planning information in its final decisions on permit applications.

Depending on how much PADEP chooses to rely upon local comprehensive plans and zoning ordinances, the MPC amendments could be used to support the goals of environmental justice communities. For example, the amendments may allow PADEP to rely on Chester’s 1994 ordinance, which requires new industrial facilities to prove that their operations would not cause a net increase in pollution, when the agency is considering permit applications in Chester.<sup>151</sup>



Another element of the Growing Smarter amendments is the requirement that state agencies reach out to county and municipal planners for comment on pending state permits regarding local land uses. The amendments changed the way the state communicates information regarding permit applications to localities. For PADEP, the revised permit process is as follows:

1. A proposed facility submits a completed permit application to PADEP for review.
2. PADEP sends the land use portion of the permit to the county and local governments for their review for potential conflicts with zoning ordinances or comprehensive plans.
3. The county and local governments submit their comments within 30 days to PADEP.
4. PADEP considers the local comments and may then deny the application, approve it, or attach special conditions to the permit.<sup>152</sup>
5. If the permit is approved, PADEP then completes the public notice and comment period as required by statute.

This new process offers the opportunity for both PADEP and municipalities to be better informed of each other's actions.

### **State Environmental Justice Efforts**

In the spring of 1999, PADEP formed the Environmental Justice Work Group, with members representing a range of interests. In June 2001, the Work Group recommended to PADEP that the agency “lead in the coordination of local, state and federal governmental agencies that can play a role in improving the conditions of environmentally burdened minority and low-income communities,” and “act swiftly and decisively to make the improvement of conditions in environmentally burdened minority and low-income communities one of the Commonwealth’s top priorities.”<sup>153</sup> The report focused on strategies to address environmental justice in permitting, but there are also opportunities for PADEP to play a leadership role in the context of local land use planning.<sup>154</sup>

The Work Group specifically recommended that PADEP:

- Take actions to reduce or eliminate the existing environmental burdens in minority and low-income communities;
- Ensure that minority and low-income communities have opportunities to become full and active participants in permit review processes;
- Enforce regulations and statutes and apply internal guidance and policies in minority and low-income communities to increase monitoring in these communities; and

- Provide organizational structures that foster a productive exchange of information with minority and low-income communities and ensure a proactive approach to environmental justice issues.<sup>155</sup>

### Office of Environmental Advocacy for the Southeast Region

As a result of these recommendations, PADEP's Office of Environmental Advocacy for the Southeast Region was established in 2001—mostly for Chester's benefit. The Office works to coordinate state, local, and federal resources for protecting the environment and addressing environmental justice issues. The Office has identified key cities and neighborhoods in Southeast Pennsylvania that may have environmental justice problems, and becomes involved in the permitting process any time an application is submitted for those areas. The Office has a corridor inspector who works with the City Council and Chester industries. The inspector reports on any unusual emissions and other concerns. The inspector meets with the City Council and CEAC at least once each quarter, or more frequently, depending on current issues and concerns.<sup>156</sup>

In addition, the Office requires that facilities make extra efforts to notify the public when they apply for permits in low-income, minority communities where there is a risk of over-exposure to industrial pollution.<sup>157</sup> This means that, in addition to publishing the usual public notices in newspapers, applicants must distribute fliers in the neighborhood and also post notices at libraries, in community centers, and in City Hall. The Office ensures that the expanded notice process happens, provides information, and helps facilitate discussions between community residents and businesses. For example, the Office recently helped facilitate information sessions regarding a facility in Chester that has applied for a permit to expand and modify some of its industrial processes.<sup>158</sup>

## **ANALYSIS AND RECOMMENDATIONS**

### **Leadership and Accountability**

The city of Chester has shown leadership by pursuing policies that will help to prevent new environmental justice problems, but it is still grappling with how to address the effects of poor land use decisions in the past. Chester has adopted a comprehensive plan and development strategy, conditions for the M-3 industrial zoning district that reduce pollution, performance standards for all new facilities, and a waterfront overlay district that encourages the voluntary down-zoning of existing heavy industrial properties. Chester is moving forward with its future vision, while being careful not to create future environmental justice problems or to exacerbate existing problems.

Nevertheless, Chester's attempts not to repeat history do not address the issues associated with some existing land uses, including inhabited but depressed housing stock still located close to industrial facilities. While Chester officials believe the city's environmental justice problems are in the past,<sup>159</sup> because a sizeable number of residents still regard environmental justice issues as unresolved because many of them continue to live near heavy industrial facilities. Although some citizens want houses in these locations purchased at fair market value and the residents

relocated, the city has no intention to do this.<sup>160</sup> Thus, there is a fundamental conflict between residents who are calling on the city to be more active in addressing existing hazards,<sup>161</sup> and city officials who are firmly focused on future development and investment.

Moreover, there are no accountability mechanisms to ensure that the city's comprehensive plan and zoning ordinances will improve growth and reduce pollution—and thereby reduce environmental hazards for Chester's low-income and people-of-color community. Currently, Chester has no city staff dedicated to environmental protection, monitoring, or enforcement.<sup>162</sup> The 1994 city ordinance requiring no net increase in pollution from proposed new heavy industrial facilities is unique, but it has been ineffective due to the lack of enforcement.<sup>163</sup> While the city's new environmental performance standards could have a positive effect, they too remain unenforced, largely due to staff shortages.<sup>164</sup>

A lack of accountability and oversight hampers Pennsylvania's attempts to institute comprehensive and consistent land use planning. Under state law, counties are required to complete comprehensive plans; but plans for municipalities are optional. If a municipality chooses to prepare a plan, however, state law requires it to be consistent with the county plan. Yet, municipalities are not required to adopt county plans in part or whole, and counties have no mechanism to ensure that municipalities prepare plans that are consistent with county plans. Pennsylvania's overarching difficulty is the lack of a mechanism to ensure that local and county plans agree. This lack of clear accountability allows county and municipal plans to conflict and highlights a substantial flaw in Pennsylvania's planning laws. Without meaningful ways to resolve conflicts when municipal plans are inconsistent with county plans, or vice-versa, Pennsylvania will continue to lack consistency in land use planning.

### **Permitting and Other Authorities**

Chester's efforts to update and re-write its zoning code, coupled with a new, detailed comprehensive plan, have already produced more investment and redevelopment. The City Council's adoption of limits on pollution for new heavy industry, as well as detailed performance standards for new facilities, are significant steps toward building a cleaner and healthier future for Chester.

The Growing Smarter initiative further institutionalizes a new relationship between PADEP and the state's county and municipal planning and zoning entities. By requiring PADEP to consider local zoning ordinances and comprehensive plans, the state has created a new avenue for strengthening communication and building awareness of county and municipal land use plans in the permitting process. The strongest element of this initiative is that PADEP now has the authority to deny a permit application on grounds that the proposed facility conflicts with local land use requirements.

### **Setting Priorities and Reducing Risk**

Chester has articulated a vision for its economic development, including desired land uses, but the city has not adopted goals for reducing pollution, achieving environmental justice, or reducing environmental and health risks for its citizens. Coupled with the fact that the city's

environmental justice stance is based on preventing future problems, Chester's officials have not explicitly focused on how they can reduce existing risks.

Chester has no staff specifically assigned to oversee the health of city residents, to implement its pollution control efforts, nor to address environmental justice problems.<sup>165</sup> Several departments have partial responsibility for these issues, but none has overall authority or any particular leadership role to work on progress for these matters. As noted earlier, Chester also has limited public health data and no method for monitoring pollution exposures. Without these measures, it is difficult for the city to make any progress in addressing residents' environmental justice concerns.

### **Public Participation**

There is no sustained community-based organizing now that CRCQL has dissolved. Its leaders are exhausted, and their resources depleted after the environmental justice battles of the 1990s.<sup>166</sup> Local government officials point to a few small groups that are concerned about community issues but, in general, they are not community-based activist organizations.<sup>167</sup> Despite the current absence of citizen involvement, Chester has not launched any specific outreach to increase public participation in local decisions.

The only community organization still active on environmental issues, Chester Environmental Action Council (CEAC), was created as the result of a recommendation from PADEP, and did not grow out of the community itself. Since CEAC's creation, the city and its planning commission have never taken any action that CEAC could not approve.<sup>168</sup> To local government officials, this indicates a changed government and a good working relationship.<sup>169</sup> But to community residents, this indicates that the functions of a community group have been co-opted.<sup>170</sup>

In general, Chester's public notices are fairly minimal. The planning department posts notices of new projects in local newspapers, conducts some outreach through regular mailings, and periodically sends information home with schoolchildren. Despite dwindling citizen involvement, city staff does not seek out citizen leaders, hold training, or conduct other programs to engage residents. Yet, the city relies on these individuals to bring problems to the government's attention.

Lastly, Chester lacks a formal process for addressing or tracking citizen concerns about environmental or public health hazards. When asked how a complaint would be handled, each of several city professionals offered different answers. Some thought the Mayor's office would handle citizen concerns; others said citizens would be referred to PADEP. The local (citizen volunteer) leader of CEAC believes he would be notified and would follow up.<sup>171</sup> While that dedication is admirable, it does not substitute for local government action and authority.

By contrast, PADEP has a more extensive environmental justice outreach program than does Chester. PADEP requires extensive public notification of communities in high-risk areas whenever a new permit application is filed.

## RECOMMENDATIONS

- The Pennsylvania Legislature should require compliance with local land use plans whenever environmental permits are sought so PADEP can better protect communities from bearing a disproportionate share of the negative consequences of industrial and commercial operations. The MPC's requirement that local land use plans be considered is a good beginning, but deference to local plans for PADEP decisions remains discretionary. A requirement that local land use plans must be followed will create a greater likelihood that community residents will receive greater protection.
- Chester's city government should enforce the 1994 changes to its municipal planning and zoning code, as well as its 1998 Performance Standard ordinance. These requirements were designed to ensure there would be no net increase in pollution from new industrial facilities, no violations of federal air quality regulations, no unlawful discharges of liquid or solid wastes, and no offensive odors beyond lot lines.
- Chester officials should look creatively at the city's existing authorities to address the range of current environmental justice concerns; and they should devise creative and aggressive strategies to solve them, including common law nuisance authorities or the Pennsylvania State Constitution, Section 27 of Article I, which states "the people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment."<sup>172</sup> The city should develop effective communication strategies to inform affected communities of the status of its efforts, and should establish measurable goals and outcomes.
- Chester officials should take steps to increase public participation in local decision-making and develop a formal process for tracking citizen concerns about environmental or public health hazards.
- PADEP should work with Chester's government on developing strategies to reduce risk and addressing other community concerns, like noise, odor, and traffic; and they should set specific goals and measures to assure accountability. As a starting point for a risk reduction strategy, PADEP should consider using EPA's 1995 health risk study for the Chester area. Chester and PADEP should also make information about progress being made against goals widely available to the public on a routine basis.

## ENDNOTES

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<sup>1</sup> *Chester Residents v. Seif*, No. 96-CV-3960.

<sup>2</sup> City of Chester, PA, *Chester City: Spanning New Horizons* (undated).

<sup>3</sup> City of Chester, PA, *Chester City Vision 2000*, 127 (undated).

<sup>4</sup> *Ibid.*, 6.

<sup>5</sup> *Ibid.*, 181.

<sup>6</sup> Morgan Kelly, *The History of Chester* (Pennsylvania Environmental Network, February 14, 1998). Available at <[www.penweb.org/chester/history.html](http://www.penweb.org/chester/history.html)> (visited July 2003).

<sup>7</sup> *Ibid.*

<sup>8</sup> *Chester City Vision 2000*, 9.

<sup>9</sup> Chester Residents Concerned for Quality Living (CRCQL), *The Case for Environmental Justice in Chester, Pennsylvania* (Environmental Background Information Center, undated). Available at <[www.ebic.org/gis/pdf/chester.pdf](http://www.ebic.org/gis/pdf/chester.pdf)> (visited July 2003).

<sup>10</sup> Morgan Kelly, *The History of Chester*.

<sup>11</sup> *Chester City Vision 2000*, 9.

<sup>12</sup> “During this period, the number of retail establishments dropped from 244 to 163, a decrease of 81 establishments. This decline represented a loss of one third of all retail establishments in the city in the five-year period [1982-1987],” *Chester City Vision 2000*, 169.

<sup>13</sup> *Chester City Vision 2000*, 9-10.

<sup>14</sup> CRCQL, *The Case for Environmental Justice*.

<sup>15</sup> U.S. Census Bureau, “Your Gateway to Census 2000,” website, <<http://www.census.gov/main/www/cen2000.html>> (visited July 2003).

<sup>16</sup> Chester is home to Widner University.

<sup>17</sup> U.S. Census Bureau, *Census 2000*.

<sup>18</sup> *Ibid.*

<sup>19</sup> A soil remediation facility was not sited by Chester, but was permitted by PADEP.

<sup>20</sup> U.S. Environmental Protection Agency (EPA), *Draft Environmental Justice Strategy for Executive Order No. 12898* (January 1995).

<sup>21</sup> See *CRCQL v. Seif*, No. 96-CV-3960, Jerome Balter Brief, I.D. 26634: “All wastes to these facilities [Westinghouse Incinerator, Abbonizio Recycling, Thermal Pure Systems, and DELCORA Sewage Treatment Sludge] are delivered by trucks.” 9.

<sup>22</sup> See Zulene Mayfield, presentation at the National Environmental Justice Advisory Council’s Public Meeting on Environmental Permitting, Arlington, Virginia (November 30—December 2, 1999).

<sup>23</sup> *Chester Residents v. PADER and Thermal Pure*, No. 556 CD 1994.

<sup>24</sup> *Thermal Pure v. PADER and the Citizens of Chester*, Supreme Court No. 63E.D-Misc, D (1995).

<sup>25</sup> “Thermal Pure’s burners and autoclave were broken, leaving 33 un-refrigerated trucks of infectious waste sitting outside the facility for four days in violation of state law. Failings such as this led to lost customers and the eventually failure of the business.” Jerome Balter, Public Interest Law Center of Philadelphia, Interview (October 31, 2002). See also, Mike Ewall, *Environmental Racism in Chester* (Pennsylvania Environmental Network, July 23, 1999). Available at <[www.penweb.org/chester/ewall\\_article.html](http://www.penweb.org/chester/ewall_article.html)> (visited July 2003).

<sup>26</sup> Pennsylvania Department of Public Health, *State Health Improvement Plan: Special Report on the Health Status of Minorities in Pennsylvania: 2002*, 6-2 (April 2002). Available at <<http://webserver.health.state.pa.us/health/cwp/view.asp?a=169&Q=231311>> (visited July 2003).

<sup>27</sup> Article 1365.03(c)(3) (1999 replacement).

<sup>28</sup> The Pennsylvania Department of Environmental Protection (PADEP) was formerly called the Pennsylvania Department of Environmental Resources (PADER). For the purpose of this text, PADEP is used to refer also to PADER.

<sup>29</sup> U.S. EPA Region III and PADER, *Environmental Risk Study for City of Chester, Pennsylvania; Summary*, 2 (June 1995).

<sup>30</sup> *CRCQL v. Seif*, filed May 28, 1996.

<sup>31</sup> EPA Region III and PADER, *Environmental Risk Study*.

<sup>32</sup> For an extensive description of the environmental inequities in Chester by census tract, see *CRCQL v. Seif*, Balter Brief, 7-33.

<sup>33</sup> *CRCQL v. Seif*, 944 F. Supp. 413, 416-417 (E.D. Pa. 1996).

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- <sup>34</sup> *CRCQL v. Seif*, 132 F.3d 925 (3<sup>rd</sup> Cir. 1997).
- <sup>35</sup> Jerome Balter, Public Interest Law Center of Philadelphia, Interview (October 31, 2002). Scott C. Fulton, Acting General Counsel, U.S. Environmental Protection Agency, Memorandum to Carol M. Browner, Administrator, U.S. Environmental Protection Agency, "Supreme Court Dismissal of Environmental Justice Case" (August 20, 1998).
- <sup>36</sup> Jerome Balter, Interview (October 31, 2002).
- <sup>37</sup> *Philadelphia Inquirer*, "State Says No to Plan for Tires as Fuel" (December 10, 2002).
- <sup>38</sup> CRCQL, *The Case for Environmental Justice*.
- <sup>39</sup> *Philadelphia Inquirer*, "State Says No."
- <sup>40</sup> Rev. Horace Strand, Faith Temple Holy Church, Interview (August 25, 2002).
- <sup>41</sup> William Payne, Director, Planning Department, City of Chester, Interview (August 20, 2002).
- <sup>42</sup> EPA Region III and PADER, *Environmental Risk Study*.
- <sup>43</sup> Dr. Masood Shaikh, Deputy Health Commissioner, Chester Health Department, Interview (August 20, 2002).
- <sup>44</sup> *Ibid.*
- <sup>45</sup> *Ibid.*
- <sup>46</sup> *Ibid.*
- <sup>47</sup> EPA Region III and PADER, *Environmental Risk Study*, 2.
- <sup>48</sup> Francine Carlini, Air Quality Program Manager, PADEP, Interview (May 27, 2003); Patrick R. Andersen, Special Assistant to the EPA Region III Administrator, Interview (May 23, 2003).
- <sup>49</sup> Francine Carlini, Interview (May 27, 2003).
- <sup>50</sup> *Ibid.*
- <sup>51</sup> EPA Region III and PADER, *Environmental Risk Study*, 2.
- <sup>52</sup> Francine Carlini, Interview (May 27, 2003).
- <sup>53</sup> EPA Region III and PADER, *Environmental Risk Study*, 2.
- <sup>54</sup> Patrick R. Andersen, Interview (May 23, 2003).
- <sup>55</sup> Pennsylvania Department of Public Health, *State Health Improvement Plan*, 6-1, 6-2 (undated).
- <sup>56</sup> *Ibid.*
- <sup>57</sup> *Ibid.*, 6-1.
- <sup>58</sup> *Ibid.*, 6-2.
- <sup>59</sup> *Ibid.*, 6-4, 6-5.
- <sup>60</sup> *Ibid.*, 6-6.
- <sup>61</sup> Dave Sciocchetti, Executive Director, Chester Economic Development Authority, Interview (August 20, 2002).
- <sup>62</sup> William Payne, Interview (August 20, 2002).
- <sup>63</sup> *Ibid.*
- <sup>64</sup> Dave Sciocchetti, Interview (August 20, 2002).
- <sup>65</sup> The City of Chester has received funding from the following federal agencies: Economic Development Administration; Department of Transportation; Housing and Urban Development; National Oceanic and Atmospheric Administration /Coastal Zone Management; EPA; Department of Justice–Weed and Seed; and the Department of Interior (historic tax credit). The city has also received funding from the following state agencies: Pennsylvania Housing Finance Agency; State Weed and Seed; Department of Community and Economic Development (DCED); Department of Conservation and Natural Resources. Dave Sciocchetti, Interview (October 30, 2002).
- <sup>66</sup> For more information, see PADEP, "Pennsylvania's Land Recycling Program," website, <<http://www.dep.state.pa.us/dep/deputate/airwaste/wm/landrecy/default.htm>> (visited June 2003).
- <sup>67</sup> Dave Sciocchetti, Interview (October 30, 2002).
- <sup>68</sup> *Ibid.*
- <sup>69</sup> *Ibid.* See also, Philadelphia Development Partnership, "Chester Microenterprise Partnership," website, <<http://www.pdp-inc.org/chester.html>> (visited July 2003).
- <sup>70</sup> Governor Thomas J. Ridge, Commonwealth of Pennsylvania, *Executive Order 1999-1* (January 7, 1999).
- <sup>71</sup> Governor's Center for Local Government Services, *Growing Smarter Toolkit: Catalog of Technical and Financial Resources*, 51-53 (April 2002). Available at <<http://www.inventpa.com/docs/Document/application/pdf/94a0ce8e-5eae-423c-b2b0-da5c16376c50/GrowingSmarterToolkit.pdf>>.
- <sup>72</sup> "In the 2 years of the program's existence, LUPTAP has appropriated more than \$5.4 million to local governments in Pennsylvania and impacted 1,744 of the State's 2,567 municipalities and over half of the 67

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counties.” Pennsylvania Growing Smarter, “Land Use Planning and Technical Assistance Program (LUPTAP),” website, <[http://www.landuseinpa.org/default.asp?content=fin\\_luptap](http://www.landuseinpa.org/default.asp?content=fin_luptap)> (visited July 2003).

<sup>73</sup> “In FY 00-01 a \$900,000 appropriation has been authorized for the Shared Municipal Services Program. In FY 99-00, the Department was able to fund 56 projects that benefited 15 cities, 724 boroughs and 309 townships in 37 counties with a \$900,000 appropriation.” DCED, *Shared Municipal Services Program: Program Guidelines*, 2 (September 2000). Available at

<[http://www.landuseinpa.org/docs/Shared\\_Municipal\\_Services/SharedMunicipalServices.pdf](http://www.landuseinpa.org/docs/Shared_Municipal_Services/SharedMunicipalServices.pdf)>.

<sup>74</sup> For more information, see DCED, “Invent PA: Community Development Block Grant Program,” website, <<http://www.inventpa.com/default.aspx?id=321>> (visited July 2003).

<sup>75</sup> William Payne, Interview (August 20, 2002).

<sup>76</sup> Neil Kinsey, Local Government Policy Specialist, Governor’s Center for Local Government Services, Harrisburg, PA, Interview (October 29, 2002).

<sup>77</sup> 53 P.S. Section 10101 (West 1997).

<sup>78</sup> 53 P.S. Section 10301.4(a) (West Supp. 2002) (municipalities and school districts within the respective county, and contiguous counties, school districts and municipalities must have an opportunity to review, comment and participate in the preparation and adoption of the county comprehensive plan).

<sup>79</sup> *Gerstley v. Cheltenham Tp. Planning Com’rs*, 95 Montg. 195 (1971).

