LETTERS

We welcome letters from readers, particularly commentaries that reflect upon or take issue with material we have published. The writer's name, affiliation, address, and telephone number should be included. Because of space limitations, letters are subject to abridgment.

ENVIRONMENTAL JUSTICE VICTORIES LONG OVERDUE

During its twenty-eight- year history, the Environmental Protection Agency has not always recognized that many of our government and industry practices (whether intended or unintended) have adverse impact on poor people and people of color. Environmental justice is about more than waste facility siting and NIMBY (not in my backyard). (See "Storm Clouds Brewing," *Regulation*, Winter 1998, Vol. 21, No. 1). It is also about health and equal protection.

Childhood lead poisoning is the number one environmental justice health issue in America. Generally, federal efforts to reduce childhood lead poisoning can be deemed a success story. In October 1991, the Centers for Disease Control issued a statement, *Preventing Lead Poisoning in Young Children*, lowering the acceptable level of lead in blood from 25 ug/dl to 10 ug/dl. The average blood lead level dropped for all children with the phasing out of leaded gasoline. Still, African American children are lead poisoned at two to three times the rate of white children. The most recent data show that over 28.4 percent of low-income black children aged one to five compared to 9.8 percent of low-income white children aged one to five had blood lead levels above 10 ug/dl. Similarly, 8.9 percent of black children from middle-income families compared to 4.8 percent of white children from middle-income families had elevated blood levels.

The EPA is mandated to protect all Americans—not just individuals or groups who can afford lawyers, lobbyists, and experts. Environmental protection is a right; not a privilege reserved for a few who can "vote with their feet" and escape or fend off environmental stressors. Growing grassroots community resistance emerged in response to practices, policies, and conditions that residents judged to be unjust, unfair, and illegal. Racial discrimination exists in education, employment, housing, voting, and other aspects of American life. Why would we expect racial discrimination not to exist in environmental decision making?

In response to growing public concern and mounting scientific evidence, President Clinton, on 11 February 1994 signed Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." Executive Order 12898 attempts to address environmental injustice within existing federal laws and regulations. It reinforces the thirty-four-year-old law, Title VI of the Civil Rights Act of 1964, which prohibits discriminatory practices in programs receiving federal funds. The Order also focuses the spotlight back on the National Environmental Policy Act or NEPA, a law passed in 1969 that set policy goals for the protection, maintenance, and enhancement of the environment.

The EPA is bound by Executive Order 12898 to ensure that "no segment of the population, regardless of race, color, national origin, or income, as a result of EPA's policies, programs, and activities, suffer disproportionately from adverse health or environmental effects, and all people live in clean and sustainable communities." EPA Administrator Carol Browner last February issued interim Title VI guidance for facility permitting. Ms. Browner went a step further and appointed a twenty-five member National Advisory Council on Environmental Policy and Technology (NACEPT) to advise her on implementing Title VI. Membership in NACEPT includes private industry, city and state government, academia, civil rights organizations, environmental groups, and community representatives.

The number of environmental justice complaints is expected to escalate against industry, government, and institutions that receive federal funds. However, it is a smokescreen for anyone to link Title VI or any other civil rights enforcement to stymied economic development in African American communities. Moreover, there is no empirical evidence to support the contention that environmental justice is impeding brownfields redevelopment. As a practical matter, should we scrap the Clean Air Act just because some mayor complains that it's hurting business? Should we throw out the minimum wage law just because some business claims its hurts minority youths? The answer to both questions is a resounding "no"!

The EPA has issued over a half million permits. The agency has awarded over 200 Brownfield grants. It has received only fifty-four Title VI complaints. Of the fifty-four complaints, not a single one involves brownfields. On the other hand, we have two decades of solid empirical evidence documenting the impact of racial redlining on African-American and other communities of color as profiled in my book *Residential Apartheid: The American Legacy*, published in 1994. Racial redlining by banks, savings and loans, insurance companies, grocery chains, and even pizza-delivery companies thwarts economic vitality in black communities—not enforcement of civil rights laws. Racial redlining was such a real problem that Congress passed the Community Reinvestment Act in 1977.

