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# Environmental Justice Litigation in California: How Effective is Litigation in Addressing Slow Violence?

Deedee Chao  
*Claremont McKenna College*

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Claremont McKenna College

Environmental Justice Litigation in California:

How Effective is Litigation in Addressing Slow Violence?

submitted to  
Professor Mary Evans  
and  
Professor Thomas McHenry

by  
Deedee Chao

for  
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## **Abstract**

As the environmental justice movement has spread and become more mainstream since its start in the 1980s, its framework and body of knowledge has expanded, and environmental justice activists, organizers, and scholars have developed and critiqued different methods through which environmental justice can be pursued. Among its relatively new concepts is the idea of slow violence, or the long-term and continuous impacts of environmental injustices on an afflicted community; and among the methods examined by scholars is environmental justice litigation, where legal action is taken, often with members of an affected community as plaintiffs, to remedy environmental injustices within that area.

This thesis aims to analyze the efficacy of environmental justice litigation in its ability to address slow violence through two case studies, Hinkley Groundwater Contamination and Kettleman Hills Waste Facility, which both took place in the 1990s in California, a state now known for its progressive legislation and consideration of environmental justice. It concludes that, while the short-term nature of litigation is not necessarily compatible with the long-term nature of slow violence, successful litigation coupled with the empowerment and engagement of the local community increase the likelihood of litigation partially addressing and mitigating the effects of slow violence in the present and future.

## Introduction

### Overview

The environmental justice movement that began in the 1980s in the United States led to a widespread recognition of issues of environmental injustice based on race, class, and other systems of power. The framework for environmental justice broke away from mainstream environmentalism in its combining of the quest for social justice and civil rights with environmental concerns that named concepts such as environmental racism and slow violence. In the United States itself, the grassroots movement achieved response from the government at all levels, resulting in various legislative measures and strategies supported by governmental agencies for seeking redress of environmental injustices. A major strategy for addressing environmental injustice has been litigation, which has been espoused and critiqued by different parties within the government and environmental activism. This paper explores how environmental justice litigation has addressed actual issues of environmental justice, especially slow violence, through the discussion of two case studies in California.

### What is Environmental Justice?

Multiple definitions for the term “environmental justice” exist. One of the most widely used definitions is the one created by the United States Environmental Protection Agency (EPA):

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.<sup>1</sup>

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<sup>1</sup> “Environmental Justice,” EPA, accessed November 23, 2016, <https://www.epa.gov/environmentaljustice>.

Another definition comes from Robert Bullard, an American scholar championed as the father of environmental justice:

Environmental justice embraces the principle that all people and communities are entitled to equal protection of our environmental laws. It means fair treatment, and it means all people — regardless of race, color or national origin — are involved when it comes to implementing and enforcing environmental laws, regulations and policies.<sup>2,3</sup>

The two definitions are similar, and in both cases, it is evident that environmental justice emphasizes the fair and equal treatment and involvement of all peoples in relation to the creation and execution of environmental laws, regulations, and policies. This is especially crucial for disenfranchised and marginalized communities who have traditionally and systemically been excluded from environmental lawmaking and policymaking.

Environmental injustice via unfair and unequal results or practices cause environmental discrimination, characterized by Bullard as “the disparate treatment of a group or community based on race, class, or some other distinguishing characteristic.”<sup>4</sup> Environmental discrimination can manifest as environmental racism, which “refers to any environmental policy, practice, or directive that disadvantages (whether intended or unintended) individuals, groups or communities based on race or colour.”<sup>5</sup> Environmental

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<sup>2</sup> “Home – Dr. Robert Bullard,” Dr. Robert Bullard, accessed November 23, 2016, <http://drrobertbullard.com/>.

<sup>3</sup> “Robert Bullard: The Father of Environmental Justice,” *Ensia*, accessed November 23, 2016, <http://ensia.com/interviews/robert-bullard-the-father-of-environmental-justice/>.

<sup>4</sup> Robert Bullard, *Dumping in Dixie: Race, Class, and Environmental Quality* (Boulder: Westview Press, 2000), 7.

<sup>5</sup> Robert D. Bullard, “Environment and Morality: Confronting Environmental Racism in the United States,” *Environment and Morality: Confronting Environmental Racism in the United States | Publications | UNRISD*, 2004, iii, accessed November 23, 2016, [http://www.unrisd.org/unrisd/website/document.nsf/\(httpPublications\)/543B2B250E64745280256B6D005788F7](http://www.unrisd.org/unrisd/website/document.nsf/(httpPublications)/543B2B250E64745280256B6D005788F7).

discrimination can also manifest as environmental classism, or what Robert Nixon, an environmental writer-activist, refers to as “environmentalism of the poor” – the unfair burden experienced by low-income communities as a result of their inability or exclusion from environmental decision making.<sup>6</sup> Environmental racism and environmental classism can be intersectional, often occurring in conjunction or combination with each other, as low-income communities are often communities of color as well. Further, environmental injustices are not limited in scope, and can occur on any scale, from local – within communities and cities – to international – between countries and transnational corporations.<sup>7</sup>

### *Slow Violence*

An essential concept within environmental justice is the slow-acting nature of environmental injustices, which often manifest over the course of multiple years and human generations – otherwise termed as slow violence, a term coined by Rob Nixon in *Slow Violence and the Environmentalism of the Poor* to reframe how environmental inequities are thought of and discussed within mainstream environmentalism.<sup>8</sup> Nixon states,

By slow violence I mean 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.<sup>9</sup>

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<sup>6</sup> Rob Nixon, *Slow Violence and the Environmentalism of the Poor* (Cambridge, MA: Harvard University Press, 2011), 4.

<sup>7</sup> Bullard, “Environment and Morality,” 3.

<sup>8</sup> Nixon, *Slow Violence*, 2.

<sup>9</sup> Ibid.



Nixon decides to attribute the term “violence” to the creation, occurrence, and long-lasting effects of environmentally damaging practices, places, and catastrophes, in order to encourage more visibility of these injustices, and as a result of doing so, incite more action to address such environmental grievances and proactively work to prevent future ones:

In the long arc between the emergence of slow violence and its delayed effects, both the causes and the memory of catastrophe readily fade from view as the casualties incurred typically pass untallied and unremembered. Such discounting in turn makes it far more difficult to secure effective legal measures for prevention, restitution, and redress.<sup>10</sup>

Additionally, by using the term “violence,” Nixon urges the masses to rethink the idea of how these negative impacts are enacted upon communities and groups of people, especially low-income communities and communities of color.<sup>11</sup> By expanding the popular conception of this word, he encourages a shift in the paradigm of popular thought, and reminds that environmental injustices occur often with the existence of a perpetrator – such as the state, large corporations, or industry – whether the perpetration is done intentionally or not.<sup>12</sup>

As such, slow violence reframes environmentally unfriendly practices and events by placing the emphasis on the people and communities affected in each situation and the prolonged nature of these effects on these individuals, whether the effects are intended or unintended. The occurrence of slow violence closely relates to the fact that adverse effects on the environment and on human health from industrial practices take a long time

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<sup>10</sup> Ibid. 8-9.

<sup>11</sup> Ibid.

<sup>12</sup> Rob Nixon, “Slow Violence,” *The Chronicle of Higher Education*, June 26, 2011, accessed November 23, 2016, <http://www.chronicle.com/article/Slow-Violence/127968/>.

to manifest and are sometimes difficult to conduct conclusive scientific studies on. Because of its nature, slow violence is one of the most potent components of environmental injustice and one of the most difficult to remedy, making it imperative to study how to best mitigate the effects of slow violence.

