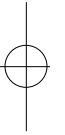
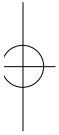
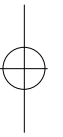


# Environmental Justice





**Environmental Justice**  
*Law, Policy, and Regulation*

**Clifford Rechtschaffen**

Professor and Co-Director, Environmental Law and Justice Clinic  
Golden Gate University School of Law

**Eileen Gauna**

Professor, Southwestern University School of Law

CAROLINA ACADEMIC PRESS  
Durham, North Carolina

Copyright © 2002  
Clifford Rechtschaffen and Eileen Gauna  
All rights reserved.

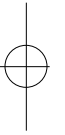
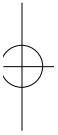
ISBN: 0-89089-412-4  
LCCN: 2002105197

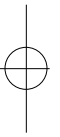
Carolina Academic Press  
700 Kent Street  
Durham, North Carolina 27701  
Telephone: (919) 489-7486  
Fax: (919) 493-5668  
Email: [cap@cap-press.com](mailto:cap@cap-press.com)  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America.

To my dad, for his great example  
Clifford Rechtschaffen

To my mom Josie, and to Ted, Jeanne, Loyola and Ruth  
Eileen Gauna

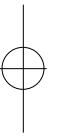




# Summary of Contents

---

Preface	xix
Acknowledgments	xxi
Chapter I Overview of the Environmental Justice Movement	3
Chapter II Theories of Causation	27
Chapter III The Evidence	55
Chapter IV Risk Assessment	87
Chapter V The Dynamics of Federal Environmental Regulation	107
Chapter VI Standard Setting	133
Chapter VII Program Design and Regulatory Innovation	159
Chapter VIII Facility Permitting	187
Chapter IX Contaminated Properties	217
Chapter X Litigation as a Response	245
Chapter XI Enforcement of Environmental Pollution Laws as a Response	265
Chapter XII Planning, Environmental Review and Information Disclosure Laws as a Response	297
Chapter XIII Constitutional Claims as a Response	331
Chapter XIV Enforcement of the Civil Rights Act as a Response	351
Chapter XV Interagency Initiatives and Collaboration as a Response	391
Chapter XVI Native American Issues	421
Index	461



# Contents

---

---

Preface	xix
Acknowledgments	xxi
<b>Chapter I Overview of the Environmental Justice Movement</b>	<b>3</b>
A. Introduction	3
1. An Introductory Note on the History of the Movement	3
Pathfinder on Environmental Justice Generally	5
B. Fairness and Justice Considered	6
Robert R. Kuehn, A Taxonomy of Environmental Justice	6
Vicki Been, What's Fairness Got to Do With It?	
Environmental Justice and the Siting of Locally	
Undesirable Land Uses	12
Notes and Questions	15
Christopher H. Foreman, Jr., The Promise and Peril of	
Environmental Justice	15
Notes and Questions	19
C. "We Speak for Ourselves"	20
Letter, Circa Earth Day 1990	21
Principles of Environmental Justice, Proceedings,	
The First National People of Color Environmental	
Leadership Summit	22
Letter, Circa Earth Day 2001	24
Notes and Questions	26
<b>Chapter II Theories of Causation</b>	<b>27</b>
A. Introduction	27
B. Land Use Practices	27
Yale Rabin, Expulsive Zoning: The Inequitable	
Legacy of <i>Euclid</i>	27
Robert Collin, Environmental Equity: A Law and	
Planning Approach to Environmental Racism	29
Craig Anthony Arnold, Planning Milagros:	
Environmental Justice and Land Use Regulation	31
Notes and Questions	33
C. The Market	33
1. Market Forces in Site Selection	34
Robin Saha & Paul Mohai, Explaining Racial and	
Socioeconomic Disparities in the Location of Locally	
Unwanted Land Uses: A Conceptual Framework	34

Luke Cole & Sheila Foster, From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement	35
Notes and Questions	37
Lynn E. Blais, Environmental Racism Reconsidered	38
Notes and Questions	40
2. Post Siting Changes	41
Vicki Been, Locally Undesirable Land Uses in Minority Neighborhoods: Disproportionate Siting or Market Dynamics?	42
Notes and Questions	44
D. Politics	45
Luke Cole, Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law	45
Richard J. Lazarus, Pursuing “Environmental Justice”: The Distributional Effects of Environmental Protection	47
Notes and Questions	48
E. Racial Discrimination	49
Charles R. Lawrence III, The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism	49
Notes and Questions	52
<b>Chapter III The Evidence</b>	55
A. Introduction	55
Pathfinder on Race and Income Disparities	56
B. Hazardous Waste Facilities	56
1. An Introductory Note on Waste Facility Siting	56
Douglas Anderton, Andy B. Anderson, Peter H. Rossi, John Michael Oakes, Michael R. Fraser, Eleanor W. Weber, & Edward J. Calabrese, Environmental Equity: The Demographics of Dumping	58
Note and Questions	59
Vicki Been & Francis Gupta, Coming to the Nuisance or Going to the Barrios? A Longitudinal Analysis of Environmental Justice Claims	60
Notes and Questions	62
C. Other Industrial Activities and Environmental Harms	64
1. Early Studies	64
Paul Mohai & Bunyan Bryant, Environmental Racism: Reviewing the Evidence	64
Notes and Questions	66
2. Farmworker Exposure to Pesticides	67
Ivette Perfecto & Baldemar Velásquez, Farm Workers: Among the Least Protected	67
Notes and Questions	68
3. Exposure to Contaminated Fish	69
Patrick West, Health Concerns for Fish-Eating Tribes?	69
Notes and Questions	70

