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## State Regulation and Environmental Justice: The Need for Strategy Reassessment

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In this paper, we explore how environmental justice activists' reliance on state regulation has inhibited their ability to achieve their goals – an important topic whose oversight we do not believe is accidental. Despite over 30 years of activism and over 20 years since President Clinton signed Executive Order 12898 (The United States Commission on Civil Rights 2003), poor communities and communities of color are still overexposed to environmental harms. While the term environmental justice (EJ) is usually associated with empowerment, struggle, and community, there is a small but growing empirical literature that examines the effectiveness of EJ initiatives to improve vulnerable communities' environments in the U.S.A. While the EJ movement has achieved great strides, which should not be discounted, we argue that, with the exception of blocking new projects and preventing the expansion of existing projects, the movement has not improved the environmental quality of vulnerable populations. Moreover, given the diversity of who and what constitutes EJ activism, there are not necessarily clear definitions of what constitutes success and failure. Researchers invariably blame the state for such problems and offer measured policy recommendations (Konisky 2015). However, as radical scholars, we know that such failings cannot be addressed solely by tinkering with policies, and are, in fact, linked to a larger political context. Given that EJ is a form of class and racial struggle, the (in)ability to achieve EJ must be seen in explicitly political terms (Faber 2008).

In this paper, we do not attempt to assess the success and failure of the entirety of the EJ movement; instead, we focus on the interactions between EJ activists and the state. We do this because for the most part, activists have not only prioritized engaging with the state, but have done so with the expectation of positive results. They have believed that by working closely with regulators, through regulatory attention, judicial action, and the

implementation of the EO, the conditions in their communities would improve. There are several reasons for this belief, including the early passage of EO 12898, the deep influence of the civil rights movement that EJ stems from (Cole and Foster 2001, 20–26), and, for some communities, a lack of clear alternatives. Given the hegemonic nature of liberal thinking in the U.S.A., many communities cannot and do not think outside of the framework created by the state. Relying on the state is understandable given that capital is not about to address the needs of vulnerable communities if it impacts profits or flexibility. Indeed, as Harrison (2015) argues, insisting that the state has the responsibility to address such concerns is a radical act. But has it actually worked? By beginning a discussion of a reassessment of movement strategies at the point of the state, we not only build on work that examines the failures of the neoliberal racial state to address EJ concerns (Kohl 2015; Kurtz 2009; Pulido 2015), but we also hope to encourage scholars to look at other aspects of EJ failure. If the movement is to progress, it is essential to pause and assess. The need for a vital EJ movement is more important than ever, as we grapple with climate justice and the environmental struggles of the poor across the globe.

To do this, we first discuss what constitutes failure and success and why the movement and its supporters have been reticent to discuss failure. Second, we review the existing literature on EJ efficacy. Third, we offer two case studies of failure based on distinct forms of state inaction. The cases are significant because the extant scholarship consists of quantitative analyses based on large datasets. Consequently, we have limited insight into the dynamics of place-based failure. Exide Technologies in Southern California represents a spectacular case of inability/unwillingness to enforce the law. In contrast, the Gainesville, Georgia case represents a lack of regulation and political will. We conclude with what these lessons might mean for the future of the EJ movement.

## **The Politics of EJ Success and Failure**

Let us be clear: there is no such thing as a “failed” progressive social movement. Whatever concrete gains a movement may or may not achieve, movements always embody success insofar as they create heightened levels of political consciousness, they increase political capacity, they challenge dominant discourses, and they manifest disagreement with the status quo. There are also less tangible but equally important contributions that sometimes can only be discerned in hindsight. For example, a particular social movement may be a single drop in a sea of discontent that ultimately produces a tidal wave. Social movements also leave historic and geographic traces which others may subsequently build upon.

The scope and complexity of determining success and failure of any social movement is difficult to discern. Within EJ it is exacerbated by the diversity of

the movement, the scale over which we measure success and failure, and who is defining it (Sze et al. 2009). Moreover, since activists are often confronting a specific environmental harm in their community, success or failure is often measured by whether they successfully move or resist a specific environmental harm. While these victories are critical for those living in the impacted communities, focusing so heavily on specific victories can potentially obscure the larger structural dynamics that systematically oppress vulnerable communities. Furthermore, even in cases of initial success, it is possible that it may later turn into failure. For example, activists have fought to protect their communities against environmental harm only to be displaced through processes of gentrification (Checker 2011).

For leftists, it is understandably difficult to critique the political activism of working class people, people of color, and others struggling against capitalism and racism. Not only are these efforts that we wish to support, but these activists produce a larger culture of resistance, which is desperately needed. EJ activists are on the front lines battling capitalism's continual search to displace the costs of doing business. Moreover, most EJ activists are not EJ activists because they want to be but because they have no choice but to be. Their communities, families and bodies are assaulted by pollutants they seek to expel from their communities. It is precisely because their work is so important that we need to critically engage with the movement. Coming from a position of solidarity, we would like to suggest that the EJ movement, by prioritizing state engagement, has had only minimal success in improving the environments of vulnerable populations, aside from blocking new projects and the expansion of existing ones. Given our focus on the interactions between the state and EJ activists, we now turn to a discussion of the successes and failures of the EJ movements' reliance on the state to achieve its goals. We realize that some may find our claims to be a stretch, arguing that perhaps some state programs are worthwhile and effective, or that perhaps it is not the job of movement activists to develop effective regulation. But seen from a social movement perspective, a capitalist state will only respond to the demands placed on it by activists. Although the state is a site of continuous racial and class struggle we have not seriously unpacked how the movement has approached it.

Perhaps the central EJ achievement from a policy perspective is EO 12898, a direct response to the movement's demands. The EO mandated all federal agencies consider EJ issues in their activities. While some point to the EO as an example of the power and success of the movement, others argue that it lacks the power of law. Turning it into law has become a goal for many. Regardless, an analysis of how the EO has been implemented indicates failure. A hearing conducted by the Civil Rights Commission, concluded that although "there has been some limited success in implementing" the EO, "significant problems and shortcomings remain" (The United States

Commission on Civil Rights 2003). Most of the “limited successes” refer to creating administrative infrastructure and allowing greater public participation – not in improving communities’ environments. Indeed, it found that the U.S. Environmental Protection Agency (EPA) had failed to “embrace the notion that the distribution of environmental benefits and burdens is based on race, income, and political power” (126). These findings were subsequently confirmed by an evaluation conducted by an outside agency (Deloitte Consulting 2011).