States have had three decades to implement Title VI. Most have chosen

to ignore the law. Recent legal victories by citizens in Flint, Michigan and Chester, Pennsylvania provide clear signs that states have to do a better job assuring nondiscrimination in the application and implementation of permitting decisions. In both cases, African-American residents shouldered the adverse and disproportionate burden of the nearby polluting facilities.

Against all odds, Citizens Against Nuclear Trash (CANT), a biracial grassroots community group, waged a nine-year battle alongside their Earth Justice Legal Defense Fund lawyers, and technical experts blocked the $750 million uranium enrichment plant. The plant would have produced over 100,000 tons of toxic, radioactive wastes stored on site in the community. On 1 May 1997, a three-judge panel of the Nuclear Regulatory Commission Atomic Safety and Licensing Board rendered a major blow to environmental racism. The judges concluded that "racial bias played a role in the selection process" and denied a permit from Louisiana Energy Services to build the nation's first privately owned uranium enrichment plant in Forest Grove and Center Springs—two black communities that date back to the 1860s and 1910, respectively. The decision was upheld on appeal on 4 April 1998.

During their decade-long battle against LES, CANT members won more than a court victory. The environmental justice cause awakened the sleeping African-American community. Few blacks held elected office in Claiborne Parish prior to 1989 when CANT filed its lawsuit. After the filing Roy Mardis was elected to the Claiborne Parish Police Jury (i.e., county commission) and CANT member Almeter Willis was recently elected to the Claiborne School Board. The town of Homer, the nearest incorporated town to Forest Grove and Center Springs, recently elected its first African-American mayor. The Homer town council now has two African-American members.

Battle lines were drawn in another Louisiana environmental justice test case. The Japanese-owned Shintech, Inc. applied for a Title V air permit to build an $800 million polyvinyl chloride plant in Convent, Louisiana—a community that is over 70 percent African American; and over 40 percent of the Convent residents fall below the poverty line. African Americans comprise 34 percent of the state's total population. The Shintech plant would be located in St. James Parish. Over 83 percent St. James Parish's 4,526 residents are African American. St. James Parish ranks third in the state for toxic releases and transfers. Over 17.7 million pounds of releases were reported in the 1996 Toxic Release Inventory or TRI. The Shintech plant would have added 600,000 pounds of air pollutants annually. The community already has a dozen plants and a 60 percent unemployment rate. The industries are so close to homes, the residents could actually walk to work. But in reality, the jobs are not there for St. James Parish and Convent residents.

On 17 September 1998, after eighteen months of intense organizing, legal maneuvering, and public hearings, St. James Citizens for Jobs and the Environment along with the Tulane University Law Clinic and their team of technical, scientific, health, environmental, and civil rights experts from around the state and nation forced Shintech to scrap its plan to build the PVC plant in Convent. The driving force behind this victory was the relentless pressure and laser-like focus of the local Convent residents and the mounting empirical evidence pointing to disparate impact, unequal protection, and environmental racism.

Residents in Sierra Blanca, Texas—a tiny community on the U.S.-Mexico border—also have reason to celebrate. On 22 October 1998, the Texas Natural Resource and Conservation Commission (TNRCC) rejected a permit for a low-level nuclear waste dump planned for the 90 percent Latino community. The nuclear waste site was proposed under a compact between Texas, Vermont, and Maine. Similarly, Native American groups in California's Ward Valley have held up plans that would dump nuclear waste near the Mojave Reservation and the Colorado River—a river that provides over fourteen million people with their water supply.

Governments must live up to their mandate of protecting all people and the environment. Anything less is unacceptable. The environmental justice movement has set out clear goals of eliminating unequal enforcement of environmental, civil rights, and public health laws. The solution to environmental injustice lies in the realm of equal protection of all individuals, groups, and communities. No community, rich or poor, urban or suburban, black or white, should be allowed to become a "sacrifice zone" or dumping ground.

