

THE CHALLENGE OF ENVIRONMENTAL JUSTICE

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ABSTRACT

The residents of Camden, New Jersey do not live in a bustling city as do residents living across the Delaware River in Philadelphia, Pennsylvania. Instead, Camden's largely minority population lives in an environmentally and economically devastated neighborhood replete with two Superfund sites. Garbage incinerators, sewage treatment plants and polluting factories have been placed in Camden because the poor have historically been less likely to protest than wealthier communities. In 1997, concerned Camden residents formed the South Camden Citizens in Action ("SCCA") association to confront the continued encroachment by polluting factories and sewage treatment centers threatening their lives and health. The passionate citizens were determined to fight on behalf of their community both politically and in court.

This article chronicles the SCCA's fight against the Department of Environmental Protection ("DEP") and the Saint Lawrence Cement Company. The DEP's myopic view of its responsibility to protect this disadvantaged community initiated a political fight to prevent the issuance of any more permits to polluting companies. In the St. Lawrence case, the SCCA became the first plaintiff in a civil rights environmental justice suit to prevail on the merits on a cause of action based on EPA administrative regulations. The success, however, was bittersweet as just a few days later, the United States Supreme Court undermined the entire basis of the New Jersey state decision, determining in a different case that private plaintiffs cannot state a cause of action under EPA administrative regulations. After making a detailed examination of the legal battles fought by Camden residents, this article concludes by questioning whether Civil Rights is the most effective answer to the environmental justice issue and arguing that other initiatives may provide a better solution.

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I. THE PROBLEM ILLUSTRATED: THE WATERFRONT SOUTH NEIGHBORHOOD IN CAMDEN

I'm going to give less of a lecture and more of a narrative, a story, around which I will weave my substantive comments. I invoke this story to illustrate the phenomenon we refer to as environmental justice, and the challenges such phenomenon poses for both poor minority communities nationwide; and, their respective environmental decision makers. In my work, I have argued that narratives about, and claims made by, those on the ground residents living in environmentally devastated communities are crucial for understanding the calls for environmental justice. Such narratives reveal, (paraphrasing the philosopher Iris Marion Young) the particular experiences of those in social locations, experiences that cannot be shared by those of us situated differently, but that we must understand in order to do justice to the others. It is in this spirit of understanding that I offer this story.

This story is about a place where I worked for 7 years—Camden, New Jersey—and the community that I worked with on legal and other issues. The members of this community live in a neighborhood in Camden situated on the edge of the Delaware River waterfront facing Philadelphia, an area is appropriately named Waterfront South. However, Waterfront South residents do not enjoy the many benefits associated with living near a fully functional waterway that is a major port full of economic activity, situated directly across from one of the largest urban metropolitan areas in the United States, Waterfront South residents live in an environmentally and economically devastated neighborhood with little hope of getting out.

The Waterfront South neighborhood has been, and is, an attractive location for polluting facilities, some of which get abandoned and remain contaminated. In truth, the neighborhood contains two designated Superfund sites. (Areas designated by the federal government as dangerously contaminated sites to be cleaned up). One of the two sites in Camden has been emitting low-level radiation for 80 years. Federal and state authorities for cleanup of hazardous substances are also investigating several other contaminated sites. In addition to these no longer operative sites, the neighborhood is host to several active industrial sources of pollution, including scrap metal companies, food processing plants, automated shops, a petroleum coke transfer station, and a few chemical companies.

Despite this already high level of pollution, the state environmental agency, the Department of Environmental Protection (“DEP”) has steadily permitted additional polluting facilities to come into the Waterfront South neighborhood. During the last decade or so, the DEP has granted operating permits for a regional sewage treatment plant, a trash-to-steam incinerator, a co-generation power plant, and, most recently, a cement recycling plant, which is the subject of a recent lawsuit. As a result, Waterfront South has more than twice the number of facilities with permits to emit air pollution than the average New Jersey zip code.

The DEP's propensity to permit pollution generating facilities in an already environmentally devastated community is quite remarkable, but not surprising given the demographic makeup of the community. As numerous studies have demonstrated,

the racial composition of a community is a powerful predictor of its environmental quality and health. Not surprisingly, 91% of the residents of Waterfront South are persons of color. (In Waterfront South 63% are African-American, 28% are Hispanic, and 9% are non-Hispanic White). The median household income of the community is approximately \$15,000; its' per capita income approximately \$4,700. Over 50% of the residents of Waterfront South live at or below the federal poverty level. While the City of Camden has a large African American (56.3%) and Hispanic (22%) population, the majority of residents of Camden County, as well as New Jersey as a whole, are White and more economically privileged. (Non-Hispanic White persons constitute 75.1% of the population in the surrounding Camden County and 74.2% of the population in the State of New Jersey as a whole).