<sup>80</sup> *Ibid.* See also, 53 P.S. Section 10306 (West Supp. 2002).

<sup>81</sup> *Ibid.*

<sup>82</sup> 53 P.S. Section 10301(a) and (b) (West Supp. 2002).

<sup>83</sup> 53 P.S. Section 10301.1 (West Supp. 2002).

<sup>84</sup> 53 P.S. Section 10301(d) (West Supp. 2002).

<sup>85</sup> DCED, “Invent PA: Governor’s Center for Local Government Services,” website, <<http://www.inventpa.com/default.aspx?id=136>> (visited October 16, 2002).

<sup>86</sup> *Ibid.*

<sup>87</sup> *Municipalities Planning Code*, Article 3, Section 307: “State Land Use and Growth Management Report. The Center for Local Government Services shall issue a land use and growth management report by the 2005 and shall review and update the report at five-year intervals.” Available at <http://www.landuseinpa.org/docs/M.P.C/MPC.pdf>.

<sup>88</sup> *Ibid.*, Article 1, Section 107. Available at <http://www.landuseinpa.org/docs/M.P.C/MPC.pdf>.

<sup>89</sup> See note 65 for a list of federal agencies providing funding to CEDA.

<sup>90</sup> See note 65 for a list of state agencies providing funding to CEDA.

<sup>91</sup> Chester City Council, *Public and Private Investment in Chester*, Map (2002).

<sup>92</sup> *Chester City Vision*, 221.

<sup>93</sup> PADEP, “Gov. Ridge Signs ‘Growing Smarter’ Land Use Bills,” *Environmental Protection Update* (June 23, 2000). Available at <[www.dep.state.pa.us/dep/deputate/polycomm/update/06-23-00/062300up.htm](http://www.dep.state.pa.us/dep/deputate/polycomm/update/06-23-00/062300up.htm)> (visited July 2003). See also DCED, “Gov. Ridge Unveils Dramatic Environmental Budget—Implements ‘Growing Greener.’ Call for “Growing Smarter,” Press Release (February 8, 2000). Available at <[www.landuseinpa.org/default.asp?content=news\\_press\\_020800](http://www.landuseinpa.org/default.asp?content=news_press_020800)> (visited July 2003).

<sup>94</sup> *Ibid.*

<sup>95</sup> 53 P.S. Section 10619.2 (West Supp. 2002).

<sup>96</sup> 53 P.S. Section 10601 (West Supp. 2002).

<sup>97</sup> *Municipalities Planning Code*, Article I, Section 107. The Code defines *preservation* or *protection* when used in connection with natural and historic resources to “include means to conserve and safeguard these resources from wasteful or destructive use, but not . . . to authorize the unreasonable restriction of forestry, mining, or other lawful uses of natural resources”.

<sup>98</sup> *Ibid.*, Article V-A, Section 502 A and Article VI Section 614, 616.

<sup>99</sup> 53 P.S. Section 10603(a) (West Supp. 2002).

<sup>100</sup> 53 P.S. Section 10501-A et. seq. (West 1997). If a municipality, however, chooses to enact impact fees for offsite transportation improvements, it must have adopted either a municipal or county comprehensive plan, subdivision and land development ordinance or zoning ordinance.

<sup>101</sup> Pennsylvania Planning Association, “State Planning Code,” website, <<http://www.planningpa.org/planning.html>> (visited 10/15/02).



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- <sup>102</sup> *Ibid.*
- <sup>103</sup> 53 P.S. Section 10304 (West 1997).
- <sup>104</sup> 53 P.S. Section 10301.4(a) (West Supp. 2002) (municipalities and school districts within the respective county, and contiguous counties, school districts and municipalities must have an opportunity to review, comment and participate in the preparation and adoption of the county comprehensive plan).
- <sup>105</sup> *Gerstley v. Cheltenham Tp. Planning Com'rs*, 95 Montg. 195 (1971). See note 100 above.
- <sup>106</sup> *Ibid.* See also, 53 P.S., Section 10306 (West Supp. 2002).
- <sup>107</sup> Susan W. Hauser, Manager, GIS & Information Services, Delaware County Planning Department, Interview (May 27, 2003).
- <sup>108</sup> *Ibid.*; William Payne, Interview (May 19, 2003).
- <sup>109</sup> 53 P.S. Section 10302(a.1) (West Supp. 2002).
- <sup>110</sup> *Ibid.*
- <sup>111</sup> 53 P.S. Section 10301.4(a) (West Supp. 2002).
- <sup>112</sup> *Ibid.*, Section 10603(k) (West Supp. 2002).
- <sup>113</sup> William Payne, Susan W. Hauser, and Neil Kinsey, Interviews.
- <sup>114</sup> 53 P.S., Section 10302(d) (West Supp. 2002).
- <sup>115</sup> *Ibid.*
- <sup>116</sup> 53 P.S. Section 10602 (West 1997).
- <sup>117</sup> Susan W. Hauser, Interview, and William Payne, Interview (May 20, 2003).
- <sup>118</sup> City of Chester, "Chester City Council," website, <[www.chestercity.com/citycouncil.php](http://www.chestercity.com/citycouncil.php)>.
- <sup>119</sup> *Ibid.*
- <sup>120</sup> Governor's Center for Local Government Services, *Home Rule in Pennsylvania; Seventh Edition*, 3 (March 2003).
- <sup>121</sup> City of Chester, "Welcome to Chester," website, <[www.chestercity.com](http://www.chestercity.com)> (visited May 2003).
- <sup>122</sup> *Municipalities Planning Code*, Article 2, Section 201-203.
- <sup>123</sup> *Ibid.*, Article 2, Section 207.
- <sup>124</sup> *Ibid.*, Article IX, Section 903.
- <sup>125</sup> *Ibid.*, Article IX, Section 906.
- <sup>126</sup> Herman Fryer, Chair, Chester Environmental Advisory Council, Interview (August 2002).
- <sup>127</sup> Dr. Masood Shaikh, Interview (August 20, 2002).
- <sup>128</sup> *Chester City Vision 2000*, 55.
- <sup>129</sup> *Chester City Code*, 1365.07 (a-i).
- <sup>130</sup> William Payne, Interview (May 19, 2003).
- <sup>131</sup> *Ibid.*
- <sup>132</sup> Office of Building Official, Department of Public Safety, City of Chester, PA, "Application for Plan Examination and Building Permit" (1990).
- <sup>133</sup> *Chester City Code*, 1365.03, "M-3 Industrial Districts."
- <sup>134</sup> *Ibid.*, 1365.03 (c)(3).
- <sup>135</sup> *Ibid.*, 1365.05
- <sup>136</sup> *Ibid.*, 1365.05(h)(1-4).
- <sup>137</sup> *Ibid.*, 1365.04
- <sup>138</sup> *Ibid.*, 1365.05 (a-e).
- <sup>139</sup> City of Chester, *Performance Standards Ordinance*, Bill No. 23, Section 4.1 (April 1998).
- <sup>140</sup> *Ibid.*, Section 4.4.
- <sup>141</sup> *Ibid.*, Section 4.6.
- <sup>142</sup> *Ibid.*, Sections 3.2 to 3.3.
- <sup>143</sup> *Ibid.*, Section 5.1.
- <sup>144</sup> William Payne, Interview (October 30, 2002).
- <sup>145</sup> See 35 Pa. Cons. Stat. Ann. Section 6018.101 et seq (West 1993).
- <sup>146</sup> 42 U.S.C. 6901 et seq., and other federal sources.
- <sup>147</sup> 53 P.S. Section 10619.2 (West Supp. 2002).
- <sup>148</sup> PADEP, *Considering Local Land Use Plans and Ordinances in Issuing DEP Permit*, Fact Sheet (January 21, 2003).

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- <sup>149</sup> PADEP, Policy Office, *Policy for Consideration of Local Comprehensive Plans and Zoning Ordinances in DEP Review of Permits for Facilities and Infrastructure*, DEP ID#012-0200-001, (June 8, 2002).
- <sup>150</sup> *Ibid.*, 10.
- <sup>151</sup> Ordinance 12-1998, Article 1365.02(c)(3), (April 9, 1998).
- <sup>152</sup> PADEP, *Considering Local Land Use Plans* (January 21, 2003).
- <sup>153</sup> PADEP, Environmental Justice Work Group, *Report to the Pennsylvania Department of Environmental Protection*, 4 (June 2001).
- <sup>154</sup> *Ibid.*, 16.
- <sup>155</sup> *Ibid.*, 4.
- <sup>156</sup> Alice Wright, Environmental Advocate, Office of Environmental Advocacy for the Southeast Region, PADEP, Interview (October 28, 2002).
- <sup>157</sup> *Ibid.*
- <sup>158</sup> *Ibid.*
- <sup>159</sup> William Payne, Interview (August 20, 2002).
- <sup>160</sup> William Payne, Interview (May 19, 2003), and Rev. Horace Strand, Interview.
- <sup>161</sup> Rev. Horace Strand, Interview.
- <sup>162</sup> William Payne, Interview (August 20, 2002).
- <sup>163</sup> Mike Ewall, "Environmental Racism in Chester" (Pennsylvania Environmental Network, July 3, 1999). Available at [www.penweb.org/chester/ewall\\_article.html](http://www.penweb.org/chester/ewall_article.html).
- <sup>164</sup> William Payne, Interview (August 20, 2003)
- <sup>165</sup> Dave Sciocchetti, Interview (August 20, 2002); William Payne, Interview (August 20, 2002); Dr. Masood Shaikh, Interview (August 20, 2002).
- <sup>166</sup> Rev. Horace Strand, Interview (August 25, 2002).
- <sup>167</sup> William Payne, Interview (August 20, 2002).
- <sup>168</sup> Herman Fryer, Interview (August 25, 2002).
- <sup>169</sup> William Payne, Interview (August 20, 2002).
- <sup>170</sup> Rev. Horace Strand, Interview (August 25, 2002).
- <sup>171</sup> Herman Fryer, Interview (August 25, 2002).
- <sup>172</sup> *Pennsylvania Constitution*, Article I, Section 27. Available at <http://members.aol.com/DKM1/C1.html> (visited May, 2003).

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## CHAPTER EIGHT

### ALTGELD GARDENS — CHICAGO, ILLINOIS

#### FINDINGS

**Finding 1.** The environmental problems at Altgeld Gardens—and throughout the Calumet Region of Southeast Chicago—are the legacy of the region’s 100-year history as an area for industrial and waste disposal and the more recent siting of nearby municipal waste treatment facilities. The environmental conditions reflect Chicago’s failure to consider the potential implications of locating residential and industrial areas in close proximity to each other because current pollution controls may not provide adequate protection to residents faced with multiple exposures. At the time the Altgeld Gardens housing project for African-Americans was built—over the objections of neighboring, primarily white, communities—possible environmental problems from past and existing industrial uses in the area were not recognized, and its location near a forest and a river was considered desirable.

**Finding 2.** Chicago’s current effort to adopt comprehensive zoning reforms provides a unique opportunity to address community and public health concerns. Zoning ordinances regarding setbacks and aesthetics in transition areas between residential and manufacturing districts can be improved. Controls on such community concerns as noise, odor, toxic matter, and smoke can be strengthened and clearly made applicable to existing, as well as future, activities. Penalties for code violations can be increased so facilities will have greater motivation to comply with zoning restrictions.

As part of these reforms, public participation in zoning decisions can be expanded. Notification requirements for proposed zoning changes can ensure that every person or organization with a potential interest is notified and has a chance to participate, and the first step is ensuring adequate public participation in the rezoning effort itself. While some outreach about the zoning reforms has occurred and the public is invited to comment on draft materials, the real test will be the extent to which the public is actively engaged—and listened to—once the city prepares proposed new zoning maps.

**Finding 3.** Chicago’s aldermen play a central role in the delivery of government services and decision-making. Local environmental and planning agencies appear to rely almost entirely on each ward’s alderman to conduct community outreach and to provide the agencies with community perspectives on the issues. By contrast, the Illinois Environmental Protection Agency (IEPA) conducts extensive community outreach efforts for comments on state permits and has a draft environmental justice policy setting out its plans for ensuring consideration of disparate impacts in its permitting and other programs.

**Finding 4.** Much of the land near Altgeld Gardens and other nearby Southeast Chicago neighborhoods is zoned for manufacturing uses. If the Calumet Area Land Use Plan is implemented, some of the land will be preserved or reclaimed for open space and recreation. However, large tracts will remain zoned for manufacturing uses because the area—with its

existing infrastructure for transporting goods—is considered vital to Chicago’s economic redevelopment. The city’s challenge is to reduce the adverse impacts on neighboring residential districts from existing and past facilities in the manufacturing districts, such as by strictly enforcing current requirements and fostering use of pollution prevention measures. With regard to new facilities, the city must carefully consider the potential for disparate impacts on low-income and people-of-color communities and accept only new developments that do not exacerbate already poor environmental conditions or expose neighboring residents to increased pollution.

**Finding 5.** The whole Calumet Region of Southeast Chicago is considered a high priority for economic improvement and environmental restoration. Several efforts are underway to foster environmentally sound development that will help to address the residents’ environmental justice and public health concerns, as well as to improve conditions for wildlife and recreation. Addressing current environmental problems such as odor is a prerequisite to progress, however. For any proposed new or expanded facilities, the city can use its zoning rules and environmental reviews to establish buffer zones between residential and commercial or industrial uses. IEPA and Chicago’s Department of Environment (DoE) can also use their permitting processes to foster pollution prevention and appropriate pollution controls. Done properly, the region’s redevelopment effort could become a model of sustainable development in other Rust Belt communities.

**Finding 6.** Chicago appears to be committed to using sustainable development approach for the Calumet Region. Turning around both the region’s negative image and its contaminated conditions will require leadership and coordination among various local and state agencies, as well as other organizations not accustomed to working together. While the area’s community-based groups and environmentally focused groups have different perspectives, they share common goals for environmental improvement coupled with economic development. A coordinated effort by these groups to work on their common goals could be a powerful engine for ensuring action on local problems.

## **INTRODUCTION**

Altgeld Gardens is one of several Southeast Chicago communities in the Calumet Region. While this case study focuses on Altgeld Gardens and some of the unique issues faced by the people living there, many of the environmental conditions, public health concerns, and the solutions are also relevant throughout the Calumet Region.

The environmental justice story of Altgeld Gardens begins in the early 1940s, when federal and city housing officials decided to build public housing for African-Americans on the far south side of Chicago. During Altgeld Garden's early years, there was a waiting list of people seeking to live in the pleasant, garden-style apartments located away from the city center on land bordered by the Beaubien Woods Forest Preserve and the Calumet River.<sup>1</sup>

Once considered a model public housing project, Altgeld Gardens is now emblematic of the problems faced by people living near industrialized areas where past, present, and possibly future industrial development threatens public health and the environment. This case study analyzes Altgeld Gardens in the broader context of similar environmental problems throughout the Calumet Region of Southeast Chicago.

## **BACKGROUND**

### **About Altgeld Gardens**

Despite its campus-like setting and proximity to open space, Altgeld Gardens is located in an area that has been industrialized for more than a century. During the period of Chicago's major industrial growth after the Civil War, steel mills, railroad shops, manufacturing facilities, and many smaller industries moved into the area around Lake Calumet and along the Calumet River. The location was desirable for industry because, although the land was wild and marshy, it was cheap and had good access to transportation for both rail and lake shipping.<sup>2</sup> Moving to the then-remote Calumet Region had another advantage for industry because, at the time, few people lived there, which minimized public health concerns that city dwellers were starting to raise about smokestacks and other pollution sources.

Initially, the residential communities—such as Roseland and Pullman—that grew up in Southeast Chicago around the mills and factories were overwhelmingly white.<sup>3</sup> Racially segregated housing was still the social norm in Chicago when Altgeld Gardens was built in the early 1940s. In 1940, African Americans lived in only nine of Chicago's 75 communities. From the very outset, Altgeld Gardens was intended to provide homes for African-Americans. When the city proposed building Altgeld Gardens and other public housing projects in Southeast Chicago, some local aldermen and community residents opposed the projects because they did not want African-Americans moving near their white neighborhoods.<sup>4</sup>

*reserved for map*

The Calumet Region prospered until after World War II. By the late 1980s, after the steel mills and other industries had moved away, they left behind contaminated land and water, unemployment, and economically depressed neighborhoods. The ethnic composition of Southeast Chicago's side neighborhoods changed, but they remained racially separated. In 2000, the neighborhoods of Roseland, Riverdale (including Altgeld Gardens), and West Pullman were more than 90 percent African-American, while Hegewisch and East Side were more than 75 percent white. Pullman and South Deering had more ethnically mixed populations.<sup>5</sup>

There are currently 3,455 residents in Altgeld Gardens, occupying 1,089 of the 1,498 housing units.<sup>6</sup> Chicago's total population is 2,215,574, of which 36.8 percent are African-Americans. In the census tract where Altgeld Gardens is located, the total population is 9,809, of which 96.8 percent are African-Americans. Median household income in Chicago is \$38,321, and the median per capita income is \$20,175. The city's unemployment rate is 6.2 percent, and 19.6 percent of individuals have incomes below the poverty level.<sup>7</sup> The Chicago Housing Authority reports that the average annual per capita income of Altgeld residents is \$8,256.<sup>8</sup>

Now more than 60 years old, Altgeld Gardens has become dilapidated; many units are boarded up and vacant. There are preliminary plans to rehabilitate the buildings as part of the Chicago's effort to transform the city's public housing.<sup>9</sup> The draft 2002 Chicago Housing Authority budget allocates one million dollars for capital improvements at Altgeld Gardens.<sup>10</sup>

Residents of Altgeld Gardens face the myriad social, economic, and public safety issues common to many urban neighborhoods. But they are also concerned about the health impacts of living in the center of what local activists term a "toxic doughnut" because Altgeld Gardens is still surrounded by more than 100 industrial plants and 50 active or closed waste dumps. Citizen activists want solutions to their long-standing exposures to odors and pollution from a multiplicity of water, air, and land sources.

These sources include steel mills, landfills, a paint factory, a chemical factory, and a sewage treatment plant.<sup>11</sup> Hidden behind a landscaped area directly across the street from Altgeld Gardens, biomass sludge dries on huge slabs in the open air at two facilities controlled by the Metropolitan Water Reclamation District. Nearby, an active landfill owned by Waste Management Inc. emits methane gas.<sup>12</sup> Among major industrial facilities within a few miles of Altgeld Gardens are Ford Motor Company, Acme Coke, and Chicago Specialties (formerly Sherwin Williams Paints).<sup>13</sup> Highways and major roads isolate Altgeld Gardens from the rest of the city.



To understand the environmental justice problems at Altgeld Gardens, it is important to recognize that it is located in an area that was, is, and is likely to remain, industrial. Despite the negative image of the Calumet Region and its wetlands as an area of contamination and economic decline, citizen groups, developers, environmentalists, and government officials see potential for economic revitalization, as well as for recreation and wildlife enhancement. They share a common interest in promoting sustainable economic development that will protect public health and enhance environmental quality.<sup>14</sup>

## **Environmental Setting**

The natural environment of the Calumet Region is characterized by wetlands, rivers, and lakes. This fact is central to the area's history, its current environmental conditions, and its future.

An estimated 25,000 acres of wetlands existed in the Calumet Region before it was settled by Europeans. Only about 600 acres of wetlands remain, many now in fragmented patches.

The low and marshy land was not appealing for residential development, but historically it was deemed suitable for waste disposal. In addition, wetlands were filled to create land for industrial expansion.<sup>15</sup> Over the years, however, working class communities grew up on the land adjacent to the mills and factories. So while land use in the area is still primarily industrial, residential communities are now located nearby.

Southeast Chicago has been an industrial center for more than 100 years. The steel industry, in particular, was very important to the local economy. Lake Michigan was convenient for receiving shipments of iron ore and coal and for shipping out product. Mills and factories used the streams and wetlands for cooling and waste disposal. Solid and liquid wastes from industry leached acids and heavy metals into the rivers and lakes. Heavy industry also caused severe air pollution. After the mills closed in the 1970s and 1980s, waste disposal became a major local industry. The wetlands had been used for waste disposal since before the industrial era, when farmers used to transport produce to the city and cart back urban waste to dump in the wetlands.<sup>16</sup>

Before landfills were required to have licenses and garbage disposal regulations were enacted, large amounts of waste were dumped in the Calumet Region; and liquid wastes were poured directly into waterways.<sup>17</sup> Over 130 years of industrial activity has exposed the region's citizens to a wide range of contaminants. For example, fly ash left over from burning coal contained trace amounts of uranium.<sup>18</sup> In addition, years of steel manufacturing added plentiful wastes in the form of slag, a fused aggregate of leftover minerals.<sup>19</sup>

In recent years, controversy has grown over the accumulation of odors from industrial and waste facilities near Altgeld Gardens. In particular, citizens have complained about the methane gas being emitted from the landfills and the odors from the Metropolitan Water Reclamation District's sludge drying facility.<sup>20</sup> Even so, since 1985, there has been a moratorium on siting new solid waste facilities in Chicago.<sup>21</sup>

When Altgeld Gardens was built during World War II, it was surrounded by a forest preserve and a river. Heavy industry was in the area, but not nearby. Later, during the 1960s and 1970s, heavy industry was permitted in the area, but half of these industries are now gone. Currently, Southeast Chicago has the most landfills of any area in the city. Wetlands have been filled with trash, and a large portion of Chicago's approximately 2,000 contaminated brownfield sites are located in the Southeast. USX's South Works, located in Southeast Chicago on Lake Michigan, is the largest brownfield site in Illinois.<sup>22</sup>

The Calumet Region has been called a "combination landfill and nature area."<sup>23</sup> In 1990, the Illinois Department of Energy and Natural Resources described the legacy of industrial development and waste disposal in the area:

The effects of past pollution in the form of contaminated water, sediment, and soils in the region are continuing threats to the environment. Land and water pollution in the Lake Calumet area is a threat to humans who work, recreate, hunt, and fish in the area as well as to native and migratory fish and wildlife.<sup>24</sup>

Yet, the Calumet Region remains a unique ecosystem, despite the severe pollution there. The wetlands are part of a larger hydrological system that serves as habitat for migratory birds. These features have attracted the attention of conservation and environmental organizations at regional and national levels, as well as local community groups, who understand that the area's economic future is tied to its environmental assets.<sup>25</sup>

## **ENVIRONMENTAL JUSTICE CONCERNS**

As explained below, residents of Southeast Chicago have numerous environmental justice and public health concerns due to the area's past and present use for industrial and waste disposal purposes. The air does not meet particulate matter standards; toxic releases are among the highest in the country; water quality is impaired; landfills and waste disposal facilities abound; and there are many plots of contaminated land from past industrial uses. All but two of the seven communities that comprise Southeast Chicago have mostly African-American residents.<sup>26</sup>

### **Environmental Quality in Cook County**

Because so much of Chicago's heavy industry and waste disposal has been located in Southeast Chicago, the people who live there face potential environmental threats from a variety of both existing and historical pollution sources. In addition to the general environmental threats facing all of Southeast Chicago, Altgeld Gardens residents have more specific concerns due to their close proximity to sewage treatment and sludge drying facilities, plus many contaminated and abandoned industrial sites.