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HUEBNER RESPONDS:

What is missing from the argument put forth by Professor Bullard and other environmental justice advocates is a rigorous examination of the cause of perceived environmental justice inequity. The issue of causality is central to any meaningful discussion about solutions to environmental injustice because policies aimed at the wrong problem will almost surely fail to achieve the intended results. Professor Bullard defines environmental justice broadly to include, among other problems, childhood lead poisoning. Although lead poisoning is a legitimate concern, it is largely irrelevant to the aspect of environmental justice at hand in recent developments–the siting and permitting of new industrial facilities.

A "disparate impact" standard–long the goal of the environmental justice movement–was recently adopted by the U.S. Environmental Protection Agency to use in investigating alleged violations of Title VI of the Civil Rights Act resulting from environmental permits. This standard is based on the assumption that the process for siting and permitting industrial facilities has histori-

cally placed a disproportionate share of industrial facilities in minority neighborhoods, through either intentional or unintentional discrimination.

But considerable evidence suggests that this assumption about causality is wrong and that flawed siting and permitting practices may not be to blame for overall patterns of racial disparity in the location of industrial facilities. To the contrary, in many instances, it appears that the demographics of host neighborhoods changed *after* facilities were sited, giving rise to predominantly minority populations surrounding those sites.

For example, a Center for the Study of American Business study of St. Louis, Missouri found that forty-eight of sixty-two active hazardous waste facilities were originally sited in census tracts that were uninhabited or contained a greater percentage of nonminority residents than the overall St. Louis area. That suggests that historical siting practices in St. Louis did not have the effect of systematically discriminating against people of color. From the time the facilities were sited to 1990, however, the percentage of minority residents around forty-two of the fifty facilities for which data were available increased at a faster rate than in St. Louis as a whole.

A plausible explanation for the demographic shifts is that changes in property values induced poorer residents to move into the areas surrounding waste facilities, while relatively wealthier residents moved away. To observers several decades later, this economic phenomenon may give the appearance of environmental racism.

If perceived environmental inequity is not the result of systematic discrimination in the siting and permitting of facilities but is instead the result of demographic shifts after facilities are built, then blocking new facility construction in minority neighborhoods–the approach recently adopted by the EPA–will be ineffective.

Referring to the concerns of mayors that the EPA's Title VI guidelines would interfere with brownfield redevelopment, Professor Bullard asks, "[S]hould we scrap the Clean Air Act just because some mayor complains that it is hurting business?" His rhetorical question is not only an insult to mayors, it is a smokescreen because it implies a false tradeoff. The absence of a disparate impact standard would in no way diminish enforcement of the Clean Air Act or other environmental laws. New facilities must comply with all environmental laws in order to receive permits, a requirement that state environmental officials continue to enforce.

Professor Bullard lauds the efforts of St. James Citizens for Jobs and the Environment and the Tulane University Law Clinic for successfully blocking the siting of an $800 million polyvinyl chloride plant in St. James Parish, Louisiana. He fails to also extend credit to environmental groups Greenpeace and the Louisiana Environmental Action Network. Of those groups, only St. James Citizens for Jobs and the Environment might be considered a local group, and that is debatable.

In a letter to the editor of *The News-Examiner* appearing on 24 April 1997 (when Shintech still sought to build its plant in St. James Parish), Gladys Maddie, a recognized civic leader in Freetown, wrote:

> Although our community is buttressed up against the Shintech property (as opposed to residents like Pat Melancon who live several miles away from the site in Convent), these groups have neither consulted us nor invited us to share our thoughts on the matter. . . . We believe that the economic infusion that will be provided by Shintech to Freetown far outweighs any environmental risks the facility may pose. . . . Of all the industries to come to St. James Parish, Shintech is the first company whose officials took the time to visit us, their potential Freetown neighbors, explain their operational processes and employment opportunities and actively desire our advice on how to be the best corporate neighbor possible . . . . Although nobody has ever bothered to ask us, we see Shintech as providing hope and financial security for many Freetown families.

