

Rachel's Environment & Health News
#770 – Environmental Justice and Precaution
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In the U.S., we all live in the same country, but we do not all live in the same environment. For example, a report just released by the Environmental Justice & Health Union in Oakland, Cal. examines U.S. government data and concludes that blacks and Hispanics are exposed to exotic industrial poisons more often and with greater intensity than whites.[1]

Key findings of the new report include:

** Blacks are more likely to be exposed to PCBs [polychlorinated biphenyls] and dioxins, compared to whites. PCBs and dioxins are associated with a host of diseases including cancer, diabetes, and damage to the immune system.

** Mexican-Americans are more likely to be exposed to pesticides and herbicides and are more likely to be exposed at high levels, compared to whites. Many pesticides and herbicides are associated with birth defects, cancers, and damage to the hormone system.

Of course environmental racism is not the only source of environmental injustice -- people with low income, no matter what their race, are much more likely to be exposed to contaminants in their daily lives (like diesel fumes, smog, and strong chemicals at work) and they are much more likely to suffer from chronic diseases like asthma, diabetes, cancer, high blood pressure, and stroke.

Children -- especially children of color, and children of low-income families -- are particularly prone to the injustice of toxic exposures that they did not invite, and were given no information or choice about. They also happen to be the ones most sensitive to harm from industrial poisons.

Often, environmental injustice can be traced to the cumulative impacts of numerous sources of contamination, all jammed into one part of town.

For example, people in the Waterfront South district of Camden, New Jersey live in housing nestled among two Superfund sites, a sewage treatment plant, a trash-to-steam incinerator, an Ogden co-generation plant, the Camden Iron and Metal works, the Jen-Cyn sheet metal plant and Comarco Pork Products. As if that weren't enough, before she left N.J. to head up George Bush's EPA, Governor Christie Whitman issued an air permit for a new St. Lawrence Cement plant which now dusts everyone in Waterfront South with a fine mist of powdered rock, day in and day out. (To see pictures of Waterfront South, go to http://www.camdenahec.org/environmental_health.ppt)

Now, however, activists are crafting a new set of tools for fighting environmental injustices, including cumulative impacts.

Take San Francisco's new Precautionary Principle law.[2] The new law opens with a statement about justice: "Every San Franciscan has a right to a healthy, safe environment." And the law says, "the City sees the Precautionary Principle

approach as its policy framework to develop laws for a healthier and more just San Francisco." A more JUST San Francisco.

Most importantly the San Francisco ordinance says people have a duty to take preventive action when they have reasonable suspicion that harm is occurring or is about to occur: "There is a duty to take anticipatory action to prevent harm. Government, business, and community groups, as well as the general public, share this responsibility," the law says.

Under the old way, environmental justice (EJ) activists had to prove to a scientific certainty that harm had occurred before they could demand remedial action. The burden of proof has now shifted. In San Francisco, when reasonable suspicion of harm is raised, the burden is now on government (and the corporate sector) to show that preventive action is not needed, instead of the other way around. This shifts power within the community.

The precautionary approach (basically, "better safe than sorry") turns traditional environmental policy on its head. Instead of asking, "How much harm is allowable?" the precautionary approach asks us to consider, "How little harm is possible?" The precautionary approach urges a full evaluation of available alternatives for the purpose of preventing or minimizing harm.

There has been another new development: In early July, the California Environmental Protection Agency (Cal/EPA) Environmental Justice Advisory Committee (EJAC), issued a report recommending that Cal/EPA adopt the precautionary principle as a way of fixing, or preventing, environmental justice problems in California.[3] In its report, the Cal/EPA EJAC committee said:

"The Committee reached broad consensus on the importance of using precautionary approaches to environmental and public health protection. Committee members believe that it is not necessary or appropriate to wait for actual, measurable harm to public health or the environment before evaluating alternatives that can prevent or minimize harm. The Committee also recognizes that many programs currently implemented by Cal/EPA... are precautionary in nature. Based on the data available to the Committee, it also concludes that additional precaution may be needed in order to address or prevent environmental justice problems."