### Environmental Justice in the United States

Environmental justice as both a concept and movement began in the United States during the 1980s, partially as an extension of the civil rights movement of the 1960s and partially in response to the mainstream environmentalist movement during the same time. In the framework of civil rights, environmental justice was another arena where social justice needed to be pursued for disenfranchised communities who experience unequal and unfair impact from institutional laws, policies, and regulations.<sup>13</sup> In relation to the mainstream environmentalism movement, the environmental justice movement was a counteraction to how the mainstream environmentalism movement largely addressed the issues of nature conservation and preservation and the ambient environmental conditions of its leaders, who were largely white, middle-to-upper class, and educated, and excluded addressing the effects of adverse environmental practices on underprivileged communities, which were and are largely communities of color and low-income communities.<sup>14</sup>

The beginning of the national environmental justice movement is commonly said to have been in Warren County, North Carolina, in 1982, when the state government

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<sup>13</sup> R. Gregory Roberts, "Environmental Justice and Community Empowerment: Learning from the Civil Rights Movement," *American University Law Review* 48, no.1 (October, 1998): 232.

<sup>14</sup> *Ibid.* 232-233.

attempted to create a landfill with polychlorinated-biphenyl (PCB) contaminated soil in the largely poor, rural, and black community of Afton.<sup>15</sup> Local residents protested, leading to over 500 arrests – the first arrests ever made in the United States over a landfill siting.<sup>16</sup> Although the state ultimately moved forward with the landfill, Warren County residents achieved concessions for no future landfills and funding for well water quality monitoring, and incited national media attention to the issue of environmental justice and environmental racism.<sup>17,18</sup>

As a result, in the same year, the United States General Accounting Office (GAO) conducted a study, “Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities,” focusing on eight Southeastern states, and found that the populations surrounding three of the four landfills in the area were majority black, and had at least 26 percent of the population below the poverty line.<sup>19,20</sup> In 1987, the Commission for Racial Justice of the United Church of Christ (UCC) published its own nationwide study, which cites that race was the most significant variable in determining the siting of a hazardous waste facility.<sup>21</sup> The environmental justice movement continued to grow, and the First National People of

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<sup>15</sup> “The Environmental Justice Movement,” NRDC, accessed November 23, 2016, <https://www.nrdc.org/stories/environmental-justice-movement>.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> Robert D. Bullard, *Unequal Protection: Environmental Justice and Communities of Color* (San Francisco, CA: Sierra Club Books, 1994), 43.

<sup>19</sup> “Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities,” U.S. Government Accountability Office, June 1, 1983, accessed November 24, 2016, <http://archive.gao.gov/d48t13/121648.pdf>.

<sup>20</sup> Barry E. Hill, *Environmental Justice: Legal Theory and Practice*, 2nd ed. (Washington, D.C.: ELI Press, Environmental Law Institute, 2009), 17.

<sup>21</sup> *Ibid.* 19.

Color Environmental Leadership Summit was convened in Washington D.C. in 1991, where “over 650 grassroots and national leaders from around the world” drafted and adopted seventeen principles of environmental justice, which address issues of public policy, moral land use, inclusive participation of all peoples in lawmaking and policymaking, reparations in cases of environmental injustice, environmental education, and more.<sup>22,23</sup>

### Environmental Justice in Policy and Law

As part of the environmental justice movement, activists and affected parties began to seek legal means through which to address cases of environmental injustice. Additionally, over time, in response to the grassroots movement of environmental justice and their conclusive reports and calls to action, the United States government began enacting environmental justice guidelines for its federal agencies.

#### *U.S. Federal Policy and Law*

During the 1990s, the first federal offices and legislation that addressed environmental justice were established. In 1992, as a result of meeting with environmental justice leaders, then EPA administrator William Reilly of the first Bush administration established the Office of Environmental Equity, which was later renamed the Office of Environmental Justice under Clinton.<sup>24</sup> In 1994, in order to address

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<sup>22</sup> “Principles of Environmental Justice,” Web Resources for Environmental Justice Activists, accessed November 25, 2016, <http://www.ejnet.org/ej/principles.html>.

<sup>23</sup> Robert D. Bullard, “ENVIRONMENTAL JUSTICE IN THE 21ST CENTURY,” August 09, 2013, accessed November 25, 2016, <http://www.deanza.edu/faculty/sullivanmark/pdf/bullard.pdf>.

<sup>24</sup> Robert D. Bullard, “Environmental Justice for All,” 556-557. In G. Tyler Miller, Jr., *Living Environment*, (Belmont, CA: Wadsworth, 1993).

increasing public concern and evidence for environmental justice, President Bill Clinton issued Executive Order 12898 (EO 12898), “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” which required federal agencies to create strategies to achieve environmental justice, and emphasized community involvement via recommendations submitted to such agencies.<sup>25</sup>

A memorandum issued with the EO emphasized utilizing the public participation component of the environmental impact assessment process under National Environmental Protection Act (NEPA) to address environmental justice issues, and called for federal agencies to improve accessibility for public meetings, notices, and documents through which civilians were informed and could provide input.<sup>26</sup> The EO also led the EPA to establish the Environmental Justice Interagency Working Group (EJ IWG), which provided a forum through which different federal agencies and White House offices could work together on environmental justice issues.<sup>27</sup> Then, during the Obama administration in 2011, the “Memorandum of Understanding on Environmental Justice and Executive Order 12898” (MOU) was issued to widen the scope of the IWG to more agencies and provide the IWG with a charter for structure and direction.<sup>28</sup> In addition, the MOU formalized the commitments that agencies had made individually following the original EO, and strengthened the ability of environmental justice cases to be pursued under the NEPA and Title VI of the Civil Rights Act.<sup>29</sup>

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<sup>25</sup> Roberts, “Environmental Justice and Community Empowerment,” 240.

<sup>26</sup> G. King, “Addressing Environmental Justice in California,” *AEP Monitor* (2001).

<sup>27</sup> “Environmental Justice Federal Interagency Working Group,” US Environmental Protection Agency, July 2012, accessed November 25, 2016, <https://www.epa.gov/sites/production/files/2015-02/documents/fact-sheet-iwg.pdf>

<sup>28</sup> Hill, *Environmental Justice*, 199.

<sup>29</sup> *Ibid.*

While there were moves forward in formalizing environmental justice measures on the federal level via the executive branch, however, the legislative branch proved to be more difficult. Although environmental justice legislation has been introduced in Congress with increasing regularity since the 1990s, there still lacks specific environmental justice legislation, handing the burden of environmental justice at the federal level to the EPA.<sup>30</sup> In the absence of specific environmental justice law, the EPA had to examine how environmental justice could be embedded in existing environmental laws, leading to a commissioned study in 2001, titled “Opportunities for Advancing Environmental Justice: An Analysis of U.S. EPA Statutory Authorities,” and another in 2002, titled “A Citizen’s Guide to Using Federal Environmental Laws to Secure Environmental Justice.”<sup>31</sup> From these treatises, and the memorandums of EO 12898, it can be seen that an important method of pursuing environmental justice via legal means involves litigation under various laws, such as the NEPA and Title VI of the Civil Rights Act.

#### The role of litigation

Environmental justice litigation has been defined as “any litigation that seeks to prevent or remedy, directly or indirectly, the disproportionate burdens of environmental harm borne by people of color” and low-income people.<sup>32,33</sup> Historically, environmental justice cases were brought forth under the Equal Protection Clause of the Fourteenth

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<sup>30</sup> Ibid. 128.

<sup>31</sup> Ibid. 128-129.

<sup>32</sup> Willie Arthur Gunn, *From the Landfill to the Other Side of the Tracks: Developing Empowerment Strategies to Alleviate Environmental Injustice* (1994).

<sup>33</sup> Roberts, “Environmental Justice and Community Empowerment,” 234.