Most data on environmental pollution and risks is available only at the county level. However, information about Cook County, which includes Chicago, illustrates the city's environmental problems. Because much of the city's industrial and waste disposal activity is concentrated in

Southeast Chicago, it is reasonable to assume that environmental conditions are poorer in that area of the city than in Cook County as a whole.

Following are some general facts about environment quality in Cook County.

- Hazardous air pollutants. Cook County ranks among the worst ten percent of counties in the United States in terms of an average individual's cancer risk from hazardous air pollutants. 82 percent of the cancer risk is from mobile sources (*e.g.*, automobiles and trucks); 12 percent is from area sources (*e.g.*, dry cleaners and gas stations); and 6.3 percent is from point sources (*e.g.*, major industrial facilities).<sup>27</sup>
- Air quality standards. Cook County ranks among the dirtiest 30 percent of counties in the nation in terms of particulate matter, a mixture of particles such as dust, soot, smoke, and liquid droplets. Common sources are cars, factories, power plants, and construction activity. Particulate matter can cause or aggravate respiratory and cardiovascular disease and result in premature death; the elderly, children, and asthmatics are especially vulnerable. Southeast Chicago is a nonattainment area for PM-10.<sup>28</sup> Acme Steel, located in Riverdale near Altgeld Gardens, had the highest PM-10 emissions in Cook County, and is among the top ten percent of PM-10 emitting facilities in the nation. Acme Steel is also among the top ten percent in the nation for PM-2.5 emissions carbon monoxide, nitrous oxide, sulfur dioxide, and volatile organic compounds.<sup>29</sup>
- Toxic releases. Cook County is among the top ten percent of counties in the United States for cancer and non-cancer risks from air and water releases. The top ranked source of cancer risk is chromium compounds, and the top ranked source of non-cancer risk is mercury compounds. Acme Steel has one of the highest releases of benzene (cancer-causing) and mercury (non-cancer risks) in Cook County.<sup>30</sup>
- Lead. Cook County ranks as the 37<sup>th</sup> highest county in the nation for lead emissions, and ranks highest in Illinois for the percentage of housing (five percent) that is projected to have lead hazards. Lead is a known carcinogen as well as a developmental and reproductive toxicant.<sup>31</sup>
- Water quality. In Cook County, the quality of 19 percent of the surface water is threatened or impaired. Some rivers and streams are impaired by nutrients and habitat alterations; some lakes, reservoirs, and ponds are impaired by nutrients and sediments. Leading sources of this water pollution are urban runoff, storm sewers, municipal point sources, hydromodification/habitat modification, and construction.<sup>32</sup>

### **Regional Multi-Media Cumulative Risk Analysis**

In 1996, EPA began working on a phased multi-media analysis of pollution sources in Cook County, Illinois and Lake County, Indiana. The goal was to create a model for defining cumulative risk in an urban setting. The first step in the effort, developing a multi-media profile of potential exposure based on existing environmental data, has been completed. An air quality

screening analysis that will establish a ranking system for evaluating air toxics is now under development.<sup>33</sup>

### **People for Community Recovery**

Efforts to gain attention for environmental problems at Altgeld Gardens began in 1979. Altgeld resident Hazel Johnson thought there might be a link between pollution in the vicinity and the illnesses she had seen among her neighbors. She made 1,000 copies of a health survey and went door-to-door to collect health information about Altgeld residents. When she learned that many people suffered from cancer, respiratory problems, and skin diseases, she founded People for Community Recovery (PCR)—the only environmental organization based in a public housing project.<sup>34</sup>

Ms. Johnson and about 70 women began meeting in churches and living rooms to discuss their concerns and possible actions they could take. One of the first things PCR accomplished was getting the city to provide hook-ups to the municipal water system for families that had been using water from local wells that smelled like sulfur.<sup>35</sup>

Neighborhood residents believed the Chemical Waste Management Inc. incinerator was a source of the noxious fumes. In 1986, PCR began staging protests at the incinerator. In 1988, IEPA took enforcement action against the incinerator, finding the company had violations such as illegally shutting off air monitors and storing 80,000 more gallons of waste than allowed. In addition, the company was not carefully checking the type of waste it was burning, resulting in an explosion in 1987. The company paid \$5 million in fines and was required to remain shut until it got a complete operating permit.<sup>36</sup> The incinerator has now been permanently closed.

PCR has had other successes, often working with other organizations. PCR prompted clean up of many waste sites and contaminated properties in the immediate vicinity of Altgeld Gardens. Using public protests, leafleting, and community meetings, PCR has educated the community about the dangers of toxic wastes and gained support for cleanup projects. PCR's efforts have successfully blocked construction of new garbage and hazardous waste landfills, transfer stations, and incinerators in the Calumet Region. Several plants still in operation have established pollution prevention programs. PCR has also helped to establish a community monitoring program to stop illegal dumping and to review data on toxic releases and inventories at local companies.

PCR currently has a lawsuit pending against the Chicago Housing Authority (CHA). They allege that CHA has not provided a safe and healthy environment for Altgeld Gardens residents due to the presence of contaminants, toxic substances, and chemicals. The suit specifically names benzene, toxic coke, polychlorinated biphenyls (PCBs), polyaromatic hydrocarbons (PAH), selenium, arsenic, lead, and pesticides. The suit seeks damages for the health problems of some residents.<sup>37</sup> In 1999, CHA began cleaning up the PCBs.<sup>38</sup>

PCR and its founder, Hazel Johnson, have received many honors for their pioneering work on environmental justice. Ms. Johnson was one of 13 African Americans who attended the United Nations Conference on Environment and Development in Rio De Janeiro, Brazil. She has

testified before Congress, met two Presidents, and spoken at countless universities and conferences. At the First National People of Color Environmental Leadership Summit People in 1991, she was tagged “Mother of the Environmental Justice Movement.” In 1992, PCR received the nation’s highest environmental award, the President’s Environmental and Conservation Challenge Award, the only African-American grassroots group to receive this honor.<sup>39</sup>

## **Environmental Concerns at Altgeld Gardens**

### Odor

About half of the complaints made to environmental officials by Altgeld Garden residents are about odors; the other half are about particulates.<sup>40</sup> Residents of Altgeld Gardens and other area residents believe the nearby sewage treatment plants operated by the Metropolitan Water Reclamation District (MWRD) of Greater Chicago are the source of at least some of the odors. The acres of drying sewer sludge located just across the street from Altgeld Gardens are a particular concern.

IEPA held hearings on August 23, 2000, regarding renewal of National Pollutant Discharge Elimination System (NPDES) permits for the MWRD’s sewage treatment plants.<sup>41</sup> Government officials from EPA, IEPA, and Chicago’s Department of Environment (DoE) participated. To make it easier for residents of Altgeld Gardens to testify, a portion of the hearing was held at the housing project. The hearing transcript provides insights about the health effects and economic impacts of odor problems for Altgeld Gardens and the Calumet Region, as well as illustrating the frustrations felt by community residents.

- Health concerns from odors. Mardi Klevs, Chicago regional team manager, EPA, reported that odors can cause serious health effects, such as nausea and headaches. She mentioned recent research indicating that odors may be partially responsible for increased asthma incidents. In addition, prolonged exposure to unpleasant odors can result in olfactory fatigue and/or failure. This temporary or permanent loss of smell is itself a serious health effect. Sense of smell is an important component in taste and the ability to enjoy eating, and there is research linking to human sexuality with the sense of smell.<sup>42</sup>
- Economic concerns from odors. Reducing the odorous emissions in the area is also important to implement plans for sustainable economic development, remediation, and preservation of wetlands and prairies in the Lake Calumet area. Ms. Klevs said: “Bad odors can be a major impediment to investment in the area. Odors can reduce the quality of life and property values. No one is going to want to live, recreate, or work in an area that smells bad.”<sup>43</sup>
- Odor logs. Emilio Salis, Chicago’s Bureau of Air, said that government agencies need detailed information in order to be able to take action against facilities. He mentioned there are several potential odor sources near Altgeld, including the waste treatment facilities, landfills, Sherwin Williams, Chicago Specialists, Ford Motor Company, and Acme Coke. He said that, to take action, government agencies need to be able to pinpoint the sources, types, and severity of the odors.<sup>44</sup> Other officials said that the odor logs

were needed because, when all of the agencies involved had combined their odor records, they found there were not many actual, written complaints on file. They explained to Altgeld and other residents how to complete the odor logs, where to file them, and how the logs would be used.

The transcript makes clear that residents of Altgeld Gardens have grown weary of urging the government to take action about the odor problems. Several objected to the idea that the burden of proof for taking action should fall on citizens. Cheryl Johnson testified for PCR. Ms. Johnson's testimony expresses the community's concern about the lack of environmental justice as they deal with many undesirable facilities and disposal of other people's waste, as well as their frustration at the lack of government action:

I hear everyone talking about the different odors. There are different odors that I could distinguish because I have learned the difference by becoming a nose expert by living in it. I know the difference between garbage smell. I know the difference between chemical smell. And I definitely know the difference between what comes off the treatment plant.... We can not tolerate it any more because we have the high incidence of asthma and other respiratory problems in our community....

And it always has to be the burden on the proof (is on us), to put some kind of paper together and send it to you all when it's common knowledge when you come down 150th off the expressway that this air is a problem.... We get sludge from other neighborhoods. Let everybody be responsible for their own sludge. We should not have to bear the burden of not only sludge, landfills, incinerators, chemical companies. This is an African-American community, 99 percent black. And it just so happens we're poor, and we shouldn't have to be bombarded with all these odors among the other things that is going on in our community.

Certain parts of (the treatment plant are) regulated but the odor is not regulated. And that's what's killing a lot of people out here. And I'm tired of seeing my community thinking cancer is normal, thinking asthma is normal. None of this stuff should be normal in anybody's neighborhood. It signifies there is a serious problem. And I hope after this meeting that we work towards a solution instead of coming up here hollering about our problem. Because if you don't hear us, then we're going to be walking over to the Water Reclamation District very soon.<sup>45</sup>

Constance Howard, a member of the Illinois Legislature, challenged the government officials to take action without asking citizens to take on the burden of additional data collection:

You say that you know that there are a number of sources of odors. Why isn't it that automatically then that you take steps to find out whether or not those odors are coming from or are hazardous to the health of the individuals of this neighborhood, and why is it that we have to get logs developed here in order for you to believe that there is something that needs to be done?...Why aren't you checking out those odors rather than rely upon these individuals to develop logs,

when, obviously, there has been some expression that it might be a difficult thing to do. If you already know where the problems might lie, then what is the point of this exercise that you are asking these good people to have to go through?<sup>46</sup>

Marian Byrnes, Executive Director of the Southeast Environmental Task Force, spoke about the impact of odors on economic development. She said industry was unlikely to locate where the odors are bad; they would move to undeveloped areas in the suburbs instead. Plans for the Calumet Heritage Area, which could bring visitors and prosperity, would fail if people smelled bad odors. She noted that plans for the Heritage Area consider Altgeld Gardens an important historic resource, worthy of preserving, because it was the first really comprehensive public housing development of its kind.<sup>47</sup>

IEPA renewed the MWRD permits on January 22, 2002 and at that time, also published a responsiveness summary explaining how the agency had addressed issues raised in public comments and at the permit hearings, including the on-site hearing held at Altgeld. In the responsiveness summary, IEPA reported there are no standards for odor. Instead, odors are regulated as a nuisance under the state's Environmental Protection Act, which prohibits air emissions from unreasonably interfering with the enjoyment of life and property. IEPA again urged residents to file odor logs so they can be investigated by appropriate officials, and enforcement action can be taken if appropriate. However, IEPA recognized that the odor problems are a continuing concern:

The odors emanating from the Calumet (facility) into the surrounding neighborhoods continued to be a concern for the Agency. The Agency believes the odors are from the sludge drying beds and are therefore outside the control of an NPDES permit. In October 2000, the Agency reissued state permits...for the sludge drying and disposal process but did add a provision that the MWRD was to prepare a study on proper odor management by October 2001.<sup>48</sup>

Appendix I contains the Altgeld Gardens section of the responsiveness summary. IEPA officials acknowledge that the MWRD permit responsiveness summary contains technical and legal language that may not be appropriate for a lay audience. As part of their environmental justice effort, the agency is working to make future responsiveness summaries easier for citizens to understand.<sup>49</sup>

The odor study by MWRD would identify potential sources and magnitude of odors at the facility and would serve as the starting point for determining what measures MWRD would need to take to control odors.<sup>50</sup> However, at the time of this report, plans for conducting the odor study were still being negotiated between MWRD and IEPA. While it has not yet begun the odor study, IEPA officials said that MWRD does have its own internal odor panel and investigates odor complaints from citizens.<sup>51</sup>

Chicago's legal authorities for addressing odor problems are uncertain. The city's zoning ordinance sets performance standards for manufacturing districts that limit the amounts of odor that can move beyond the property line, but it may be difficult to enforce against existing facilities.<sup>52</sup> Yet, the odor issue is central to the environmental justice concerns of residents of

Altgeld Gardens. Therefore, federal, state, and local officials need to undertake a full and creative examination of all authorities under environmental, zoning, or general nuisance laws to see if there are potential solutions to the odor problem. For example, a preliminary examination of the MWRD's Title V permit, issued by IEPA under the Clean Air Act, suggests that fugitive odor emissions from the sludge drying operation may not be appropriately addressed in the permit.<sup>53</sup> Meanwhile, IEPA officials are considering trying to conduct a good neighbor dialogue between Altgeld residents and the MWRD facility to find a resolution to the odor issues.<sup>54</sup>

### Asthma

In Chicago, asthma deaths are among the highest in the United States, with particularly high mortality among minorities living in low-income communities. There have been disproportionate increases in deaths among the city's African-Americans since the mid 1970s.<sup>55</sup> The zip codes with the highest rates of asthma are more likely to be in the city's poorest neighborhoods, including in zip codes where a high proportion of Chicago's public housing is located.<sup>56</sup>

A recent study of Chicago's public housing residents reveals that they are greatly affected by asthma. In the survey, 29 percent of residents stated that someone in their household had had at least one asthma attack in the past six months, and 50 percent said that a member of their household had been diagnosed with asthma by a doctor.<sup>57</sup>

### Lead

Chicago has one of the highest rates of lead poisoning in the country.<sup>58</sup> Lead-based paints can cause lead poisoning, as can soil contaminated from years of exhaust fumes from cars and trucks that used leaded gas before it was banned.<sup>59</sup>

Because of the old age of the housing stock, there are lead issues throughout Chicago, and an estimated 20 to 30 percent of Chicago communities face high lead hazards.<sup>60</sup> Over 100,000 housing units are estimated to have lead paint.<sup>61</sup> Lead issues are addressed through the city's Department of Health, and the city's Department of Planning and Development is working on a lead reduction program at Altgeld Gardens.<sup>62</sup>

Compared to the rest of Chicago's neighborhoods, the Riverdale community—which includes Altgeld Gardens—has a relatively low percentage of children who have elevated blood lead levels greater than 10 mcg/dL. With five percent of children having elevated blood lead levels, Riverdale ranks 58<sup>th</sup> out of 77 Chicago communities.<sup>63</sup> However, average blood lead levels for children living in the Altgeld Gardens housing project cannot be determined from these aggregated data.

Altgeld residents are concerned about lead exposures. PCR founder Hazel Johnson organized and developed a lead awareness project. Working with the Chicago Legal Clinic, PCR trained public housing residents to address the issue and later started the Resident Education About Lead (REAL) Program.<sup>64</sup> Cheryl Johnson, daughter of the PCR founder and a PCR leader herself, said recently that concerns about lead continue, in part because Chicago Housing Authority



maintenance staff are not trained to protect residents against dust and lead paint exposure when they make repairs to apartment units.<sup>65</sup>

### Soil Contamination

In response to community concerns—including a belief that Altgeld Gardens was built on a former landfill—EPA conducted a site evaluation in 1996 to learn if hazardous materials remained due to previous activity in the area. Ten surface samples were collected from the 190-acre site from grassy areas near housing units, schools, and a community clinic. Samples were analyzed for metals, volatile organic compounds, semi-volatile organic compounds, polychlorinated biphenyls, pesticides, and cyanide.<sup>66</sup>

The Agency for Toxic Substances and Disease Registry (ATSDR), through the Illinois Department of Public Health (IDPH), evaluated EPA's sampling results to determine if the contaminants detected in the soil presented any hazards. The same levels of polycyclic aromatic hydrocarbons (PAHs) at Altgeld Gardens are typically found in urban areas and are not known to cause adverse health effects. Several pesticides, including DDT, were also found. Based on the limited information, IDPH concluded there were no apparent public health hazards from surface soil contamination at Altgeld Gardens. But IDPH recommended further study of the pesticide contamination.<sup>67</sup>

Because preliminary studies did not show significant problems and resources and authority for such studies are limited, no additional soil studies have been conducted.<sup>68</sup>

Northwestern University, the Chicago Legal Clinic, and IEPA are now cooperating on a project to remove heavy metals from soil at Altgeld Gardens through phytoremediation, using plants to “take up” the heavy metals from the soil. If the pilot is successful, a more extensive project may be undertaken.<sup>69</sup>

### Southeast Chicago Health Consultation

In 1998, ATSDR reviewed health data for adverse reproductive outcomes, asthma mortality, and cancer rates in Southeast Chicago. The report did not identify any adverse health outcomes that are believed to be related to environmental pollution.<sup>70</sup>

## **Other Issues at Altgeld Gardens**

### Health of Public Housing Residents

In December 1999, the Chicago Housing Authority (CHA) set up a health task force to identify current health concerns of public housing residents and to determine strategies for addressing them. The task force included representatives from multiple health and social service fields, community organizations, and CHA staff. During the eight-month study, they conducted literature reviews and analyzed health outcomes. To ensure community involvement, the task force also held focus groups with residents of public housing.

The task force's study encompassed a broad range of health issues, including family health, seniors, HIV/AIDS, environmental health and asthma, substance abuse, and mental health. The final report established that many residents of public housing have extremely poor health outcomes compared to Chicago residents overall. The task force also found that Chicago's public housing residents are dying earlier due to almost all causes of death.<sup>71</sup>

### General Conditions at Altgeld Gardens

Health concerns are not the only problems that Altgeld Gardens residents face. The community is isolated, because with only one bus line, residents are not well served by public transportation. Retail shopping is limited to a small grocery store operated by CHA, which also operates an on-site health clinic at Altgeld Gardens.<sup>72</sup>

According to a survey conducted by Abt Associates for the CHA in 1996, residents are also concerned about lack of building maintenance and repairs, crime, graffiti, trash, and drug activity. Abt interviewed randomly selected residents of Altgeld Gardens and three other low-rise apartment complexes about conditions in their housing projects. Nearly half of the residents of low-rise apartments (47 percent) said they were dissatisfied with their buildings. Over half said they had gone without heat for at least 24 hours the previous winter, and more than half also said they had waited more than six months for repairs of a household item. More than a third said gang activity, drug dealing, and/or drug use occurs inside their buildings; and over half said they observed these activities outside their buildings. More than half reported hearing gunshots outside their buildings at least ten times in the past year, and nearly one-fourth reported that they or a member of their household had been a victim of crime.<sup>73</sup>

### **City Agencies and Environmental Justice**

Four city departments or agencies have potential responsibility for addressing environmental justice issues at Altgeld Gardens: the Chicago Housing Authority (CHA), the Department of Planning and Development (DPD), the Department of Environment (DoE), and the Metropolitan Water Reclamation District (MWRD).

#### Chicago Housing Authority (CHA)

CHA is the third largest public housing authority in the United States. For more than 60 years, CHA has played a key role in providing housing options for low and moderate-income residents in Chicago. CHA provides assisted housing for about 134,000 residents, about 4.7 percent of the city's population.<sup>74</sup>

In 1999, Mayor Daley took control of the CHA from the U.S. Department of Housing and Urban Development (HUD), which had taken over CHA in 1995 due to serious management problems.<sup>75</sup> In taking CHA back from HUD, the Mayor offered city resources and expertise and announced plans for fundamentally restructuring the agency.<sup>76</sup>

Until recently, CHA's operations were independent of the city government. CHA provided its own social services, infrastructure, environmental services (*e.g.*, trash hauling), and policing for

public safety. The Mayor said the city could no longer treat public housing residents differently than other Chicagoans; they should have the same city services.<sup>77</sup> Currently, CHA operates as a quasi-official city office, and its staff works with other city departments. The Mayor is now responsible for appointing CHA's Board and Chief Executive Officer.<sup>78</sup> CHA staff view the Mayor's leadership and support for public housing as a salvation for their programs.

