

A Brief Legal History of the Environmental Justice Movement in North Carolina

The EPA recognizes that “Environmental justice means the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment.”¹ Environmental Racism is the manifestation of structural and systemic racism in the physical world where people live and work, such as disparities in access to clean water or air and including the “intentional siting of polluting and waste facilities in communities primarily populated by African Americans, Latines, Indigenous People, Asian Americans and Pacific Islanders, migrant farmworkers, and low-income workers.”²

North Carolina has long been recognized as the birthplace of the Environmental Justice movement, and the origin of the term “environmental racism” from the struggle against the dumping of polychlorinated biphenyls (PCBs) in Warren County, NC.³ Starting in Warren County, advocates have repeatedly sought justice through the courts, with limited but increasing success.

In the 1980s, after the State successfully prosecuted the man who illegally dumped PCB contaminated oil along rural NC highways, including in Warren County⁴, it joined a suit by the United States Department of Justice to recover the clean-up costs from the company that contracted for the dumping.⁵ The State, with mostly federal funding, had dug up the contaminated soil and dumped it back in Warren County in a landfill lacking the necessary leachate system and protections to keep PCB’s out of the water supply. Multiple lawsuits were filed to prevent the dumping of PCBs in Warren County⁶, including one by the NAACP alleging racial discrimination in the use of federal funds in violation of Title VI of the Civil Rights Act of 1964.⁷ Unfortunately, none of the cases were successful. The landfill opened in 1983 to mass protests and civil disobedience. Decontamination of the site was not completed until 2004.

Despite the fact that the Title VI lawsuit in Warren County was unsuccessful, it marked one of the first efforts to use federal civil rights claims to further environmental justice. The EPA actively resisted investigating environmental justice claims based upon racial discrimination for decades.⁸ The combination of protests and litigation ultimately led, in 1994, thirty years after Congress passed Title VI, to federal recognition that agencies must further environmental justice by

¹ <https://www.epa.gov/environmentaljustice>

² Attributed to Dr. Ben Chavis Jr, <https://www.nrdc.org/stories/what-environmental-racism>

³ <https://www.energy.gov/lm/environmental-justice-history>

⁴ United States v. Ward, 676 F.2d 94 (4th Cir. 1982)

⁵ United States v. Ward, 618 F.Supp. 884 (E.D.N.C. 1985)

⁶ See, Twitty v. North Carolina, 527 F. Supp. 778 (E.D.N.C. 1981) (alleging public nuisance, violation of EPA rules, as well as violation of a county ordinance and improper exercise of eminent domain); Warren Cty. v. North Carolina, 528 F. Supp. 276 (E.D.N.C. 1981) (challenging the siting decision as a public nuisance and in violation of EPA rules)

⁷ NAACP v. Gorsuch, No. 82-768-CIV-5 (E.D.N.C. Aug. 10, 1982) (unreported). See Mank, Bradford, *Title VI and the Warren County Protests*, 1 *Golden Gate U. Env'tl. L.J.* 73 (2007).

⁸ *Id.* at n.33-37 and accompanying text.

prohibiting discrimination in the use of federal funds.⁹ However, as of 2007 the EPA still had “yet to make a single formal finding of discrimination.”¹⁰

Even without a final court judgment or agency decision, advocates in North Carolina have continued to build on the model of Warren County and have successfully used Title VI, the Fair Housing Act, and other civil rights laws, in combination with organizing, to further environmental justice.

Starting in 2007, the Rogers-Eubanks Neighborhood Association (RENA) and the Coalition to End Environmental Racism (CEER) with assistance from the UNC Center for Civil Rights, filed Title VI complaints seeking to close the landfill, prevent a new waste-transfer station, and achieve equal access to municipal water and sewer. While the complaint took years to investigate, and ultimately only resulted in partial findings with no direct enforcement by the federal agencies, the framework of a legal civil rights complaint bolstered local advocacy and ultimately led to relief from the burden of the solid waste facilities and much increased access to water and sewer.

In 2011, the UNC Center for Civil Rights initiated the lawsuit in Brunswick County Superior Court and subsequently joined forces with the Fair Housing Project of Legal Aid of NC and pro bono attorney Ray Owens of Higgins & Owens in Charlotte, to represent the Royal Oak Concerned Citizens Association (ROCCA) and three individual plaintiffs in this environmental justice case filed under the North Carolina Fair Housing Act. The procedural impetus for filing the action occurred when the County bought and rezoned from Rural Residential to Industrial General two parcels of land adjacent to the County’s current landfills, all of which have been and continue to be located in the historic African American community of Royal Oak. As part of the resolution of the case, the land was not used for a landfill.

In 2014, the North Carolina Environmental Justice Network (NEJN), the Rural Empowerment Center for Community Help (REACH), and Waterkeeper Alliance, represented by Earthjustice and the UNC Center for Civil Rights filed a Title VI complaint against the NC Dep’t of Environmental Quality (DEQ) to challenge their regulation of permits for hog farms as having a disproportionate adverse impact based upon race. That complaint led to settlement talks and at least some increased influence by community members on the regulation of hog farms.¹¹

While a finding of discrimination by a federal agency in an environmental justice case remains rare, legal victories are possible. See also, <https://www.fairhousingnc.org/newsletter/hud-issues-letter-of-findings-of-noncompliance-with-title-vi-against-city-of-chicago-in-relocating-recycling-facility/>. And the history of legal challenges in EJ struggles in North Carolina establishes that they can be effective in providing legitimacy, influencing public opinion, and long-term shifts in government policy. With time and persistence, courts and administrative agencies will be made to enforce civil rights laws prohibiting discrimination in the terms and conditions of housing, the use of federal funding, and other aspects of environmental racism. The struggle to get courts to enforce

⁹ Id. at n. 38-41 and accompanying text.

¹⁰ <https://www.newyorker.com/news/news-desk/fighting-environmental-racism-in-north-carolina>

¹¹ <https://ncejn.org/2016/03/title-vi-update-deq-in-bed-with-big-pig/>

the promise of desegregated schools began two decades before *Brown v. Board of Education* and continues today; perhaps the road to environmental justice will be more direct.

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