This endorsement of precaution is particularly significant because the Cal/EPA EJAC committee included representatives from many government agencies and the corporate sector, as well as community activists.[4]

The precautionary principle says,[5]

- (1) If you have reasonable suspicion of harm, and
- (2) you have scientific uncertainty, then
- (3) you have a duty to take action to prevent harm, by

(4) shifting the burden of proof of safety onto those people whose activities raised the suspicion of harm in the first place, and evaluating the available alternatives to find the least harmful way, using a decision-making process that is open, informed, and democratic and that includes the people who will be affected by the decision.

It is this fourth part of the precautionary principle that the Cal/EPA EJAC committee highlighted in its report -- assessing alternatives through meaningful democratic participation.

"In fact, the theme of meaningful public participation is central throughout all of the [committee's] recommendations," the committee wrote.[3, pg. 9] And: "Improving public participation in environmental decision-making forms the foundation for successful implementation of the other goals." [3, pg. 16]

This emphasis on meaningful public involvement in decisions is consistent with the U.S. Environmental Protection Agency's official definition of environmental justice, which begins,

"Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.... Meaningful involvement means that: (1) potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public's contribution can influence the regulatory agency's decision; (3) the concerns of all participants involved will be considered in the decision making process; and (4) the decision makers seek out and facilitate the involvement of those potentially affected." [6]

The Cal/EPA EJAC committee structured its recommendations around four key goals. We will only look at the first two. The first goal is, "1. Providing for meaningful public participation." The report suggests many steps that government can take to make sure that affected communities can participate in decisions and are listened to, including:

- (a) creating public participation guidelines for agencies to follow, and training agency staff to follow the guidelines;
- (b) giving one person or one office authority and responsibility for coordinating effective public participation opportunities;
- (c) taking many specific steps to assure that information flows into affected communities;
- (d) with information, financial grants, and technical assistance, build the capacity of communities to understand, and participate in, decisions;
- (e) build relationships between communities and their government in many different ways.

The committee's second goal is to "Integrate environmental justice into the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies."

The report devotes 10 meaty pages to this goal. This section is filled with ideas to help Cal/EPA identify successful (or unsuccessful) EJ initiatives and implement precautionary decision-making, such as:

** Officially recognize the importance of precaution, and that it is not always necessary or appropriate to wait for actual, measurable harm to public health or the environment before evaluating alternatives that can prevent or minimize harm.

** Identify, for each [Cal/EPA department], significant decision points or processes within existing and developing programs where a precautionary approach is currently used, or could be used, and evaluate whether additional precaution is needed to address or prevent environmental justice problems.

The committee made the following specific (precautionary) suggestions:

** Creation of buffer zones around significant sources of risk;

** Relocation of small sources away from residential areas or sites of sensitive receptors (such as schools, hospitals, etc.)

** Develop tools for communities and local governments to use for evaluating the siting of facilities that significantly increase pollution in disproportionately impacted communities, including the authority for denial of permits, and increase the weight of community involvement in those decisions.

The Cal/EPA EJAC committee stressed the use of alternatives assessment in many of its recommendations, such as:

** Engage community and environmental justice groups in community planning activities that address the potential conflicts between jobs, economic development, and environmental health; and

** Adoption of stricter control and/or pollution prevention measures to reduce pollution and health risks.

Precautionary recommendations for land-use and zoning include:

** Requirements for local government to demonstrate integration of environmental justice principles into general plans at their next General Plan update.

** Requirements for local government to adopt new land use and zoning laws which use a buffer zone, objective siting criteria, or other measure[s] to prevent the location of residences, schools, or other sensitive populations near significant sources of pollution.

** Pursue amendments to the California Environmental Quality Act (CEQA) to require more meaningful alternatives assessment that addresses all reasonably viable alternative processes, methods and locations for new projects.