Research has shown that EJ principles have been ineffectively integrated into environmental decision-making processes. Guana (2015), for instance, studied the record of the Environmental Appeals Board. The Board, which is a part of the EPA, hears challenges to permitting decisions, which she considers to be a “gateway” issue. She found that the Board, created in 1992, has never once blocked a decision based on EJ considerations. Likewise, Noonan (2015) studied the discretionary space that the EPA has when developing regulations and found that it consistently overlooked EJ issues in favor of universal coverage.

EJ failure can also be documented in the courts. To date, eight EJ lawsuits have been filed based on the Equal Protection Clause of the 14th amendment. All have failed (Gerrard and Foster 2008; Gross and Stretesky 2015). A key reason for these failures is the contracted definition of discrimination since the Supreme Court’s 2001 *Alexander v Sandoval* decision. The court ruled “a government action that might have a discriminatory impact is not unconstitutional unless the decision maker had a discriminatory *intent*, which is something that is very hard to prove” (Cole and Foster 2001, 126; italics in original).

Distinct, but related to lawsuits, are Title VI Complaints. These are complaints filed in response to perceived discrimination by a public agency using Federal funds. Title VI was encouraged by the Clinton administration as a way of achieving greater EJ. As of January 2014, 298 complaints have been filed and only one has been upheld. This is a success rate of .3%. Such consistent failure is truly breathtaking in scope (Gordon and Harley 2005), and, according to Mank (2008), is due to a massive lack of political will. The single case that was upheld – acknowledging that Latina/o school children were disproportionately impacted by pesticides in rural California – failed to make substantive change in the community’s exposure. Instead, an agreement, between the EPA and the California Department of Pesticide Regulation that excluded the plaintiffs, called for greater monitoring and community outreach. Because they were excluded from the process, the plaintiff sued to abrogate the settlement. The court rejected the case, claiming it lacked the authority to intervene in how the EPA implemented a Title VI settlement (Kearn 2014). The end result was not that different from the 297 other cases that have been dismissed.

Another dimension of EJ failure is the extent to which environmental enforcement may be discriminatory (see, for example, Mennis 2005). A small but robust literature is beginning to address this question with mixed results. The overall body of work suggests that regulations are inequitably enforced, particularly in poor and Latina/o communities. Researchers have approached this question using different measurements of enforcement and geographic scales (Konisky 2009). While some studies found that African Americans were more likely to live near a High Priority Violator, others found that Black communities experienced regulation and enforcement comparable to, and in some cases, exceeding that of white communities. Konisky and Reenock (2013), drawing on Hamilton (1995), suggest that such patterns may be due to the perception of Black communities' heightened mobilization capacity. In contrast, researchers consistently find that Latina/o communities, who are seen as less likely to mobilize, experience less environmental enforcement. However, it is still too early to draw any firm conclusions, especially given the diverse methods and data. For instance, Lynch, Stretesky, and Burns (2004) found that when using census tracts there was no difference in the fines imposed on petroleum refineries between various communities, but when using zip codes, they found that refineries in poor and Latina/o communities received significantly lower fines.

A final register of EJ failure are state-based EJ initiatives. Over 30 states have adopted EJ initiatives. Many are limited and targeted, but a growing number are comprehensive, intended to weave EJ issues into all facets of government activity. Nevertheless, scholars have found that such comprehensive approaches, while impressive at first glance, may lack standards, accountability, and legal authority (Targ 2005). California, which began an EJ program in 1999, is frequently considered a leader. However, that has not necessarily translated into an actual improved environment for vulnerable communities. One study found that in state decision-making, EJ was reduced to a "special interest," precluding activists from realizing meaningful improvements (Sze et al. 2009). Even worse, when California passed the landmark Global Warming Solutions Act (AB 32) in 2006, EJ activists sued the California Air Resources Board because the proposal would increase the pollution experienced by vulnerable communities through its market-based program (London et al. 2013).

Given this overall conceptualization of EJ failure, one question we need to ask is "why?" Why have EJ activists, despite some very real successes, not been able to improve the environments of marginalized communities? It certainly is not for lack of effort. Two key reasons, we argue, include the particular historical moment in which EJ arose and the movement's heavy reliance on the state. Pulido (forthcoming) argues that a key reason for EJ failure at the federal level is simply historical timing. Seen within a larger historical context, EJ can be viewed as one of the last expressions of the Civil Rights

Movement (CRM). EJ surfaced in the 1980s when public support for racial claims was waning and racism was being explicitly employed by conservatives to promote a neoliberal agenda (Duggan 2003). Neoliberalism initiated direct attacks on both antiracist claims and on environmental regulatory structures and practices. Holifield (2007) has argued that EO 12898 is a prime example of neoliberal regulation. It offers enhanced public participation, standardization via geographic information sciences, and economic opportunity, but it does not actually help communities challenge environmental discrimination.

A different, and potentially more contentious, explanation for limited EJ success is the movement's continual participation in frameworks established by the state. From early on, many in the EJ movement viewed the state as key to its strategy, believing that it could or would improve the environmental conditions of EJ communities. This is quite understandable, particularly if, once again, we place EJ within the context of the CRM, which did achieve meaningful changes through this strategy. But after 30 years, the EJ movement does not seem to have produced significant change. There are several reasons why this might be so. First, as Faber (2008) has argued, there has been significant "industry capture," in which environmental regulations are now largely controlled through the "polluter industrial complex." Closely related to this is co-optation. The state has integrated EJ activists and issues into its work. For example, the National Environmental Justice Advisory Committee (NEJAC) includes representatives from Valero Energy Corporation and Weyerhaeuser, along with deeply committed and astute activists (NEJAC 2013). Research has shown that anti-EJ forces on such boards can thwart meaningful progress (Lievanos 2012). Co-optation also works by creating processes that require community buy-in but are not actually designed to create significant change. For instance, the EPA has shifted increasingly to mediation and Alternative Dispute Resolution, the stated purpose of which is compromise, not the elimination of discrimination or pollution (The United States Commission on Civil Rights 2003, 104). EJ activists have had difficulty translating the political meanings and values associated with EJ to bureaucrats, resulting in greatly weakened programs (Lievanos 2012). Harrison (2015), in her study of EJ grant making, has shown how bureaucrats have fundamentally different ideas of what constitutes EJ. For instance, she found that grant programs typically discourage projects that challenge industry or the state, instead promoting individual behavior modification. Those who continue to fight for change in their communities are not naive. They may no longer believe in the power of the state to improve conditions but such is the power of the neoliberal state that they do not see other viable options.