Amendment, and then under Title VI of the Civil Rights Act.<sup>34</sup> The Equal Protection Clause of the Fourteenth Amendment had been traditionally used to remedy racial discrimination, but environmental justice cases proved hard to win, as *Washington v. Davis*, a Supreme Court case, ruled that “discriminatory purpose” had to be a motivating factor for decisions: while plaintiffs were able to prove that decisions would have disproportionate, adverse effects on their communities, conscious ill intent and discrimination were difficult to prove.<sup>35</sup>

Thus, those seeking environmental justice turned to Title VI of the Civil Rights Act, which allowed plaintiffs to pursue cases based on disparate impact, with or without discriminatory intent.<sup>36</sup> The two most important provisions for environmental justice litigation are sections 601 and 602, which respectively prohibit discrimination in programs and activities that receive federal funds, and require federal agencies to implement rules and regulations for such prohibition.<sup>37</sup> Although it was ruled in *Alexander v. Choate* that Section 601 of Title VI only prohibits cases of intentional discrimination, like the Equal Protection Clause, the same case held that Section 602 allows agencies to prohibit “certain disparate impacts” in order to receive federal assistance.<sup>38</sup> The latter was further enforced by the EPA’s adoption of a disparate impact standard for its Title VI regulations.<sup>39</sup> As a result, policies and practices that produce

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<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.* 235.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.* 235-236.

<sup>38</sup> *Ibid.* 236.

<sup>39</sup> *Ibid.*

discriminatory effects are in violation of Title VI, unless the effects are justified by showing that there are no alternatives that result in less discriminatory impacts.<sup>40</sup>

Additionally, environmental justice has been pursued under various environmental laws, such as the NEPA and similar acts at the state level. In general, environmental laws that include a mandate for public participation of some sort offer room for environmental justice concerns to be addressed via a fight for accessible community engagement and procedural equity.<sup>41</sup> Strategies under this approach can achieve the release of public studies on health hazards, force parties to hold public hearings on controversial projects, mandate regulators to hire interpreters and create translated documents for communities of color, and more.<sup>42</sup> Other traditional environmental laws can be used in challenging siting decisions and the issuance of construction or operating permits, as well as the non-enforcement of cleanup provisions.<sup>43</sup>

Despite a number of environmental justice successes via litigation, however, lawsuits tend to be unpredictable and highly dependent on the political views of the court involved.<sup>44</sup> In addition, the traditions of federalism and a degree of autonomy for state and local governments make federal and state courts, where most environmental legislation resides, hesitant to assert power and address local issues.<sup>45</sup> Moreover,

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<sup>40</sup> “INTERIM GUIDANCE FOR INVESTIGATING TITLE VI ADMINISTRATIVE COMPLAINTS CHALLENGING PERMITS,” US Environmental Protection Agency, accessed November 26, 2016. <http://www.enviro-lawyer.com/InterimGuidance.pdf>

<sup>41</sup> Hill, *Environmental Justice*, 416.

<sup>42</sup> *Ibid.* 270.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*



environmental justice activists and scholars have critiqued litigation as a short term solution for a long term issue, and can easily lead to losses based on court rulings; even when wins are achieved, court rulings may not adequately address the environmental injustice.<sup>46</sup> Another issue with litigation is that plaintiffs, often of low-income communities, cannot afford the lawyers that their opponents, which are often well-funded corporations, can.<sup>47</sup>

However, in cases where community engagement and organizing have not been enough to sway the opposition or to encourage the passing of new legislation, litigation has been the only method of addressing environmental injustice and achieving change, and thus must continue to be explored, examined, and evaluated for its efficacy.<sup>48</sup>

#### *California State Policy and Law*

The California Environmental Protection Agency (CalEPA), a state cabinet-level version of the U.S. EPA, made California the first state that codified environmental justice in statute in 1999.<sup>49,50</sup> California Government Code Section 65040.12 defines environmental justice as the “fair treatment of people of all races, cultures and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.”<sup>51</sup> The same section designated the

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<sup>46</sup> Ibid. 271.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> “Environmental Justice Program,” California Environmental Protection Agency (CalEPA), accessed November 26, 2016, <http://www.calepa.ca.gov/EnvJustice/>.

<sup>50</sup> Hill, *Environmental Justice*, 173.

<sup>51</sup> “California Government Code - GOV § 65040.12 | FindLaw,” FindLaw: For Legal Professionals, accessed November 26, 2016, <http://codes.findlaw.com/ca/government-code/gov-sect-65040-12.html>.

Governor's Office of Planning and Research (OPR) as the "coordinating agency in state government for environmental justice programs," and requires its director to consult with a number of state agencies, including the CalEPA, in environmental justice programming.<sup>52</sup> In addition, an amendment to Government Code Section 11139 has made disparate impact discrimination actionable under Government Section 11135, an anti-discrimination statute for state programs.<sup>53</sup> In 2003, the OPR's new General Plan included guidance on how to address environmental justice, especially via public participation.<sup>54</sup>

The California Environmental Quality Act (CEQA) can also be used to address environmental justice indirectly, as it states that any project that "will cause substantial adverse effects on human beings, either directly or indirectly" will be considered as having a "significant effect on the environment and thereby require an EIR [Environmental Impact Report]" before the project can be started.<sup>55</sup> Although California has legislation specific to environmental justice in place, unlike the federal level, it is similar to the federal government in that it recommends utilizing the provisions of the CEQA, a traditional environmental law, to address environmental justice concerns. In

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<sup>52</sup> John Auyong, Adante Pointer, and Nicholas Wellington, "Opportunities for Environmental Justice in California Agency by Agency," The Public Law Research Institute: University of California, Hastings College of the Law, May 2003, accessed November 27, 2016, [http://gov.uchastings.edu/public-law/docs/PLRI\\_Agency-by-Agency\\_03.pdf](http://gov.uchastings.edu/public-law/docs/PLRI_Agency-by-Agency_03.pdf), 8.

<sup>53</sup> *Ibid.*

<sup>54</sup> "State of California General Plan Guidelines," Office of Planning and Research, 2003, accessed November 27, 2016, [https://www.opr.ca.gov/docs/General\\_Plan\\_Guidelines\\_2003.pdf](https://www.opr.ca.gov/docs/General_Plan_Guidelines_2003.pdf), 8, 142.

<sup>55</sup> "Environmental Justice at the Local and Regional Level: Legal Background," State of California Department of Justice: Office of the Attorney General, July 10, 2012, accessed November 27, 2016, [https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej\\_fact\\_sheet.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej_fact_sheet.pdf), 2.

addition, the Attorney General has published a document entitled “Environmental Justice at the Local and Regional Level: Legal Background,” to detail the role that “cities, counties, and other local governmental entities” play in ensuring environmental justice at their level.<sup>56</sup>

#### Environmental justice cases in California

Despite California’s progressive legislation for environmental justice, the state has been the site of a number of well-known environmental justice cases including the Hinkley Groundwater Contamination case and the Kettleman Hills Waste Facility case that will be studied in this paper, both of which were centered around environmental justice litigation in the 1990s, when environmental justice was beginning to emerge as a concept to be considered judicially and legislatively.

#### *Environmental Litigation and Slow Violence*

As a whole, the environmental justice movement with its grassroots origins has largely espoused community engagement and empowerment as a means through which to achieve environmental justice for the disenfranchised communities it champions. A lot of the literature by activists and scholars has been focused on community empowerment and engagement via the public participation process in passing environmental impact assessments and reports, a strategy that has been encouraged by EO 12898 and the environmental impact assessment process of the NEPA and CalEPA.<sup>57</sup> While there are different methods of approach for implementing environmental justice through legal measures, such as passing legislation, litigation is one of the only ways to address

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<sup>56</sup> Ibid. 1.