CHA has a plan for transforming its public housing units and is in the process of rehabbing or demolishing and reconstructing 25,000 units.<sup>79</sup> Much of the existing public housing that is slated for redevelopment is located in desirable neighborhoods, and CHA is committed to keeping residents in their current neighborhoods.

Many of the 1,500 housing units in Altgeld Gardens are in disrepair, and nearly one-third of the units are vacant and/or boarded up.<sup>80</sup> According to CHA officials, Altgeld Gardens is actually in better condition than other public housing, but only preliminary planning has begun for some rehabilitation projects there. The draft 2003 budget for CHA includes \$1 million for capital improvements at Altgeld Gardens.<sup>81</sup>

However, the transformation of public housing in Chicago is not without controversy. Much of the existing public housing slated for redevelopment is located in neighborhoods where real estate values are rising. While CHA says it is committed to keeping residents in their current neighborhoods,<sup>82</sup> many homes are being torn down. Residents fear they will have no place to live once the buildings are demolished and new, more expensive ones are built.<sup>83</sup> Residents of Altgeld Gardens are worried about the future of their homes as well.<sup>84</sup>

As mentioned above, People for Community Recovery is suing CHA for environmental contamination at Altgeld Gardens, so CHA staff could not comment on the pending lawsuit.

#### Department of Planning and Development

Altgeld Gardens is located in Chicago's Far South Planning District. While planners at the Far South District say environmental justice is not a specific focus of their work, they believe all their work addresses the diverse social, economic, and environmental needs of citizens.<sup>85</sup> They acknowledge there are environmental concerns at Altgeld Gardens and in the Calumet Region. However, they contend that Altgeld Gardens was developed before the concept of incompatible uses was widely understood, and environmental regulations were not yet in place. Poor land use decisions in the past precipitated the current environmental problems, which they note may not be as severe at Altgeld Gardens as in some other Chicago neighborhoods.<sup>86</sup>

District planners say that Altgeld Gardens is not under the jurisdiction of the city planning department, so they do not include the housing project in their plans.<sup>87</sup> Planners should, however, take into account the potential impacts of proposed land use changes on the health and welfare of area residents in making land use decisions.

The Calumet Area Land Use Plan, produced in December of 2001, provides an overview and vision for 1,000 acres of industrial and 4,000 acres of open space in a portion of the Far South Planning District. However, the plan assumes residential neighborhoods will remain where they

are now, and does not cover Altgeld Gardens or other residential neighborhoods within the Calumet Region.<sup>88</sup> Some areas currently zoned for manufacturing uses in the Calumet Region would need to be rezoned to provide for reclaiming and preserving open spaces as called for in the plan.

### Chicago Department of the Environment

Chicago Department of the Environment (DoE) staff acknowledge they are not yet actively addressing environmental justice concerns. However, DoE staff have attended EPA training seminars to familiarize themselves with the issues.<sup>89</sup> In addition, DoE reviewed an environmental justice map compiled by EPA's Region V, which highlights poor and minority neighborhoods. DoE staff may be able to plot health conditions and environmental impacts on this map because the city already has established databases and services using a Geographic Information System (GIS).<sup>90</sup>

DoE is working with the Chicago Department of Planning and Development (DPD) to set up buffers between residential and commercial or industrial land uses. But in many areas of the city, including Southeast Chicago, commercial and industrial facilities were present before the residential uses. At least once, DoE and DPD staff have asked that additional conditions be required for new development based on environmental concerns.<sup>91</sup> DoE does environmental reviews for the Chicago Housing Authority (CHA), and these reviews contain an environmental justice component. Thus far, DoE has not been asked to do a review for Altgeld Gardens.

DoE has not done extensive community outreach, which may help to explain why African-American community groups have limited relationships with the Department, as discussed below. DoE relies heavily on the alderman in each district for community outreach. Each alderman holds periodic meetings in his or her ward, and notices for these meetings are advertised in the classified section of the *Chicago Sun Times*. DoE does not contact community groups for comments during its permitting process, but relies instead on the ward's alderman to obtain and contribute community perspectives.

Outside the permitting context, DoE has several educational and outreach programs that are at least indirectly related to environmental justice. DoE has the staff of an entire section who are dedicated to community programs, ranging from educating the public about health and environmental issues to providing assistance in energy reduction, weather proofing, and community beautification.<sup>92</sup>

DoE also has a well-established brownfields program. Chicago has received grants and other federal funding to facilitate remediation and redevelopment of numerous brownfield sites in the Calumet Region. However, because none of the sites in Southeast Chicago have been placed on the EPA's National Priorities List (NPL), they are not eligible for significant Superfund funding.<sup>93</sup>

DoE is currently developing the Chicago Principles for economy, equity, and environment. These principles will be a set of guidelines to help the city and its citizens develop a holistic, integrated plan for the "greening" of Chicago.<sup>94</sup> William McDonough, a national leader on

sustainability issues, is conducting this project, supported by an advisory group of 12 local leaders and 12 national experts.

### Metropolitan Water Reclamation District of Greater Chicago

In 1889, the Illinois Legislature created the Metropolitan Water Reclamation District of Greater Chicago (MWRD) to protect the water quality of Lake Michigan. MWRD is a separate, special purpose government with a jurisdiction that covers the entire city of Chicago, as well as 124 municipalities in Cook County. MWRD has its own taxing authority, and its nine commissioners are elected officials.

Among its responsibilities, MWRD manages wastewater reclamation (sewage treatment), disposal of biosolids, the tunnel and reservoir plan for addressing combined sewer overflows, and an industrial waste program.<sup>95</sup>

The MWRD's elected commissioners meet twice a month and approve contracts, create policies, and determine property uses. Meetings are open to the public, and the agenda and associated information are made available to the public in advance. Meeting notes are posted on MWRD's website four to five days after each meeting.<sup>96</sup>

MWRD facilities near Altgeld Gardens are longstanding sources of the residents' odor complaints. Citizens expressed their concerns about odors and frustration about government inaction at an August, 2000 hearing, as discussed above.

MWRD says it wants to be a good neighbor and maintains that it takes odor complaints very seriously. MWRD always checks into complaints from Altgeld Gardens. However, the exact causes of the smells are hard to determine because the housing project is located in an industrial area where other facilities could create odors.<sup>97</sup> MWRD reports that it is in 100 percent compliance with its water discharge permit requirements.<sup>98</sup>

As an example of how MWRD is working with communities, MWRD points to a demonstration project at the USX site in Southeast Chicago. MWRD is testing various amounts and combinations of biosolids mixed with dirt as a method to grow plants. The objective is to prove that the site is not barren.<sup>99</sup>

However, several individuals interviewed for this study said that MWRD has not been very responsive to government officials or nearby residents in trying to resolve its odor problems.

### **Community and Environmental Group Coordination**

Many community and environmental organizations are active in Southeast Chicago, but they do not always work together even when they have common goals. In research conducted for EPA's Region V, anthropologists Kathleen A. Gillogly and Eve C. Pinkers found differences in the emphasis and expression of environmental concerns among groups reflecting various ethnic groups: "Groups based in predominantly African-American neighborhoods emphasized health and environmental justice; groups drawing from predominantly white neighborhoods spoke more

of heritage and quality of life; environmental activists from national and regional organizations spoke more of natural resource conservation.”<sup>100</sup>

In keeping with these different emphases, white and African-American community groups tend to have connections with very different governmental and nongovernmental agencies. White activists are more closely connected to the federal EPA, IEPA, Chicago DoE, the National Park Service, and outside environmental groups. African-American community groups have closer connections to health agencies, such as the Greater Roseland Health Council and Chicago Department of Public Health, and have not been very involved in the city’s area-wide environmental planning and land use efforts.<sup>101</sup>

Significantly, however, the groups share several common interests that could make them powerful allies. They all want to make industry responsible to local communities, are concerned about the health and safety of residents, and seek sustainable economic development. Table 7-1 summarizes the primary concerns of environmental groups in Southeast Chicago.

A variety of community and environmental organizations have participated in a brownfields working group. They include the Center for Neighborhood Technology, Calumet Ecological Park Association, People for Community Recovery, Chicago Legal Clinic, Mexican Community Committee, Community Workshop on Economic Development, Committee for Economic Recovery, Grand Cal Task Force, and Calumet Project for Industrial Jobs. This working group has identified priorities for community involvement in brownfields restorations at USX South Works, Wisconsin Steel, the southern portion of LTV Steel property, the West Pullman brownfield cluster, and a 25-acre property south of Altgeld Gardens.<sup>102</sup> Such initiatives could foster greater cross-community networking.

**Table 7-1 Primary Concerns of Southeast Chicago Environmental Groups**

<b>Organizations</b>	<b>Primary Concerns</b>
Groups based in predominantly white neighborhoods	Aesthetics Heritage Quality of life Local control over places
Groups based in predominantly African-American neighborhoods	Environmental justice (fairness, equality) Health, removal of toxins Jobs and economic development
National/regional organizations	Conservancy Preservation of natural resources as a resource for all
<b>Common interests</b>	Making industry responsible to local communities Health and safety of residents Sustainable economic development

Source: Adapted from Gillogly, Kathleen A., and Eve C. Pinsker. *Networks and Fragmentation Among Community Environmental Groups of Southeast Chicago* (U.S. Environmental Protection Agency, Region V. June 5, 2000).

## LAND USE PLANNING, ZONING, AND GOVERNANCE IN CHICAGO

### City Governance

#### Form of Government

Chicago has a Mayor-Council form of government. The Mayor is the chief executive, and the City Council is the legislative body. The Mayor is elected city-wide, but the 50 Council members—called aldermen—are elected from neighborhood wards, whose interests they protect. Each alderman represents about 50,000 citizens and serves those constituents; there are no at-large members on the Council. The Mayor presides over City Council meetings and can vote in the event of a tie.

The City Council usually meets each month to exercise general and specific powers that have been delegated by Illinois statute. The city takes official action by passing ordinances and resolutions. The City Council's 19 standing committees work with individual city departments to carry out city activities. These committees review proposed ordinances, resolutions, and orders before they are voted on by the entire Council. The City Council votes on all proposed loans, grants, bond issues, land acquisitions and sales, traffic control issues, mayoral appointees, other financial appropriations, and — most relevant to this case study—zoning changes.<sup>103</sup>

#### Role of Aldermen

Two themes came through consistently in interviews by Academy researchers with city staff:

- Chicago is a very political city, where having the right connections helps to get things done; and
- There is also a great emphasis on local control and local services, so the aldermen have considerable power to produce action by city departments.

On the positive side, projects can be quickly and easily accomplished with the right political backing. Once city residents learn how to navigate the system, they can excel at getting their projects accomplished. If an alderman calls with an idea or concern, staff make the issue a priority. Because the entire City Council votes on some issues, there are numerous layers of process to ensure balanced and fair service delivery. On the downside, citizens who are not politically active or engaged do not prosper and have difficulty obtaining solutions to their problems. However, city staff believe all city residents know they need political connections in order to obtain city services.

Chicago's ward structure affects how things get done, as well as how people organize to get them done. Activists know exactly where to go when the problems are straightforward — such as garbage collection or street repair — and can expect prompt results. But complex problems, like environmental justice, take a longer time for city staff to understand and address. The resulting delays may be seen by local residents as the government's failure to take action:

In the ward structure, it is quite straightforward. If you need something like better garbage pickup, more patrol cars, or streets paved, you take it to the alderman (often via a contact such as a precinct captain)...It is a system that provides a sense of control in terms of a high degree of understandability in marked contrast to environmental issues, which can take a much longer period of time to resolve, because of the profound nature of pollution, the lower visibility of pollution, and the difficulties of enforcing federal rules and regulations. When local environmental problems are not immediately resolved, local people may be inclined to look for political reasons for this.<sup>104</sup>

## **Land Use Planning in Illinois**

### State Planning Laws

There is no Illinois law requiring local land use planning, but municipalities may voluntarily create a planning commission, planning department, or both. While the state has no oversight or control for local planning and zoning, the Illinois Department of Commerce and Community Affairs is authorized to provide education and training programs in planning, regulatory, and development practices and techniques that promote sound comprehensive planning. In addition, the Department is authorized to develop and distribute model ordinances, manuals, and other technical publications.<sup>105</sup>

A new state law, which took effect in August 2002, provides incentives for local governments to undertake comprehensive land use planning.<sup>106</sup> To receive technical assistance grants, local planning agencies must address several elements in their new or revised comprehensive plans. Among the elements are land use, transportation, community facilities, telecommunications infrastructure, housing, economic development, and public participation. See Appendix G for a more detailed description of Illinois' land use planning authorities.

### Chicago's Department of Planning and Development

Chicago's Department of Planning and Development (DPD) prepares land use plans for the city and reviews plans for large developments. DPD also proposes all local land use laws, such as changes to the zoning code.<sup>107</sup> The last city-wide planning document for Chicago was the Comprehensive City Plan of 1946.<sup>108</sup> Planning is now decentralized in DPD's seven Community Development Planning Districts.

DPD promotes economic development in Chicago by offering financial resources, such as low-interest loans and tax increment financing, as well as other business services. DPD is also responsible for preserving the city's architectural and historical landmarks, protecting the Chicago River and Lake Michigan shorelines, and creating new public open space for city residents, workers, and visitors.<sup>109</sup>

DPD develops strategic plans for specific urban redevelopment projects, such as Empowerment Zones (a program of the U.S. Department of Housing and Urban Development) and Tax Increment Financing Districts.<sup>110</sup> These plans generally outline development regulations for a neighborhood. The strategic plans contain area-wide designs that include recommendations for



open space, transportation, and infrastructure improvements. DPD also prepares capital improvement plans, updated every five years, which are road maps to infrastructure improvements.

Two DPD programs are designed to encourage and retain businesses: Industrial Corridors and Enterprise Zones. Under the Industrial Corridors program, local community and business leaders develop plans for making the corridors safe, accessible, functional, competitive, marketable, manageable, and attractive.<sup>111</sup> State and local tax exemptions, investment tax credits, several tax deductions, and other incentives are available to companies locating or expanding within an Enterprise Zone.<sup>112</sup> In keeping with plans for economic revitalization in the region, the Calumet Industrial Corridor<sup>113</sup> and Illinois Enterprise Zone 3<sup>114</sup> are near Altgeld Gardens.

DPD's Zoning and Land Use Planning Division creates long-term land use plans, evaluates planned developments, and reviews zoning amendments and special uses. It also conducts economic research and analysis to support department programs and activities.<sup>115</sup> The Zoning Division employs a team of inspectors who conduct daily inspections made in response to complaints from citizens and aldermen from all around the city.<sup>116</sup>

In DPD's seven planning districts, teams provide a focal point for anticipating and meeting the development needs of Chicago's neighborhoods. The team works closely with residents, community groups, businesses, and elected officials to provide coordinated and appropriate solutions to neighborhood problems. Assistance ranges from information and referral to technical assistance, program support, and local planning.<sup>117</sup>

#### Local Planning for the Far South Planning District

Altgeld Gardens is located in the Far South Planning District. Population density in the district is comparatively low, mostly due to its large number single-family homes, many vacant properties, and extensive industrial lands. As discussed above, the District is also known for its wetlands and natural areas surrounding Lake Calumet and the Calumet River.<sup>118</sup>

District planning officials say that Altgeld Gardens was built before the dumps and landfills arrived. Heavy industry was already in the area, but not near the housing project until the 1960s and 1970s. Spot zoning by the local aldermen played a role in developing the area surrounding Altgeld Gardens. Now, half of the industrial operations that used to surround Altgeld Gardens have closed. While in the past, haphazard development was allowed to happen, planners say the city now has regulations in place that should prevent similar situations from happening again.<sup>119</sup>

The Far South Planning District has two planning teams: community planners and industrial planners. While they do collaborate, the community planners primarily work with neighborhood planning and the industrial planners work on redeveloping industrial areas. District planners work primarily with four constituent groups: Community Development Corporations (CDC), individuals, developers, and churches (which are becoming increasingly active in development matters). In addition to the District's professional staff, there are advisory groups for special redevelopment areas. Within the Far South District, there are internal standing committees on

design, site selection, evaluation, and landscape ordinance coordination. These committees are made up of appointed individuals who are intended to represent diverse viewpoints.<sup>120</sup>

The planning district holds regular meetings that are open to the public. Notices about the meetings are sent via FAX to community groups and interested individuals. The local alderman's staff also help DPD by communicating with local residents. DPD staff attend community meetings when requested. While outreach is not a routine activity, the DPD does some outreach as new projects come along and is required to mail out information regarding Tax Increment Finance districts.<sup>121</sup>

### Calumet Area Land Use Plan

The Calumet Region—which includes Altgeld Gardens—is currently slated for economic revitalization and environmental improvements. The Calumet Area Land Use Plan, issued in December 2001, sets out a vision for taking advantage of the region's unique wetlands and natural areas as well as the vacant industrial lands that are ripe for redevelopment. The plan was developed by DPD in partnership with DoE and three non-governmental organizations: the Southeast Chicago Development Commission, Openlands Project, and Calumet Area Industrial Commission. Two federal agencies, EPA and the U.S. Forest Service, helped to fund development of the Region's land use plan.<sup>122</sup>

The goals of the plan are to improve the quality of life in the Calumet Region by creating greater economic opportunity and enhanced environmental quality, retaining and enhancing existing businesses and industry, attracting new industrial and business development, and protecting and enhancing wetland and natural areas.<sup>123</sup>

The plan provides an overview and vision for 1,000 acres of industrial and 4,000 acres of open space in a portion of the Far South Planning District. Because half of the industries located in the Calumet Region have closed, the city is looking for ways to attract new businesses to the area so they will provide local citizens with badly needed jobs and services.<sup>124</sup> The plan also calls for reclaiming former landfills as open space for habitat and recreation.<sup>125</sup>

Many agencies, organizations, and individuals helped to develop the Calumet Land Use Plan, but most were representatives of government agencies. Some local elected officials and representatives of several environmental and a few community organizations are listed in the plan as having participated in focus groups.<sup>126</sup> But otherwise, Altgeld and other local residents did not have much involvement in preparing the plan.

The land use map published with the plan delineates five major land uses for the Calumet Region: industrial, public open space (for recreation), open space preservation (for wildlife habitat), open space recreation (for recreation), and open space reclamation (reclaimed for recreation from previous waste management sites).

The plan does not address Altgeld Gardens or any other residential neighborhoods under the assumption that residential neighborhoods will remain in place where they are now. It is unclear

whether, in attracting new business and industries to the area, the planners considered the potential health and environmental impacts on surrounding neighborhoods.

Altgeld Gardens is at the southern end of the Calumet Region and, according to the land use map, all five land uses would be located within a mile of Altgeld Gardens. However, as noted below, the Calumet map—which includes several areas of open and recreational space near Altgeld Gardens—is not consistent with the current zoning of the area, which still allows for primarily manufacturing uses. Thus, zoning changes will be needed to implement the Region’s plan.

## **Zoning in Chicago**

### Roles and Responsibilities

Three government agencies have primary roles in Chicago’s zoning decisions. DPD and the seven planning districts prepare land use plans for the city. DPD also reviews plans for large developments and proposes all land use laws, such as changes to the zoning code. The DPD’s Department of Zoning enforces zoning laws, mostly through advance plan approval and inspections thereafter. The City Council must approve all changes to zoning ordinances, but aldermen are usually given great discretion in zoning matters for their wards.<sup>127</sup> Table 7-2 summarizes the role of various players in zoning decisions.

### Zoning Districts

Chicago is divided into four basic types of zoning districts and many sub-districts. There are also some special districts and planned manufacturing districts.

- Residential districts are primarily intended for residential uses; some commercial and retail businesses may also be allowed.
- Business districts include offices and retail uses, and sometimes residential uses.
- Commercial districts include offices, facilities for the sale of goods and services, residential buildings, and a limited number of manufacturing uses.
- Manufacturing districts house industrial facilities like factories or warehouses and some commercial uses. Industrial uses in the M1 and M2 subdistricts are limited to those which do not bother their neighbors. M3 subdistricts house businesses that might bother their neighbors. The performance standards for nuisances like noise, vibration, smoke, and odors differ among the three districts. Noise and vibration levels can be higher in M3 districts than in M1 districts.<sup>128</sup> All manufacturing facilities must comply with the air quality requirements in the Chicago Municipal Code.<sup>129</sup>

The penalty for violating the zoning code is \$500 for each offense or day in violation, and violators must also take remedial action to correct the infraction.

## Current Zoning Reforms

Chicago is now conducting a comprehensive revision of its zoning code, which has been in place since 1957 but has been changed piecemeal ever since. In 2000, Mayor Richard M. Daley called for this overhaul of the city’s zoning code. His goals are to insure the stability of residential property values, maintain affordability of housing, provide vital retail areas, promote more transportation choices, and ensure parks and open spaces throughout Chicago.<sup>130</sup>

The Mayor appointed a Zoning Reform Commission made up of aldermen, planners, architects, bankers, and nongovernmental organization (NGO) representatives to develop the revised code.<sup>131</sup> However, none of the NGO members seem to represent local community-based or environmental justice organizations.