In short, while the EJ movement has been successful in many ways, including politicization and blocking new hazardous projects and in specific instances removing or remediating harmful environments, overall it has not been successful in creating more healthy environments for less powerful

communities. Through two case studies, one in California and one in Georgia, we provide examples where despite continued activism, the EJ framework has failed to improve the environmental conditions in two communities of color. Through these grounded cases we examine distinct versions of failure – one where regulations were explicitly ignored and one where no regulations existed in the first place.

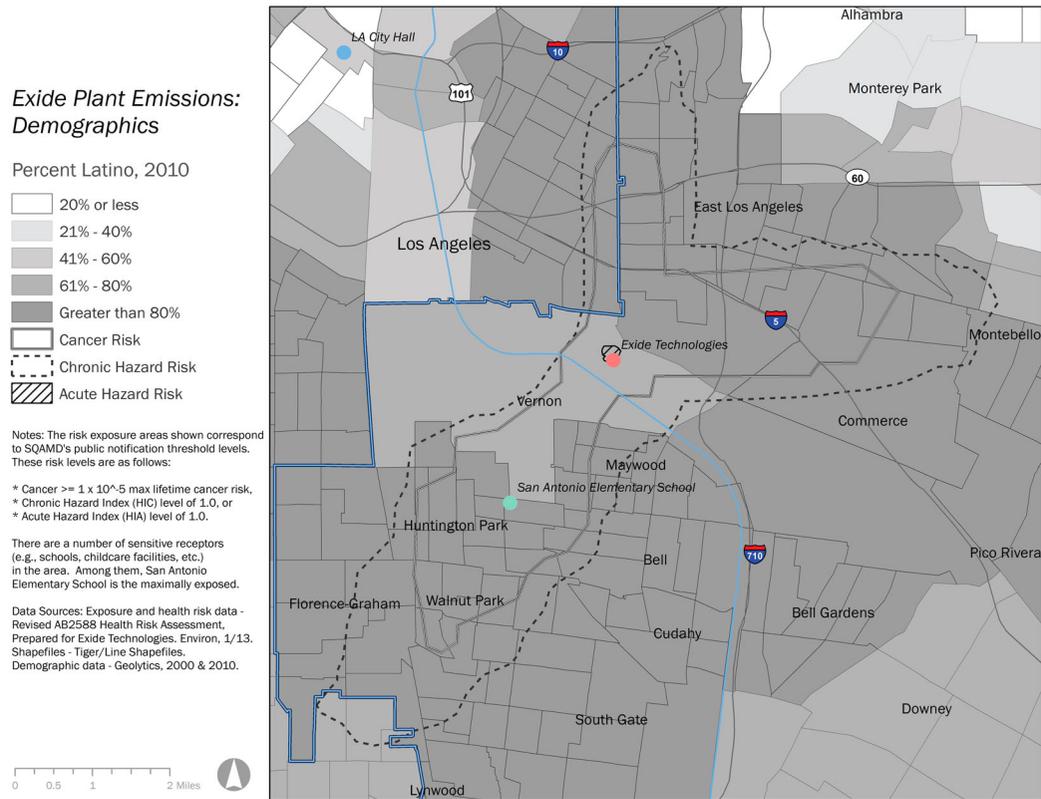
### Exide Case Study

The struggle between Exide and the community of Southeast Los Angeles is a prime example of how state regulators have failed to enforce environmental laws despite profound violations, scientific evidence of harm, and pressure from community activists. Exide, an egregious polluter, is a national battery recycling company headquartered in Georgia with plants in 80 countries and across the U.S.A. Until 2013, Exide was one of the nearly 30 major hazardous waste facilities operating on expired permits in California (Garrison, Christensen, and Poston 2013). Communities impacted by Exide's toxic dust include Bell, Boyle Heights, East LA, Huntington Park, and Maywood (see Figure 1), predominantly Latino and working class communities. Residents have complained that lead and arsenic emissions from the plant have caused various illnesses including respiratory diseases, cancer and neurological disorders.

The Vernon facility, which has been in operation since 1981 under an interim status, has had issues with EPA compliance prior to Exide taking over in 2000. The Department of Toxic Substance Control (DTSC) first cited the facility for numerous violations in May 1987, when GNB Technologies owned the plant. From 1989 to 1992 DTSC authored numerous letters to GNB outlining copious hazardous waste violations. However, GNB did not pay penalties for these infractions until July 1993 when it was fined \$162,500 (Trigilio 1996). Both the pace of enforcement and the miniscule penalties indicated DTSC's priorities: support for businesses over public health.

In 1992 community activists gathered in Sacramento to petition the DTSC to ensure companies operating without full permits, like Exide, went through the proper channels to secure a permit and comply with current regulations. Temporary permits are typically awarded to give facilities time to meet federal standards. All facilities eventually obtained full permits except Exide. According to a DTSC spokesperson, "regulators do not have a good explanation for the plant's continued operation without a full permit" (Garrison, Christensen, and Poston 2013).

Over the years, community and environmental groups have fervently kept the case in the media spotlight, holding public hearings and protests, getting coverage in the *Los Angeles Times* and working with public officials to keep



**Figure 1.** Exide plant location and emissions by percent Latina/o.  
 Source: Program for Environmental and Regional Equity, University of Southern California.

pressure on DTSC to act more aggressively. Despite these efforts, the Vernon facility continued to operate under a temporary permit for decades. From 2000 to 2013, Exide was cited 41 times for excessive lead emissions and allowed to continue operations (Garrison, Christensen, and Poston 2013). In January 2014 East Yard Communities for Environmental Justice (EYCEJ) went to Sacramento to support Senate Bill 712 and Senate Bill 812. SB 712, authored by Senator Ricardo Lara of Long Beach, proposed that all facilities operating under a temporary permit obtain a permanent one by July 2015 or have their permit revoked. SB 812, authored by Senator Kevin de León, addressed the DTSC's internal challenges by setting a three-year deadline for issuing permits, requiring greater public disclosure, and establishing a public oversight committee (Barboza 2014b). In October 2014, Governor Jerry Brown vetoed SB 812 citing problems with Senator de León's language in the bill. However, SB 712 was signed into law, providing a mechanism for plant closure.