Predictably, most residents suffer from poor health. Asthma and other respiratory ailments are especially prevalent in the neighborhood. Cancer rates, particularly among African American residents, are many times higher in Waterfront South compared to the rest of Camden County and New Jersey, both being wealthier and whiter. The cancer rate for African-Americans in Camden (County) is 70% higher for men and 90% higher for women than that of the rest of the State. The rate of death from asthma for African Americans in Camden County is over three to six times higher than that for Whites. In addition, the self-reported asthma rate for Waterfront South residents is more than twice that of other parts of the county. As many as 61% of Waterfront South residents have persistent respiratory problems such as coughing and shortness of breath; 48% report experiencing chronic tightness in their chests.

Predictably, the patterns of environmental hazard distribution throughout the State of New Jersey mirror that of Camden County. A recent study in New Jersey has analyzed the correlation between race and the distribution of facilities that emit air pollution. The regression analysis employed in this study revealed that for every 10% increase in the percentage of non-white residents in a given zip code in the State, the corresponding neighborhood would experience a 16% increase in pollution generating facilities over the State's average number per zip code. Through this study, it was concluded that there is "a strong, highly statistically significant, and disturbing pattern of association between the racial and ethnic composition of communities, the number of regulated facilities, and the number of facilities with Air Permits."

The factors that have given rise to Waterfront South's status as an environmentally devastated community are undoubtedly varied, and further, not all factors are attributable to the agency permitting such polluting facilities. Various structural factors including poverty, historical and current housing discrimination, inadequate zoning laws, lack of meaningful public participation, lack of adequate resources to mount opposition to incoming facilities, and differential permitting oversight by government agencies, among other factors caused the disproportionate location of polluting facilities and other hazards in communities like Waterfront South. Rarely is there evidence that a single bad actor—such as a company or the permitting agency—is intentionally targeting these communities for new polluting facilities solely because they are low-income minority communities.

Nevertheless, neither the causal complexity nor the lack of purposeful targeting changes the social reality for residents in Waterfront South. Residents must live with the constant stench coming from the regional sewage treatment plant, which processes all of the sewage from the entire county, and which sits next to one of the few playgrounds in

the Waterfront South neighborhood. The odor – which residents liken to rotten eggs and causes a burning sensation in the nostrils – is so bad that on most summer days, the children of the community (who make up 41% of Waterfront South’s residents) cannot play outside. Further, the air pollution in the community regularly leaves walls and windows blackened with oily soot.

It was the presence of these odors that became the impetus for the formation of a grassroots environmental justice group in Waterfront South. In 1997, concerned residents formed South Camden Citizens in Action (“SCCA”) to address the constant toxic assault on their environmental health that was threatening their overall quality of life. Although at the time no one in the group could define exactly what pursuing environmental justice entailed – its main stated goal – there was nevertheless an intuitive sense that something was drastically wrong with the conditions in which they lived. They knew, from a casual observation of nearby wealthier, more Caucasian dominated communities that their neighborhood was bearing more than their share of environmental hazard exposure and substandard living conditions. Their rallying cry, as it has been for many similar community organizations, was that something had to be done to improve the quality of their environment and stop more polluting sources from coming into the neighborhood. How the Waterfront South community went about achieving these goals, and the obstacles they encountered in doing so, provides an important lens through which we can examine the contours of the movement for environmental justice and its critical role in the future of environmental and land use decision making.

II. ENVIRONMENTAL JUSTICE: THE CONCEPTUAL FUSION

What are the residents of Waterfront South and residents of similar communities across the country seeking to achieve “environmental justice”? Environmental justice has been both broadly defined in the language of community empowerment and specifically articulated as a commitment to particular types of justice: distributive, procedural, corrective, and social. Academics, politicians, environmental agency officials, and others have used various definitions. Nevertheless, there is no precise or agreed upon theory or definition of environmental justice that neatly ties together all of its aspirations. Nor should there be any such strict interpretation.