<sup>57</sup> Roberts, “Environmental Justice and Community Empowerment,” 250.

environmental injustices that have already occurred and cannot be remedied through proactive legislation or community empowerment and involvement.

As the history of environmental justice and environmentalism as a whole have shown, adverse industrial practices that have taken place over a long period of time, and slow violence that manifests from these practices, presents situations that necessitate the use of reactive measures to gain justice, often through environmental litigation. Thus it is imperative to examine the effectiveness of environmental justice litigation, particularly in its ability to address the slow violence that has accumulated in cases of environmental injustice, as this is one of its largest areas of critique. The rest of this paper will explore this relationship via the aforementioned case studies of environmental justice litigation that have taken place in California.

## Case Study 1: Hinkley Groundwater Contamination

### History and Summary

In 1952, Pacific Gas and Electric Company (PG&E), a California energy company, began operating the first two compressor stations of its natural gas distribution system in Topock and Hinkley, both small desert towns located in the Mojave Desert in Southern California.<sup>58,59</sup> These compressor stations were necessary for maintaining the pressure of gas in the pipeline to facilitate transmission.<sup>60</sup> To prevent rust from forming in the cooling towers that prepared gas for transportation through the pipelines, an additive containing hexavalent chromium, one of the cheapest and most efficient corrosion inhibitors at the time, was used.<sup>61,62</sup> The wastewater containing this compound was then “disposed of next to the compressor stations” – that is, dumped into open, unlined ponds, in the time period from 1952 to 1966.<sup>63,64</sup> In Hinkley, this practice resulted in an alleged 370 million gallons of chromium-tainted water in the ponds surrounding the area.<sup>65</sup>

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<sup>58</sup> “Learn about PG&E Environmental Restoration at Our Compressor Stations,” Pacific Gas and Electric Company, accessed November 28, 2016, [https://www.pge.com/en\\_US/about-pge/environment/taking-responsibility/compressor-stations/compressor-stations.page](https://www.pge.com/en_US/about-pge/environment/taking-responsibility/compressor-stations/compressor-stations.page).

<sup>59</sup> Sedina Banks, “The ‘Erin Brockovich Effect’: How Media Shapes Toxics Policy,” *Environs*. 26 (2), (2008), accessed November 28, 2016, <http://environs.law.ucdavis.edu/volumes/26/2/banks.pdf>, 228.

<sup>60</sup> *Ibid.*

<sup>61</sup> “Compressor Stations,” Pacific Gas and Electric Company.

<sup>62</sup> “Fact Sheet: Eliminating Hexavalent Chromium From Cooling Towers,” Board of Public Works: City of Los Angeles, accessed November 28, 2016, <http://citeserx.ist.psu.edu/viewdoc/download?doi=10.1.1.399.1376&rep=rep1&type=pdf>.

<sup>63</sup> “Compressor Stations,” Pacific Gas and Electric Company.

<sup>64</sup> Banks, “The ‘Erin Brockovich Effect,’” 228.

<sup>65</sup> *Ibid.*

By 1965, PG&E had received a number of reports of problems with well-water in the area, and upon drawing water from one well, discovered high levels of chromium.<sup>66</sup> However, it was not until December 7, 1987, 22 years later, that PG&E finally notified the Regional Board and the San Bernardino County Department of Environmental Health Services that it had discovered groundwater contamination by hexavalent chromium, “well north of the facility’s industrial wastewater ponds,” a finding purportedly made on November 30, 1987, only a week prior.<sup>67,68</sup> Earlier the same year, a Chinese scientist named Jian Dong Zhang had published a study that reported a strong link between hexavalent chromium in drinking water and stomach cancer in humans.<sup>69</sup> The Regional Water Quality Board issued a cleanup and abatement order to PG&E, which began the cleanup process for the 290-acre underground toxic plume, which took place throughout the early 1990s and cost \$12.5 million.<sup>70</sup>

At the same time, PG&E approached local owners of three farms and ten houses, offering to buy their properties and agreeing to pay ten times the fair market value of one of the houses.<sup>71</sup> These strange offers incited suspicion and eventually led the townspeople

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<sup>66</sup> David Heath, “How Industry Scientists Stalled Action on Carcinogen,” Center for Public Integrity, March 13, 2013, accessed November 29, 2016, <https://www.publicintegrity.org/2013/03/13/12290/how-industry-scientists-stalled-action-carcinogen>.

<sup>67</sup> Ibid.

<sup>68</sup> “Cleanup and Abatement Order No. 6-87-160,” California Regional Water Quality Control Board: Lahontan Region, 1987, accessed November 29, 2016, <https://www.documentcloud.org/documents/563694-pge-cao-6-87-160-2.html>.

<sup>69</sup> “JOEM Retracts Fraudulent Chromium Article,” Environmental Working Group (EWG), June 2, 2006, accessed November 29, 2016, <http://www.ewg.org/news/news-releases/2006/06/02/joem-retracts-fraudulent-chromium-article>.

<sup>70</sup> Banks, “The ‘Erin Brockovich Effect,’” 228.

<sup>71</sup> Kathleen Sharp, “‘Erin Brockovich’: The Real Story,” Salon, April 14, 2000, accessed November 30, 2016, <http://www.salon.com/2000/04/14/sharp/>.

to seek legal counsel from the firm Masry & Vititoe, which told the townspeople that they believed that chromium-contaminated water, caused by PG&E, was the cause of longtime illnesses in the community.<sup>72</sup> By spring 1993, the firm gathered 47 clients and filed a suit against PG&E.<sup>73</sup>

### *Litigation*

The case soon grew to 650 plaintiffs with help of two larger law firms.<sup>74</sup> The plaintiffs alleged that PG&E had failed to warn them of the health risks associated with hexavalent chromium, and that chromium was the cause of multiple ailments within the Hinkley community.<sup>75,76</sup> Additionally, the plaintiffs' attorneys also alleged that two PG&E employees had been instructed by PG&E to dispose of all of the Hinkley compressor station records, which included information on "how much chromium was put into the system between 1952 and 1986."<sup>77</sup>

However, this lawsuit, *Anderson v. Pacific Gas & Electric Co.* (Superior Court for County of San Bernardino, Barstow Division, file BCV 00300), never came to trial in open court: in 1994, the sitting judge wrote to plaintiffs, explaining that it could take as many as five years before the case was assigned a trial date.<sup>78,79</sup> As a result, residents, with the advice of their attorneys, agreed to voluntary arbitration, which PG&E, wary of

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<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Robert W. Welkos, "Digging for the Truth," Los Angeles Times, March 12, 2000, accessed November 30, 2016, <http://articles.latimes.com/2000/mar/12/entertainment/ca-7856>.

<sup>77</sup> Ibid.

<sup>78</sup> Banks, "The 'Erin Brockovich Effect,'" 230.

<sup>79</sup> Sharp, "'Erin Brockovich': The Real Story."

a drawn-out and costly trial process against their favor, agreed to as well.<sup>80</sup> Through undisclosed arbitration agreements, arbitrators awarded plaintiffs \$130.5 million for the first 39 cases, eventually leading PG&E to settle for \$333 million in 1996 – “the largest settlement amount ever paid in a lawsuit in United States history” at the time.<sup>81,82,83</sup>

Because these proceedings took place during private arbitration, it is unknown what kind of scientific proof the plaintiffs’ attorneys presented and whether or not PG&E’s chromium pollution contributed to the ailments of Hinkley’s residents (and if so, to what extent).<sup>84</sup> In fact, even some of the plaintiffs involved in the case did not know how it was settled, as they were discouraged from attending these private trials, and had to rely on attorneys’ letters to learn the details of the case proceedings.<sup>85</sup> The disbursement of the \$333 million settlement was also controversial for the residents, as checks were delayed and unexpected fees were taken for the proceedings and minor plaintiffs.<sup>86</sup> In some cases, individual plaintiffs decided to contest their settlement amounts through appeals, although many were discouraged by having to pay another set of arbitration fees, and by the possibility of receiving less money.<sup>87</sup>

*Anderson v. PG&E* was also made into the plot for the movie, *Erin Brockovich*, named after the law clerk who worked at Masry & Vititoe and purportedly played a large role in uncovering the possible links between chromium pollution and health for the

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<sup>80</sup> Ibid.