The Zoning Reform Commission plans to finish its work in the summer of 2003. Once completed the proposed new zoning maps and other changes will be presented to the entire City Council for a vote.<sup>132</sup>

**Table 7-2 Players and Roles in Chicago’s Zoning Process**

<b>Player</b>	<b>Role in Zoning Process</b>
Residents and Business Owners	Offer comments and recommendations to developers and aldermen on development proposals, either at public hearings or through block clubs/community groups. Citizens can submit proposed zoning amendments through the City Clerk.
Developers and Property Owners	Submit applications, advocate for the proposed project, provide information on development for other players. Usually hire any architects and lawyers involved.
Zoning Department Staff	Reviews compliance for “as of right” zoning applications, prepares recommendations for other applications, and keeps records.
Zoning Administrator	Hears requests for exceptions to zoning requirements.
Department of Planning and Development Staff	Issues recommendations to Plan Commission, develops plans for city areas, provides staff support to Zoning Board of Appeals and Plan Commission.
Plan Commission	Reviews applications for Planned Developments, including Planned Manufacturing Districts.
Aldermen	Reviews all developments in her/his ward, and offers or supports zoning amendments.
City Council	Votes on all amendments to zoning ordinances.

Source: Adapted from Metropolitan Planning Organization, *Revise, Recreate, Rezone: A Neighborhood Guide to Zoning*, 2001.

## Public Participation in Zoning Reforms

The Zoning Reform Commission has actively solicited public participation. In 2000, they held seven community meetings in neighborhoods across Chicago, followed in 2001 with six public workshops on specific zoning issues. Participants represented more than 300 business and community organizations.<sup>133</sup>

The non-profit Metropolitan Planning Council (MPC) is also actively engaged in helping citizens and neighborhood groups understand and influence Chicago's zoning reform process. They have developed plain-language guides and made presentations to community organizations about the proposed zoning reforms.<sup>134</sup> In addition, the organization conducted community forums and workshops to solicit public comment on the rezoning effort.

Focus group participants expressed concerns and made recommendations on two issues that are particularly relevant to environmental justice, transitional areas between industrial and non-industrial uses and public participation in the zoning process:

- Transitions at the edge of some industrial and non-industrial areas provide insufficient protection. Focus group participants recommended requiring landscaping and setbacks from industrial districts and creating transition requirements in manufacturing districts that match existing standards for Planned Manufacturing Districts.
- Communicate better and provide greater opportunities for neighborhood participation in the development review process. Focus group participants recommended expanding current notice requirements, which are now mailed only to property owners within 250 feet of the property in question, to all neighborhood organizations and residents that indicate interest in specific properties or areas of Chicago. They recommended establishing neighborhood contact requirements for development proposals of a certain scale, so that neighborhood organizations would have an opportunity to request an informational meeting before the city's review. They also recommended improving the public notification process by posting announcements in public spaces.<sup>135</sup>

## Performance Standards for Manufacturing Districts

Chicago's zoning ordinance establishes performance standards for noxious, odorous matter in areas zoned as manufacturing districts, as much of the land near Altgeld is zoned (see below).

Smoke and Particulate Matter. All land uses established after May 1, 1959, must comply with the city's requirements governing air pollution and waste management, as set out in Chapter 11-4 of the Municipal Code of Chicago.<sup>136</sup>

Odor. There are increasingly stringent performance standards in M1 to M5 manufacturing zones for amounts of odor that can be detected along property lines. For all manufacturing zones, emissions of noxious odors that are detrimental to or endanger public health, safety, comfort, or welfare are considered public nuisances and are unlawful.<sup>137</sup>

Toxic Matter. For all manufacturing districts, toxic matter cannot be discharged beyond the property line in concentrations that can be detrimental to or endanger the public health, safety, comfort, or welfare or cause injury or damage to property or business.<sup>138</sup>

Significantly, however, neither performance standards applies to odors or toxic matter from land uses that were in already in place at the time the revised ordinance was adopted.<sup>139</sup>

### Zoning Near Altgeld Gardens

On the current zoning map, most of the area near Altgeld Gardens is zoned M3, or heavy manufacturing.<sup>140</sup> There are also a few M1 (restricted manufacturing) and M2 (general manufacturing) districts, as well as a Planned Manufacturing District in the vicinity of Altgeld. If the Calumet Area Land use Plan is implemented, some of the area near Altgeld Gardens would be changed from manufacturing uses to open space, as discussed above.

## **ENVIRONMENTAL PERMITTING**

### **Illinois Environmental Protection Agency**

The Illinois Environmental Protection Agency (IEPA) administers the state's environmental protection programs. EPA has authorized IEPA to administer most aspects of the federal air, water, and hazardous waste programs.<sup>141</sup>

- State Environmental Permits

The key categories of environmental permits issued by IEPA are: air pollution control permits for constructing and operating a source of air emissions; water pollution control permits for discharges into water, pollution control equipment, and operating permits; and land permits for waste treatment, storage, or disposal. Proposed and final environmental permits for Illinois facilities are available to the public online at a website maintained by EPA Region V.<sup>142</sup>

- Emissions Reduction Credit (ERC) Bank

In 1995, IEPA began trading air pollution credits under the federal Clean Air Act. Through the ERC bank, DoE helps businesses that want to build or expand meet federal and state regulations for volatile organic chemicals (VOCs) by obtaining emissions credits for the amount of new emissions they will create. According to IEPA, the ERC bank will reduce air pollution because, when a business uses its credits, it must also commit to retire 30 percent of the credits, which are given to the state and never used again. Companies participating in the ERC bank must also complete an environmental project that benefits the community.<sup>143</sup>

## Environmental Justice Policy

During the spring of 2003, IEPA began soliciting comments on a Draft Interim Environmental Justice Policy. In addition to designating an Environmental Justice Officer for IEPA and an advisory group, the policy sets out the following objectives:

- Ensure that communities are not disproportionately impacted by degradation of the environment or receive a less-than-equitable share of environmental protection and benefits;
- Strengthen the public's involvement in environmental decision-making, including permitting and regulation and, where practicable, enforcement matters;
- Ensure that agency personnel use a common-sense approach to addressing environmental justice issues; and
- Ensure IEPA continues refining its environmental justice strategy so that it continues to protect the health of Illinois citizens and the environment, promote environmental equity in the administration of its program, and is responsive to the communities it serves.<sup>144</sup>

The strategy includes steps to improve public participation in permitting and other actions that may have environmental justice implications. In addition to working with host communities to identify potential issues, IEPA will hold meetings in and around the affected communities before taking action. Sometimes, IEPA will hold “small group” or “living room” meetings for citizens when they request a public hearing on a permit. These small meetings encourage greater public participation and candid dialogue. Illinois regulations also allow for public participation in the permitting process beyond the hearings required under law. Thus, IEPA will sometimes hold informational hearings to inform the public about a proposed action or to gather information or comments from the public before making a final decision.<sup>145</sup>

For permitting actions where environmental justice concerns are raised, IEPA will look at the information provided and other available information to assess whether there are potentially significant, adverse environmental impacts. If there are any such potential adverse impacts, the IEPA will either request an assessment or assess these impacts using the information and tools reasonably available, and within the time constraints allowed by applicable state and federal law. The assessments will be made available to the public and other affected persons or entities, and an appropriate agency response will be made based on these assessments.

## Local Siting Process

The Illinois Environmental Protection Act of 1970 also includes a local siting process for pollution control facilities.<sup>146</sup> A pollution control facility is defined as any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, or waste incinerator. A developer who wants to build a new landfill or other pollution control facility must get the approval of the local siting authority—either the county board in unincorporated

areas or the governing board of a municipality. IEPA will not review a permit application for one of these facilities until the local body has approved its location.<sup>147</sup>

Local governments may base their decision about the suitability of a pollution control facility only in accordance with specified criteria. Several of the criteria would allow for consideration of environmental justice concerns. The local government may consider whether:

- The facility is designed, located, and proposed to be operated so that the public health, safety, and welfare will be protected;
- The facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;
- The traffic patterns to and from the facility are designed to minimize the impact on existing traffic flow; and
- If the facility will be treating, storing, or disposing of hazardous waste, an emergency response plan for the facility will be developed to include notification, containment, and evaluation procedures to be used in case of an accidental release.<sup>148</sup>

Within the city limits of Chicago only, local zoning and land use requirements can also be applied as criteria for siting decisions.<sup>149</sup>

Additional public participation requirements are designed to assure adequate outreach to the local community. The applicant must notify certain adjacent property owners and members of Illinois' General Assembly from the legislative district in which the facility is to be located. The applicant must also notify the general public through publication of a notice in a newspaper. At least one public hearing must be held, and any person may comment on the proposed facility.<sup>150</sup>

## **Chicago Department of Environment**

### Permits

Chicago's DoE ensures compliance with and enforces air quality laws in the city. Additionally, the DoE issues permits and conducts inspections at more than 2,100 industrial facilities to ensure they are in compliance with laws and regulations.<sup>151</sup>

DoE issues air quality permits for such activities as installation of pollution control equipment, incinerators and afterburners, dry cleaning equipment, and spray booths in auto repair shops. DoE also issues permits for waste disposal facilities, such as landfills, transfer stations, junkyards, liquid wastes, and rock crushers, and IEPA has delegated authority to DoE for issuing permits of underground storage tanks.<sup>152</sup>



## Enforcement

DoE enforces the municipal code and, through delegation agreements, also enforces some state and federal environmental laws. DoE inspectors write tickets for violations, file inspection reports, gather evidence, and provide court testimony. DoE's enforcement programs cover landfills, transfer stations, recycling facilities, junkyards, and rock crushing facilities, illegal dumping, asbestos demolition and construction, odor complaints, air emissions, recycling, removal and management of underground storage tanks, and response to emergencies involving hazardous materials.<sup>153</sup>

## Public Participation

DoE relies heavily on the alderman in each ward to disseminate information about proposed permits. Notices of alderman meetings are placed in the *Chicago Sun Times*, and the meetings are held in the appropriate alderman's ward. DoE generally does not use community groups to participate in the permitting process, relying mostly on the aldermen to provide the local perspective.<sup>154</sup>

## **ANALYSIS AND RECOMMENDATIONS**

### **Leadership and Accountability**

The Calumet Region of Southeast Chicago has the potential to become a positive example of sustainable development where the Region's economic revitalization is tied to enhancement of the natural environment. If this vision becomes reality, residents of Altgeld Gardens—along with other citizens in the Region—will realize improved environmental conditions as well as greater economic opportunities. To turn around both the negative image and the reality of the Region's contamination, however, leadership and coordination among many agencies and organizations that are not accustomed to working together will be necessary. They must also embrace the concept of achieving environmental justice, so that economic development opportunities are not produced at the expense of people who already face disproportionate risks from environmental threats.

Community activists, such as the People for Community Recovery based at Altgeld Gardens, have brought attention to the environmental and health problems of residents in Southeast Chicago. By educating citizens and creating political pressure, community groups have produced positive results, such as a moratorium on landfills, enforcement actions against violating facilities, and a demand for "green" industry as part of economic redevelopment plans. Community-based organizations and environmentally-focused organizations share common goals with regard to environmental improvement coupled with economic development. A coordinated effort by these groups to work on their common goals could be a powerful engine for ensuring action on problems at Altgeld and the rest of the Calumet Region.

Local agencies should adopt policies to ensure environmental justice, and should incorporate active community involvement and careful evaluation of potential health and environmental

impacts in their decision-making processes. These agencies also need to coordinate, so that their collective resources can be used most effectively.

Unfortunately, responsibility is split among several autonomous organizations. Most notably, the Metropolitan Water Reclamation District (MWRD) is managed independently by its own set of elected officials, and is not under the jurisdiction of the City of Chicago. According to local officials and federal staff interviewed for this project, MWRD has generally not been very cooperative with other agencies. Odor problems at its sewage treatment and sludge drying facilities are central to the environmental justice concerns at Altgeld Gardens, and odor is considered a major impediment to attracting new industry and recreation in the area. Federal, state, and local agencies should carefully and creatively examine all their authorities to see whether a legal solution to this ongoing problem can be found.

Chicago's Department of the Environment (DoE) does coordinate with the city's Department of Planning and Development (DPD) on new development. DoE reviews the environmental impacts of new land uses and development and makes recommendations regarding consistency with existing requirements. More recently, DoE has been working with the Department of Zoning to draft new zoning guidelines. The zoning guidelines will include requirements for noise and view barriers and measures to keep from having a heavy industrial area next to a residential area.<sup>155</sup> DoE also conducts environmental reviews for the Chicago Housing Authority (CHA). But more coordination is needed. For example, DPD does not coordinate with the Chicago Department of Health.<sup>156</sup> DPD staff say the health department focuses on people and social factors, while they are focused on physical land use planning.<sup>157</sup> This narrow focus does not recognize the need to make sure that public health concerns are addressed by land use plans.

City staff emphasized the central role that the ward aldermen play in delivery of services and in getting things done. Their leadership and involvement is essential to success in dealing with the environmental and economic problems of Southeast Chicago and Altgeld Gardens. Community and environmental groups that gain the support of the local aldermen have a greater chance of getting attention and action on their issues. Aldermen play an important role with regard to zoning issues as well. All requests for zoning changes must be approved by the City Council, and the Council normally follows the recommendation of the alderman for the ward where changes are proposed.

Thus far, it is unclear whether or how Chicago's current zoning reforms will address environmental and public health threats, particularly where manufacturing districts are located near residential districts. The city should ensure that its comprehensive new zoning code and maps consider these impacts and that there are adequate safeguards. Grandfather clauses in the current zoning ordinances—which cloud the city's authority to enforce odor, smoke, and toxic matter requirements when uses that pre-dated the ordinances— should be eliminated in the new code.

While DoE staff acknowledge the particular concerns of people-of-color and low-income communities, they do not have a goal, policy, or specific program for addressing environmental justice. However, DoE staff have received environmental justice training from EPA's Region V, which has sparked ideas for addressing environmental justice in city programs. At the time this

report went to press, IEPA was circulating for comment a draft Interim Environmental Justice Policy.<sup>158</sup> The draft policy sets out the state agency's intent to consider disparate impacts in its permitting and other decisions and to ensure fair and equitable delivery of services. However, the policy would apply only to IEPA and not to other state agencies, and it is unclear how this state policy might affect the environmental authorities that IEPA has delegated to Chicago's city agencies.

### **Permitting and Planning and Zoning Authorities**

Plans for revitalizing Southeast Chicago call for sustainable, environmentally sound economic development and enhanced natural resources. If this vision can be implemented, residents of Altgeld Gardens and neighboring communities will benefit from increased economic opportunities, as well as a healthier and more attractive environment.

Permits can play a critical role in minimizing otherwise adverse impacts of facilities. Community and environmental groups can work with government agencies and businesses during the permitting process—including the permit renewal process for existing facilities—to ensure that facilities employ pollution prevention practices wherever possible and use the most effective pollution control techniques when prevention is not possible. Permits can also require facilities to manage their noise, odors, and traffic so that they will be good neighbors in the community.

Depending on the type of permit involved and whether the program has been delegated (air, water, waste, or multiple permits), IEPA and/or Chicago's DoE will have the lead permitting responsibility. Even where the city has direct responsibility for issuing permits, however, IEPA needs to provide technical and other expertise if needed. IEPA's proposed environmental justice policy is designed to ensure that the agency's permitting and program decisions do not have a disparate impact on people-of-color or low-income communities. IEPA's environmental justice coordinator and Office of Community Relations can be a valuable source of support for Chicago's efforts to deal with environmental justice issues where city agencies implement environmental programs. One area that should be carefully monitored is implementation of the Emissions Reductions Credit bank, to ensure that no local VOC "hot spots" emissions result from trading emission credits.

Chicago has made a political commitment to economic development that will protect the environment and public health, and the city's new zoning reform effort includes environmentally sound development as a goal. Other signs of the city's commitment are the stated goals and objectives of the Calumet Regional Land Use Plan and the effort underway to develop a policy on "green" industries.

Although additional economic development in Southeast Chicago may be a desirable goal, questions remain whether it can be accomplished without further exacerbating the health and environmental threats that area residents already face. To ensure that proposed projects are acceptable to the community and prevent or strictly control pollution, the decision-making process must include careful evaluation of potential impacts as well as active involvement of

environmental justice and community-based organizations. Some new projects simply may not be appropriate for the Region.

Already, community groups and environmental organizations are working with federal, state, and city agencies, as well as with private developers, to make sure that new businesses at redeveloped brownfields and old industrial sites will be environmentally sound. Government agencies and community groups can encourage new or expanding businesses to use pollution prevention practices, employ the most effective techniques for pollution control where prevention is not possible, and take steps to be good neighbors by addressing potential noise, traffic, and aesthetic concerns.

Clearly, it is not sufficient to have environmental permit conditions and ordinances on noise and odor. There must also be effective monitoring and enforcement to ensure that these requirements are being met. As in the permitting process, community groups and environmental organizations must work together in holding government agencies and industry accountable for compliance with permits, land use plans, and zoning and other local ordinances.

### **Setting Priorities and Reducing Risks**

It is well established that residents of the Calumet Region face multiple environmental and public health threats. Nearly all of the Southeast Chicago neighborhoods are overwhelmingly African-American or have mostly people-of-color populations, with strong concerns about environmental justice.

Once home to many thriving industries, Southeast Chicago must now deal with the fact that many of its industries have moved away, leaving behind a legacy of contaminated land and possibly ground water contamination. Thousands of acres of vacant land await redevelopment, yet some of the facilities that remain still produce high levels of particulate matter and toxic emissions, giving the region significant air pollution problems and placing it in nonattainment for particulate matter.

The entire Calumet Region is a high priority for Chicago's economic and environmental improvement. Several efforts are underway to foster environmentally sound development that will help to address both concerns, and will benefit local residents and all of Chicago. For new facilities, zoning rules and environmental reviews can ensure proper use of buffer zones between residential and commercial or industrial land uses; and the permitting process can promote pollution prevention and ensure appropriate pollution controls are installed. Done correctly, the redevelopment effort could become a model of sustainable development for other Rust Belt communities.

Mitigating the impacts of existing pollution is especially difficult. The few studies about the health impacts of possible cumulative exposures to contaminants have been inconclusive, leaving no one satisfied. Citizens are tired of complaining but not obtaining any government action, and government agencies cannot take action without very specific data to support proposed solutions.

Nevertheless, a number of steps can be taken in the near term to help reduce environmental exposures and risks to local residents. IEPA and Chicago DoE, with assistance from EPA as appropriate, should develop and implement a strategy that includes the following actions:

- Monitor all facilities in the Calumet Region for compliance with environmental permit and other requirements, and take appropriate enforcement actions to bring them into compliance if they are not;
- For existing facilities, use the permit renewal process to solicit community perspectives about the facility and incorporate new permit conditions that address their concerns;
- Develop and implement a strategy to address the odor issues that are a primary concern of Altgeld and other area residents, as well as a barrier to business development, by:
  - Actively involving citizens in developing and implementing the strategy, such as by using focus groups and including citizen representatives on odor panels; and
  - Exploring creative and aggressive use of existing legal authorities at all levels of government—such air, water, and waste laws as well as general health and welfare and nuisance statutes—to ensure that odors are controlled through effective management practices and installation of appropriate, cleaner technologies;
- By using analytic tools, modeling, and sampling, assess the potential health impacts of cumulative exposures to contaminants in particular communities such as Altgeld Gardens;
- Identify and address sources of contamination that are most likely to be responsible for health impacts by ensuring compliance with current requirements and re-opening existing permits if necessary to reduce risks; and
- Provide education and training to local residents on risks such as asbestos, lead paint, and pesticides to prevent or mitigate household exposures.

### **Public Participation**

Public participation and community outreach efforts by Chicago agencies appear to be minimal, at best. For each neighborhood, public participation depends almost entirely on the local aldermen. Staffs of both Chicago DoE and DPD said they rely on the aldermen's offices to do most of the outreach to community residents. DoE staff said they generally do not use community groups in the permitting process, relying mostly on the aldermen to get the local perspective on city permits. IEPA does more extensive community outreach on its air, water, and waste permits. Building on the agency's long-standing community relations program, IEPA's draft Interim Environmental Justice Policy sets out steps to ensure public participation in permitting and other actions that may have environmental justice implications. In addition to

working with host communities to identify potential issues, IEPA will hold meetings in and around the affected communities before taking action.

Regarding land use decisions, the recommendations of the local alderman on proposed zoning changes are generally approved by the City Council. Consequently, aldermen have substantial influence with regard to both permitting and land use decisions. While aldermen are elected officials and must be responsive to the concerns of their constituencies if they wish to be re-elected, Chicago's DPD and DoE could, and should, do more to reach out to affected communities regarding proposed decisions.

Chicago's current efforts to adopt comprehensive zoning reforms provide a unique and critical opportunity to ensure that environmental justice concerns are addressed. Ordinances controlling the activities that can be conducted in each type of zoning district and requirements for set-backs and aesthetics in transition areas between manufacturing and residential districts can be improved. Controls on such community concerns as noise, odor, toxics, smoke, and traffic can be strengthened. Penalties for violations can be increased above the current \$500.

Focus group participants discussing Chicago's current zoning reforms have highlighted the lack of adequate public participation as a key defect in the city's zoning process. Currently, only property owners within 250 feet of a proposed zoning change must receive a written notification. This notification requirement clearly leaves out renters and others who live beyond the 250-foot line but may still be affected by the proposed change. To improve public outreach, these focus groups have recommended developing lists of neighborhood organizations and residents who have expressed an interest in specific properties or areas of Chicago to receive notices of proposed zoning changes. They also suggested establishing a neighborhood contact requirement for development proposals of a certain size, so that neighborhood groups could request a meeting in advance of the city's decision.

The first key step is to ensure an adequate public participation in the zoning reforms. While Chicago has conducted some outreach about the process, and the public has been invited to comment on draft materials, the real test will be the extent to which the city actively engages—and listens to—the public when preparing the proposed new zoning maps.