The environmental justice movement is the direct beneficiary of many direct action, grassroots social reform movements in the United States over the past few decades – most notably the civil rights and anti-toxics movements. These movements have sought self-determination and empowerment for different communities, a legacy that is quite evident in environmental justice activism. But the legacy of these predecessor movements is the understanding that residents in communities like Waterfront South possess about the conditions they must live with. It is these understandings that fuel the people’s sense of injustice. From the civil rights movement, environmental justice activism has inherited a perspective that recognizes that the disproportionate distribution of environmental hazards is not random or the result of “neutral” decisions, but is instead a product of a larger discriminatory social structure, which produces many other social ills in communities like Waterfront South. The anti-toxics movement has also contributed a structural understanding of pollution; that is, an understanding that discrete toxic assaults on certain communities are part of

the natural functioning of a capitalist economic structure. But, the anti-toxics movement additionally bequeathed to the environmental justice movement the importance of challenging the normative framework in which environmental decisions are made and its ignorance of important considerations like pollution prevention and distributional equity. Environmental justice, importantly, emerged out of the marriage of these two predecessor movements.

In the 1980's, when civil rights leaders like Ben Chavis, previously the head of the NAACP, began to embrace the anti-toxic movement's economic analysis, and the anti-toxics leaders embraced the civil rights activists' racial critique, the conceptual fusion took place that helped create the environmental justice movement. Environmental justice, anchored by its grassroots activists, takes a distinct social justice orientation to pollution; viewing environmental degradation as just one of many ways communities like Waterfront South are under attack. Other such attacks include inner-city disinvestment, lack of decent health care, unemployment, and poor education. Because of this orientation, environmental justice activists seek remedies that are much more fundamental than simply stopping a particular polluter in their community or moving waste facilities to wealthier neighborhoods. What they seek are broader, structural reforms that will alleviate a variety of problems, including environmental degradation, which these poorer communities endure.

In doing so, those communities striving for "environmental justice" collide head-on with a stubborn, much more myopic framework (and mode of decision making) that characterizes most environmental and land use planning decisions. It is this collision, or to put it more mildly "tension," that policymakers and regulators must address if they are to answer the challenge that environmental justice poses to our current system of decision making in these embattled communities.

III. PURSUING ENVIRONMENTAL JUSTICE: SOUTH CAMDEN CITIZENS IN ACTION

Like many residents in similar communities, residents of Waterfront South have been disenfranchised by most major societal institutions. The DEP for instance is responsible for the recent pattern of polluting facilities in Waterfront South's neighborhood. The disenfranchisement, and associated political powerlessness, that has historically drawn polluting industries to communities like Waterfront South. Instead of trying to place garbage incinerators and other waste facilities in upper income communities, which will actively resist, industry takes, and perhaps understandably, the path of least resistance. Industry's powerful presence perpetuates the powerlessness felt by residents in poor, and often minority, communities. The cycle of powerlessness continues as more polluting facilities come into the neighborhood, and communities lose control of their environment and their health.

Part of the impetus for Waterfront South's newfound organization, South Camden Citizens in Action, was to change this feeling of powerlessness by finding a way to hold accountable both the industries that operate in the community and the decision makers responsible for enforcing environmental rules and regulations. Their first step toward this goal was to take on the cause of the most pressing and immediate environmental health problem – the constant stench coming from the regional sewage

treatment plant. Many residents complained that their asthma had grown worse because of the odors, forcing them to keep their windows closed. Others simply wanted to avoid the nausea they felt when outdoors for any extended period of time.

Yet, when residents complained to the DEP about the odors coming from the plant, particularly on days when the odors reached unacceptable levels, DEP inspectors suggested that the residents get used to the smell or keep their windows closed. The DEP's response to the community's complaints, instead of disempowering them, worked to galvanize the residents. The grassroots group went into action, directing its rage at both the plant's owner – the County Board of Freeholders – and the DEP. The organization launched a "stop the stink" campaign, whereby residents recorded the time and date of each complaint called into the DEP and presented the list of to the agency demanding that something be done about the odor. SCCA also submitted a list of demands to the owner of the plant, which included a demand for a reduction in the number of garbage trucks coming through the neighborhood en-route to the plant and a request for the County to contribute to neighborhood improvement projects with some of the profits from the plant. The citizens' group was not surprised when its demands went unmet. The organization then partnered with Rutgers University, to conduct a health and odor study. The study results confirmed the residents' fears, finding that by a ratio of 2 to 1 Waterfront South residents experienced breathing disorders, sensory irritation, and other health symptoms associated with the odor pollution as compared to residents in another Camden neighborhood without industrial odors.