4.	A Note on Methodological Criticisms	70
5.	More Recent Studies	71
	a. Cross-Cutting Environmental Harms	71
	John A. Hird & Michael Reese, The Distribution of Environmental Quality: An Empirical Analysis	71
	Notes and Questions	72
	b. TRI Facilities	72
	Evan J. Ringquist, Equity and the Distribution of Environmental Risk: The Case of TRI Facilities	72
	Notes and Questions	73
	c. Air Toxics Exposures	73
	Rachel Morello-Frosch, Manuel Pastor, Jr., & James Saad, Environmental Justice and Southern California's Riskscape: The Distribution of Air Toxics Exposures and Health Risks Among Diverse Communities	73
	Notes and Questions	75
D.	Disparities in Enforcement and Cleanup	76
	Notes and Questions	78
E.	Disparities in Other Environmental Amenities	78
	1. Transportation Benefits	79
	Robert Bullard, Glenn Johnson, & Angel Torres, The Routes of American Apartheid	79
	Robert Garcia, Mean Streets	80
	Notes and Questions	81
	2. Open Space and Access to the Waterfront	82
	Samara F. Swanston, Environmental Justice: Mobilizing for the 21st Century: Environmental Justice and Environmental Quality Benefits: The Oldest, Most Pernicious Struggle and Hope for Burdened Communities	82
	Notes and Questions	83
	<b>Chapter IV Risk Assessment</b>	87
A.	Introduction	87
	Pathfinder on Risk Assessment	87
B.	Quantitative Risk Assessment	88
	1. An Introductory Note on Quantitative Risk Assessment	88
	Robert R. Kuehn, The Environmental Justice Implications of Quantitative Risk Assessment	89
	Notes and Questions	92
C.	Comparative Risk Assessment	95
	Donald T. Hornstein, Reclaiming Environmental Law: A Normative Critique of Comparative Risk Analysis	96
	Notes and Questions	99
D.	An Alternative to Risk Assessment	101
	Mary O'Brien, Making Better Environmental Decisions: An Alternative to Risk Assessment	101
	Notes and Questions	103
E.	Cumulative and Synergistic Risks	103
	Notes and Questions	105

<b>Chapter V</b>	<b>The Dynamics of Federal Environmental Regulation</b>	107
A.	The Political Context	107
	Richard J. Lazarus, The Tragedy of Distrust in the Implementation of Federal Environmental Law	107
	Notes and Questions	114
B.	Agency Decisionmaking	115
	Jody Freeman, Collaborative Governance in the Administrative State	115
	Eileen Gauna, The Environmental Justice Misfit: Public Participation and the Paradigm Paradox	122
	Notes and Questions	125
	William Funk, Bargaining Toward the New Millennium: Regulatory Negotiation and the Subversion of the Public Interest	126
	Notes and Questions	128
C.	Devolution	129
	Rena I. Steinzor, Devolution and the Public Health	129
	Notes and Questions	131
<b>Chapter VI</b>	<b>Standard Setting</b>	133
A.	Legal Complexities	133
1.	An Introductory Note on the Taxonomy of Standards	133
2.	Legal Sources of Authority	135
	Richard J. Lazarus & Stephanie Tai, Integrating Environmental Justice Into EPA Permitting Authority	135
	Notes and Questions	137
3.	Judicial Review—A Note on the NAAQS	137
	Notes and Questions	140
B.	The Case of the Clean Water Act Standards	141
1.	An Introductory Note on the Role of Standards under the Clean Water Act	141
2.	Water Quality Standards	142
	Catherine O’Neill, Variable Justice: Environmental Standards, Contaminated Fish, and “Acceptable” Risk to Native Peoples	142
	Notes and Questions	146
	<i>City of Albuquerque v. Browner</i>	147
	Notes and Questions	150
3.	New Program Possibilities	151
	Oliver A. Houck, TMDLS IV: The Final Frontier	151
	Notes and Questions	157
<b>Chapter VII</b>	<b>Program Design and Regulatory Innovation</b>	159
A.	Introduction	159
	Dennis D. Hirsch, Second Generation Policy and the New Economy	160
	Notes and Questions	163