In February 2015 Communities for a Better Environment (CBE) and EYCEJ organized a protest of 200 residents in response to eight additional violations. Activists expressed rage that a permanent closure had not occurred given the multiple infractions. Protesters accused DTSC of environmental racism, contrasting their long battle for action with the relatively fast closure of Exide's identical facility in Frisco, Texas where residents are affluent and predominantly white (CBE 2015).

In April 2013, DTSC took legal action to temporarily suspend operations at the Vernon plant. The closure was precipitated by the discovery that a degraded pipeline under the plant was continuously leaking hazardous waste into the soil (Garrison and Christensen 2013). However, the Los Angeles Superior Court sided with Exide's argument that the toxins did not pose an imminent and substantial danger and regulators were acting under public and political pressure (Christensen and Garrison 2013). The South Coast Air Quality Management District (SCAQMD) held several public meetings in fall 2013 concerning a possible closure. The judge's decision to allow the facility to re-open operations was inconsistent with the findings from a study earlier that year which revealed 111,000 residents faced an elevated cancer risk (Garrison and Zarembo 2013). Further, the SCAQMD affirmed the plant posed the highest cancer risk of the 450 facilities they had overseen in the past 25 years (Garrison 2013). The battle for a temporary shut-down or full permitting continued for over a year.

DTSC also proved ineffectual in holding Exide accountable for violations and enforcement of safety standards. Two of DTSC's structural problems included a revolving door of leadership, with seven directors in ten years, and budget constraints. DTSC underscored its incompetence when it neglected to collect \$184.5 million in fines assessed on polluters simply because it failed to bill them. Likewise, the Department took no aggressive action to

collect nearly \$45 million in fines when facilities were billed yet did not pay (Garrison, Christensen, and Poston 2013).

Due to the inconsistency of penalties and lack of government enforcement, community activists and elected officials were skeptical when the County Bureau of Toxicology and Environmental Assessment oversaw a blood lead testing program in 2013. Some residents were especially suspicious since the testing was funded by Exide. Accordingly, after four months, only 180 people had been tested, although 180,000 were eligible. Critics blamed poor advertising for the low participation rate. In contrast, Texas health officials collected 600 samples in four days when free blood screening was offered to the predominantly white, middle class residents near Exide's Frisco, Texas facility (Barboza 2014a). Bell city councilman, Nestor Valencia, called the testing a "PR stunt" (Garrison, Zarembo, and Vives 2013). EJ organizations such as CBE and EYCEJ recognized the county's blood testing as an unconvincing "performance" of EJ.

In 2014, Exide was ordered to pay for soil testing and remediation of lead in yards. Every home tested in the area with an elevated cancer risk had lead levels above 80 parts per million – the threshold for remedial action (Garrison 2014). Exide denied responsibility, suggesting that the elevated lead levels may have originated from other facilities or lead paint in residents' homes (*The Los Angeles Times*, August 24, 2015).

Due to mounting lawsuits, in March 2015 Exide agreed to permanently close the Vernon facility rather than face prosecution for environmental crimes. The agreement included paying \$50 million for cleanup to avoid criminal charges. The cleanup was projected to be the largest in history – involving as many as 10,000 homes. As of August 2015, DTSC had supervised the removal of soil from 150 homes at a cost of over \$40,000 (Barboza 2015). Since the lead contamination has affected between 5000 and 10,000 homes, total costs range from \$200 to \$400 million (*The Los Angeles Times*, August 24, 2015). The \$9 million DTSC initially earmarked for lead cleanup is clearly inadequate. With the plant closure, activists have shifted their efforts to removing DTSC as the agency overseeing the cleanup.

The closure of Exide in early 2015 cannot be seen as a victory, given the toxicity left in its wake. The Exide case exemplifies failure because of the continued inability of two enforcement agencies, the SCAQMD and the DTSC, to protect the public. Although CBE and EYCEJ persisted in their efforts to keep the story in the press, which was critical to generating public outrage, at the end of the day, the local residents are *still* living in contaminated neighborhoods, although there are no longer continued emissions.

## **The Newtown Case Study**

In Newtown, people are forced to live with the consequences of industrial neighbors not because regulations are ignored but because there are no

regulations to protect the community. This lack of regulation, which is invariably coupled with a lack of political will, occurs for two reasons – first, there are some facilities, like a local junkyard, which are “too small” to regulate – their emissions are too small to fall under the purview of state and federal regulators. Second, industrial pollution is regulated by individual facility; hence, regulations do not consider the cumulative impacts of multiple polluting facilities (Allen 2003; Morello-Frosch et al. 2011; Novotny 1998). The fact that there are no regulations to address the possessive, community’s concerns is the problem.

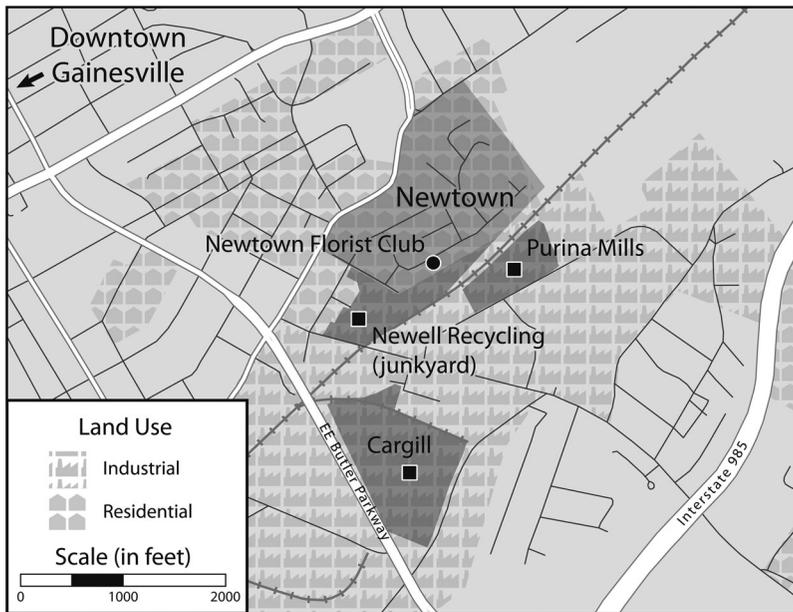
Newtown is a historically Black neighborhood in Gainesville, Georgia in the Southeastern U.S.A. Like the other Black and Latina/o communities on Gainesville’s southside, residents’ daily lives are dominated by the compounding impacts of industries. Newtown experiences additional challenges – it was built on a landfill in 1937 after a tornado devastated downtown Gainesville (Friddell 1993). There are 14 polluting industries within a one-mile radius from the geographic center of the neighborhood – including Cargill Inc. and Purina Mills, which are approximately 800 feet and 1200 feet from the southwestern edge of the neighborhood. The CSX railroad runs adjacent to southern border of the neighborhood. A junkyard sits next to people’s homes, as seen in Figure 2.