** Require cumulative impact analysis for new applications.

** Significantly increase the role and influence of community residents and the weight of their recommendations via community planning groups or other entities that have a significant role in the permit decision-making process...

Precautionary suggestions for siting and permitting include:

** Establish and provide to local government health-based permitting requirements that would prevent the issuance of permits for certain types of activities near sensitive receptors.

** Establish permit action thresholds and control requirements commensurate with an area's media-specific cumulative pollution burden.

** In areas that have been identified as having a disproportionately high cumulative impact, require applications for new or modified facilities to include a pollution prevention analysis that addresses materials that are significant (because of volume, potential risk, hazard, etc.), and includes the following:

*** Opportunities for material substitutions;

*** Top-down selection of alternative materials (in other words, non-toxic is considered first and then the next least toxic material, and so on);

*** Clear justification for any proposal to use a material other than the least toxic available (including, for example, availability of data on materials, feasibility of substitution, product performance/safety issues, etc.) and;

*** Other alternatives analyses (i.e., process changes, fuels substitutions, movement of raw materials/product, other energy considerations), with justification for the alternative selected.

To reduce present-day ongoing harms, the committee devoted a section of its report to "risk reduction and pollution prevention," including these six recommendations:

1) Reduce environmental risks to children through pollution prevention and other mechanisms by using a public process to:

** Identify the pollutants and pollution sources (including industrial, municipal, transportation, and others) which present the highest risk to children, based on toxicity, proximity, persistence, or other factors;

** Prioritize these pollutants and processes for further action, and conducting research into non-toxic and/or less toxic alternatives;

** Require adoption of non/less toxic alternatives through a comprehensive alternatives assessment process that includes evaluation of technical feasibility and cost, and allows a reasonable transition period;

** Provide information and resources to businesses, municipalities, and other entities to encourage the use of non/less toxic alternatives.

2) Cal/EPA should also seek funding to assist schools and municipalities to implement pollution prevention programs.... Select examples of risk reduction actions could include:

** Requiring schools and municipalities to implement Pollution Prevention or precautionary approaches to reduce and eliminate the use of toxic pesticides, cleaners, paints, inks, etc., based on a comprehensive assessment of alternatives;

** Requiring municipalities to redesign traffic flow to limit or eliminate diesel vehicle traffic through residential communities;

3) Reduce existing and potential environmental health problems in impacted communities by taking the following actions. In implementing these actions, Cal/EPA should not place an unfunded mandate on local government and/or local programs.

** Identifying all facilities and operations based on existing data that may pose a threat to human health and the environment because of their storage, use, disposal, or emission/discharge of hazardous substances, including pesticides. To implement this item, Cal/EPA should make use of currently available data under California's right to know laws and federal facilities information, including Superfund and the National Priorities List (NPL), and shall at a minimum rely on the thresholds for reporting under those laws.

** Using a public process, assess cumulative pollution burden for disproportionately impacted communities based on the degree of threatened harm to human health and the environment that communities experience.

** Using a public process and data from the previous two steps, identify and prioritize disproportionately impacted communities.

** Using a public process, establish goals and performance measures to reduce the threat of harm to human health and the environment in these disproportionately impacted communities, using enhanced pollution controls and pollution prevention.

** Create effective mechanisms with the community for public participation, and support state and local agencies, to enhance the role played by residents in disproportionately impacted communities in decisions about how to reduce pollution and risks in their community.

4) Work with the Department of Health Services (DHS) to establish goals to reduce health and environmental risks, such as:

** Setting goals and timelines for eliminating lead poisoning in children; and

** Setting goals and timelines for reducing the incidence of asthma, environmental-related cancer, and other environmental-related illnesses.