<sup>81</sup> Welkos, “Digging for the Truth.”

<sup>82</sup> Sharp, “‘Erin Brockovich’: The Real Story.”

<sup>83</sup> Banks, “The ‘Erin Brockovich Effect,’” 230.

<sup>84</sup> Ibid.

<sup>85</sup> Sharp, “‘Erin Brockovich’: The Real Story.”

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.



Hinkley residents.<sup>88</sup> The popularity of the movie led to more widespread awareness of chromium pollution in Hinkley, which led additional residents of the area to file a lawsuit against PG&E.<sup>89</sup> In 2006, PG&E paid a \$295 million settlement for the combined lawsuits of 1,100 people.<sup>90</sup> In 2008, PG&E paid another settlement of \$20 million to 104 parties who were exposed to chromium pollution, closing what were then the last cases of chromium pollution by PG&E in the Hinkley area.<sup>91</sup> However, in 2013, with chromium showing up in more wells than before despite PG&E's cleanup efforts, a new class-action suit was filed by residents, alleging that PG&E's chromium pollution has damaged their home and property values, rendering them worthless.<sup>92</sup>

#### *Hinkley Today*

In 2015, Hinkley's single post office, single market, and single gas station closed, following dwindling business as result of the only school's closure in 2013 and a PG&E

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<sup>88</sup> Ibid.

<sup>89</sup> Bloomberg News, "'Brockovich' Film Prompts More Residents to Sue PG&E," retrieved from Los Angeles Times, October 27, 2000, accessed December 1, 2016, <http://articles.latimes.com/2000/oct/27/business/fi-42829>.

<sup>90</sup> Associated Press, "PG&E Settles Last Chromium 6 Case," retrieved from Los Angeles Times, April 04, 2008, accessed December 1, 2016, <http://articles.latimes.com/2008/apr/04/local/me-briefs4.S6>.

<sup>91</sup> Ibid.

<sup>92</sup> David R. Baker, "Toxic Plume Spreads, PG&E Faces 2nd Hinkley Suit," SFGate, July 25, 2013, accessed December 1, 2016, <http://www.sfgate.com/science/article/Toxic-plume-spreads-PG-amp-E-faces-2nd-Hinkley-4688046.php>.

buyout process spanning from 2010 to 2014.<sup>93,94,95</sup> It is now described as a ghost town.<sup>96</sup> The 2010 U.S. Census reported 1,692 residents in Hinkley's zip code area, 92347, with the current number of residents likely being lower as a result of the buyout process and other residents moving out in fear of contaminated drinking water.<sup>97,98</sup> Despite PG&E's continuous cleanup process, it was discovered in 2010 that the contamination plume had spread, leading to PG&E offering affected residents either clean water via bottled water and an installed purification system, or a buyout of their property so they could move elsewhere.<sup>99,100</sup> Although PG&E has claimed that they decide whether or not to keep the houses they have bought based on the conditions they are in, residents have said that PG&E has destroyed most of the houses on the properties it owns, instead of renting it out again, thus contributing to the decreasing economy and community.<sup>101</sup> Some of the residents who had been plaintiffs in the original lawsuit and chosen to relocate within

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<sup>93</sup> Jim Steinberg, "Hinkley continues to shrink: Desert town set to lose only market, gas station, Post Office," San Bernardino County Sun, March 18, 2015, accessed December 1, 2016, [http://www.sbsun.com/environment-and-nature/20150318/hinkley-continues-to-shrink-desert-town-set-to-lose-only-market-gas-station-post-office?source=most\\_viewed](http://www.sbsun.com/environment-and-nature/20150318/hinkley-continues-to-shrink-desert-town-set-to-lose-only-market-gas-station-post-office?source=most_viewed).

<sup>94</sup> Mike Lambstaff, "Hinkley 'will never come back,'" Victorville Daily Press, March 27, 2015, accessed December 1, 2016, <http://www.vvdailypress.com/article/20150327/NEWS/150329776>.

<sup>95</sup> Paloma Esquivel, "15 years after 'Erin Brockovich,' town still fearful of polluted water," Los Angeles Times, April 12, 2015, accessed December 1, 2016, <http://www.latimes.com/local/california/la-me-hinkley-20150413-story.html>.

<sup>96</sup> Baker, "Toxic Plume Spreads."

<sup>97</sup> "2010 Demographic Profile Data," United States Census Bureau: American FactFinder, 2010, accessed December 1, 2016, <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>.

<sup>98</sup> Esquivel, "15 years after 'Erin Brockovich.'"

<sup>99</sup> Jim Steinberg, "Hinkley: No Hollywood ending for Erin Brockovich's tainted town," The Mercury News, April 12, 2015, accessed December 1, 2016, <http://www.mercurynews.com/2013/07/12/hinkley-no-hollywood-ending-for-erin-brockovichs-tainted-town/>.

<sup>100</sup> Esquivel, "15 years after 'Erin Brockovich.'"

<sup>101</sup> Lambstaff, "Hinkley 'will never come back.'"

Hinkley using their settlement have now been forced to leave because of the spread of chromium pollution.<sup>102</sup> In 2013, PG&E estimated that “fully cleaning up the aquifer” could take 30 to 60 years.<sup>103</sup>

#### Environmental Justice Issues

Through the lens of environmental justice, Hinkley’s case involves a measure of environmental classism, exacerbated by the power structure of knowledge that often comes hand in hand with classism: corporations and lawyers with more resources, and more access to knowledge as a result of having more resources and training, are in a more advantageous position than residents of a rural, isolated community in the Mojave Desert.<sup>104</sup> This power dynamic can be seen in the belated response of PG&E towards the discovery of chromium in the water, which residents had been complaining about since at least 1956, and in the litigation process of the original lawsuit, where plaintiffs followed their attorneys’ advice for arbitration, and as a result, felt left out of the arbitration process and uneducated and confused about the settlement amounts they eventually received. As articulated in an article that drew input “scores of residents of Hinckley,”

[...] the Hinkley lawsuit was a case study in how the rise of private arbitration [through which the case was settled], as an alternative to costly public trials, is creating a two-tiered legal system that not only favors litigants who can afford it over those who cannot [creating a case of environmental classism], but is open to conflicts and interest and cronyism.<sup>105</sup>

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<sup>102</sup> Miles O’Brien, “Erin Brockovich: The Real-Life Unhappy Ending,” PBS NewsHour, March 13, 2013, accessed December 1, 2016, [http://www.pbs.org/newshour/updates/science-jan-june13-hinkley\\_03-13/](http://www.pbs.org/newshour/updates/science-jan-june13-hinkley_03-13/).

<sup>103</sup> Baker, “Toxic Plume Spreads”

<sup>104</sup> Esquivel, “15 years after ‘Erin Brockovich.’”

<sup>105</sup> Sharp, “‘Erin Brockovich’: The Real Story.”