Had they been given a choice, the residents near the proposed Shintech site may very well have allowed the company to build in their community. They may place a higher value on the economic development associated with the plant than Professor Bullard estimates. Indeed, many of the plant's 165 high-paying jobs would have gone to local residents. Those without the necessary job skills would have benefited from the $500,000 the company pledged to improve job training and to help small businesses.

Rather than require environmental authorities to make subjective judgments based on discriminatory effect, a sensible environmental justice solution would empower residents of the affected communities to make their own decision to accept or reject a facility. After all, no one has better knowledge about the community's welfare than its members. The need for economic development in the opinion of outsiders is no justification to impose an unwanted facility on a community. By the same token, a sensible solution will not allow outsiders to impose their beliefs on a community to prevent a wanted facility from locating there.

It is the duty of environmental authorities to see that laws to protect public health from pollution are upheld. When a permit meets all requirements, environmental officials have done their jobs. Many large firms (and environmental officials) go the extra mile today and seek arrangements that make siting a new facility an asset to a community, rather than a liability. Such a voluntary process can benefit all parties involved.

The objective of the environmental justice movement–to eliminate unequal enforcement of environmental, civil rights, and public health laws–is one that every American should support. But that goal is no justification to deprive certain individuals of the right to voluntary consent simply because others may find their choices distasteful. Broadening Title VI enforcement to include disparate impact as a standard for issuing environmental permits is not the answer

to the problem of apparent environmental inequity.

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THE REAL EFFECTS OF ALCOHOL ADS

Many things sound right and are often repeated as if they are true, but something does not become true simply because it is repeated. In an otherwise excellent review of regulation and self-regulation issues of distilled spirits advertising, Thomas Hemphill (last issue) repeats a common error. He gives the Distilled Spirits Council of the U.S. (DISCUS) code credit for keeping gin, scotch, vodka, and other distilled products off television for the past five decades through its self-imposed ban on such advertising, and blames the changes in the code for the recent emergence of the commercials.

Actually, DISCUS's claims—that it has kept its members' products off U.S. television for fifty years—appears almost racist since the products were quite common on Spanish language television until 1988. If the code kept the products off "mainstream" TV stations and networks, it should have done it for the Spanish-speaking audiences, too. Since most alcohol advertisers are charged with targeting minorities with unsafe products, it is doubtful that the association would assert that the past code contained an "exception" for the Spanish language stations. But to credit the code with keeping the products off of television as desirable public policy would require an assertion that such an exception existed prior to 1988.

Fortunately, there is another explanation for the exception.

What really kept the distilled products off most of television was that, except for Spanish language stations, only a handful of stations broadcasting in English (mostly weak stations in small markets) would accept any such commercials. Distillers were faced with a simple choice: make commercials for those small audiences that might see commercials on those few stations or design print media campaigns. Given the potential for strong negative public reactions coupled with the very limited potential marketing gain, pragmatic business decisions logically had them depending on print vehicles. Since Spanish language stations readily accepted the commercials, distillers used the broadcast media for campaigns targeting those audiences.

What changed in 1988 was that the Spanish stations and networks stopped accepting the commercials. What changed in 1996 was that some visible major market stations decided to accept Seagrams commercials. *After* the Seagrams commercials aired, realizing that other stations and advertisers might soon follow suit, DISCUS quickly altered the code to say that television advertising was acceptable, probably avoiding what could have become a conflict with its major members.

Such longtime broadcaster practices are understandable. In the early days of commercial radio, Prohibition laws had just been repealed and government-licensed broadcasters feared renewed public backlash. When commercial television had just begun, such fears were still recent and probably quite strong. Even today, the first commercials and their accompanying paranoid fears that they might induce overconsumption has engendered all sorts of negative reactions from government regulators and legislators, even though public reaction has tended toward apathy (indicating that the stations apparently did not err in gauging their audiences's modern reactions).

Available advertising media might force a collection of firms to follow certain practices as they decide how to efficiently reach certain target audiences. And a trade association might adopt those common practices as part of a code; formally endorsing what is already done.