After a year of complaints about the odors, the DEP cited the plant for 16 violations of state environmental regulations and fined the company several thousand dollars. However, the plant never paid the fines, the odors did not cease, and the group discovered that the plant's odor control equipment was not sufficient to control the odors produced by its operations. SCCA subsequently, with the help of public interest attorneys, filed a lawsuit, demanding that the DEP bring the plant into compliance with environmental regulations. The lawsuit was eventually settled when the plant agreed to install better equipment to control the odors and come into compliance with the environmental regulations. The plant also set up a fund for the community to establish an environmental health initiative of its choice.

Waging a successful campaign against the odor problem was an important victory for this community. Specifically, it helped to remove the sense of many in the community that they were powerless to address perceived injustices, like the ongoing environmental assault in their community. Their successful campaign against one of the largest polluting facilities in the neighborhood broke the cycle of powerlessness and transformed the community's mood from hopeless to one of empowerment. As they hoped, the successful campaign also put industry and state agencies on notice that future attempts to place polluting facilities in their community would be met with considerable resistance.

IV. DISTRIBUTIONAL EQUITY: PREVENTING MORE POLLUTION

Nevertheless, while Waterfront South residents achieved a sense of community empowerment from their battle against the sewage treatment plant, a much larger battle loomed not too far in the distant future. This larger battle would test both their hard

earned sense of empowerment and the extent to which they could influence decisions about the environmental health in their community.

In August 1999, the Saint Lawrence Cement Company ("St. Lawrence"), a multinational company which manufactures cement and other concrete material, applied to the DEP for permits to construct and operate a cement grinding plant in Waterfront South. St. Lawrence proposed to process granulated blast furnace slag ("slag"). Slag is a by-product of the steel-making industry, specifically the iron manufacturing process, and is used as a partial substitute for cement in concrete. St. Lawrence planned to ship in the slag from Italy by boat to a port terminal in Camden, and then use trucks to transport the materials to its grinding facility. There, the slag would be kept in open piles, transported by conveyer belt to a sifter, and then ground into a fine powder the size and texture of powdered sugar. The grinding facility will operate 24 hours a day, 365 days a year, processing 850,000 tons of slag annually.

This grinding process would emit almost 60 tons of fine dust per year of 10 microns or less (technically referred to as particulate matter-10 or "PM-10"), small enough for human inhalation. Allowable levels of PM-10 emissions are regulated under the Federal Clean Air Act, which state agencies are responsible for enforcing. Most of the dust emitted from the plant would, in fact, be even finer than PM-10, consisting of particulate matter of 2.5 microns or less ("PM-2.5"). Although the Environmental Protection Agency has drafted standards for allowable emissions of PM 2.5, they have not been finalized; and so, such emissions are not yet regulated. Nevertheless, it has been scientifically established that exposure to fine particulate matter of PM-10 constitutes a serious health hazard. Increases in levels of PM-10 in the air causes increased death rates and causes and aggravates respiratory diseases. Residents were understandably concerned about emissions of PM-10 and PM-2.5 in a community with widespread respiratory illnesses. The community was also concerned with the other pollutants that would be released into its environment from the St. Lawrence grinding operations. These materials include: lead, mercury, carbon monoxide, volatile organic compounds, sulfur oxides, and radioactive materials.

In addition, the residents learned that over 77,000 trucks would travel through the neighborhood each year to make deliveries of the slag to the facility and to remove the finished product. The contemplated truck route would pass through residential areas of the Waterfront South community. These trucks would emit carcinogenic diesel fumes and add even more PM-10 pollution. They would also emit nitrogen oxides and volatile organic compounds, which are precursors to ground level ozone. Ozone irritates lung and breathing passages and increases susceptibility to respiratory infection, particularly in persons with asthma. Waterfront South is located in a region that already is ranked as a severe non-attainment area for ground level ozone. Residents feared both for their health as well as for their ability to move away from the neighborhood to a cleaner environment. They feared that their property values, already suffering from the poor environmental quality of the neighborhood, would plummet with the additional noise and structural damage the trucks will bring.