During the process of private arbitration, plaintiffs were discouraged from attending the proceedings between their attorneys and PG&E, and “began to feel increasingly removed,” with “no idea what was going on.”<sup>106</sup>

Further, while PG&E paid the \$333 million settlement in August 1996, the plaintiffs did not receive their awards until six months later, in January 1997.<sup>107</sup> Upon receipt of their awards, a number of residents were perplexed at receiving checks without interest – the amount they received in January was the same as the amount they were told they would receive in August – or at the amounts they were given, which did not correlate with their documented medical problems or exposure, even though they had been told that their awards would be based on their medical records.<sup>108</sup> Table 1 lists the reported amounts received by the Gonzales family, who had all experienced “the same level, intensity, and duration of chromium exposure.”<sup>109</sup>

Table 1. *Awards Received by Gonzales Family Plaintiffs in Hinkley Lawsuit.*

Family Member	Medical Problem(s)	Amount Received (\$)
Father	Lower colon removal	100,000
Daughter, Lydia	Skin problems	200,000
Daughter, Anita	Lower colon removal	2,000,000
Son, Daniel	Skin problems	0

Source: Sharp (2000).

Because of the nondisclosure agreements signed by the residents and the private arbitration process through which the settlement was attained, it has been difficult to conduct a full study of the various amounts received by individuals, correlated to the

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<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

medical problems they experienced and their vicinity to the PG&E compression station in Hinkley.<sup>110</sup> Thus residents who feel wronged and bewildered by this process have continued to remain in the dark about the legal proceedings between their attorneys and PG&E.

### *Slow Violence*

Litigation, in this case, appears to have exacerbated environmental injustice, and failed to address the occurrence of slow violence within the community. In this case, slow violence took the form of medical problems among Hinkley residents as a result of chromium-polluted water, and later on, the desertion and economic problems of the Hinkley community as chromium pollution persisted.<sup>111</sup> While the lawsuit proceeded to voluntary arbitration in order to speed up the process, which would have otherwise taken five years to be assigned an open trial date, the private arbitration process disenfranchised residents and contributed to the slow violence they experienced by giving them additional issues to contend with over time, as some struggled to reconcile the settlement amounts they received with the medical problems they had experienced, and some appealed their settlement amounts while giving up money for the additional arbitration.<sup>112</sup> In a number of cases, the settlement amount gained from litigation was not enough for plaintiffs to cover their medical fees or to relocate to a property without chromium pollution, thus not

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<sup>110</sup> “Hinkley: Legal settlement process kept details private,” San Bernardino County Sun, July 9, 2013, accessed December 1, 2016, <http://www.sbsun.com/article/zz/20130709/NEWS/130709243>.

<sup>111</sup> Esquivel, “15 years after ‘Erin Brockovich.’”

<sup>112</sup> Sharp, “‘Erin Brockovich’: The Real Story.”

mitigating the negative effects that chromium pollution had already had on them, nor preventing further negative impact in the future.<sup>113</sup>

Additionally, as the only result of arbitration in this case was the settlement money, litigation did not address how the defendant should proceed in controlling the negative environmental effects of chromium that were already occurring and would occur in the future. PG&E's cleanup process was the result of the cleanup order from the Regional Water Quality Board, separate from the lawsuit. Further, the drawn-out cleanup process and the mishaps along the way necessitated further litigation by Hinkley residents, demonstrating that litigation was a short-term solution that needed to be implemented multiple times in search of environmental justice. In sum, within the Hinkley case, litigation was unable to address the issue of slow violence, and for some, even exacerbated it, despite winning a technical victory for the plaintiffs and the largest settlement amount in U.S. history.

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<sup>113</sup> Ibid.

## Case Study 2: Kettleman Hills Waste Facility

### History and Summary

Kettleman City is a census-designated place (CDP) located at the base of Kettleman Hills in the San Joaquin Valley in Kings County, California.<sup>114</sup> In the 1990s, its population was roughly 1,100 with over 95 percent of residents identifying as Latino.<sup>115</sup> The whole of Kings County is approximately 65 percent white, with the population center around the county seat, Hanford, about 30 miles away from Kettleman City.<sup>116</sup> Kings County is majority conservative, and was specifically covered in the Voting Rights Act of 1965 as one of three counties in California that required preclearance before changing any of its voting laws, a requirement that remained in place until 2013, when a Supreme Court decision overturned the practice.<sup>117</sup>

The Kettleman Hills Waste Facility, located 3.5 miles away from the city, began activity in 1975, when McKay Trucking was issued a permit for liquid waste disposal at

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<sup>114</sup> “GNIS Detail - Kettleman City,” United States Geological Survey: Geographic Names Information System, accessed December 2, 2016, [http://geonames.usgs.gov/apex/f?p=gnispq:3:::NO::P3\\_FID:1652733](http://geonames.usgs.gov/apex/f?p=gnispq:3:::NO::P3_FID:1652733).

<sup>115</sup> Luke W. Cole, “The Struggle of Kettleman City: Lessons for the Movement,” *Maryland Journal of Contemporary Legal Issues* 5.1 (1994), accessed December 2, 2016, [http://heinonline.org/HOL/Page?handle=hein.journals/mjcolei5&div=10&g\\_sent=1&collection=journals#71](http://heinonline.org/HOL/Page?handle=hein.journals/mjcolei5&div=10&g_sent=1&collection=journals#71), 68.

<sup>116</sup> Alejandro Colsa Pérez, “Toxic Waste Landfill in Kettleman City, USA,” *Environmental Justice Atlas*, August 7, 2015, accessed December 2, 2016, <https://ejatlas.org/conflict/toxic-waste-landfill-in-kettleman-city-usa>.

<sup>117</sup> “Jurisdictions Previously Covered By Section 5 of the Voting Rights Act of 1965,” *The United States Department of Justice*, August 6, 2015, accessed December 2, 2016, <https://www.justice.gov/crt/jurisdictions-previously-covered-section-5>.

the site.<sup>118,119</sup> In 1979, the facility was acquired by Chemical Waste Management, Inc. (“Chem Waste”), a subsidiary of Waste Management, Inc. The company obtained a joint operating permit for the facility from the EPA and California Department of Health Services (now the Department of Toxic Substances Control, or DTSC), which allowed for the processing of polychlorinated biphenyl (PCB), which was banned from production the same year, as it was a known carcinogen that could also cause other adverse health effects.<sup>120</sup>

Both of these activities were done without the community’s consent or knowledge, despite California state law requiring that government agencies were required to provide public notice of this siting through a “newspaper of general circulation, a post “on and off the site,” and mail to “adjacent landowners.”<sup>121</sup> Kettleman City did so by placing a small advertised ad in the *Hanford Sentinel*, a paper published forty miles away from the city; placing a post 3.5 miles away from the city; and informing the large agribusiness and oil companies adjacent to the landfill site, effectively making public notice inaccessible to the largely Latino, Spanish-speaking population of Kettleman City that would be adversely affected.<sup>122</sup> It was not until a few years later, in the early 1980s,

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<sup>118</sup> “EPA Activities in Kettleman City Area,” US Environmental Protection Agency, April 29, 2016, accessed December 2, 2016, <https://www3.epa.gov/region9/kettleman/>.

<sup>119</sup> “Kettleman Hills Facility Permitting Activities,” California Department of Toxic Substances Control, 2010, accessed December 2, 2016, <https://dtsc.ca.gov/HazardousWaste/Projects/CWMIPermittingActivities.cfm>.

<sup>120</sup> “Learn about Polychlorinated Biphenyls (PCBs),” US Environmental Protection Agency, September 15, 2016, accessed December 2, 2016, <https://www.epa.gov/pcbs/learn-about-polychlorinated-biphenyls-pcbs>.

<sup>121</sup> “Title 14: Chapter 3, Article 6, Sections 15070 to 15075,” The California Environmental Quality Act, accessed December 2, 2016, <http://resources.ca.gov/ceqa/guidelines/art6.html>.