B.	“Reinventing” Environmental Statutes (Informally) Through Program Implementation	163
	Daniel A. Farber, Taking Slippage Seriously: Noncompliance and Creative Compliance in Environmental Law	163
	Notes and Questions	168
C.	Facility Specific Approaches—Operational Flexibility	170
	Eileen Gauna, EPA at Thirty: Fairness in Environmental Protection	170
	Notes and Questions	174
D.	Other Economic Incentive Programs	174
	Pathfinder on Economic Incentives	175
	Stephen M. Johnson, Economics vs. Equity: Do Market-Based Environmental Reforms Exacerbate Environmental Injustice?	175
	Notes and Questions	179
	Richard Toshiyuki Drury, Michael E. Belliveau, J. Scott Kuhn & Shipra Bansal, Pollution Trading and Environmental Injustice: Los Angeles’ Failed Experiment in Air Quality Policy	181
	Notes and Questions	183
	<b>Chapter VIII Facility Permitting</b>	187
A.	Introduction	187
B.	A State Law Perspective	188
	NAACP— <i>Flint Chapter v. Engler</i>	188
	Notes and Questions	190
C.	Statutory Sources of Authority to Address Environmental Justice	191
	Richard J. Lazarus & Stephanie Tai, Integrating Environmental Justice Into EPA Permitting Authority	191
	Notes and Questions	194
D.	The Environmental Appeals Board Decisions	194
	Richard J. Lazarus & Stephanie Tai, Integrating Environmental Justice Into EPA Permitting Authority	195
	Notes and Questions	199
	<i>In Re: AES Puerto Rico, L.P.</i>	202
	Notes and Questions	208
E.	The Permit Applicant’s Perspective	208
	Terry R. Bossert, The Permit Applicant’s Perspective	209
	Notes and Questions	211
F.	Environmental Justice in a Reinvention Context	212
	Rena I. Steinzor, Regulatory Reinvention and Project XL: Does the Emperor Have Any Clothes?	212
	Notes and Questions	215
	<b>Chapter IX Contaminated Properties</b>	217
A.	Cercla Cleanups — An Introduction	217
B.	Brownfields	219

Pathfinder on Brownfields and Environmental Justice	219
Joel B. Eisen, Brownfields of Dreams?: Challenges and Limits of Voluntary Cleanup Programs and Incentives	220
Notes and Questions	225
Kirsten H. Engel, Brownfield Initiatives and Environmental Justice: Second-Class Cleanups or Market-based Equity?	226
Notes and Questions	228
Robert Hersh & Kris Wernstedt, Out of Site, Out of Mind: The Problem of Institutional Controls	230
Notes and Questions	231
William W. Buzbee, Brownfields, Environmental Federalism, and Institutional Determinism	232
Notes and Questions	235
C. Relocation	236
Escambia Treating Company Case Study for the Relocation Roundtable Meeting	236
Notes and Questions	242
<b>Chapter X Litigation as a Response</b>	245
A. The Role of the Lawyer	245
1. Environmental Justice Lawyering	245
Francis Calpotura, Why the Law?	245
Notes and Questions	246
Luke Cole, Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law	246
Notes and Questions	250
Richard Toshiyuki Drury & Flora Chu, From White Knight Lawyers to Community Organizing: Citizens for a Better Environment-California	251
Notes and Questions	253
Michael B. Gerrard, Building Environmentally Just Projects: Perspective of a Developers' Lawyer	254
Notes and Questions	258
2. A Note on the Tulane Environmental Law Clinic	259
Notes and Questions	260
B. Alternative Litigation-Oriented Responses	260
1. Introduction	260
2. A Note on Toxic Tort Litigation	261
Notes and Questions	262
<b>Chapter XI Enforcement of Environmental Pollution Laws as a Response</b>	265
A. Introduction	265
B. Enforcement by Government Agencies	266
1. Sources of Disparate Enforcement	266
Robert R. Kuehn, Remediating the Unequal Enforcement of Environmental Laws	266
Notes and Questions	267

2.	The State Trend Away From Enforcement	268
	Clifford Rechtschaffen, Competing Visions: EPA and the States Battle for the Future of Environmental Enforcement	268
	Notes and Questions	272
3.	Strengthening Public Enforcement in Environmental Justice Communities	273
a.	Enhanced Penalties	273
b.	Targeting Enforcement Resources	273
c.	Greater Use of Supplemental Environmental Projects	274
d.	EPA's Response	274
	EPA Region II, Interim Environmental Justice Policy	275
	Notes and Questions	277
C.	Private Enforcement — Citizen Suits	277
1.	A Note on Procedural and Standing Hurdles	277
	<i>Lujan v. Defenders of Wildlife</i>	280
	Notes and Questions	283
	<i>Friends of the Earth v. Laidlaw Environmental Services</i>	284
	Notes and Questions	287
2.	The Practicalities of Private Enforcement	289
	Eileen Gauna, Federal Environmental Citizen Provisions: Obstacles and Incentives on the Road to Environmental Justice	289
	Notes and Questions	292
3.	Building Community Enforcement Capacity	292
a.	Upwardly Adjusting Attorneys Fees	292
b.	Technical Assistance to Communities	293
i.	Superfund's Technical Assistance Provisions	293
ii.	Community Outreach and Education.	294
iii.	Training Communities To Detect Noncompliance	294
	Notes and Questions	295

## Chapter XII Planning, Environmental Review and Information Disclosure Laws as a Response

A.	Introduction	297
B.	Planning, Land Use and Compensated Siting Approaches	298
1.	Planning & Zoning Changes	298
	Craig Anthony Arnold, Planning Milagros: Environmental Justice and Land Use Regulation	298
	Notes and Questions	301
2.	Compensated Siting Proposals	302
	Vicki Been, Compensated Siting Proposals: Is it Time to Pay Attention?	302
	Notes and Questions	307
C.	Environmental Review: The National Environmental Policy Act and State Environmental Policy Acts	309
1.	A Note on NEPA And SEPA's	309
	Pathfinder on NEPA	311
	Notes and Questions	312