## **RECOMMENDATIONS**

**Recommendation 1.** Chicago should ensure that its current effort to adopt comprehensive zoning reforms addresses community and public health concerns, and should plan and carry out extensive public outreach and participation on the zoning reforms, particularly with regard to proposed revised zoning maps. The reformed zoning code should:

- Require explicit consideration of public health and environmental impacts for all proposed land uses;
- Strengthen controls on noise, odor, toxics, smoke, and traffic and make them apply to both existing and future activities;

- Incorporate set-backs, barriers, and other aesthetic measures in transitional areas between manufacturing and residential districts;
- Increase penalties for code violations; and
- Broaden public participation to include written notification of proposed zoning changes for all interested individuals and organizations, not just to adjacent property owners.

**Recommendation 2.** Chicago’s plans for economic redevelopment, such as the Calumet Area Land Use Plan, must be implemented in a way that does not adversely impact neighboring residential districts. Strict enforcement of current requirements and fostering pollution prevention measures can reduce impacts from existing facilities. With regard to new facilities, the city must carefully consider the potential for disparate impacts on low-income and people-of-color communities and accept only new developments that do not exacerbate already poor environmental conditions or expose neighboring residents to increased pollution.

**Recommendation 3.** Officials of federal, state, and local agencies and local political leaders should work with community representatives to develop and implement a strategy that will address the odor issues faced by residents of Altgeld Gardens and other Southeast Chicago neighborhoods. The strategy should:

- Give first priority to resolving the long-standing odor problem at the Metropolitan Water Reclamation District’s wastewater treatment plant and sludge drying facility;
- Provide for an aggressive and creative review of each jurisdiction’s respective legal authorities—including general welfare and nuisance laws plus water, air, and waste disposal regulations—to find an enforceable solution; and
- Foster good neighbor dialogues between facility operators, representatives of community organizations, and government officials.

**Recommendation 4.** Chicago agencies should expand their public participation efforts and actively reach out to community-based and environmental justice organizations when making permitting, planning, and zoning decisions. They should also ensure that these organizations are represented on advisory panels and focus groups. The Illinois Environmental Protection Agency should fully implement its Interim Environmental Justice Policy, and help Chicago’s planning and environmental agencies to develop and implement comparable policies and practices.

## ENDNOTES

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- <sup>3</sup> An estimated 85 percent of Chicago was racially segregated in 1940. Restrictive covenants barring African Americans from owning or renting homes were in place in some neighborhoods. R.W. Brooks, *Covenants and Conventions*, Northwestern University Law School, 20 (April 2002). Available at <<http://www.yale.edu/law/leo/papers/covenant.pdf>> (visited May 2003).
- <sup>4</sup> Hirsch, Arnold R. *Making the Second Ghetto: Race and Housing in Chicago, 1940-1960*. (Cambridge University Press, 1990).
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- <sup>6</sup> Chicago Housing Authority, *Draft Plan for Transportation FY 2003*, (September 1, 2002).
- <sup>7</sup> U.S. Bureau of the Census, 2000 data for Chicago.
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- <sup>9</sup> Katherine Greenberg, Interview (August 10, 2002).
- <sup>10</sup> Chicago Housing Authority, *Draft Plan*, 85.
- <sup>11</sup> Frank Sennett, "An Urban Refusal," *The Neighborhood Works*, 9-13 (October/November 1993).
- <sup>12</sup> Jim Motavalli, "Toxic Targets Polluters That Dump on Communities of Color Are Finally Being Brought to Justice," *E-Magazine* (July-August 1998).
- <sup>13</sup> U.S. Environmental Protection Agency (EPA), *Envirofacts Data Base* (undated.) Available at <[http://www.epa.gov/enviro/index\\_java.html](http://www.epa.gov/enviro/index_java.html)> (visited July 2003).
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- <sup>15</sup> Julia Parzen, *Calumet Region—Concerns and Liabilities, Progress and Assets, Gaps and Opportunities*, Physical Infrastructure Section (South Metropolitan Regional Leadership Center at Governors State University, January 31, 1997). Available at <<http://www.lincolnet.net/reports/calumet/physstu.html>> (visited July 2003).
- <sup>16</sup> *Ibid.*
- <sup>17</sup> Chicago Department of Planning and Development, *Calumet Area Land Use Plan* (December 2001).
- <sup>18</sup> *Ibid.*
- <sup>19</sup> *Ibid.*
- <sup>20</sup> Juanita Charlton, Assistant Commissioner; Kathleen Dickhut, Planner; and Marilyn Engwall, Planner; Far South Planning District, Chicago Department of Planning and Development, Interviews (September 9, 2002).
- <sup>21</sup> *Ibid.*
- <sup>22</sup> Cara Jepsen, "Retooling South Works," *The Neighborhood Works*, 17 (February/March 1995).
- <sup>23</sup> Illinois Department of Energy and Natural Resources and Nature of Illinois Foundation. *The Changing Illinois Environment: Critical Trends*, 15 (1994).
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- <sup>25</sup> Gallogly and Pinsker, *Networks*.
- <sup>26</sup> *Chicago Sun Times*, Census summary.
- <sup>27</sup> Environmental Defense Fund, *Scorecard*, website, <<http://www.scorecard.org/>>. Information is drawn from the EPA's most current data in the National Scale Air Toxics Assessment (1996), and emissions may have changed since then. Data was drawn for zip code 60827 that covers Altgeld Gardens.
- <sup>28</sup> *Ibid.* Information is drawn from EPA's National Emissions Trends and Aerometric Information Retrieval System.
- <sup>29</sup> *Ibid.*
- <sup>30</sup> *Ibid.* Data is drawn from EPA's 2000 Toxic Release Inventory database.
- <sup>31</sup> *Ibid.* Rankings are based on household and demographic information from the 1990 Census as well as statistical sampling.
- <sup>32</sup> *Ibid.* Data is drawn from EPA's TMDL Tracking System and Index of Watershed Indicators.
- <sup>33</sup> Mardi Klevs, Chicago Regional Team Manager, EPA, Interview (May 23, 2003).



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- <sup>34</sup>Jim Motavalli, "Toxic Targets."
- <sup>35</sup>*Ibid.*
- <sup>36</sup>*Ibid.*
- <sup>37</sup>*Alfred Aaron vs. Chicago Housing Authority*, No. 99 L 117388, Circuit Court of Cook County, Illinois, County Department, Law Division.
- <sup>38</sup>Cheryl Johnson, People for Community Recovery, Interview (September 10, 2002).
- <sup>39</sup>Xavier University, "Deep South Center for Environmental Justice," website, <<http://www.xula.edu/dscej>> (visited July 2003).
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- <sup>41</sup>EPA, Transcript of hearing on proposed renewals of NPDES permits for three Metropolitan Water Reclamation District of Greater Chicago plants (August 23, 2000). Available at <<http://www.epa.state.il.us/public-notices/2000/mwr-d-greater-chicago/hearing-transcript.pdf>> (visited May 2003).
- <sup>42</sup>*Ibid.* Mardi Klevs, Testimony, 67.
- <sup>43</sup>*Ibid.*, 68.
- <sup>44</sup>*Ibid.* Emilio Salis, Chicago Bureau of Air, Testimony, 89-90.
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- <sup>46</sup>*Ibid.* Cheryl Johnson, People for Community Recovery, Testimony, 89.
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## CHAPTER NINE

### ST. JAMES PARISH, LOUISIANA

#### FINDINGS

**Finding 1:** Louisiana law does not require local governments to adopt comprehensive plans or zoning ordinances, and St. James Parish has no comprehensive plan or zoning ordinances. Local officials say they lack professional planning staff, do not have adequate information about current land use, and have only limited public support for land use controls on private property.

**Finding 2:** Louisiana law authorizes regional planning organizations to assist local governments that are interested in planning and zoning, but officials in St. James Parish have seldom used these services.

**Finding 3:** Regional planning officials and some St. James Parish officials acknowledge that instituting zoning has the potential both to protect citizens and to create a predictable regulatory structure for industry that might reduce future controversies about siting decisions. In 1990, the Louisiana Department of Environmental Quality (LDEQ) issued a memorandum to all local officials reminding them of their responsibility for protecting human health and welfare and of their existing authority to exercise that responsibility when making local siting decisions. St. James Parish officials are reluctant, however, to embrace land use planning or zoning because of possible political objections to local government controls on decisions about how to use private property.

**Finding 4:** The government of St. James Parish does not identify environmental justice as either a problem or a priority, in large part because parish officials believe there are no environmental justice issues unless a polluting facility purposefully locates near a low-income or people-of-color community intending to harm the residents.

**Finding 5:** Through a task force and public hearings, respectively, Louisiana's Governor and the state Legislature have solicited recommendations from stakeholders on environmental justice. Stakeholders recommended developing an environmental policy act ("little NEPA") and examining whether the state needs land use planning and zoning. They also recommended creating buffer zones around some industrial facilities. To date, these and a wide range of other recommendations from these stakeholder processes have not been implemented by state or local governments. If implemented, they would help to address many of the environmental justice complaints in St. James Parish and elsewhere in Louisiana.

**Finding 6:** LDEQ has not been able to provide effective assistance for St. James Parish on environmental justice issues because the agency lacks a vision, strategy, and tools that could help local governments in Louisiana understand the health and environmental implications of their siting decisions.



## BACKGROUND

### About St. James Parish

St. James Parish (the equivalent of a county under Louisiana law) is located in southeastern Louisiana between Baton Rouge and New Orleans. It covers 246 square miles, and is predominantly rural, with the Mississippi River running through the center.<sup>1</sup>



According to the 2000 Census, the population of St. James Parish is 21,224, almost evenly divided between African-American and white (non-Hispanic) populations; no other race or ethnicity comprises more than one percent of the population.<sup>2</sup> Over 20 percent of the Parish's general population and 27 percent of its children live in poverty. Median household income is \$35,277, with 37.4 percent of households in the Parish earning less than \$25,000 annually. Just over a quarter its residents 25 years or older have not achieved a high school diploma or equivalent. Of the available labor force, 5.5 percent are unemployed. The largest industries reported in the Census are manufacturing (26.2 percent, mostly petrochemical and large-scale agricultural), plus education, health, and social services (19.9 percent).<sup>3</sup> St. James Parish suffers from out-migration and a lack of economic development.<sup>4</sup> According to the 2000 Census, the Parish's population has only increased 1.6 percent in ten years.<sup>5</sup>

### Environmental Setting

The Parish contains large areas of bayou (swamp and marsh), and a settled strip of land on each side of the Mississippi River. Much of the area is not inhabitable because of the high water table. Historically, the two strips of fertile land on either side of the Mississippi consisted of plantations between the bayous and the River, with property boundaries between them running perpendicular to the River. Today, these properties make natural ports, with easy access for shipping.

The River is also a physical and cultural divide. Residents on the west bank have a strong Acadian (French) heritage and are interested in preserving this cultural tradition. Many west bank citizens still speak both Creole and English. By contrast, east bank residents, with direct access to New Orleans and Baton Rouge, tend to be more oriented to the modern urban culture of those cities. Most east bank citizens speak only English. There are no distinctive demographic, economic, or social differences between the populations on either riverbank, although each



community sees itself as distinct. The Parish also provides two sets of most public services, even drinking water treatment plants, one on each side of the River.<sup>6</sup>

## **Economic History**

When slavery ended, groups of free blacks, referred to as “companies,” purchased strips of land on the edges of many plantations. The descendants of these freed slaves have remained there, generation after generation, subdividing and re-subdividing the parcels. In general, these communities are economically poor, but rich in family histories going back many generations. The result is a series of small African-American communities—a few hundred people in each community—whose residents live in dense clusters of dwellings on small strips of land.<sup>7</sup>

After these strips of land were purchased by the free black companies, the remaining plantation lands were usually left to the plantation owners’ children and other descendants. Today, some plantation properties are owned by up to 200 heirs. Other plantations have been sold for development; and some now contain heavy industry that is dependent on river access. Of the plantations that have not been sold, many are leased for growing sugar cane.<sup>8</sup>

Petrochemical and agricultural businesses are the major industries. Fourteen major factories in St. James Parish produce, transport, or distribute chemical and petroleum products. The other major industrial facilities in the parish include an aluminum producer, two grain exporters, a sugar refinery, and a potato chip manufacturer.<sup>9</sup>

## **ENVIRONMENTAL JUSTICE CONCERNS**

### **Environmental Quality in St. James Parish**

LDEQ listed air toxics as the state’s highest environmental risk statewide for 2000.<sup>10</sup> While is an overall downward trend in toxic air releases, the state continues to be one of the largest toxic release emitters in the nation. In 1997, Louisiana ranked second highest for toxic releases, with 186,038,253 pounds of toxics released to air, water, and land.<sup>11</sup> Due to de-listing of one chemical and reduced usage of another, in 2000 the state dropped to 11<sup>th</sup> highest in toxics releases, with 154,522,635 pounds of total releases.<sup>12</sup>

St. James Parish is part of the 85-mile stretch along the Mississippi River where more than 100 chemical, petrochemical, refining, and industrial plants are located.<sup>13</sup> The potential for human exposures to toxic chemicals has earned this area the nickname “Cancer Alley.” According to the Toxics Release Inventory, St. James Parish has an extraordinarily high level of toxic releases.<sup>14</sup> For 1997—the year the Shintech environmental justice case was filed (discussed below)—put St. James in the national news, the Parish ranked 27<sup>th</sup> in the nation for total toxic releases, with 16,653,641 lbs.<sup>15</sup> In 2000, St. James Parish was ranked as the 90<sup>th</sup> highest county in the nation for toxics releases; and its total toxic releases were 4,815,816 pounds, including 4,510,587 pounds of toxic air releases.<sup>16</sup>

In 2000, 88 percent of the air pollution causing cancer risks in St. James Parish was from mobile sources; while 9.9 percent was from area sources and two percent was from point sources.<sup>17</sup> A 1998 EPA analysis for the Shintech case found that there were 30 polluting facilities within a four-mile radius of people residing in St. James Parish.<sup>18</sup>

With regard to air quality, St. James Parish was designated as nonclassifiable for ozone in 1995, but the adjacent parish of Ascension and nearby parishes of Iberville and Livingston are classified as in serious nonattainment areas for ozone.<sup>19</sup> Based on 2000 air quality data, St. James Parish has also been rated as one of the worst counties in the nation for nitrogen oxides, particulate matter (PM-2.5 and PM-10), and sulfur dioxide.<sup>20</sup>

## Health Issues

According to EPA, air toxics—which are a major concern for Louisiana’s Industrial Corridor<sup>21</sup>—can cause serious health problems including cancer, respiratory irritation, nervous system problems, and birth defects. These effects can be minor and more immediate, like eye irritation, or longer-term and life threatening, like lung cancer.<sup>22</sup>

The potentially adverse health effects from chemical exposures have been a major issue for residents of Convent, a town in St. James Parish. In the late 1990s, Convent residents raised environmental justice claims about a proposal for a new polyvinyl chloride facility in their community. Many residents testified about their health concerns associated due to air emissions from nearby industrial facilities, including “respiratory problems, such as asthma..., leukemia, skin rashes, lung damage, and premature death.”<sup>23</sup> Members of the community also expressed concern about the health effects of the cumulative risks associated with their exposures to multiple chemicals and the vulnerability of sub-populations near the proposed facility—including children attending two elementary schools and a Head Start center within one mile of the proposed boundary for the chemical plant.<sup>24</sup>

Industry and state officials have disagreed over designation of Louisiana’s Industrial Corridor as “Cancer Alley” because some past studies have not shown that overall cancer rates are substantially different in the Corridor when compared with cancer rates in the rest of Louisiana.<sup>25</sup> Community and environmental groups assert that analyzing health information on a regional or parish basis may fail to detect cancer clusters or the result of other very localized impacts from emissions, like those of concern to St. James Parish residents.<sup>26</sup> Rather, they claim that science has not caught up with the way these localized health problems should be analyzed. An environmental epidemiologist, Ellen Silbergeld from Johns Hopkins University, recently said: “This is not a sensitive science.... The numbers of people are too small and our ability to see a difference in their disease patterns is very imprecise. So the two things just compound one another.”<sup>27</sup>

The shortcomings of current tools to assess localized pollution impacts have been acknowledged by organizations like the National Academy of Science. In 1999, the Committee on Environmental Justice of the National Institute of Medicine conducted a study on environmental justice problems and recommended, among other things, that research to address these issues “must improv[e] the science base and collect data that is [sic] relevant to policy-makers.”<sup>28</sup>

## Sources of Health Data

There are a number of data sources and organizations responsible for gathering health-related data for Louisiana, the Industrial Corridor, and St. James Parish.

- Federal Cancer Data

According to the National Cancer Institute's *Cancer Burden Fact Sheets* for 2002, "Louisiana ranks second highest overall in cancer mortality rates among the 50 states and Washington, D.C., with 237.3 deaths per 100,000 persons, compared to 206.0 for the United States."<sup>29</sup> The average annual age-adjusted mortality rates for cancer deaths per 100,000 persons, by race, [during] 1995-1999 for lung, colorectal, and breast cancer is higher for blacks than for whites in the United States, and the rate is higher for blacks in Louisiana than it is for blacks nationwide.<sup>30</sup> The mortality rate for prostate cancer is also dramatically greater for blacks in Louisiana (73.7 per 100,000) than for whites (32.7 per 100,000), and much higher than the overall national rate of 33.9 per 100,000.<sup>31</sup>

The National Cancer Institute's *State Cancer Profiles, Death Rate/Trend Comparison by State/County*<sup>32</sup> for all races through 2000 notes that St. James Parish ranks higher than the national rate of lung and bronchial cancer deaths for males of all races, but below the national rate in this same category for females of all races. Yet, the Parish's breast cancer rate for females of all races is similar to the national rate. These profiles do not provide Parish data for other cancers for the parish because these data were either "too sparse to provide stable estimates [or to] ensure confidentiality and stability of rate estimates."<sup>33</sup>

- State Cancer Data

The Louisiana Department of Health and Hospital's Section of Environmental Epidemiology and Toxicology (SEET) is charged with investigating potential long-term and short-term health effects caused by chemicals in the environment and residents' exposures to toxic pollutants.<sup>34</sup> Although SEET has not conducted any health effects studies in St. James Parish,<sup>35</sup> there is a study underway now—called the Lower Mississippi River Intra-agency Cancer Study—to analyze the frequency of lung cancer among residents of the Industrial Corridor.<sup>36</sup>

The Department of Health and Hospitals does produce a periodic health profile report for each parish with a variety of health statistics, including a section on environmental health.<sup>37</sup> The 1999 version of this report, which is the most recent, provides data on toxic releases in St. James Parish for 1997 (8.1 million pounds to air; 7.8 million pounds to water; and 843,678 pounds to land); but it contains no analysis or other information about health effects on Parish residents.<sup>38</sup>

The Louisiana Tumor Registry "does not calculate [cancer] rates for individual parishes because of concerns of statistical instability in some of the smaller parishes."<sup>39</sup> The Registry does, however, have cancer counts for St. James Parish during 1995-1999, although these data are not disaggregated by race or sex. The Parish's counts of *in situ* and invasive cancer cases for these years among males and females of all races showed the top cancers for females to be breast, colon, rectum, lung, and bronchial cancers (118 out of a total of 207 cancers for females).<sup>40</sup> For

males of all races, the top cancers were prostate, lung, bronchial, colon, and rectum cancers (145 out of a total of 243 cancers for males).<sup>41</sup>

The Registry's data on cancer mortality rates for the Industrial Corridor during 1994-1998, by race and sex, show that blacks had higher mortality and cancer rates than whites in the Corridor, the state, and the United States, as well as higher rates than for all blacks in the United States.<sup>42</sup> The Registry's data show that for the six-year period, mortality rates per 100,000 (age adjusted to the United States 1970 population) were 345 for whites and 483.1 for blacks.<sup>43</sup> For Louisiana, the mortality rates per 100,000 were 370.7 for whites and 497.3 for blacks. The comparable numbers for the United States are 337.8 for whites and 458 for blacks.<sup>44</sup> But the Registry did not analyze the data, so no conclusions can be drawn as to their significance.