Since industries are regulated individually, it is difficult to quantify the cumulative stresses of multiple industries. The Newtown Florist Club (NFC), a social and EJ organization that has been active in the community since 1950, has attempted to quantify community impacts. They petitioned state and federal regulators to carry out health and environmental assessments and partnered with university researchers. They also conducted health and quality of life surveys and enacted community environmental monitoring. The results have been varied. A lupus and a cancer cluster were discovered, but state researchers asserted that the cancer cluster was due to “lifestyle choices” (smoking and drinking) and did not consider the role of industrial pollution (Kardestuncer and Frumkin 1997; McKinley and Williams 1990). University partners who reviewed these studies found methodological flaws that underestimated the extent of clusters. They also criticized the studies for using short-term data and for blaming community members without considering the impact of surrounding industries (Roskie et al. 2008).

Community residents identify noise and dust pollution, primarily from the junkyard, as negatively affecting their quality of life (Johnson, Heynen, and Shepherd 2009). In 2008 environmental consultants measured noise levels between 55 and 93 dBA adjacent to the junkyard at 157 Norwood Street (Figure 2). These levels were 15–53 dBA louder than a typical residential neighborhood and at times exceeded 85 dBA, the Occupational Safety and Health Administration’s threshold for requiring hearing protection.<sup>1</sup>

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<sup>1</sup>The typical national ambient background noise level of a neighborhood is 40 dBA.



**Figure 2.** Map of Newtown neighborhood and surrounding industries. Prepared by Carl Sack.

Therefore, if Newtown was a worksite, for some residents, hearing protection would be required at their homes (Roskie et al. 2008, 14). Environmental consultants also measured visual dust and found that all observations exceeded the recommended standards of visible emissions (2008).<sup>2</sup>

Gainesville's southside embodies what Nixon (2011, 2) calls slow violence, or "a violence that occurs gradually and out of sight, a violence of delayed destruction that is dispersed across time and space, an attritional violence that is typically not viewed as violence at all." The NFC has drawn attention to this slow violence through formal and informal processes. In the 1990s the burgeoning EJ movement gave them a language to describe and contextualize the connection between surrounding industries and the fact that people in their neighborhood were dying of the same types of cancer and lupus. We now turn to NFC's efforts to use regulatory pathways to relocate the junkyard adjacent to their homes. Despite myriad and creative attempts, they have yet to achieve this goal.

The junkyard was legally established in 1967, with unanimous approval from the Gainesville Board of Zoning and Appeals, at 859 Athens Street –

<sup>2</sup>Dust measurements were made using EPA method 9, which uses a natural sky background to determine opacity for black and white smoke, and Method 22, which measures observations of any visible fugitive dust over a given time period (Eastern Technical Associates and Entropy Environmentalist, Inc. 1993; Roskie et al. 2008, 17).

adjacent to 26 homes and one church in the Newtown neighborhood (Figure 2) (Board of Zoning Appeals Minutes 1967; Roskie et al. 2008, 14). The fact that it is legally zoned is an important point of contention for both community members and lawmakers. City officials, both elected and career, concede that a junkyard should have never been located next to people's homes. City officials point to the historic, legal allowance as justification for their inaction to move the junkyard. As Skylar, who works for the City of Gainesville explains, "it's a historical situation ... I hated that it was created the way it was then because ... We would never do that today ... I'm not saying we can't do it but it makes it a lot harder to correct something that legally exists today" (interview with author, 20 March, 2013). Taylor, who also works for the City of Gainesville, echoes these sentiments and adds the caveat that was universal among city officials, "none of us that are here now created any of that [the junkyard] and we want to do everything we can to help, but there are limits to what can be done" (interview with author, 27 March, 2013).

EJ communities were created through historical processes; they remain so through the maintenance of the status quo. While city planners recognize the historical wrongs that led to inequitable land use, they point to these processes to explain existing injustices rather than see how their own actions contribute to them. If historical land use decisions are not explicitly addressed and rectified, local governments and planners, perhaps unintentionally, perpetuate environmental racism. The junkyard was zoned legally, but it is the lack of political will that allows it to stay where it is – a lack of regulatory action and effective enforcement.

Not only is the junkyard legally zoned, but residents' primary complaints, noise and dust pollution, are unaddressed because it is too small to be subject to federal and state monitoring requirements. The junkyard must abide by the Georgia Regulated Metals Recycling Law (O.C.G.A §§10-1-350 through 10-1-363), which manages the purchasing and selling of metals, but does not include environmental provisions. The junkyard has a storm water discharge permit from the Georgia Environmental Protection Division, which they renew annually. EPA regulates waste and recycling facilities through the Resource Conservation and Recovery Act (RCRA), but since the junkyard does not deal with hazardous materials, although it can be inspected by RCRA at any time, it is not inspected regularly.

Working in conjunction with members of the NFC, the University of Georgia Land Use Clinic proposed changes to Gainesville's Air Pollution and Noise Ordinances to address this lack of regulations. The changes, which were presented to the Gainesville City Council in November 2008, provided specific regulations for dust and noise pollution (see Roskie et al. 2008, 23–33). The changes were never implemented. Taylor, a Gainesville city official, justified the city's refusal to implement the proposed changes because of

concerns of how the ordinances would impact other industries, “I think the hard thing from the city[’s] standpoint [is that] regulations have to apply to everybody ... So, you’re maybe focused on one person [the junkyard], but there is a ripple of unintended consequences sometimes” (Taylor, interview with author, 27 March, 2013). Taylor’s sentiments, which were echoed by other city officials, demonstrate the lack of political will to solve Newtown’s problems. Since the junkyard is not breaking any specific laws, from their viewpoint city officials can claim they have done what they could within the existing regulatory framework. While sufficient for governmental officials, from the perspective of the community, it is not enough.