2.	New Opportunities — CEQ and EPA Guidance	313
a.	CEQ's Guidance	313
b.	EPA's Guidance	314
	U.S. Environmental Protection Agency, Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses	314
	Notes and Questions	315
3.	Judicial Review of NEPA	316
	<i>In the Matter of Louisiana Energy Services, L.P.</i>	316
	Notes and Questions	320
D.	Information Disclosure and Right to Know Laws	321
1.	The Toxics Release Inventory	322
	Bradley C. Karkkainen, Information as Environmental Regulation: TRI and Performance Benchmarking, Precursor to a New Paradigm?	322
	Notes and Questions	324
2.	Proposition 65	325
	Clifford Rechtschaffen, The Warning Game: Evaluating Warnings Under California's Proposition 65	325
	Notes and Questions	327
3.	A Note on Environmental Scorecard and Other Mapping Tools	328
	Notes and Questions	329
	<b>Chapter XIII Constitutional Claims as a Response</b>	331
A.	Introduction	331
	Pathfinder on Equal Protection and Environmental Justice	332
B.	The Equal Protection Cases	332
	<i>Dowdell v. City of Apopka</i>	332
	<i>Bean v. Southwestern Waste Management Corporation</i>	334
	Notes and Questions	339
	<i>East Bibb Twiggs Neighborhood Association v.</i> <i>Macon-Bibb County Planning &amp; Zoning Commission</i>	339
	Notes and Questions	342
	<i>R.I.S.E. v. Kay</i>	343
	Notes and Questions	345
C.	Rethinking the Intent Standard	347
	Edward Patrick Boyle, It's Not Easy Bein' Green: The Psychology of Racism, Environmental Discrimination, and the Argument for Modernizing Equal Protection Analysis	347
	Notes and Questions	349
	<b>Chapter XIV Enforcement of the Civil Rights Act as a Response</b>	351
A.	Introduction	351
1.	An Introductory Note on the History of Environmental Title VI Claims	351
	Pathfinder on Title VI and Environmental Justice	352

B. Administrative Complaints vs. Lawsuits in Court:	
A Brief Comparison	353
C. Administrative Proceedings Under Title VI	354
1. Complaint Procedure	354
2. Stories of Frustration	355
3. The Interim Guidance	356
Bradford C. Mank, Environmental Justice and Title VI:	
Making Recipient Agencies Justify Their Siting Decisions	357
The <i>Select Steel</i> Administrative Decision	359
Notes and Questions	361
4. The Title VI FACA and the New Draft Guidance	362
Eileen Gauna, EPA at Thirty: Fairness in Environmental	
Protection	363
Notes and Questions	368
D. Private Rights of Action Under Title VI Regulations	369
<i>Alexander v. Sandoval</i>	369
Notes and Questions	373
Bradford C. Mank, Using Section 1983 to Enforce Title VI's	
Section 602 Regulations	373
<i>South Camden Citizens in Action v. New Jersey Department</i>	
<i>of Environmental Protection</i>	375
Notes and Questions	380
E. Judicial Interpretation	381
<i>South Camden Citizens in Action v. New Jersey Department</i>	
<i>of Environmental Protection</i>	381
Notes and Questions	388

## **Chapter XV Interagency Initiatives and Collaboration as a Response** 391

A. The Executive Order on Environmental Justice	391
Executive Order 12898: Federal Actions To Address	
Environmental Justice in Minority Populations and	
Low-Income Populations	391
Memorandum on Environmental Justice	396
Notes and Questions	397
Denis Binder, Colin Crawford, Eileen Gauna, M. Casey	
Jarman, Alice Kaswan, Bradford C. Mank, Catherine A.	
O'Neill, Clifford Rechtschaffen, and Robert R. M.	
Verchick, A Survey of Federal Agency Responses to	
President Clinton's Executive Order 12898 on	
Environmental Justice	398
Notes and Questions	404
B. Interagency Collaborations	404
1. An Introductory Note on Collaboration	404
Charles Lee, Submission to the National Environmental	
Policy Commission	405
Notes and Questions	409
2. A Collaborative Project in Detail: The Case of Barrio Logan	411
Notes and Questions	414

C. A Sampling of State Responses	414
Notes and Questions	416
D. A Model Environmental Justice Framework?	416
Robert D. Bullard, A Model Environmental Justice Framework	417
Notes and Questions	419
<b>Chapter XVI Native American Issues</b>	421
A. Introduction	421
1. An Introductory Note on Native American Legal Issues	421
Pathfinder on Native Americans	423
Paul Smith, Lost in America	424
Notes and Questions	425
B. Tribes as Environmental Regulators	425
Dean B. Suagee, The Indian Country Environmental Justice Clinic: From Vision to Reality	425
Notes and Questions	428
Rebecca Tsosie, Tribal Environmental Policy in an Era of Self-Determination: The Role of Ethics, Economics and Traditional Ecological Knowledge	429
Notes and Questions	435
Robert Williams, Large Binocular Telescopes, Red Squirrel Pinatas, and Apache Sacred Mountains: Decolonizing Environmental Law in a Multicultural World	436
Notes and Questions	441
Eric K. Yamamoto & Jen-L W. Lyman, Racializing Environmental Justice	441
Notes and Questions	444
C. Protection of Sacred Sites on Public Lands	445
<i>Lyng v. Northwest Indian Cemetery Protective Association</i>	446
Notes and Questions	451
<i>Badoni v. Higginson</i>	453
Notes and Questions	455
<i>Bear Lodge Multiple Use Association v. Babbitt</i>	455
Notes and Questions	459
Index	461