Perhaps as a testament to its newfound sense of community empowerment following the successful odor battle, the community was pleasantly surprised when, shortly before submitting its final air permit applications to the DEP, St. Lawrence began to reach out to the residents to solicit support for the facility. This was first time ever a company or a facility owner made efforts to notify of the community of its plans

and seek the community's input. St. Lawrence representatives met numerous times with Waterfront South residents in a series of public meetings in homes and churches throughout the community. It then set up a community advisory board that met eighteen times over ten months. The board consisted of residents from a cross-section of the community, and represented a diversity of views on the wisdom of hosting the facility given both their environmental health problems and their economic development needs.

Notwithstanding the diversity of opinion about the wisdom of hosting this facility in the community, St. Lawrence made perfectly clear what was NOT on the table for negotiation. St. Lawrence was not open to locating the facility elsewhere. In fact, from the beginning, St. Lawrence fully expected to receive the final permit approvals for construction and operation in the Waterfront South neighborhood. St. Lawrence was confident because: (1) it intended to build a state-of-the-art facility; (2) it planned to install all required pollution control equipment; and (3) it believed the facility would be within applicable federal and state environmental emission standards. Indeed, early on in the process, after receiving the DEP's letter indicating its permit application was administratively complete (meaning the company has submitted all necessary information to evaluate the application) St. Lawrence elected to begin construction of the proposed facility. New Jersey law allows a company to begin construction before receiving its permit, once its application has been completed, based on the understanding that the company does so at its own risk. Thus, the only issue for St. Lawrence was not whether to impose additional environmental risks on the community, but how to impose the risks.

The community advisory board was thus structured around getting community input on managing the inevitable health and environmental risks accompanying this facility. Toward this end, St. Lawrence generously paid for technical experts to help the community evaluate the impact of the proposed facility on traffic, air quality, storm water management, and health. Out of these evaluations came quite generous concessions by St. Lawrence. For example, it agreed to modify the original truck delivery route to minimize the number of residential streets used. It also agreed, importantly, to work to persuade the Port Authority of New Jersey, who owned the property, to acquire the housing development closest to the facility and to relocate its residents.

However, not everyone was happy with the role of the community in this process. SCCA, the environmental justice group, opted out of the community advisory board process early on. The organization and its constituents considered the entire process somewhat paradoxical. They wondered what the point of community participation was if the ultimate outcome, the operation of the facility in their neighborhood, was a foregone conclusion. Stated another way: what benefit was gained by obtaining community input in these decisions if the most important issue faced by the community – whether or not to even bear the additional environmental and health risks – is not open to community influence? The group concluded that community empowerment, for them, had to mean a greater influence and role in the decision making process regarding whether, and how, to bear additional environmental and health risks.

A. THE LARGER TENSION ILLUSTRATED: REGULATORY MYOPIA AND THE LIMITS OF INCLUSION

After pulling out of the St. Lawrence-initiated community advisory board process, SCCA turned to the agency that, ultimately had authority to determine whether or not the community would have to bear the risks associated with this facility. Surely, the group thought, the DEP would have to take into account the present state of its environment and health in deciding whether to permit this facility. How could the agency not consider the cumulative and adverse impact from various environmental hazards in the community and the vulnerability of the community to additional hazard exposure? However, as SCCA quickly realized, its claims were at odds with deeply embedded norms in environmental decision making.

This tension became apparent at the public hearing for the permit application requested by the organization and the DEP's response to the community's concern there voiced. During the public hearing, Waterfront South residents expressed both support for and opposition to the proposed St. Lawrence facility. Several residents commended St. Lawrence for its effort at involving the community early on in the process, while others expressed grave concerns about the addition of the facility's emissions to the neighborhood. The DEP responded in writing to the community's concerns shortly after the public meeting.

In response to those who requested that the DEP consider the St. Lawrence permit request in the context of pre-existing environmental hazards and health problems in the community, the agency chose to carve out a very limited role for itself. In the DEP's view, since St. Lawrence's emissions of various pollutants would not exceed the amount allowed under the Clean Air Act, the agency's inquiry ended there. These technical environmental standards, the agency reasoned, were presumptively protective of human health, and therefore the community would suffer no adverse effect from St. Lawrence's operations. Since these standards would be met, the DEP reasoned, there was no need to consider the cumulative environmental burden already borne by this impoverished community, the pre-existing poor health of the residents, or the level of ozone generated by the truck traffic, notwithstanding the fact that Waterfront South was not in compliance with federal standards for permissible ozone levels at that time. Indeed, the DEP advised the community to take its concerns and complaints about increased vehicle emissions from the trucks to the Department of Motor Vehicles, the agency responsible for regulating vehicle emissions. It noted that the community concerns regarding the noise and increased traffic from the trucks were more appropriately addressed by the county health department and the local police. The administrators at the DEP had clearly taken a myopic view of its responsibility in protecting the environment of this community, narrowly confining its inquiry to whether the emissions of pollutants produced by this particular facility's operations ran afoul of technical environmental standards.