Many believe that self-regulation programs can be a powerful influence on business practices. But while industry codes can suggest desired practices, under U.S. laws, a trade group cannot *force* any of their members to adhere to the code. Any group of competitors that decided how its members could work or sell products would be a clear violation of the antitrust laws. So trade associations' only self-regulation "enforcement" powers are limited to member cooperation. And in this case, pragmatic business realities helped a trade association claim powers and influence beyond that which it really possessed.

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READING, WRITING, AND REPRESENTATION

Cassandra Chrones Moore's insightful article, "Blocking Beck: Union Dues and Politics Ten Years After the Decision," (last issue) aptly chronicles how many union leaders have systematically thwarted employees' right to choose whether dues will be used for political expenditures.

Perhaps no group has been so exploited as America's teachers in that regard. They pay sizable dues, often more than $600 a year. But while that has made the unions politically powerful and effective, the benefits to teachers are negligible at best.

Given that the primary function of any union is to increase the pay of its members, the teachers' unions, i.e., the National Education Association and the American Federation of Teachers, have failed miserably. According to figures obtained from the U.S. Department of Education, since the 1959-60 school year—which is shortly before the teachers' unions emerged as a potent political force—K-12 education spending has risen more than 300 percent on a per capita basis. Yet, teacher pay has increased only 43 percent after inflation.

Indeed, with an average salary of just over $38,000, teachers today are paid much less than social workers, artists, writers and nurses. When one considers that taxpayers often provide over $250,000 for a classroom of students, the inefficiency of education dollars is

staggering.

Where has the money gone? It has been plowed into administrative personnel. Since 1959-60 the number of non-teaching personnel has risen by over 1.66 million, while the number of teachers has risen by 1.24 million. Much of that is driven by federal and state education regulations and mandates backed by the NEA and AFT.

Today, school administrators, guidance counselors, psychologists, support staff, and others account for nearly half the personnel in the school system. That may be good for the unions who have a large new membership base to draw upon for dues money. It's bad news however for teachers who have to comply with more burdensome administrative tasks while seeing dollars diverted from the classroom.

As Moore documents, there is an array of burdensome entanglements that paid union staff erect to keep members from holding on to dues money that is diverted toward politics. But just how high are the costs to teachers over time?

Let's assume that $200 per year of teachers' dues are used for political purposes (that is a conservative estimate in light of Moore's figure that $4.6 billion out of $6.0 billion in union dues are used for politics). If this $200 was annually placed in a retirement account—and grew at an average rate of eight percent per year—the funds would be worth over $27,000 in thirty years. That would make an important difference in many teachers' quality of life upon retirement.

Furthermore, it is projected that two million teachers will be hired in the coming decade. Given that new teachers tend to be more skeptical about the two giant teachers unions—and can least afford the high costs of political dues—there will be significant pressure going forward to ensure that teachers can exercise their Beck decision rights.

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CALFEE RESPONDS TO POLLAY: This is a reply to Richard Pollay's entertaining letter ("Bah Humbug!") in the Spring 1998 issue about my article, "The Ghost of Cigarette Advertising Past," which appeared in the Summer 1997 issue of *Regulation*. That article was a reprint (albeit with different illustrations and a number of typographical errors) of a piece that originally appeared in December 1986 and analyzed events in the 1950s and 1960s. Many of Pollay's remarks refer to later events and thus are irrelevant as criticism of my article. I said nothing about smoking and heart disease, for example, because that was not a major concern before 1970 and did not play a substantial role in the competitive and regulatory dynamics of that era. And of course I did not discuss how smokers and new types of cigarettes befuddled the FTC's tar and nicotine measurement machines in the 1980s.

I would like to address, however, some of today's policy issues, which are the subject of most of Pollay's comments. Pollay agreed with my basic point, which is that competitive (less bad) health claims tend to serve consumers by raising awareness of the dangers of smoking, and therefore may suppress overall demand despite increases in market shares for some firms. But he thinks this point is no longer relevant because the industry has long since learned to avoid competitive behavior that harms the industry's collective welfare.