Despite the myriad attempts by the women of the NFC to invoke a regulatory framework to move the junkyard, they have thus far failed. The political will on the part of the local state to either move the junkyard or change the regulations does not exist. Moreover, the junkyard is just one of 14 polluting industries within a one-mile radius of their homes. Even if the NFC succeeds in moving the junkyard, there would still be 13 other industries to contend with. It is important to note that *none* of these industries are currently in violation of state or federal environmental regulations. There have been isolated incidents when they have been fined, primarily for air violations, but the issues were often remedied quickly. As Ms Rose Johnson, the current executive director of the NFC, explains, even if the junkyard is moved, it will not address the issues at the core of the environmental injustices – racial injustice. It is only when issues of environmental racism are addressed and remedied that a true solution to the injustices facing Newtown could be implemented.

## Conclusion

We have argued that through its reliance on the state the EJ movement has not been successful at improving the environmental quality of vulnerable populations. Exide Technologies illustrates the inability and/or refusal of diverse parts of the state to enforce existing laws. The many reasons for this include a lack of awareness, the judiciary’s willingness to strike deals, and the local regulatory agency’s failure and/or unwillingness to close the facility when it did not comply with regulations. In the second case, a predominantly Black community in Gainesville Georgia has not been able to secure a clean environment for decades. Here, no laws are being broken. Rather, there is an absence of meaningful regulation and enforcement, especially concerning small emitters. The local state consistently tells activists that its hands are tied and that nothing can be done, when in reality, the inaction reflects a lack of political will. Though certainly there is room for enhanced regulatory science and policy practices, especially around cumulative exposure (Sadd et al. 2011), it should be clear that the problem is primarily one of politics.

The question we are left with is “why?” Why have these communities and the larger EJ movement been unable to extract meaningful protection from the state? Part of the challenge in answering this question is the diversity of the EJ movement, the myriad challenges individual communities face, and the various measures of success within and outside the movement. Despite this diversity, we feel there are important overarching themes. The first point to stress is the extent to which vulnerable communities, in this case communities of color, are essential to the functioning of racial capitalism. Racial capitalism is a distinct interpretation of capitalism that acknowledges race as a structuring logic (Robinson [1983] 2000). Racism, as a material and ideological system that produces differential meaning and value, is harnessed by capital in order to exploit the differences that racism creates. In this case, devalued communities, places, and people serve as pollution “sinks,” that enable firms to accumulate more surplus than would otherwise be possible (see also Faber 2008, ch. 1).

We must bear this fundamental truth in mind when considering how the EJ movement has imagined the state and approached it. There is no doubt that activists understand that they are essential to racial capitalism, even if they do not express it in those terms. But they seem to believe that the state will actually protect them. Accordingly, they approach the state with a great deal of faith and hope. This is especially the case in California with its many Latina/o politicians. Hope and faith are not the only emotions that accompany interactions with the state, however. There is also distrust, disappointment, and desperation. In the case of the NFC, who have worked with EPA Region 4 for over 25 years and seen little change in the community, they still feel that the EPA is the only option, even if they are pessimistic that such efforts will actually result in meaningful change. *The fact that activists continually turn to the state and see it as the only option suggests the hegemony of the state in terms of creating social change:* activists cannot readily identify paths outside of the framework offered by the state. It is important here to recall the deep connections between the CRM and the EJ movement. While Swyngedouw and Heynen (2003) have argued that the EJ movement is a fundamentally liberal project, we believe that the movement includes a diversity of political orientations, including some quite radical and some more conservative (Carter 2016). Yet, there is no denying that the movement’s dominant strand is liberal. Indeed, Pellow and Brulle (2005) have advocated for a *critical* EJ studies. As a primarily liberal movement, EJ seeks to address the most problematic aspects of capitalism and racial domination, without necessarily challenging capitalism or the state’s efforts to protect it. Perhaps EJ is following the path of many other social movements, splintering between more liberal and radical factions. Liberal groups will continue to work *with* the state, while the latter *confronts* it, perhaps through alliances with anarchist and/or anti-capitalist formations, with environmentalists from the Global

South, or with counterhegemonic identity movements, such as Black Lives Matter.

Using conventional strategies, especially relying on the state in this neoliberal era, will not produce conditions that compel polluters to stop. The state is not about to eliminate the necessary “sinks” that communities of color provide, for fear of both capital flight and the wrath of conservatives. Instead, the state gives lip-service to EJ but in fact does little to change the materiality of disproportionate pollution patterns. In the case of Exide, it was only after the story had been publicized for years by the *Los Angeles Times* that the facility was finally closed down. The inability of regulators to control Exide became a joke, and the legitimacy of state and local regulators was threatened.<sup>3</sup> And recall, Exide decided to close *instead* of facing criminal charges.

What is needed on the part of the EJ movement is a fundamental rethinking of its attitude towards the state. Instead of seeing the state as a helpmate or partner, it needs to see the state as an adversary and directly challenge it. While the early EJ movement did this, over the decades it has been increasingly co-opted by the state and lost much of its oppositional content. It can regain its radical position by not only challenging the state, but refusing to participate in regulatory charades. The EJ movement should take a page from Black Lives Matter. *It's not about being respectable, acknowledged, and included. It's about raising hell for both polluters and the agencies that protect them.* Given the planetary crisis we are facing, we need a radicalized EJ movement more than ever.

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## References

- Allen, Barbara. 2003. *Uneasy Alchemy: Citizens and Experts in Louisiana's Chemical Corridor Dispute*. Cambridge, MA: MIT Press.
- Barboza, Tony. 2014a. “Few Undergo Exide Testing.” *Los Angeles Times*, August 20, AA6.
- Barboza, Tony. 2014b. “Toxics Bill Veto Draws Criticism.” *Los Angeles Times*, October 2, AA3.
- Barboza, Tony. 2015. “Exide Cleanup: Toxic Lead Removal Could Be California's Biggest Yet.” *Los Angeles Times*, August 18. <http://www.latimes.com/local/lanow/la-me-ln-exide-cleanup-20150817-story.html>.
- Board of Zoning Appeals Minutes. 1967. “Minutes of Zoning Board of Appeals Meeting of April 20, 1967.” Gainesville, GA.

