

# **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

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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



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# Preface

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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

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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.

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

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