I imagine that nearly every captain of every industry in American history has, at one time or another, wished that Pollay were correct in his understanding of how competition works. But he is mistaken. His argument amounts to saying that firms in markets with five or fewer competitors will coordinate their actions to avoid collective harm from competitive behavior. Adam Smith could have warned him about this particular error. In fact, Pollay himself belies his own argument when he excoriates the FTC as an industry "cartel manager" because it enabled the industry to avoid the very behavior that Pollay had previously said the industry could have avoided on its own.

But the fact is, incentives to gain market share at competitors' expense have never changed. Numerous episodes have illustrated the continuing temptation for cigarette sellers to seek market share by appealing to smokers' fear of smoking. A 13 January 1993, *Wall Street Journal* story quoted a Liggett marketing executive on that firm's latest marketing plan, which was to focus on specific tobacco ingredients: "For something that people put into their mouths twenty or thirty times a day, it's surprising that no one tells them more about it," he marvels. Large manufacturers have a "vested interest in not telling. We, being the little guy, might as well tell the truth and make hay with it." Similarly, the development of smokeless cigarettes by RJ Reynolds and others has repeatedly aroused regulatory outrage and industry fears, very much as fear advertising did for the original filter-tips of the 1950s (see the 27 May 1996 *Washington Post* story, "New Cigarette Clears the Smoke, but the Heat Is Still On"). In every case, firms have backed down from attempts to sell their new brands explicitly in terms of safety. It is still regulation and the threat of regulation that forestalls blatant health claims and their consequences.

Pollay thoroughly denounces modern low-tar cigarettes (which were not a factor in my *Regulation* article). He thinks they are a "fraud" that has been foisted upon the public despite being universally condemned by public health experts. That is too narrow a view, one that seems to be almost unique to the United States and obscures differences within the public health community. Some of the most comprehensive consensus reports on this topic take very different positions. The landmark 1985 Scarborough consensus conference (published in *Lancet*) explicitly endorsed tar and nicotine advertising because (guess what?) it would help alert smokers to the dangers of smoking. The latest report from the U.K. Department of Health's *Scientific Committee on Tobacco and Health*, published earlier this year, emphatically supported further development of lower-yield cigarettes. In addition, some of the

stalwarts of the smoking and health research community, most notably epidemiologist Richard Peto, have vigorously advocated the adoption of U.S.-style low-yield cigarettes in those parts of the world that have lagged behind. Those people do not see themselves as abetting an industry fraud.

One thing that particularly bothers Pollay is the disparity between what smokers ingest and what the ads and labels say they will ingest. That disparity is a direct result of the mandatory use of the FTC's much maligned method for measuring tar and nicotine yield. The FTC method has not been substantially revised since its inception more than thirty years ago. It stands as a monument to the folly of insulating government-sanctioned benchmarks from market competition. Only the most bizarre reversal of intellectual fortunes could paint this as a fraud perpetrated by the industry, when that industry is *required* to use that benchmark and no other.

Thus we arrive at a false dichotomy and a true one. Pollay says the choice is between relying on public health regulators or relying on the industry to advance public health. I say it is a choice between regulation and *competition*, which is a very different thing. Whatever secret knowledge and purposes may lurk in the minds of tobacco executives, the only things that count are the ineluctable dynamics of competition in the pursuit of profits. History demonstrates that the cigarette market, far from being an odd exception to the workings of competitive markets, is simply another example of the triumph of markets whenever permitted by regulation. The perceptive observation made a decade ago by Lynn Kozlowski, a researcher close to the anti-smoking community, is still valid: "Remember that the cigarette industry is not a monopoly in North America. If any one company knew how to make a cigarette that sold well, but did not kill the customers, it would not hesitate to capture as much of the cigarette market as possible." But such a cigarette cannot succeed as long as it cannot be marketed in terms of health. That is still the nub of the problem.

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