---

# Preface

---

Environmental justice is arguably the most important and dynamic development in environmental law in the past decade. Drawing on principles from environmental law, civil rights law, and broader movements for economic and social justice, the environmental justice movement has focused attention on the disparate environmental harms and benefits experienced by low income communities and communities of color. Indeed, some of the claims presented by activists challenge some of the fundamental underpinnings of environmental law and policy. Environmental justice considerations arise in virtually all aspects of environmental law, including standard setting, program design, permitting facilities, enforcement, cleaning up contaminated sites, and redeveloping brownfields. And the environmental justice movement has generated an explosion of scholarship; since 1991, there have been close to 300 law review articles and over 30 books written on the subject.

This book is designed to provide students with a comprehensive introduction to environmental justice, whether or not they have prior background in environmental law. While its focus is oriented toward legal and regulatory issues, the book also draws considerably on non-legal disciplines; thus, it can be used in undergraduate or graduate courses as well. We have included frequent introductory notes to provide background for students unfamiliar with some of the environmental statutes and other materials. This book is designed for use in a single semester seminar course, and each of the 16 chapters roughly corresponds to a week's worth of reading. The book also can be easily used as a supplement in other environmental, land use, or civil rights classes in which the professor wishes to cover selected issues in environmental justice. The book also can serve as a reference for practitioners, government officials, and activists involved in environmental justice matters, as well as students wishing to engage in more focused research on environmental justice. On key areas of interest, we have included pathfinders for students and others wishing to undertake further research on specific topics

A note about the scope of the book's coverage. Environmental problems are far ranging, and environmental disparities implicate land use, transportation, civil rights, labor issues, international law, Native American law and other areas. A single casebook/reader of this nature cannot adequately cover all of these disparate and intricate legal specialties. Consequently, we have elected to limit the scope of this book to domestic environmental regulation and those subjects most closely related to and having an impact on environmental regulation, such as land use issues and constitutional or civil rights cases against environmental regulators. Other specialized areas such as labor law, transportation law, and international law are not within the scope of this book, although the health, quality of life and political issues that may implicate these legal subjects are briefly described. In a related vein, we have elected to focus upon federal environmental law, as implemented by federal, state, local, and tribal governments, rather than various state laws (although one chapter does contain a sampling of recent state law initiatives).

We do this for several reasons. First, the EPA was one of the first of the governmental institutions to respond to charges of environmental justice and it remains a key participant. Second, much of the controversy over environmental regulation and enforcement at the state and local level has involved dissatisfaction with the way the federal environmental statutes have been implemented. And third, state laws vary significantly and are only at the very beginning of their implementation phases. We look forward to articles and books on these important areas from our colleagues.

The editors of this book maintain the position that pursuing complete neutrality in these difficult and politically-charged issues is unrealistic. Although we are sympathetic to environmental justice struggles, we recognize that the issues are complex and raise hard questions that often generate compelling arguments from all perspectives. We strive to bring that complexity to the surface by choosing a range of materials that present different viewpoints. To further tease out the clash of interests and viewpoints, our notes often contain intentionally provocative questions. Those with a perspective different than ours may take issue with the way that some of the issues are framed and discussed. In response, we can only invite alternative ways to frame the debates and similar disclosures of the subject position of the author.

A note on the editing conventions we use: In general, we have omitted footnotes and other references from excerpted materials. We have left in citations from case excerpts that are directly discussed by the court or that we believe are important to understand the opinion. The few case footnotes that are included are numbered as they appear in the original opinions. We have indicated text that we omitted from the original sources with three ellipses, i.e. . . . . Text that was omitted in the original excerpts is indicated by three ellipses separated by a space, i.e. . . . .

We are deeply grateful to the following people who reviewed chapters of the book when they were in draft form: Tony Arnold, Denis Binder, Carl Cranor, Colin Crawford, Sheila Foster, Rachel Morello-Frosch, Casey Jarman, Steve Johnson, Alice Kaswan, Brad Mank, Catherine O'Neill, Marc Poirier, Rena Steinzor, and Rob Verchick. Thanks also to Diane Takvorian who reviewed portions of Chapter 15 dealing with Barrio Logan, and a special thanks is due to Bob Kuehn, who reviewed early drafts of multiple chapters. We are also grateful to Michael Gerrard for generously sharing materials with us. We are also deeply appreciative of the excellent research assistance provided by Golden Gate Law students Kristin Henry and Amy Cohen, and Southwestern University Law students Shannon Tool, Tony Foster, Alane Kumamoto, and Dan Bugay; thanks also to the administrative help provided by Pat Paulson of Golden Gate, and the assistance provided by Golden Gate law librarian Michael Daw. Karen Kramer provided unwavering support and terrific advice. The authors also thank Golden Gate University School of Law and Southwestern University School of Law for administrative and financial support.

Finally, we dedicate this book to activists from the grassroots. Their insight, courage, tenacity and wit constantly inspire.

# Acknowledgments

---

---

We gratefully acknowledge the permissions granted by the authors and publishers of the following works to reproduce excerpts in this book:

Douglas Anderton, et al., *Environmental Equity: The Demographics of Dumping*, 31 *Demography* 229 (May 1994). Reprinted by permission of the Population Association of America.