<sup>3</sup>See, for example, *Curbed LA* and its ongoing reporting on Exide. (<http://la.curbed.com/tags/exide-technologies>). Accessed October 25, 2015.

- Carter, Eric. 2016. "Environmental Justice 2.0: New Latino Environmentalism in Los Angeles." *Local Environment: The International Journal of Justice and Sustainability* 21 (1): 3–23. doi:10.1080/13549839.2014.912622.
- CBE (Communities for a Better Environment). 2015. "Residents Call for Shut Down of Exide." February 10. <http://www.cbecal.org/press-release-residents-call-for-shut-down-of-exide/>.
- Checker, Melissa. 2011. "Wiped Out by the 'Greenwave': Environmental Gentrification and the Paradoxical Politics of Urban Sustainability." *City & Society* 23 (2): 210–229.
- Christensen, Kim, and Jessica Garrison. 2013. "Uproar Swells Over Toxic Sites." *Los Angeles Times*, July 13, A1, A2.
- Cole, Luke, and Sheila Foster. 2001. *From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement*. New York: New York University Press.
- Deloitte Consulting. 2011. *Evaluation of the EPA Office of Civil Rights*. Final Report, March 21. Washington, DC. [http://epa.gov/epahome/ocr-statement/epa-ocr\\_20110321\\_finalreport.pdf](http://epa.gov/epahome/ocr-statement/epa-ocr_20110321_finalreport.pdf).
- Duggan, Lisa. 2003. *The Twilight of Equality? Neoliberalism, Cultural Politics, and the Attack on Democracy*. Boston: Beacon.
- Eastern Technical Associates and Entropy Environmentalist, Inc. 1993. *Visible Emissions Field Manual EPA Methods 9 and 22*. Washington, DC: US Environmental Protection Division, EPA 340/1 -92-004. <http://www3.epa.gov/ttnemc01/methods/VEFieldManual.pdf>.
- Faber, Daniel. 2008. *Capitalizing on Environmental Injustice: The Polluter-Industrial Complex in the Age of Globalization*. Lanham, MD: Rowman & Littlefield.
- Friddell, Michael. 1993. *An Investigation of Environmental Conditions at a Previous Landfill in the Newtown area of Gainesville, Georgia*. Atlanta, GA: Georgia Department of Natural Resources Environmental Protection Division Georgia Geologic Survey.
- Garrison, Jessica. 2013. "Vernon Plant Put on Notice." *Los Angeles Times*, March 24, A27–A30.
- Garrison, Jessica. 2014. "Elevated Lead Levels Found Near Exide." *Los Angeles Times*, March 11.
- Garrison, Jessica, and Kim Christensen. 2013. "Battery Recycler Has Tainted Soil and Poses an 'Unacceptable Risk to Human Health,' a State Official Says." *Los Angeles Times*, April 25, A1, A9.
- Garrison, Jessica, Kim Christensen, and Ben Poston. 2013. "State is Slow to Act Against Toxic Waste." *Los Angeles Times*, December 27.
- Garrison, Jessica, and Alan Zarembo. 2013. "Exide Will Pay for Blood Tests." *Los Angeles Times*, September 13, A1, A4.
- Garrison, Jessica, Alan Zarembo, and Ruben Vives. 2013. "Value of Blood Tests Near Exide Plant Questioned." *Los Angeles Times*, September 14.
- Gerrard, Michael, and Sheila Foster. 2008. *The Law of Environmental Justice*. Chicago: Section of Environment, Energy, and Resources, American Bar Association.
- Gordon, Holly, and Keith Harley. 2005. "Environmental Justice and the Legal System." In *Power, Justice and the Environment: A Critical Appraisal of the Environmental Justice Movement*, edited by David Pellow and Robert Brulle, 153–170. Cambridge, MA: The MIT Press.
- Gross, Elizabeth, and Paul Stretesky. 2015. "Environmental Justice in the Courts." In *Failed Promises: Evaluating the Federal Government's Response to*

- Environmental Justice*, edited by David Konisky, 205–231. Cambridge, MA: The MIT Press.
- Guana, Eileen. 2015. “Federal Environmental Justice Policy in Permitting.” In *Failed Promises: Evaluating the Federal Government’s Response to Environmental Justice*, edited by David Konisky, 57–83. Cambridge, MA: The MIT Press.
- Hamilton, James. 1995. “Testing for Environmental Racism: Prejudice, Profits, Political Power?” *Journal of Policy Analysis and Management* 14 (1): 107–132.
- Harrison, Jill Lindsey. 2015. “Coopted Environmental Justice? Activists’ Roles in Shaping EJ Policy Implementation.” *Environmental Sociology* 1 (4): 241–255. doi:10.1080/23251042.2015.1084682.
- Holifield, Ryan. 2007. “Neoliberalism and Environmental Policy.” In *Neoliberal Environments: False Promises and Unnatural Consequences*, edited by Nik Heynen, James McCarthy, and Paul Robbins, 202–216. New York: Routledge.
- “How to Pay for Cleaning Up the Exide Mess.” 2015. *Los Angeles Times*, August 24. <http://www.latimes.com/opinion/editorials/la-ed-exide-20150824-story.html>.
- Johnson, Cassandra, Nik Heynen, and Marshall Shepherd. 2009. “Crossing Jesse Jewell: A Comparison of Environmental Perception and Green Space Activity in Five Hall County, GA Neighborhoods.” Report to the United States Department of Agriculture Forest Service.
- Kardestuncer, Tarik, and Howard Frumkin. 1997. “Systemic Lupus Erythematosus in Relation to Environmental Pollution: An Investigation in an African-American Community in North Georgia.” *Archives of Environmental Health: An International Journal* 52 (2): 85–90.
- Kearn, Rebekah. 2014. “Toxic Exposure Claims Won’t Move Forward.” *Courthouse News Service*, January 20. [http://smfws.com/articles2014/january\\_2014/art01202014.html](http://smfws.com/articles2014/january_2014/art01202014.html).
- Kohl, Ellen. 2015. “Surviving Unregulatable Places: Race, Gender, and Environmental Justice in Gainesville, GA.” PhD diss., University of Georgia, Athens, GA.
- Konisky, David. 2009. “Inequities in Enforcement? Environmental Justice and Government Performance.” *Journal of Policy Analysis and Management* 28 (1): 102–121.
- Konisky, David. 2015. *Failed Promises: Evaluating the Federal Government’s Response to Environmental Justice*. Cambridge, MA: The MIT Press.
- Konisky, David, and Christopher Reenock. 2013. “Compliance Bias and Environmental (In)Justice.” *The Journal of Politics* 75 (2): 506–519.
- Konisky, David, and Christopher Reenock. 2015. “Evaluating Fairness in Environmental Regulatory Enforcement.” In *Failed Promises: Evaluating the Federal Government’s Response to Environmental Justice*, edited by David Konisky, 173–203. Cambridge, MA: The MIT Press.
- Kurtz, Hilda E. 2009. “Acknowledging the Racial State: An Agenda for Environmental Justice Research.” *Antipode* 41 (4): 684–704.
- Lievanos, Raoul. 2012. “Certainty, Fairness, and Balance: State Resonance and Environmental Justice Policy Implementation.” *Sociological Forum* 27 (2): 481–503.
- London, Jonathan, Alex Karner, Julie Sze, Dana Rowan, Gerardo Gambirazzio, and Deb Niemeier. 2013. “Racing Climate Change: Collaboration and Conflict in California’s Global Climate Change Policy Arena.” *Global Climate Change* 23 (4): 791–799.