Cancer rates by race and gender for the Industrial Corridor<sup>45</sup> during 1995-1999 show that they are higher overall than in the rest of Louisiana and the United States, and that rates for blacks are higher than for whites in each area.<sup>46</sup> These rates are per 100,000 people, adjusted for age using the United States population in 2000.<sup>47</sup>

### **The Shintech Case**

In 1996, the Shintech Corporation, a Japanese producer of polyvinyl chloride, announced its intent to build a \$700 million facility, including an incinerator, in Convent, Louisiana, a small, predominately African-American community in St. James Parish.<sup>48</sup> The company's air permit application indicated its intent to emit annually more than 104,000 pounds of vinyl chloride, 360,000 pounds of methanol, 102,000 pounds of chlorine, and 64,800 pounds of hydrochloric acid.<sup>49</sup> At the time, St. James Parish ranked 27<sup>th</sup> in the nation for total toxics releases.<sup>50</sup>

A group of local citizens, calling themselves the St. James Citizens for Jobs and the Environment, organized to oppose the siting of this facility,<sup>51</sup> which would have been located near 16 other large industrial plants.<sup>52</sup> (See map on the next page.) Their primary concern was the potential threats that the facility would pose to the health and safety of the community.<sup>53</sup>

On behalf of the St. James group and several other organizations,<sup>54</sup> two significant actions were initiated. First, in May 1997, the Tulane Environmental Law Clinic filed an administrative complaint against LDEQ under Title VI of the Civil Rights Act of 1964, opposing LDEQ's approval of a permit for the Shintech facility.<sup>55</sup> Second, in July 1997, the Louisiana Environmental Action Network (LEAN) filed a petition with the EPA Administrator to revoke Shintech's air permit, on the grounds that it was not issued in accordance to federal requirements.<sup>56</sup>

The 1997 Shintech case was not the first Title VI case filed against Louisiana's Department of Environmental Quality.<sup>57</sup> The case was, however, significant for a number of reasons:

*reserved for Shintech map*

- It highlighted the potential disproportionate amounts of new pollution in an area already ranked nationally as having significant total toxic releases.
- The local citizens gained national and international attention for their cause by enlisting the help of other Louisiana and national environmental and civil rights organizations to assist them, thus raising the profile for issues of environmental justice for all impacted communities.<sup>58</sup>
- It highlighted the significant obstacles faced by citizens complaining about environmental justice problems when seeking redress. In this case, these obstacles included not only the highly technical nature of the permitting process, but also the political dimensions of opposing a new multi-million dollar facility and a state bureaucracy that wanted to attract more new businesses.
- It dramatically illustrated the need for effective state management of programs to protect human health and the environment, when EPA agreed with complainants that the law had not been followed by Louisiana and revoked the air permit for Shintech, marking the first time that EPA had ever rejected an air permit because of a citizens' petition.<sup>59</sup> LDEQ was then required to begin the permitting process again.<sup>60</sup>
- The issues raised by the citizens pointed not only to their concerns about health issues associated with air toxics, but also to a different vision of economic development for the Parish.<sup>61</sup> The citizens wanted "a cleaner environment and greater economic opportunities, 'clean businesses' that employ local residents and enhance the community."<sup>62</sup>

As the result of the Tulane Law Clinic's involvement in the Shintech case, the Governor of Louisiana "threatened to go after Tulane's tax breaks and to ask supporters to reconsider their financial contributions because of the [law] clinic's activities."<sup>63</sup> Additionally:

- The Louisiana Supreme Court investigated the Tulane Environmental Law Clinic, at the request of some major industry groups, who said the "environmental law student practitioners should be regulated more closely because business in the state was being negatively impacted by their misguided challenges to environmental permits and other practices."<sup>64</sup>
- The Court's investigation resulted in a revised rule that re-defined "indigence" to be 200 percent of the federal poverty level, thus severely limiting the law school's ability to represent community groups like St. James Citizens for Jobs and the Environment.
- The Secretary of the Louisiana Department of Economic Development compiled a list of nonprofit organizations with the intent to, as he put it, "use every legitimate method at my command to defeat them."<sup>65</sup>

For their part, Shintech officials' were interested in moving to Convent because of easy access to the Mississippi River and railway lines, as well as the availability of needed raw materials like

natural gas and salt.<sup>66</sup> The company also proposed to provide “165 full-time jobs and 90 contract positions, plus 1,800 temporary jobs during construction.”<sup>67</sup> After the initial controversy about siting the facility in Convent, Shintech additionally agreed to provide \$500,000 for local residents’ job training and small business development, with support from the local chapter of the National Association for the Advancement of Colored People.<sup>68</sup> Convent residents opposed to the facility were not, however, persuaded by the promises of jobs, which they believed would not benefit very many local residents because they required higher skill levels than most local workers had attained.<sup>69</sup>

There were also community residents who favored the facility, provided that real benefits accrued to local residents.<sup>70</sup> This group, however, received financial support from Shintech.<sup>71</sup> In the final analysis, for those opposed to the facility, the issue was not whether Shintech was attempting to harm the community intentionally, but rather the harmful effects that additional toxic emissions would have on the area.<sup>72</sup>

Parish and state officials saw the project very differently. In their eyes, the benefits were clear. The Parish economy had been growing slowly, and Shintech would bring 165 permanent jobs, plus 1,800 temporary construction jobs. Further, the company planned to buy 3,000 acres, using 400 for the plant and the rest as a buffer zone.<sup>73</sup> Parish officials had researched other Shintech facilities and found no past environmental problems, so they believed that Shintech workers and the communities around other Shintech plants did not seem unhappy with the company.<sup>74</sup>

Leaders on both sides of the issue claimed to be supported by the majority of Parish residents. While Parish officials were still in private conversations with Shintech and before LDEQ had acted on the permit, they were invited to a community meeting and, according to them, were “attacked and blindsided” by accusations of environmental racism.<sup>75</sup> They claimed they did not understand the charges of racism. They believed that the community had good race relations and asserted that race was not considered when selecting the site for this facility. Also, Parish officials thought that many who opposed the Shintech facility seemed to be white outsiders, not from the local black community. In their view, these activists merely hurt the community by driving away potential jobs, leaving the community with no alternatives for economic development.<sup>76</sup> As this local issue made national headlines, the Governor of Louisiana came to Convent, went to the neighborhood closest to the proposed Shintech site, and asked several people if they wanted the project. He concluded that they did after getting several affirmative responses.<sup>77</sup>

LDEQ’s Secretary took the position that the community was focusing on the wrong organization to solve the problem, because it was a problem of siting, not the environmental permitting process for which the Department was responsible. According to the then-Secretary:

What you see happening is first and foremost an absence of normal zoning regulations that might keep people from building a sewerage plant or a refinery or a gambling establishment next to your house. There’s no debate; there is a woeful lack of rules. Because you don’t have zoning, they turn to environmental agencies. We have regulations. We can’t just say we want all buses painted red because it’s pleasing to the eye. If it meets the regulations, if it meets the science,

then taking action is a ministerial function. You can't just take action because someone says, "Oh, I don't really want you to locate there."<sup>78</sup>

This was not a new position for the Department. In 1990, LDEQ's previous Secretary had sent a memorandum to local officials in Louisiana clarifying their responsibility for public health and the environment, and admonishing them to consider fully the environmental implications of industry siting decisions.<sup>79</sup>

### **Audits of Louisiana Environmental Programs**

Environmental justice organizations do not, however, agree that LDEQ has only a ministerial role. Environmental justice concerns in Louisiana and St. James Parish raise serious issues with the overall effectiveness of LDEQ.

#### Audit by EPA's Inspector General

In 2001, the Regional Administrator for EPA's Region VI, which has oversight responsibility for Louisiana, received a petition from the Tulane Environmental Law Clinic:

Requesting EPA to withdraw Louisiana's authority to implement the National Pollutant Discharge Elimination System (NPDES) water program. In March of 2002, the New Sarpy Concerned Citizens Group [also] petitioned Region 6 to withdraw from Louisiana the Resource Conservation and Recovery Act (RCRA) hazardous waste program and the Title V air permit program."<sup>80</sup>

The Regional Administrator asked the EPA's Inspector General to investigate these concerns. The resulting audit highlighted the deficiencies of Region VI in overseeing Louisiana's environmental programs, by failing to establish measurable performance goals, not holding the state accountable, and failing to ensure data quality from LDEQ.<sup>81</sup>

In August 2002, another report by EPA's Inspector General focused on public participation in Louisiana's air permitting program and EPA oversight. That report concluded the program met basic requirements, but could be improved by:

- Better record keeping;
- A clearly defined role for the agency's public participation group; and
- Increased public access to information about sources that receive multiple air permits.<sup>82</sup>

The report recommended that EPA improve its review of public comments before approving LDEQ's air permits and take a more proactive role in assuring that LDEQ carries out its commitments to EPA for improving public participation.<sup>83</sup>



## Concerns about Emissions Trading Program

Federal oversight of the Louisiana environmental program also came under scrutiny in November of 2002, when EPA employees raised concerns about its approval of LDEQ's trading program that allows industry to trade emissions of toxic volatile organic compounds (VOCs) for reductions in nitrogen oxide emissions.<sup>84</sup> EPA employees said that LDEQ's program violates EPA's own environmental justice policy because of the potential for disproportionate impacts on low-income and minority communities. They also alleged other deficiencies in the state trading program:

- Failure to ensure that trades will result in net reductions in air pollution;
- Lack of safeguards to prevent double counting and other illegitimate trades; and
- Inability of state authorities to conduct reliable monitoring of industry exchanges.<sup>85</sup>

## Louisiana's Legislative Auditor

Other audits have revealed a number of concerns about LDEQ's overall performance. In March of 2002, Louisiana's Legislative Auditor released a performance audit of LDEQ that found four categories of deficiencies:

### 1. Monitoring Functions

- LDEQ could not easily provide accurate information about the facilities regulated by its programs.
- LDEQ had not issued 66 percent of water permits as committed to EPA, and to issue; many facilities are operating under expired permits. Moreover, 69 percent of major water facility permits and 73 percent of all solid waste facility permits have expired.
- Twenty-six percent of the required self-monitoring reports in the sample for water and 22 percent of the required reports for air in the sample were either never submitted to LDEQ or could not be located at LDEQ.

### 2. Enforcement Functions

- Some violations never received enforcement actions, and some enforcement actions were not escalated when a facility continued to have the same or similar violation.
- Eight percent of the formal water enforcement actions in the sample were issued more than 150 days after the violation occurred.
- LDEQ has not collected nearly \$4.5 million—75 percent—of the monetary penalties it assessed in fiscal years 1999, 2000, and 2001.

- LDEQ’s beneficial environmental projects and negotiated settlements may not effectively penalize facilities with violations.

### 3. Complaint Resolution Process

- One-third of complaints in the sample were not handled within five days from when LDEQ received the complaint.
- Some complaints in the sample that appeared to involve a violation were never the basis for any enforcement action.
- Most complainants in the sample were dissatisfied with LDEQ’s handling of their complaints.

### 4. Other Issues

- Many of LDEQ’s vital documents could not be located, were misfiled in agency files, or were indexed incorrectly in electronic files.
- Nearly \$11 million in fees were never collected because of LDEQ’s poor billing and collection practices.<sup>86</sup>

### **Other Environmental Justice Concerns**

This legislative audit and the report of EPA’s Inspector General confirmed the concerns of environmental justice groups about the failures of LDEQ and EPA Region VI in protecting their health and welfare of local residents, and they highlight the continuing incidents that harm public health in communities like St. James Parish.

Recent vinyl chloride contamination of well water used for drinking, bathing, and cooking in an African-American community in Iberville Parish, two miles from a chemical plant that produces vinyl chloride, also illustrates why the Shintech case caused such concern among many St. James residents.<sup>87</sup> Louisiana’s first grand jury on environmental issues has been impaneled amid allegations that the state’s Department of Health and Hospitals had known about the contamination since 1997 but, through what state officials call “human error,” failed to inform the community or other authorities, including EPA and LDEQ.<sup>88</sup>

Residents of this small 300-person community are concerned that their high rate of miscarriages may be attributable to the vinyl chloride.<sup>89</sup> Health officials have provided them with pamphlets “warning them of possible threats from vinyl chloride to unborn children,” and acknowledging that this chemical can also cause “liver cancer, nerve damage, [and] circulatory problems.”<sup>90</sup> In the final analysis, however, scientists are unsure what the effects might be from bathing in and drinking water contaminated with the chemical.

Responding to these concerns, in June 2002, the Governor established a task force to review and report on the funding and performance issues at LDEQ. The task force—made up of

representatives from industry, the environmental community, public interest groups, and government—produced their final report in March 2003, with specific recommendations for correcting various deficiencies. While the report does not address environmental justice issues specifically, it does include recommendations for improving enforcement and enhancing public access to information, all concerns frequently raised by environmental justice groups.<sup>91</sup>

## **PLANNING, ZONING, AND GOVERNANCE IN LOUISIANA**

### **Louisiana Planning and Zoning Laws**

The Louisiana Constitution authorizes local governments to adopt regulations for land use, zoning, and historic preservation; and state-planning legislation has authorized adoption of local land use plans since the early 1920s.<sup>92</sup> However, the state does not mandate local planning or zoning by parishes or towns, nor does it provide incentives for local governments to engage in such activities. If a locality nonetheless chooses to plan, it must adopt a master plan to promote health, safety, and general welfare; provide for adequate light and air; include adequate traffic provisions; and provide for the healthful and convenient distribution of population, open space, and public housing.<sup>93</sup>

Localities in Louisiana must file their plans with the State Planning Office and also file their plans and zoning ordinances with the appropriate regional planning commission, but solely for informational purposes. There is no coordinated statewide plan for Louisiana, no statewide role in local planning, and no mechanism for state approval or enforcement of local plans.<sup>94</sup> The Louisiana State Planning Office does, however, engage in some planning activities, such as surveying state resources, reviewing local planning, and coordinating the planning and programming of individual state agencies.<sup>95</sup> In addition, the Legislature authorized creation of certain regional development districts to facilitate intergovernmental cooperation and to coordinate state, federal, and local planning and development programs.<sup>96</sup>

The South Central Planning and Development Commission carries out regional planning for the district where St. James Parish is located (see section below on planning).<sup>97</sup> When enacting comprehensive plans, these regional planning commissions must hold at least one public hearing and must give appropriate public notice, including posting the purpose, time, and place of the hearing in a newspaper of common local circulation.<sup>98</sup>

### **Local Governance in St. James Parish**

Under Louisiana law, a parish is the approximate equivalent of a county and has jurisdiction over the unincorporated areas within its borders.<sup>99</sup> There are two incorporated towns in St. James Parish: Litcher and Gramercy. Each has its own local government with planning and zoning capabilities,<sup>100</sup> but these two incorporated towns are not involved in this case study. The remaining unincorporated areas of St. James Parish operate under a home rule charter that grants the Parish the right to establish rules of governance “requisite or proper for the management of its affairs, not denied by general law or inconsistent with the constitution.”<sup>101</sup> A Parish Council acts as the principal governing body for St. James.<sup>102</sup>

The Parish Council—made up of 7 members who are chosen by general election—and its President govern St. James Parish, along with other elected and appointed officials. The Parish President, who has served for 14 years, is the political and administrative head and appoints four area directors for operations, finance, human resources, and emergency preparedness. These directorships are further subdivided into several departments with appointed department heads who also report to the Parish President.<sup>103</sup>

The Office of Planning and Permitting comes under the Director of Operations and is responsible for construction permits, fees, and notifications concerning building permits.<sup>104</sup> It is a relatively new function, first established in 2001.<sup>105</sup>

The Parish supplements its professional staff with advisory commissions composed of citizen volunteers appointed by the President and (elected) Parish Council. These commissions include a Planning Commission, Coastal Zone Management Board, and Economic Development Board.<sup>106</sup>

### Planning Commission

The St. James Planning Commission has ten volunteer members. It has authority for decisions about subdividing plots of land in unincorporated areas of the Parish.<sup>107</sup>

### Coastal Zone Management Board

The St. James Coastal Zone Management Board has eight appointees and three major functions:

- Protection, development, and restoration or enhancement of the Parish’s coastal zone;
- Supporting and encouraging multiple uses of coastal resources, consistent maintaining and enhancing their renewable resource management and productivity; and
- Developing and implementing the coastal zone resource management program.

The Coastal Zone Management Board also has authority to review rules and regulations relative to coastal resource management; review and comment on any permit application; review and recommend modifications to the Parish Council on the coastal zone management program; issue deny, or modify permits issued by the Parish President; inspect or investigate conditions relating to the zone; and conduct other investigations related to the program.<sup>108</sup>

The Director of the program is a civil engineer, and experts are retained as needed to assist the citizen board with technical expertise.<sup>109</sup> The parish-level board has never denied a permit, but it has required permit conditions that have made it difficult for new development to proceed, particularly to protect wetlands.<sup>110</sup> Louisiana’s coastal management agency has jurisdiction over “uses of state concern,” including gas and oil related facilities; but the Parish Board has

jurisdiction over “uses of local concern,” including houses, camps, small developments, and some large industry that does not fall under the state’s jurisdiction.<sup>111</sup>

### Economic Development Board

St. James’ Economic Development Board has 17 members. Each Parish Council member appoints two members, and the Parish President appoints four members. The Director of the Office of Economic Development invites interested companies to make presentations before the Board, works closely with them, and seeks to recruit new businesses through other outreach. While the Board cannot require new industry to hire local residents, the Board negotiates to encourage local hiring.

### **Planning in St. James Parish**

The Parish does not have a planning department, a comprehensive plan, a future land use plan, or any professional planners on staff. Nor does the Parish intend to develop a comprehensive plan. Parish officials offer two reasons for their decision. First, with no professional planning staff, the Parish is reluctant to overburden its volunteer planning commission, which also supervises compliance with the subdivision ordinance. Second, Parish leaders believe it is important to study current land uses before undertaking planning.<sup>112</sup> Toward that end, the Parish is in the midst of developing a land use inventory based on a geographic information system (GIS) that will enumerate all of the Parish’s existing land uses and parcels.<sup>113</sup>

### South Central Planning and Development Commission

The South Central Planning and Development Commission (SCPDC) was formed in 1973 under Louisiana State Executive Order 27. SCPDC handles regional planning in Louisiana Planning District Three, which covers six parishes, including St. James, as well as six municipalities, including Litcher and Gramercy. A 24-member Board, whose members are the top elected officials of each Parish and municipality, governs the SCPDC.

SCPDC is partially funded by the parishes, and it assists member communities in developing master land use plans, master recreation plans, and capital improvement plans. SCPDC also helps with coastal zone management, transportation planning, environmental assessments and impact statements, floodplain management, subdivision regulations, zoning ordinances, and administration. In addition, SCPDC provides assistance on community development, historic preservation districts, and historic structure surveys.

SCPDC also serves as a conduit for state information on environmental and development permits. SCPDC receives notice of every permit application filed with LDEQ and passes this information on to affected local governments. The commission also works closely with other regional agencies, such as the Barataria Terrebonne National Estuary Program, the Port of South Louisiana, and the Greater Lafourche Port Commission.

Although St. James has access to the planning resources of SCPDC, regional planners there report that St. James seldom utilizes their expertise.<sup>114</sup>

## **Zoning and Related Ordinances**

The incorporated towns of Litcher and Gramercy have adopted zoning ordinances,<sup>115</sup> but the St. James Parish Council has yet to do so for the unincorporated areas. The Parish President explained this reluctance is due to the belief that zoning infringes on individuals' ability to control privately owned property.<sup>116</sup> According to Parish officials, local citizens heavily resist zoning. In the absence of a state mandate to do so, the Parish has chosen not to adopt a land use plan or any zoning ordinances.<sup>117</sup>

St. James' failure to utilize zoning that would separate residential areas from industrial uses has two important economic consequences for the Parish. First, low-income housing is often located near heavy industry because an undesirable use can be located anywhere, leaving the poor helpless to resist new sources of pollution.<sup>118</sup> Second, the lack of zoning could deter new businesses that, fearing litigation, do not want to locate near residential areas.<sup>119</sup> A Parish official also acknowledged that the lack of zoning is a concern for watchdog groups concerned about environmental justice in the Parish.<sup>120</sup> Another city official identified zoning as one of the biggest cross-cutting issues in the Parish, and described zoning and land use plans as "laws to help poor people."<sup>121</sup> This official described the Shintech incident as resulting from local government's lack of foresight to understand the implications of its siting decision.<sup>122</sup>

Although reluctant to accept restrictions on its industrial properties, St. James has imposed restrictions on residential property. For example, St. James' has adopted an ordinance requiring that plans for any new subdivision be submitted to the Parish Council and allowing time for public comment, public hearings, and approval by both the Planning Commission and the Parish Council. The subdivision ordinance has multiple aims, including to:

- Protect the character, social, and economic stability of all parts of the Parish;
- Protect the value of Parish land, buildings and improvements; preventing pollution of air, bayous, canals, and other water bodies;
- Preserve the integrity, stability, and beauty of the community;
- Preserve the natural beauty and topography of the Parish; and
- Provide for open spaces.

To achieve these aims, the ordinance contains specific guidelines and design standards for many aspects of residential subdivisions, including roads, shoulders, utilities, and drainage.<sup>123</sup>

## **ENVIRONMENTAL PERMITTING**

Beginning in the early 1990s, various Louisiana agencies began to address the environmental justice concerns that some of the state's African-American communities had vigorously raised. While the Governor, the state Legislature, and LDEQ have noted the importance of

environmental justice, to date their collective actions have not resulted in any official definition, policy, or program beyond troubleshooting on specific issues as they emerge. Their efforts have, however, produced a body of recommendations that, if implemented, could provide useful tools for addressing environmental justice issues and other problems caused by the siting decisions of local governments.