Craig Anthony Arnold, *Planning Milagos: Environmental Justice and Land Use Regulation*, 76 *Denver University Law Review* 1 (1998). Reprinted by permission of the Denver University Law Review.

Vicki Been, *What's Fairness Got To Do With It: Environmental Justice and the Siting of Locally Undesirable Land Uses*, 78 *Cornell Law Review* 1001 (1993). Reprinted by permission of the Cornell Law Review.

Vicki Been, *Locally Undesirable Land Uses in Minority Neighborhoods: Disproportionate Siting or Market Dynamics?*, 103 *Yale Law Journal* 1383 (1994). Reprinted by permission of the Yale Law Journal Company and William S. Hein Company.

Vicki Been, *Compensated Siting Proposals: Is it Time to Pay Attention?*, 21 *Fordham Urban Law Journal* 787 (1994). Reprinted by permission of the Fordham Urban Law Journal.

Vicki Been & Francis Gupta, *Coming to the Nuisance or Going to the Barrios? A Longitudinal Analysis of Environmental Justice Claims*, 24 *Ecology Law Quarterly* 1. Copyright 1997 by the Regents of the University of California. Reprinted by permission of the University of California, Berkeley.

Denis Binder, et al., *A Survey of Federal Agency Response to President Clinton's Executive Order 12,898 on Environmental Justice*, 31 *Environmental Law Reporter* 11,133 (2001). Reprinted by permission of the Environmental Law Institute.

Lynn E. Blais, *Environmental Racism Reconsidered*, 75 *North Carolina Law Review* 75 (1996). Reprinted by permission of the North Carolina Law Review.

Terry R. Bossert, *The Permit Applicant's Perspective*, 18 *Temple Environmental Law and Technology Journal* 135 (2000). Reprinted by permission of the Temple Environmental Law and Technology Journal.

Edward Patrick Boyle, *It's Not Easy Bein' Green: The Psychology of Racism, Environmental Discrimination, and the Argument for Modernizing Protection Analysis*, 46 *Vanderbilt Law Review* 937 (1993). Copyright 1993 by Vanderbilt Law Review. Reprinted by permission.

Robert Bullard, *A Model Environmental Justice Framework*, in *Confronting Environmental Racism: Voices from the Grassroots* 203 (1993). Reprinted by permission of South End Press.

Robert Bullard et al., *The Routes of American Apartheid*, 15 Forum for Applied Research and Public Policy 66 (2000). Reprinted by permission of the Forum for Applied Research and Public Policy.

Lloyd Burton & David Ruppert, *Bear's Lodge or Devil's Tower: Intercultural Relations, Legal Pluralism, and the Management of Sacred Sites on Public Lands*, 8 Cornell Journal of Law and Public Policy 201 (1999). Reprinted by permission of the Cornell Journal of Law and Public Policy.

William W. Buzbee, *Brownfields Environmental Federalism and Institutional Determinism*, 21 William and Mary Environmental Law and Policy Review 1 (1997). Reprinted by permission of the William and Mary Environmental Law and Policy Review.

Francis Calpotura, *Why the Law?* Third Force Magazine (May/June 1994). Reprinted by permission of the Center for Third World Organizing.

Luke Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 Ecology Law Quarterly 619 (1992). Copyright 1992 by the Regents of the University of California. Reprinted by permission of the University of California, Berkeley.

Luke Cole & Sheila Foster, *From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement*, 70–74 (2000). Reprinted by permission of New York University Press.

Robert Collin, *Environmental Equity: A Law and Planning Approach to Environmental Racism*, 11 Virginia Environmental Law Journal 495 (1992). Reprinted by permission of the Virginia Environmental Law Journal.

Richard Toshiyuki Drury & Flora Chu, *From White Knight Lawyers to Community Organizing: Citizens for a Better Environment-California*, 5 Race, Poverty and the Environment 52 (Fall/Winter 1995). Reprinted by permission of Race, Poverty and the Environment.

Richard Toshiyuki Drury, et al., *Pollution Trading and Environmental Injustice: Los Angeles' Failed Experiment in Air Quality Policy*, 9 Duke Environmental Law and Policy Forum 231 (Spring 1999). Reprinted by permission of the Duke Environmental Law and Policy Forum.

Joel B. Eisen, *Brownfields of Dreams?: Challenges and Limits of Voluntary Cleanup Programs and Incentives*, 1996 University of Illinois Law Review 883 (1996). Copyright 1996 by the Board of Trustees of the University of Illinois. Reprinted by permission of the University of Illinois Law Review and the Board of Trustees of the University of Illinois.

Joel B. Eisen, *Brownfields Policies for Sustainable Cities*, 9 Duke Environmental Law & Policy Forum 187 (1999). Reprinted by permission of the Duke Environmental Law and Policy Forum.

Kirsten H. Engel, *Brownfield Initiatives and Environmental Justice: Second-class Cleanups or Market-based Equity?*, 13 Journal of Natural Resources and Environmental Law 317 (1998). Reprinted by permission of the Journal of Natural Resources and Environmental Law.

Daniel A. Farber, *Taking Slippage Seriously: Noncompliance and Creative Compliance in Environmental Law*, 23 Harvard Environmental Law Review 297 (1999). Copyright 1999 by President and Fellows of Harvard College and the Harvard Environmental Law Review. Reprinted by permission.