5) Establish a California Office of Pollution Prevention... to:

** Serve as a clearinghouse for information on less and non-toxic products and processes;

** Evaluate products and processes under consideration by municipalities and industries;

** Conduct research into new processes and products that could provide less toxic, or non-toxic alternatives for municipalities and industries; and

** Provide support to municipalities, industries, and other entities seeking to implement the recommendations for "Risk Reduction and Pollution Prevention," and other related recommendations in Goal #2.

6) Identify and address environmental justice gaps related to preventive approaches to risk reduction.

In sum, the Cal/EPA EJAC committee report offers 45 pages of detailed suggestions for reducing and preventing environmental injustices in California. Most of these suggestions derive from one part or another of the precautionary approach: be alert for signs of trouble (especially cumulative impacts) and, when you find them, take action without waiting for definite proof of harm because by the time you have proof, it will be too late and the harm will have been done. What sort of action should you take? First, shift the burden of proof of safety onto those people whose activities raised the suspicion of harm in the first place. Second, evaluate all available alternatives to find the least harmful way, using a participatory, democratic process that respects and engages those people who will be affected by the decisions.

Naturally, a precautionary approach cannot reduce the need for community organizing, or hard work. Government and the corporate sector will always have to be held accountable by alert, organized citizens.

But whenever there is reasonable suspicion of harm, a precautionary policy puts the burden on government and the corporate sector to show that preventive action is not needed, instead of the other way around. This represents a shift in power.

Furthermore, a precautionary approach requires government and the corporate sector to engage the affected community in a respectful discussion of available alternatives, with the goal of selecting the least-damaging way. For most communities, this too represents an important shift in power.

And remember, folks, there is nothing special about California. These ideas could be tried anywhere, including your own home town.

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My thanks to Carolyn Raffensperger and Maria B. Pellerano for reviewing drafts of this newsletter.

[1] Available on the web at <http://www.ejhu.org/disparities.html> .

[2] Read the San Francisco Precautionary Principle law at <http://www.rachel.org/library/getfile.cfm?ID=195> . Learn how the law came about in Rachel's #765 at http://www.rachel.org/bulletin/index.cfm?issue_ID=2338 .

[3] The July 11, 2003 Draft Cal/EPA EJAC report is available at <http://www.rachel.org/library/getfile.cfm?ID=186> .

[4] Cal/EPA EJAC members include: Detrich B. Allen, Environmental Affairs Department -- Los Angeles, CA; Henry Clark, West County Toxics Coalition -- Richmond, CA; Michael Dorsey, Department of Environmental Health -- San Diego, CA; Dorothy M. Hallock, Fort Mojave Indian Tribe -- Needles, CA; Robert Harris, Pacific Gas & Electric -- San Francisco, CA; William Jones, County of Los Angeles Fire Department -- Commerce, CA; James Kennedy, Contra Costa Redevelopment Agency -- Martinez, CA; Barbara Lee, Northern Sonoma County Air Pollution Control District -- Healdsburg, CA; Joseph K. Lyou, California Environmental Rights Alliance -- El Segundo, CA; Cynthia McClain-Hill, McClain-Hill Associates -- Los Angeles, CA; Donna Pittman, Pittman & Associates -- San Francisco, CA; Carlos Porras, Communities for Better Environment -- Huntington Park, CA; Levonne Stone, Fort Ord Environmental Justice Network -- Marina, CA; Diane Takvorian, Environmental Health Coalition -- San Diego, CA; Cindy K. Tuck, California Council for Environmental & Economic Balance -- Sacramento, CA; Eva Vasquez-Camacho, United Farm Workers of America -- Bakersfield, CA; Barry R. Wallerstein, South Coast Air Quality Management District -- Diamond Bar, CA;

[5] For good discussions of the precautionary principle, see <http://www.rachel.org/library/getfile.cfm?ID=187> and <http://www.rachel.org/library/getfile.cfm?ID=188> and <http://www.rachel.org/library/getfile.cfm?ID=197> .

[6] See <http://www.epa.gov/compliance/environmentaljustice/> .

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