Underlying this regulatory myopia is a host of regulatory tools and practices built upon a set of normative principles that are in deep tension with environmental justice goals. On the one hand, many environmental decisions, such as site location decisions, are characterized by an underlying utilitarian philosophy that seeks optimal environmental protection and administrative efficiency. On the other hand, environmental justice claims of the type made by Waterfront South residents highlight

how these very norms lead to the inequitable distribution of environmental hazards and exclude meaningful participation by those asked to bear environmental and health risks. Stated another way: this utilitarian norm, which requires regulators to produce the greatest good for the greatest number, supports the widespread use of scientific and technical decision-making techniques that distill environmental impacts and values to a common, quantitative metric, which is then used to make decisions that maximize aggregate social welfare, without accounting for, and indeed even ignoring important ethical issues and public values such as equity and justice. Even with community input and participation, decision makers give substantial deference to this model of decision making by using public input to check the math, so to speak, rather than to question the structure of the underlying equations.

This model of technocratic utilitarianism, and the complex mathematics associated with quantifying and measuring, recognized variables ignores equally important questions such as: “who are the persons at risk; what other risks are they exposed to; what benefits will those who must bear the risk receive from the increased risk; what benefits will those who produce the risk enjoy; and is it really necessary to impose the risks on these or other people.” The process of reducing complex environmental problems to strictly technical dimensions may further the efficient expenditure of resources and even optimize environmental protection. However, exclusive or undue reliance on such reductionism techniques has led to a substantively narrow focus, which dominates environmental decisions and contributes immeasurably to the current equity crisis in environmental policy.

V. LOOKING OUTSIDE THE FRAMEWORK: CIVIL RIGHTS AS THE ANSWER?

The failure of our reigning environmental decision making model to incorporate a broader set of norms and regulatory tools has led many communities to look to other frameworks, such as civil rights, as a way of importing these norms into environmental decisions. This is exactly what happened in Camden. Shortly after the public hearing and the DEP’s response to community concerns, it issued the necessary permits to enable St. Lawrence to construct and operate the cement grinding facility. Concerned Waterfront South residents turned once again to litigation as in a final, desperate attempt to save their community. The SCCA and a number of individual residents brought a lawsuit against the DEP under the Civil Rights Act of 1964. The lawsuit alleged that the residents’ civil rights were violated by the agency’s failure to determine whether the grant of the permit would result in an adverse, disproportionate impact on the basis of race, despite its knowledge that Waterfront South was a predominantly minority, environmentally disadvantaged community. In the first legal victory of its kind, a federal judge agreed with the residents and ruled that the DEP has a separate, enforceable duty to comply with federal civil rights laws, outside of its duty to enforce environmental statutes. The agency violated its duty under civil rights laws, the judge reasoned, because it had refused to conduct an assessment into the impact this facility would have on a neighborhood suffering from cumulative and disproportionate environmental hazard exposure. The judge reasoned that the agency’s duty was particularly heightened in light of the statewide pattern of state regulated, pollution

producing facilities in low-income communities across the state. Due to this violation, the judge revoked St. Lawrence's permits, enjoined the company from operating, and gave the DEP 30 days to conduct a full impact analysis.

The outcome of this litigation is a testament to the potential that the conceptual fusion of civil rights and environmentalism can have on transforming communities, enforcement of environmental laws, and environmental policy. Yet, there is also a cautionary lesson to be learned in this story about undue reliance on a civil rights framework to achieve environmental justice. Lawsuits that allege violations of civil rights statutes, or that are based on constitutional civil rights norms, rests on an increasingly shaky foundation. These lawsuits and claims have not historically been successful in transforming environmental decision-making processes to take into account the social, political, and economic vulnerability of poor communities of color.