Christopher H. Foreman, Jr., *The Promise and the Peril of Environmental Justice* (1998). Reprinted by permission of the Brookings Institution Press.

Sheila R. Foster, *Meeting the Environmental Justice Challenge: Evolving Norms in Environmental Decisionmaking*, 30 *Environmental Law Reporter* 10,992 (2000). Reprinted by permission of the Environmental Law Institute.

Jody Freeman, *Collaborative Governance in the Administrative State*, 45 *University of California Law Review* 1 (1997). Copyright 1997, the Regents of the University of California. All rights reserved. Reprinted by permission of the author.

William Funk, *Bargaining Toward the New Millennium: Regulatory Negotiation and the Subversion of the Public Interest*, 46 *Duke Law Journal* 1351 (1997). Reprinted by permission of the author.

Robert Garcia, *Mean Streets*, 15 *Forum for Applied Research and Public Policy* 75 (2000). Reprinted by permission of the Forum for Applied Research and Public Policy and the author.

Eileen Gauna, *Federal Environmental Citizen Provisions: Obstacles and Incentives on the Road to Environmental Justice*, 22 *Ecology Law Quarterly* 1 (1995). Copyright 1995 by the Regents of the University of California. Reprinted by permission of the University of California, Berkeley.

Eileen Gauna, *The Environmental Justice Misfit, Public Participation and the Paradigm Paradox*, 17 *Stanford Environmental Law Journal* 3 (1998). Reprinted by permission of the Stanford Environmental Law Journal.

Eileen Gauna, *EPA at Thirty: Fairness in Environmental Protection*, 31 *Environmental Law Reporter* 10,528 (2001). Reprinted by permission of the Environmental Law Institute.

Michael B. Gerrard, *Building Environmentally Just Projects: Perspectives of a Developers' Lawyer*, 5 *Environmental Law News* 33 (Environmental Law Section, State Bar of California, 1996). Reprinted by permission of the author.

Robert Hersh & Kris Wernstedt, *Out of Site, Out of Mind: The Problem of Institutional Controls*, 8 *Race, Poverty and the Environment* 15 (Winter 2001). Reprinted by permission of *Race, Poverty and the Environment*.

John A. Hird & Michael Reese, *The Distribution of Environmental Quality: An Empirical Analysis*, 79 *Social Science Quarterly* 693 (1998). Copyright 1997 by Social Science Quarterly and Blackwell Publishers. Reprinted by permission of Blackwell Publishers.

Dennis D. Hirsch, *Second Generation Policy and the New Economy*, 29 *Capital University Law Review* 1 (2001). Reprinted by permission of the Capital University Law Review.

Donald T. Hornstein, *Reclaiming Environmental Law: A Normative Critique of Comparative Risk Analysis*, 92 *Columbia Law Review* 562 (1992). Reprinted by permission of the Columbia Law Review.

Oliver A. Houck, *TMDLS IV: The Final Frontier*, 29 *Environmental Law Reporter* 10,469 (1999). Reprinted by permission of the Environmental Law Institute.

Stephen M. Johnson, *Economics vs. Equity: Do Market-Based Environmental Reforms Exacerbate Environmental Injustice?*, 56 *Washington and Lee Law Review* 111 (Winter 1999). Reprinted by permission of the Washington and Lee Law Review and the author.

Bradley C. Karkkainen, *Information as Environmental Regulation: TRI and Performance Benchmarking, Precursor to a New Paradigm?*, 89 *Georgetown Law Journal* 57 (2001). Reprinted with permission of the publisher, Georgetown Law Journal. Copyright 2001.

Alice Kaswan, *Environmental Laws: Grist for the Equal Protection Mill*, 70 University of Colorado Law Review 387 (1999). Reprinted by permission of the University of Colorado Law Review.

Robert Kuehn, *Remedying the Unequal Enforcement of Environmental Laws*, 9 St. John's Journal of Legal Commentary 625 (1994). Reprinted by permission of the St. John's Journal of Legal Commentary.

Robert Kuehn, *The Environmental Justice Implications of Quantitative Risk Assessment*, 1996 University of Illinois Law Review 103. Copyright 1996 by the Board of Trustees of the University of Illinois. Reprinted by permission of the University of Illinois Law Review.

Robert Kuehn, *A Taxonomy of Environmental Justice*, 30 Environmental Law Reporter 10,681 (2000). Reprinted by permission of the Environmental Law Institute.

Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 Stanford Law Review 317 (1987). Copyright 1987 by Stanford Law Review. Reproduced with permission of the Stanford Law Review via the Copyright Clearance Center.

Richard J. Lazarus, *The Tragedy of Distrust in the Implementation of Federal Environmental Law*, 54 Law & Contemporary Problems 311 (1991). Reprinted by permission of the Journal of Law and Contemporary Problems and the author.

Richard Lazarus, *Pursuing "Environmental Justice": The Distributional Effects of Environmental Protection*, 87 Northwestern University Law Review 787 (1993). Reprinted by special permission of Northwestern University School of Law, Law Review.

Richard J. Lazarus & Stephanie Tai, *Integrating Environmental Justice Into EPA Permitting Authority*, 26 Ecology Law Quarterly 617 (1999). Copyright 1999 by the Regents of the University of California. Reprinted by permission of the University of California, Berkeley.