<sup>122</sup> Cole, “The Struggle of Kettleman City,” 68.



when residents found out the landfill existed, via a local newspaper's coverage of the "multi-million dollar fines" the facility had to pay for violating environmental laws.<sup>123</sup>

In January 1988, Kettleman City residents similarly found out from a non-governmental source that Chem Waste had proposed to build a toxic waste incinerator at the site, when a Greenpeace organizer in San Francisco called one of the Kettleman residents he knew to ask if she was aware that there would be a hearing on the proposed project that night.<sup>124</sup> Upon going to the hearing, residents learned that the proposed incinerator would burn 108,000 tons of hazardous waste per year, equal to an additional 5000 truckloads of waste that would pass through the city per year.<sup>125</sup> To better educate themselves and organize, Kettleman residents formed a community group named *El Pueblo para el Aire y Agua Limpio (El Pueblo)*, which translates to "the People for Clean Air and Water."<sup>126</sup>

*El Pueblo* researched and found that in 1984, the California Waste Management Board had commissioned Cerrell Associates, a consulting firm, to conduct a \$500,000 study to define communities that would be the least resistant to the siting of locally undesirable land uses (LULUs).<sup>127,128</sup> The demographics found least likely to resist the siting of waste disposal sites included rural, low income, and uneducated communities, as well as communities based around "resource extractive jobs" such as agriculture – a

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<sup>123</sup> Ibid.

<sup>124</sup> Ibid, 69.

<sup>125</sup> Ibid.

<sup>126</sup> Barry E. Hill, *Environmental Justice: Legal Theory and Practice*, 2nd ed. (Washington, D.C.: ELI Press, Environmental Law Institute, 2009), 418.

<sup>127</sup> Cole, "The Struggle of Kettleman City," 69-70.

<sup>128</sup> Cerrell Associates, "Political Difficulties Facing Waste-to-Energy Conversion Plant Siting," 1984, accessed December 2, 2016, <http://www.ejnet.org/ej/cerrell.pdf>, i.

profile that matched Kettleman City almost exactly.<sup>129,130</sup> The group also found that California had a compensated siting law that allowed local governments to tax up to ten percent of a hazardous waste facility's gross revenues.<sup>131</sup> In the case of the existing waste facility, Kings County already received about seven million dollars per year, which accounted for "approximately eight percent of the county's annual budget."<sup>132</sup>

Looking into Chem Waste, *El Pueblo* also found that the company's other three hazardous waste facilities were all located in communities of color.<sup>133</sup> Further, the Chem Waste fines the residents had read about in the early 1980s were the result of over 1,500 instances of the company overfilling evaporation ponds with waste, along with other infractions for improper groundwater monitoring and dumping of incompatible wastes into the ponds.<sup>134</sup> As *El Pueblo* researched Chem Waste's actions at their other facilities, they found a pattern of Chem Waste paying multiple fines for improper practices, ranging from improper air monitoring over the course of months to improper PCB disposal to improper sampling of incompatible wastes.<sup>135</sup> These findings alarmed the residents and enforced their opposition to the incinerator proposal.

Under the California Environmental Quality Act (CEQA), an Environmental Impact Report (EIR) was required for the permit for the incinerator to be approved. The

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<sup>129</sup> Ibid, 11-18.

<sup>130</sup> Cole, "The Struggle of Kettleman City," 70.

<sup>131</sup> "Hazardous Waste Fee Health and Safety Code - Section 25149.5," California State Board of Equalization, 2012, accessed December 2, 2016, <http://www.boe.ca.gov/lawguides/business/archive/2012/vol4/hwf/hwf-25149-5.html>.

<sup>132</sup> Cole, "The Struggle of Kettleman City," 76-77.

<sup>133</sup> Ibid, 70-71.

<sup>134</sup> Wendy Umينو and Jody Sparks, *Today's Toxic Dump Sites: Tomorrow's Toxic Cleanup Sites* (Sacramento, CA: The Office, 1986).

<sup>135</sup> Cole, "The Struggle of Kettleman City," 72-73.

EIR prepared by Kings County was approximately 300 pages with a 700-page appendix, resulting in a 1000-page document that was inaccessible to Kettleman residents, 40 percent of which were monolingual Spanish speakers.<sup>136</sup> The County refused to translate the documents into Spanish, while Chem Waste translated only the five-page executive summary.<sup>137</sup> About 70 percent of the comments on the EIR were in Spanish, as residents asked for participation in the process.<sup>138</sup>

The required public hearing for the EIR was held in 1990 in Hanford, 30 miles away from Kettleman City, but 200 residents showed up to fight the proposal, with their own translator.<sup>139</sup> The location was the County Fairground building, which was “about the size of a football field.”<sup>140</sup> The Kings County Planning Commission Chair told residents that they could listen to their translator in the back of the large auditorium where the hearing was held, but the residents refused to be relegated to the back of the room, over 300 feet away from the stage, where they had to watch the proceedings on monitors, despite the seating in front being largely empty.<sup>141</sup> At the end of the hearing, the Planning Commission voted to approve the incinerator, a decision that was affirmed by the County’s Board of Supervisors, leading to *El Pueblo* filing a lawsuit against the County in early 1991.<sup>142,143</sup>

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<sup>136</sup> Hill, *Environmental Justice*, 417.

<sup>137</sup> Cole, “The Struggle of Kettleman City,” 74.

<sup>138</sup> Hill, *Environmental Justice*, 420.

<sup>139</sup> Cole, “The Struggle of Kettleman City,” 75.

<sup>140</sup> *Ibid*, 74.

<sup>141</sup> *Ibid*, 74-75.

<sup>142</sup> *Ibid*, 76.

<sup>143</sup> Hill, *Environmental Justice*, 418.

*Litigation*

The case, *El Pueblo Para el Aire y Agua Limpio v. County of Kings*, which involved both civil rights and environmental law claims, was brought before the Superior Court of the State of California to set aside the approved EIR and issuance of the conditional use permit (CUP) for the toxic waste incinerator.<sup>144</sup> The plaintiffs alleged that the certification of the EIR and the issuance of the (CUP) were illegal for four reasons: (1) it violated the provisions of the CEQA and CEQA Guidelines; (2) the project was inconsistent with the Kings County General Plan; (3) the General Plan conflicted with the Zoning Ordinance; and (4) the County violated its own Zoning Ordinance by rushing the project through the appeals process.<sup>145</sup>

The case was first heard on October 1, 1991, and the court ruled in favor of the plaintiffs on December 31, 1991, agreeing that the EIR was inadequate under the CEQA, as it had not sufficiently analyzed the hazardous waste incinerator's impacts on air quality, nor properly taken into consideration the public participation component of the EIR process.<sup>146,147</sup> The court found that the "strong emphasis in CEQA on environmental decision-making by public officials which involves and informs members of the public" would have been enough to justify an extensive Spanish translation of the EIR, public meeting notices, and public hearing testimony, especially since Kettleman residents continuously expressed a strong interest in participating in the CEQA review process of a

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<sup>144</sup> Hill, *Environmental Justice*, 417.

<sup>145</sup> *Ibid.*

<sup>146</sup> Pérez, "Toxic Waste Landfill in Kettleman City."