This failure is attributable most directly to a fairly radical transformation in courts' understanding of equal protection and civil rights' guarantees. Courts have significantly watered down civil rights laws in the past 20 years, such that what appears to the average person to be a clear violation of civil rights might not fit the narrow legal definition of such a violation. Most courts view that government action that has a foreseeable and adverse discriminatory impact on society's most vulnerable populations is not legally problematic unless it can be demonstrated that the decision maker had a discriminatory intent or motive to harm that group. This subjective motivation is obviously difficult to prove, and virtually all attempts to do so have failed in the courts.

Prior to the judge's ruling in the St. Lawrence case, no plaintiff in an environmental justice suit predicated on civil rights theories has prevailed on the merits, although the strategy has been tried in numerous jurisdictions across the country. The judge in Camden relied on an EPA administrative regulation issued over 30 years ago to enforce the Civil Rights Act of 1964. This regulation prohibits any agency receiving federal funds from taking an action, which has the *effect* of discriminating against a minority group. Using this regulation allowed the plaintiffs and the judge to circumvent the necessity of proving subjective intent, and to find a violation of civil rights based upon the much less stringent discriminatory effect standard.

However, what happened in the ensuing few days and weeks following the judge's decision would ultimately bear out the lesson that civil rights is a precarious basis for achieving environmental justice. A few days after the judge's decision, the U.S. Supreme Court, in a 5-4 opinion, called into question the validity of the administrative regulations containing a discriminatory effect standard to enforce federal Civil Rights Laws. Although not overruling these regulations, the Court severely restricted their use by preventing private plaintiffs from using them in civil litigation, hereby undermining the entire legal basis of the federal judge's ruling and injunction in the St. Lawrence case. Shortly thereafter, a federal appeals court lifted the judge's injunction, allowing St. Lawrence to begin its operations in the Waterfront South community. A subsequent appeal by plaintiffs to the U.S. Supreme Court was unsuccessful.

VI. SOCIAL JUSTICE: THE FALSE TRADEOFF BETWEEN JOBS AND HEALTH

Finally, let me say a word about the broader issue implicated by environmental justice and another potential, although overstated, tension that characterizes debates in this area.

What about, one might ask, the residents who were in favor of the St. Lawrence facility? As mentioned previously, a significant number of residents welcomed St. Lawrence into the community and voiced their support both to St. Lawrence and the DEP. These residents viewed the addition of the St. Lawrence facility in the community as a precursor to an era of economic redevelopment in Camden. St. Lawrence promised to be a good corporate neighbor, and held out the promise of potential jobs at the facility for Waterfront South resident, even though the company refused to guarantee that Camden residents would get the jobs, and made clear that it had no control over the unionized truck driver positions for the trucks bringing materials to its facility.

Does environmental justice mean that economic prosperity must always be sacrificed to environmental and health concerns? This jobs/environment tradeoff in this context, if judged by recent history, both in this community and others promised, is, however, a false one. The reality is that industrial development of the sort challenged in environmental justice struggles, such as those in Waterfront South, yields few, if any, jobs for the residents in the host community. Too often, these communities have seen enough waste and other polluting facilities proliferate around them, and have observed the persistent lack of economic development, to realize the hollowness of these promises.

A telling example of this false tradeoff exists, unfortunately, on stark display right in the Waterfront South community. The regional sewage treatment plant in Waterfront Sough sits on 45 acres of city waterfront property, but does not pay property taxes and employs less than 10 Camden residents. Similarly, St. Lawrence leased its property from the Port of New Jersey and will pay no city taxes (but will pay state taxes) and made an unspecified promise of the potential for no more than 15 jobs for Camden residents. Understandably, the majority of community residents concluded, as many other communities have when forced with this illusory tradeoff, that they would get much more of the facility's toxic emissions than its jobs or economic contribution to the community.

VII. THE FUTURE OF ENVIRONMENTAL JUSTICE

In closing, how should we understand the challenge of environmental justice, both as social reform movement and as a critique of environmental decision-making? As understood by communities like Waterfront South, calls for environmental justice, ultimately, synthesize aspirations for community empowerment, participatory democracy, distributional equity, and social justice into an untidy conceptual framework. Environmental justice demands attention to important ethical, moral and public values and a move away from the narrow, technocratic framework that dominates environmental policy and enforcement. There have been many advances toward these ends, illustrated by President Clinton's Executive Order on environmental justice and

the nascent policy work initiated by the Environmental Protection Agency. However, until these initiatives take root, calls for environmental justice from those on the ground will continue to grow louder and stronger.