- Lynch, Michael, Paul Stretesky, and Ronald Burns. 2004. "Determinants of Environmental Law Violation Fines Against Petroleum Refineries: Race, Ethnicity, Income and Aggregation Effects." *Society & Natural Resources* 17: 333–347.
- Mank, Bradford. 2008. "Title VI." In *The Law of Environmental Justice: Theories and Procedures*, edited by Michael Gerrard, and Sheila Foster, 22–65. Chicago, IL: American Bar Association.
- McKinley, T. W., and D. Williams. 1990. "Newtown Neighborhood Cancer Investigation, Gainesville, Georgia." (Available from the Georgia Department of Public Health, 2 Peachtree Street, Atlanta, GA.).
- Mennis, Jeremy. 2005. "The Distribution and Enforcement of Air Polluting Facilities in New Jersey." *Professional Geographer* 57 (3): 411–422.
- Morello-Frosch, Rachel, Miriam Zuk, Michael Jerrett, Bhavna Shamasunder, and Amy D. Kyle. 2011. "Understanding the Cumulative Impacts of Inequalities." *Environmental Health: Implications for Policy Health Affairs* 30 (5): 879–887.
- NEJAC (National Environmental Justice Advisory Committee). 2013. "National Environmental Justice Advisory Council Member Biographical Summaries." <http://www.epa.gov/environmentaljustice/resources/publications/nejac/members-exec-council-bios.pdf>.
- Nixon, Rob. 2011. *Slow Violence and the Environmentalism of the Poor*. Cambridge: Harvard University Press.
- Noonan, Douglas. 2015. "Assessing the EPA's Experience with Equity in Standard Setting." In *Failed Promises: Evaluating the Federal Government's Response to Environmental Justice*, edited by David Konisky, 85–116. Cambridge, MA: The MIT Press.
- Novotny, Patrick. 1998. "Popular Epidemiology and the Struggle for Community Health in the Environmental Justice Movement." In *The Struggle for Ecological Democracy: Environmental Justice Movements in the United States*, edited by Daniel Faber, 137–158. New York: The Guilford Press.
- Pellow, David, and Robert Brulle. 2005. *Power, Justice, and the Environment: A Critical Appraisal of the Environmental Justice Movement*. Cambridge, MA: The MIT Press.
- Pulido, Laura. 2015. "Geographies of Race and Ethnicity 1 White Supremacy vs White Privilege in Environmental Racism Research." *Progress in Human Geography* 39 (6): 809–817.
- Pulido, Laura. *Forthcoming*. "Personal Reflection." In *Handbook of Environmental Justice*, edited by Ryan Holifield, Jayajit Chakraborty, and Gordon Walker. New York: Routledge Press.
- Robinson, Cedric. [1983] 2000. *Black Marxism: The Making of the Black Radical Tradition*. Chapel Hill: University of North Carolina Press.
- Roskie, Jamie Baker, Ela Orenstein, Jamie R. Henderson, Michelle A. Keith, Jesse J. Ehnert, Kathryn Wurzel, Brenda Tolson, et al. 2008. *Health, environment, and quality of life impacts: Newtown community, Gainesville, GA*. Atlanta, GA: Newfields, LLC.
- Sadd, James, Manuel Pastor, Rachel Morello-Frosch, Justin Scoggins, and Bill Jesdale. 2011. "Playing It Safe: Assessing Cumulative Impact and Social Vulnerability through an Environmental Justice Screening Method in the South Coast Air Basin, California." *International Journal of Environmental Research and Public Health* 8 (5): 1441–1459.

- Swyngedouw, Erik, and Nik Heynen. 2003. "Urban Political Ecology, Justice and the Politics of Scale." *Antipode* 35 (5): 898–918.
- Sze, Julie, Jonathan London, Fraser Shilling, Gerardo Gambirazzio, Trina Filan, and Mary Cadesnasso. 2009. "Defining and Contesting Environmental Justice: Socio-natures and the Politics of Scale in the Delta." *Antipode* 41 (4): 807–843.
- Targ, Nicholas. 2005. "The States' Comprehensive Approach to Environmental Justice." In *Power, Justice, and the Environment: A Critical Appraisal of the Environmental Justice Movement*, edited by David Pellow, and Robert Brulle, 171–184. Cambridge, MA: The MIT Press.
- Trigilio, Razel. 1996. "US Environmental Protection Agency Inspection Report: GNB Technologies." EPA ID# CAD 097 854 541. February 13, 1997.
- The United States Commission on Civil Rights. 2003. *Not in My Backyard: Executive Order 12898 and Title VI as Tools for Achieving Environmental Justice*. Washington, DC: U.S. Commission on Civil Rights.