Bradford C. Mank, *Environmental Justice and Title VI: Making Recipient Agencies Justify their Siting Decisions*, 73 Tulane Law Review 787 (1999). Copyright 1999 by Tulane Law Review Association. Reprinted by permission.

Bradford C. Mank, *Using §1983 to Enforce Title VI's Section 602 Regulations*, 49 University of Kansas Law Review 321 (2001). Reprinted by permission of the University of Kansas Law Review.

Paul Mohai & Bunyan Bryant, *Environmental Racism: Reviewing the Evidence*, in *Race and the Incidence of Environmental Hazards: A Time for Disclosure* 163 (Bunyan Bryant and Paul Mohai eds., 1992). Copyright 1992 by Westview Press, Inc. Reprinted by permission of Westview Press, a member of Perseus Books, L.L.C.

Rachel Morello-Frosch, et al., *Environmental Justice and Southern California's Riskscape: The Distribution of Air Toxics Exposure and Health Risks Among Diverse Communities*, 36 Urban Affairs Review 551 (2001). Copyright 2001 by Sage Publications, Inc. Reprinted by permission of Sage Publications.

Mary O'Brien, *Making Better Environmental Decisions: An Alternative to Risk Assessment* (2000). Copyright 2000 by MIT Press. Reprinted by permission.

Catherine O'Neill, *Variable Justice: Environmental Standards, Contaminated Fish, and "Acceptable" Risk to Native Peoples*, 19 Stanford Environmental Law Journal 3 (2000). Reprinted by permission of the Stanford Environmental Law Journal.

Yale Rabin, *Expulsive Zoning: The Inequitable Legacy of Euclid*, in *Zoning and the American Dream* 101 (Charles M. Haar & Jerold S. Kayden eds., 1989). Reprinted by permission from *Zoning and the American Dream*. Copyright 1989 by the American Planning Association, Suite 1600, 122 S. Michigan Ave., Chicago, IL 60603-6107.

Clifford Rechtschaffen, *The Warning Game: Evaluating Warnings Under California's Proposition 65*, 23 *Ecology Law Quarterly* 303 (1996). Copyright 1996 by the Regents of the University of California. Reprinted by permission of the University of California, Berkeley.

Clifford Rechtschaffen, *Competing Visions: EPA and the States' Battle for the Future of Environmental Enforcement*, 30 *Environmental Law Reporter* 10,803 (2000). Reprinted by permission of the Environmental Law Institute.

Evan J. Ringquist, *Equity and the Distribution of Environmental Risk: The Case of TRI Facilities*, 78 *Social Science Quarterly* 811 (1997). Copyright 1997 by Social Science Quarterly and Blackwell Publishers. Reprinted by permission of Blackwell Publishers.

Robin Saha & Paul Mohai, "Explaining Race and Income Disparities in the Location of Locally Unwanted Land Uses: A Conceptual Framework," Paper presented at the 1997 Annual Meeting of the Rural Sociological Society (Toronto, August 1997). Reprinted by permission of the authors.

Paul Smith, *Lost in America*, *Border/Lines* (Winter 1991/1992). Reprinted by permission of the author.

Rena Steinzor, *Regulatory Reinvention and Project XL: Does the Emperor Have Any Clothes?*, 26 *Environmental Law Reporter* 10,527 (1996). Reprinted by permission of the Environmental Law Institute.

Rena Steinzor, *Devolution and the Public Health*, 24 *Harvard Environmental Law Review* 351 (2000). Copyright 2000 by the President and Fellows of Harvard College and the Harvard Environmental Law Review. Reprinted by permission.

Dean B. Suagee, *Symposium: Environmental Justice: Mobilizing for the 21st Century: The Indian Country Environmental Justice Clinic: From Vision to Reality*, 23 *Vermont Law Review* 567 (1999). Copyright 1999 by Vermont Law Review. Reprinted by permission of the Vermont Law Review and the author.

Samara F. Swanston, *Environmental Justice: Mobilization for the 21st Century: Environmental Justice and Environmental Quality Benefits: The Oldest, Most Pernicious Struggle and Hope for Burdened Communities*, 23 *Vermont Law Review* 545 (1999). Copyright 1999 by Vermont Law Review. Reprinted by permission of the Vermont Law Review and the author.

Rebecca Tsosie, *Tribal Environmental Policy in an Era of Self-Determination: The Role of Ethics, Economics, and Traditional Ecological Knowledge*, 21 *Vermont Law Review* 225 (1996). Copyright 1996 by Vermont Law Review. Reprinted by permission of the Vermont Law Review and the author.

*Environmental Law Clinic Raises Environmental Justice and a Hostile Reaction From the Governor and the Louisiana Supreme Court*, *Tulane Environmental Law News* (Winter 1999). Reprinted by permission of Tulane Environmental Law News.

Robert Williams, *Large Binocular Telescopes, Red Squirrel Pinata, and Apache Sacred Mountains: Decolonizing Environmental Law in a Multi cultural World*, 96 *West Virginia Law Review* 1133 (1994). Reprinted by permission of the author.

Eric K. Yamamoto & Jen-L. W. Lyman, *Racializing Environmental Justice*, 72 *University of Colorado Law Review* 311 (2001). Reprinted by permission of the University of Colorado Law Review and Eric Yamamoto.