### **Louisiana Department of Environmental Quality**

LDEQ has primary responsibility for issuing the environmental permits, including the Shintech permit that caused major concerns for the state's environmental justice communities.<sup>124</sup> LDEQ's permitting responsibilities are carried out by its Office of Environmental Services, a multi-media office that also has responsibility for licenses, registrations, certifications, authorizations, pre-permit meetings, small business assistance, customer assistance, outreach, and a complaints hotline.<sup>125</sup> The Community/Industry Relations Group that has responsibility for responding to environmental justice concerns is housed in this Office.<sup>126</sup>

LDEQ began to address environmental justice issues in 1992. In that year, citizen concerns about a permit for a new commercial hazardous waste incinerator eventually resulted in the filing of an administrative complaint with the U.S. EPA under Title VI of the Civil Rights Act of 1964.<sup>127</sup> LDEQ decided to address this problem by creating voluntary opportunities for dialogues between community members and industry representatives to discuss their mutual concerns.<sup>128</sup> While the Department provided technical workshops for the citizens at these meetings, it otherwise saw its role as solely a neutral convener.<sup>129</sup> LDEQ's philosophy was to "teach people how to solve their own problems with minimal government interference."<sup>130</sup> The Department hired a coordinator to manage the panel project, EPA provided the initial funding, and LDEQ created an environmental justice group that reported to LDEQ's Secretary.<sup>131</sup>

Between 1993 and 1994, three panels were convened for St. John the Baptist Parish, the Industrial Corridor, and Mossville and Westlake in Calcasieu Parish.<sup>132</sup> These panels and other efforts of LDEQ's environmental justice group did produce a few actions that may benefit some communities. Examples include creating a recreation area, getting financial support for job training, providing citizens with training for responding to emergencies, installing wind socks, and setting up community advisory panels for some industrial facilities.<sup>133</sup>

In 1996, with a change in state administration, the environmental justice group was renamed the Community/Industrial Relations Group<sup>134</sup> and was moved to LDEQ's Office of Environmental Services as part of the Stakeholder Outreach Section. The program manager for community/industry relations heads the group, and it remains there today.<sup>135</sup> This program manager also serves as LDEQ's ombudsman and, as such, still has direct access to LDEQ's Secretary.<sup>136</sup>

The three-person Community/Industrial Relations Group tries to keep an eye on any potential LDEQ actions across the state, such as decisions on permit applications, that may raise environmental justice concerns. They then notify appropriate LDEQ staff if they think there might be such problems. They also work to try to defuse issues when they arise.<sup>137</sup>

The Community/Industrial Relations Group's standard operating procedures serve as the only guidance for LDEQ's staff on how to respond to environmental justice problems.<sup>138</sup> These procedures are posted on the agency's Intranet. Suggested best practices for better public participation include considering access to transportation, providing translators to overcome language barriers, and adjusting the time and location of meetings to accommodate the public's availability. These procedures can be used by any LDEQ staff who may chose to do so.<sup>139</sup>

LDEQ has also developed draft environmental justice strategic plans, but the Community/Industry Relations Group is waiting to make them final until after they receive formal guidance on Title VI of the Civil Rights Act of 1964 and environmental justice from EPA.<sup>140</sup> However, LDEQ has not changed any of its permitting procedures to address environmental justice concerns. The Department works with local governments on siting issues as they emerge through the usual public participation process, and uses its environmental justice staff to troubleshoot any problems that arise.<sup>141</sup>

### **Environmental Justice Report to the Legislature**

In 1993, the Louisiana Legislature passed Act 767, which required the LDEQ to conduct public hearings across the state, gather information from citizens about environmental justice concerns, and then report back to the Legislature. In that report, LDEQ defined environmental justice as "the equitable treatment of all people, regardless of race, income, culture, or social class with respect to the development, implementation, and enforcement of environmental laws regulations and policies."<sup>142</sup> Although the Department has not officially adopted this definition, it has been used consistently since that time.<sup>143</sup>

In August of 1994, LDEQ made the following recommendations to the Legislature for its action:

- Consider legislation to codify the court's decision in *Save Ourselves Inc. v. the Louisiana Environmental Control Commission* 452 So. 2d. 1152 (La. 1984) (commonly referred to as the *IT* decision), and require that LDEQ establish a broad-based advisory committee to draft regulations implementing the mandates of the decision, beginning with consideration of specific criteria for siting facilities;<sup>144</sup>
- Consider legislation to strengthen land use planning requirements in the state, taking into consideration environmental justice concerns;
- Consider legislation to strengthen requirements for transporting toxic materials through residential areas;
- Consider legislation offering tax incentives to reduce hazardous waste generation and disposal in Louisiana;
- Consider legislation to strengthen existing statutes on emergency response in order to meet community concerns more effectively;
- Provide funding for LDEQ to continue its environmental justice program and to create a permanent position of environmental justice coordinator with adequate support staff;



- Provide funding for community/industry environmental justice program to allow for expansion beyond the current limited areas;
- Provide funding for a joint project between LDEQ's environmental justice program and Louisiana's Emergency Planning Committees to train local citizens in emergency response;
- Provide increased funding to Louisiana's Historically Black Colleges and Universities to support programs in environmental sciences and engineering, thus creating a pool of minority candidates eligible for positions at the LDEQ;
- Require that LDEQ report to the Legislature on its modified public notification procedures and public hearing activities;
- Require that LDEQ report to the Legislature annually on the status and progress of its environmental justice program; and
- Require LDEQ to review its enforcement alternatives so it can better serve highly industrialized areas and report its findings to the Legislature.<sup>145</sup>

To date, the state Legislature has not taken any action to adopt these recommendations.<sup>146</sup>

### **Mississippi River Corridor Task Force**

In 1998, with the Shintech case still receiving national and international attention, Louisiana's Governor, Mike Foster, issued Executive Order MJF 98-01 establishing the Mississippi River Corridor Task Force. The Task Force was charged with providing:

The governor and state agencies with objective recommendations regarding the most efficient and effective means to obtain and address public comment on all aspects of future proposals for development or expansion projects, including possible human health, environmental, and economic development issues, along with recommendations as to the resolution of any potentially conflicting concerns.<sup>147</sup>

Task Force members included a representative of the Governor; Secretaries from the Departments of Environmental Quality, Economic Development, Agriculture and Forestry, and Health and Hospitals; the Task Force on Environmental Protection and Preservation; the presidents of the state chapter and two local branches of the National Association for the Advancement of Colored People; and four residents from the Industrial Corridor.<sup>148</sup> The Task Force's recommendations, released in 2000, are strikingly similar to those from the 1994 report to the Legislature, including the need for the state to adopt a "little NEPA," to improve coordination and integration of state planning and development, to assess the potential for greater use of land use planning and zoning, and to use buffer zones.

Specific recommendations of the Task Force included:

- Louisiana should consider establishing a State Environmental Review Process (SERP) modeled after the National Environmental Policy Act (NEPA) and implementation guidance developed by the U.S. Council on Environmental Quality. It should be a relatively short, streamlined, and focused process required of only major projects and should apply to all major actions within the state, not just environmental permitting actions. This process could also accommodate the I.T. Questions<sup>149</sup> issue from the *Save Ourselves* court decision. Scoping meetings and hearings would provide public participation and due process. The new law would also provide a much-needed open, structured, and predictable process for decision-making, and there is a wealth of federal case law concerning NEPA decisions to provide guidance. About 15 states plus the District of Columbia have enacted little NEPA statutes that generally require state agencies to oversee the preparation of environmental impact statements on proposed actions that may significantly affect the environment.
- Louisiana should consider forming a regional organization to integrate, give greater voice to, and assist with coordination of, activities of the multiple regional jurisdictions. This organization should be established as a resource for coordination, not another layer of bureaucracy. Louisiana has metropolitan planning organizations such as the Capital Region Planning Commission and river basin organizations such as the Amite River Basin Drainage and Water Conservation District that are designed to address specific issues on a regional basis and assist with coordination of efforts of numerous local jurisdictions. The Mississippi River Corridor is a major economic engine for Louisiana and is rich in history as well as human and natural resources. The parishes and communities of the Corridor have a lot of common, local issues but do not have a vehicle for addressing regional concerns such as sustainability of environmental and economic resources, including quality of life and self-sufficiency.
- The pre-permitting process should include a component that allows businesses, government agencies, and community groups an opportunity to form an alliance to discuss jointly their respective concerns about facility siting, expansions, and other permitting issues at the beginning of the application process.
- The Governor should recommend that the Legislature study the concept of zoning with the goal of developing more active and broader based land use planning and zoning. The Legislature should explore the possibility of statewide zoning laws and minimum statewide siting standards for new industrial development, should develop legislation requiring buffer zones between residential areas and industrial facilities, and should encourage local governing bodies to listen to and address residents' concerns about zoning and land use planning.
- The Legislature should approve funding for LDEQ to conduct the environmental justice study mandated by La. R.S. 30:2011.2, on the relationship between emissions of air pollutants and waste discharged by facilities located in or near residential areas, as well as the amount of such emissions and discharges in each residential area of the state,

including permitted and unpermitted emissions and discharges; and should then determine and set out any correlation that may exist between the emissions and discharges and residential areas.<sup>150</sup>

Other recommendations included improving communication and dialogue between stakeholder groups, developing targeted job training for Mississippi River Corridor residents near proposed facilities, ensuring that pursuit of environmental justice does not harm economic growth, increasing state resources for environmental programs, strengthening whistleblower laws to protect industrial workers who report violations, and developing and supporting health studies to determine the relationship between pollution and health effects.<sup>151</sup>

Unfortunately, the Governor has not yet taken action on any of these recommendations.

## **ANALYSIS AND RECOMMENDATIONS**

### **Leadership and Accountability**

The opportunities for leadership and accountability for resolving environmental justice problems have not been fully realized by any level of government in Louisiana although the Legislature and the Governor have each solicited recommendations on how to address environmental justice issues. The recommendations from citizens, industry, environmental groups, and state officials provide a good foundation for action that, if properly implemented, could move Louisiana forward to address environmental justice issues more effectively. But more visible leadership by both the Legislature and the Governor is necessary for making progress.

The Governor's Advisory Task Force on the Funding and Efficiency of LDEQ developed recommendations to correct the inadequacies identified by the state legislative audit. Implementation of these recommendations by LDEQ and continued follow-up by the Governor are essential to improve the state's stewardship of its environmental responsibilities and to rebuild LDEQ's credibility with citizens whom the Department is responsible for serving.

LDEQ can become an important technical resource to local governments, helping them to understand the environmental and human health implications of their siting decisions. However, for LDEQ to perform this function, the Department needs channels for early communication in advance of crisis situations; and LDEQ must demonstrate real progress in effectively exercising its overall responsibilities along with taking visible actions that demonstrate its commitment to achieving environmental justice.

Local officials throughout Louisiana have potentially valuable legal authorities for local land use planning and zoning, but they have not exercised these powers. They also should make better use of their regional planning authorities. Yet, local officials in St. James Parish have narrowly viewed environmental justice issues and have defined it to mean only intentional decisions by an industry to locate near a community-of-color. With this restricted view, they have shown little willingness to address environmental justice problems.

A more comprehensive view would enable the Parish to recognize that localized environmental impacts and effective citizen participation affect the welfare of all Parish residents; and they are elements of good government that, if enhanced, would benefit the Parish overall. The Parish has also missed opportunities to work with regional planning authorities who could help to address environmental and land use problems, for example, by recruiting a more diverse set of potential businesses that would provide more jobs without increasing toxic burdens in the Parish.

### **Permitting and Other Authorities**

LDEQ has responsibility for approving environmental permits in St. James Parish. However, the Department has no clear strategy or demonstrated commitment to achieving environmental justice and has many basic administrative deficiencies, as documented by several community, state, and federal evaluations of its programs. Because of its own problems, LDEQ has not been able to help St. James officials in resolving their environmental justice problems. Moreover, LDEQ has not yet changed its permitting functions so it can effectively address community concerns, such as by proactive public outreach and other steps to ensure meaningful citizen participation in the Department's decisions.

### **Setting Priorities and Reducing Risks**

Because Parish officials view environmental justice issues only as intentional discrimination by industry, they have not explored ways to address the underlying community concerns about toxic burdens that adversely affect public health and quality of life for Parish residents.

### **Public Participation**

The Parish and the LDEQ offer only the most basic public participation opportunities required by various laws. There is no evidence that they have adopted enhanced procedures to involve local residents or respond to their environmental justice concerns.

### **Integration and Coordination**

St. James Parish has not taken advantage of the support available from the regional planning authority, which can assist the Parish in planning for important changes, including possibly ways to address environmental justice issues. Nor has the Parish sought guidance or technical assistance from LDEQ on environmental justice issues, and LDEQ has not made efforts to engage Parishes proactively about these problems. Moreover, LDEQ still needs to remedy many of its own deficiencies, and has not been in a position to help the parishes respond more effectively to environmental justice concerns.

## RECOMMENDATIONS

- The Louisiana Legislature and Governor should move forward to implement the recommendations on environmental justice resulting from public hearings in 1994 and the 1998 Mississippi Corridor Task Force. Each of these efforts produced useful recommendations from the public, business representatives, and senior state officials that will help Louisiana to resolve some pressing public health and environmental problems.
- LDEQ should develop a clear environmental justice policy, action agenda, and accountability measures that include commitments to reducing risk, improving communication, and providing public access to more information. LDEQ should also consider working with other state environmental agencies with effective environmental justice programs, so it can benefit from their experience. LDEQ should further review the environmental justice recommendations it has gathered at the request of the Louisiana Legislature and implement those actions the Department could pursue based on existing legal authorities.
- LDEQ should provide parish and town governments with guidance to help them understand the public health and environmental implications of their land use decisions. This assistance should follow up on the Department's 1990 memorandum to local officials, which reminded them about their responsibilities for protecting public health and welfare and the implications of their siting decisions.
- St. James Parish officials should work more closely with their regional planning organization to develop a land use plan and zoning rules for the Parish so they can prevent incompatible land uses such as residential communities close to polluting industries. The Parish should also engage citizens in every stage of the planning and zoning process and give them opportunities to shape the Parish plan and zoning by ongoing involvement in Parish decisions.
- St. James Parish should adopt an environmental justice policy, embracing an appropriate definition of environmental justice and acknowledging that all citizens should receive fair treatment and have opportunities for meaningful involvement in processes that affect their health and welfare. The Parish should then work with LDEQ to gather information about environmental and health hazards in the Parish, and should develop strategies—in conjunction with other state agencies, such as the coastal zone management program—to address any identified risks.

## ENDNOTES

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- <sup>3</sup> *Ibid.*
- <sup>4</sup> Kevin Belange, Director, South Central Planning and Development Commission, Louisiana, Interview (August 13, 2002).
- <sup>5</sup> U.S. Census Bureau, “American Fact Finder.”
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- <sup>8</sup> Edie Michel, Interview.
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- <sup>11</sup> U.S. Environmental Protection Agency (EPA), *TRI Reporter: Chemical Report--State Report*, website, (1997) <<http://www.epa.gov/triexplorer/chemical.htm>> (visited June 2003).
- <sup>12</sup> *Ibid.*, 2000.
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- <sup>14</sup> EPA, *TRI Reporter*.
- <sup>15</sup> *Ibid.*
- <sup>16</sup> *Ibid.*, 2000.
- <sup>17</sup> Environmental Defense Fund, *Scorecard* (2000), website, <<http://www.scorecard.org>> (visited December 2002).
- <sup>18</sup> EPA, *Title VI Administrative Complaint re: Louisiana Department of Environmental Quality/Permit for Proposed Shintech Facility, Draft Revised Demographic Information* (April 1998). Some of the facilities within a four-mile radius of the parish were in other parishes but impacted St. James Parish.
- <sup>19</sup> EPA, *Nonattainment Status for Louisiana Parishes Under the 1-Hour Ozone Standard* (Updated January 2000).
- <sup>20</sup> Environmental Defense Fund, *Scorecard*.
- <sup>21</sup> EPA’s Office of Civil Rights includes 12 parishes in the Industrial Corridor, also known as the Mississippi River Industrial Corridor: Plaquemines, St. Bernard, Jefferson, St. Charles, Orleans, St. John the Baptist, St. James, Ascension, Iberville, East Baton Rouge, West Feliciana, and Concordia. EPA, Office of Civil Rights, Title VI, “Mississippi River Industrial Corridor” (April 2, 1998).
- <sup>22</sup> EPA, *Risk Assessment for Toxic Air Pollutants: A Citizen Guide*, 2 (March 1991).
- <sup>23</sup> St. James Citizens for Jobs and the Environment, *et al.*, *From Plantations to Plants*.
- <sup>24</sup> *Ibid.*, 13.
- <sup>25</sup> John McQuaid, “‘Cancer Alley’: Myth or Fact,” *The Times-Picayune* (May 23, 2000).
- <sup>26</sup> *Ibid.*
- <sup>27</sup> *Ibid.*
- <sup>28</sup> The National Academies, “Better Information Needed to Guide Efforts in Addressing Environmental Justice,” Press Release (March 5, 1999).
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- <sup>30</sup> *Ibid.*
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- <sup>37</sup> Louisiana Department of Health and Hospitals, Office of Public Health, *Parish Health Profile 1999*.
- <sup>38</sup> *Ibid.*, 99.
- <sup>39</sup> Patricia Andrews, Email.
- <sup>40</sup> *Ibid.*
- <sup>41</sup> *Ibid.*
- <sup>42</sup> *Ibid.*
- <sup>43</sup> *Ibid.*
- <sup>44</sup> *Ibid.*
- <sup>45</sup> The Louisiana Tumor Registry includes the following parishes in the Industrial Corridor: East Baton Rouge, West Baton Rouge, Iberville, Ascension, St. John the Baptist, St. James, and St. Charles.
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- <sup>47</sup> *Ibid.*
- <sup>48</sup> Charlie Cray and Monique Harden, "Environmental Justice in Louisiana," *Rachel's Environment and Health Weekly* (June 4, 1998).
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- <sup>52</sup> Sara Shipley, "Race, Jobs, Pollution in Bayou," *Christian Science Monitor* (January 12, 1998).
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- <sup>54</sup> The other organizations were LEAN, St. John Citizens for the Environmental Justice, Ascension Parish Residents Against Toxic Pollution, Gulf Coast Tenants Organization, River Area Planning Group, Southern Christian Leadership Conference Counsel, and Tulane Environmental Law Clinic.
- <sup>55</sup> EPA, Office of Civil Rights, *Title VI Administrative Complaint, re: Louisiana Department of Environmental Quality/Permit for Proposed Shintech Facility* (April 1998).
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- <sup>67</sup> *Ibid.*
- <sup>68</sup> *Ibid.*
- <sup>69</sup> *Ibid.*
- <sup>70</sup> *Ibid.*
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- <sup>72</sup> *Ibid.*
- <sup>73</sup> *Ibid.*
- <sup>74</sup> Edie Michel, Interview.
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- <sup>94</sup> LSA-R.S. 33:108 and LSA-R.S. 33:138 (West Group 2002).
- <sup>95</sup> LSA – R.S. 39:4.1 (West Group 2002).
- <sup>96</sup> LSA- R.S. 33:140.61 (West Group 2002).
- <sup>97</sup> LSA-R.S. 33:131 (West Group 2002).
- <sup>98</sup> LSA-R.S. 33:108 (West Group 2002).
- <sup>99</sup> LSA-R.S. 33:106 (West Group 2002).
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- <sup>130</sup> *Ibid.*
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- <sup>142</sup> LDEQ, *Final Report to the Louisiana Legislature on Environmental Justice*: as mandated by Act 767 of the 1993 Legislative Session, (1993).
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- <sup>144</sup> *Save Ourselves, Inc. v. Louisiana Environmental Control Commission*, 452 So.2d 1152, 1157 (La. 1984) required that LDEQ must be guided by “a ‘rule of reasonableness,’ which requires [L]DEQ to determine, before granting approval of any proposed action affecting the environment, that adverse environmental impacts have been minimized or avoided as much as possible consistently with the public welfare. . . . [L]DEQ’s written findings of act and reasons for decision must address whether (1) the potential and real adverse environmental effects of the proposed project have been avoided to the maximum extent possible; (2) a cost-benefit analysis of the environmental impact costs balanced against the social and economic benefits of the project demonstrate that the latter outweighs the former; and (3) there are alternative projects or alternative sites or mitigating measures that would offer more protection to the environment than the proposed project without unduly curtailing non-environmental benefits to the extent applicable.”
- <sup>145</sup> LDEQ, *Final Report to the Louisiana Legislature on Environmental Justice*.
- <sup>146</sup> Roger Ward, E-mail (May 15, 2003).
- <sup>147</sup> LDEQ, Community/Industry Relations Group summary and minutes of the Mississippi Corridor Task Force (undated).
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- <sup>149</sup> The “IT Questions” stem from a 1984 lawsuit, *Save Ourselves, Inc., v. Louisiana Environmental Control Commission*, which is commonly referred to as the “IT case.” The questions are requirements that LEDQ reviews and considers during certain permit application processes. The questions are: “(1) Have the potential and real adverse environmental effects of the proposed project been avoided to the maximum extent possible? (2) Does a cost

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benefit analysis of the environmental impact costs balanced against the social and economic benefits of the project demonstrate that the latter outweighs the former? and (3) Are there alternative projects or alternative sites or mitigating measures which would offer more protection to the environment than the proposed project without unduly curtailing non-environmental benefits to the extent applicable?" LDEQ, *IT/BFD Guidance* (May 22, 2001). See also, endnote 144.

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## CONCLUSION

Public administrators who are working to address environmental justice issues are faced with many challenges but also many opportunities. In the course of the Academy's three studies, the Panel has found that concerns at the heart of environmental justice problems really relate to how federal, state, and local governments can better serve all citizens. Solutions to environmental justice concerns include protecting citizens' health and welfare and ensuring they have meaningful opportunities to shape decisions that affect their lives and neighborhoods.

The Panel's research has shown that these issues can be addressed by using existing legal authorities, including current planning laws and zoning ordinances. The Panel has also found that it is critical for federal, state, and local agencies to work together effectively, because each level of government brings discrete tools and authorities that are critical to solving current environmental justice problems and preventing future ones. The federal government must ensure that its policies, rules, and guidance adequately consider environmental justice concerns, like localized impacts. State environmental and other agencies must implement their environmental, public health, planning, and other programs to take into consideration disproportionate impacts that may heighten risk. States must also ensure that the public has opportunities and the requisite information to participate fully in decisions about environmental permitting and future economic development. Additionally, federal and state agencies have an important responsibility to enforce environmental laws so that no community or neighborhood suffers the adverse consequences of pollution.

There are also many opportunities for federal and state governments to provide the technical assistance often needed by local governments. For their part, local governments have a unique responsibility for planning and zoning decisions that can significantly affect the environment, public health, and quality of life for their citizens.

The Panel's research has also demonstrated that addressing environmental justice problems requires government officials at every level to:

- Exercise leadership by recognizing environmental justice as an important issue and by establishing accountability to address these problems;
- Set priorities to reduce risks caused by pollution and other hazards;
- Engage the public early and proactively in substantive discussions about decisions that affect their health and welfare;
- Adopt effective mechanisms for communicating with the public and provide the public with adequate information so they can make useful contributions prior to agency decisions; and
- Coordinate with other levels of government so local citizens can benefit from the unique kinds of support that agencies at each level can provide.

The Panel believes that the goal of environmental justice can be achieved by every level of government. We have found promising examples of strategies and activities at local, state, and federal levels that can produce positive results for communities. The Panel hopes that the best practices we have described in all three studies will serve as useful models to help public administrators, citizens, nonprofit groups, and industry in quickly making real progress toward achieving environmental justice for all communities.