<sup>147</sup> Hill, *Environmental Justice*, 422.

facility that would be located within four miles of them.<sup>148</sup> The lack of translation prevented the “meaningful involvement” of the public detailed in the CEQA.<sup>149</sup> This decision was precedent-setting, as “the legislature has never passed a law that requires environmental documents to be prepared in languages other than English.”<sup>150</sup>

The court also agreed that the EIR was inconsistent with the General Plan and Zoning Ordinance, as its compliance with both had been based on the faulty conclusions that “significant environmental effects of the incinerator would be mitigated to levels of insignificance.”<sup>151</sup> However, the court disagreed with plaintiffs that the County Board of Supervisors was biased by the prospect of additional tax revenue from the facility, citing a lack of evidence for profit-based motives.<sup>152</sup> In sum, the court ruled in favor of the plaintiffs “based on the substantive merits of their environmental claims,” but did not directly address its civil rights race-based claims, only touching upon race in their ruling on the CEQA public participation process.<sup>153</sup>

The ruling thus required a new EIR be conducted and published in accordance to the CEQA, and approved in compliance to the Kings County General Plan and Zoning Ordinance, before a CUP could be issued for the incinerator. Kings County, the defendant, did not choose to appeal the court’s decision, but Chem Waste did, although it

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<sup>148</sup> Ibid, 423.

<sup>149</sup> Ibid.

<sup>150</sup> Jane Kay, “The Kettleman City Story,” *EPA Journal*, Volume 18, Number 1 (March/April 1992): 47-48, accessed December 2, 2016, <https://nepis.epa.gov/Exe/ZyPDF.cgi/4000083P.PDF?Dockey=4000083P.PDF>, 47.

<sup>151</sup> Ibid.

<sup>152</sup> Ibid, 424.

<sup>153</sup> Ibid, 416-417.

ultimately dropped the project before an appeal decision was made.<sup>154</sup> All in all, the litigation process and result were a victory for the Kettleman residents, as the incinerator was not added to the facility.

### *Kettleman Today*

The most recent notable activity at Kettleman began in 2014, when the DTSC finalized a permit modification for the waste facility that would allow it to increase its capacity by 50 percent, adding approximately fourteen landfill acres and 4.6 billion pounds of hazardous waste to the site.<sup>155</sup> Initial appeals were denied by the DTSC, leading *El Pueblo* and related parties to file a complaint pursuant to Title VI of the Civil Rights Act, alleging both intentional discrimination and discriminatory impact via the permitting process and EIR.<sup>156</sup> *El Pueblo; Greenaction for Health and Environmental Justice v. DTSC and CalEPA* was filed in March 2015, and settled in a voluntary, court enforceable agreement in August 2016.<sup>157</sup> In the settlement agreement, the California state agencies promise to take factors of environmental justice, such as language barriers,

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<sup>154</sup> Barton H. Thompson, Jr., and Flora Y. F. Chu, “Kettleman City: Siting a Hazardous Waste Incinerator,” Stanford Law School: Environmental and Natural Resources Law and Policy Program, June 1998, accessed December 2, 2016, <http://media.law.stanford.edu/organizations/programs-and-centers/enrlp/doc/slspublic/kettleman.pdf>.

<sup>155</sup> “Assemblymember Alejo Opposes Kettleman Hills Expansion,” Central California Environmental Justice Network, October 10, 2013, accessed December 2, 2016, <https://ccejn.wordpress.com/2013/10/10/614/>.

<sup>156</sup> *El Pueblo Para El Aire y Agua Limpia; Greenaction for Health and Environmental Justice v. Department of Toxic Substances Control and California Environmental Protection Agency*: Complaint under Title VI of the United States Civil Rights Act of 1964 (2015), accessed December 2, 2016, <https://www.documentcloud.org/documents/3041334-Title-VI-Kettleman-City-Civil-Rights-Complaint.html>.

<sup>157</sup> Lewis Griswold, “State, Kettleman City Advocates Settle Dispute over Toxic Waste Landfill,” *The Fresno Bee*, August 10, 2016, accessed December 2, 2016, <http://www.fresnobee.com/news/local/article94948467.html>.

into account when reviewing Chem Waste’s application for permit approval, as well as in reviewing any other expansion applications by the company submitted within the next three years.<sup>158</sup> Additionally, the state agencies committed to helping residents in looking for ways to improve public health in terms of air and water quality, including building a water treatment plant to address arsenic levels in the water.<sup>159</sup> This agreement was lauded by both sides as a historical occurrence, as it is “one of the first examples of a voluntary resolution by state agencies and community groups of this kind of complaint.”<sup>160</sup>

### Environmental Justice Issues

In the framework of environmental justice, the Kettleman case involves both environmental racism and classism, as pointed out by residents when they formed *El Pueblo* and began researching the patterns of toxic waste facility siting and became involved with the toxic waste incinerator proposal. Kettleman City was and is a community of color, with an overwhelming majority of Latino residents, as well as a low-income community, with half of the residents below the poverty line and a majority working in agriculture.<sup>161</sup> The barriers that precluded residents from receiving public notice and participating in environmental review processes were systemic, involving the

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<sup>158</sup> Greenaction for Health and Environmental Justice, *El Pueblo para el Aire y Agua Limpia*, California Environmental Protection Agency, and Department of Toxic Substances Control, “Settlement Agreement,” Department of Toxic Substances Control, 2016, accessed December 2, 2016, [http://www.dtsc.ca.gov/HazardousWaste/Projects/upload/Kettleman\\_TitleVI\\_Settlement.pdf](http://www.dtsc.ca.gov/HazardousWaste/Projects/upload/Kettleman_TitleVI_Settlement.pdf).

<sup>159</sup> Lewis Griswold, “Environmentalists, State Settle Differences over Hazardous Waste Site,” *The Fresno Bee*, September 5, 2016, accessed December 2, 2016, <http://www.fresnobee.com/news/local/article100013267.html>.

<sup>160</sup> Griswold, “State, Kettleman City Advocates Settle Dispute.”

<sup>161</sup> “What’s Killing the Babies of Kettleman City?,” *Mother Jones*, July/August 2010, accessed December 2, 2016, <http://www.motherjones.com/environment/2010/07/kettleman-city-toxic-birth-defect-cluster>.

use of language as a means to withhold knowledge about issues that would affect community members. Further, the practices of Kings County officials, including the method of public notice for the original siting of the facility, the unwillingness to translate the EIR, and the treatment of residents who attended the public hearing for the toxic waste incinerator, suggest structural and institutional discrimination enabled by local government.

### *Slow Violence*

In this case study, the use of litigation has proven somewhat effective in individual cases of environmental injustice, as demonstrated through the original lawsuit, *El Pueblo v. Kings County*, and in the more recent complaint, *El Pueblo; Greenaction v. DTSC and CalEPA*, as both ended with favorable results for the residents. However, an examination of how litigation has addressed slow violence in particular shows that essential issues have been left out. For the Kettleman residents, slow violence took the form of continued violations and new permits for expansion, as well as possible negative health effects in the community.

While the creation of the toxic waste incinerator was halted via the success of *El Pueblo v. Kings County*, the operations of the existing facility still continued under its original permit – the same series of operations that had resulted in multiple violations and fines over the course of the facility’s existence. Following the conclusion of the lawsuit in 1991, until the end of 1995, multiple violations were found in inspections by the EPA and state agencies, contributing to the unease of residents, and the continued activism



against new permits submitted by Chem Waste.<sup>162</sup> Since the nature of litigation is to tackle a single case at a time, and must be in reaction to something that has occurred already, using litigation as a means to achieve environmental justice translates to a constant reactive struggle and output of labor on the part of Kettleman residents, who must remain vigilant in paying attention to the actions of Chem Waste. An example of this process is the filing of *El Pueblo; Greenaction v. DTSC and CalEPA*, which was done to as a last resort to address a new permit that Kettleman residents had no means to stop besides going to court. In fact, in both instances, community residents exhausted all avenues before turning to litigation, attempting to stop facility expansion via the public participation process of the CEQA.

Another possible issue of slow violence did not surface until the late 2000s, nearly two decades after the initial lawsuit, when residents noticed what seemed to be an unusual amount of birth defects occurring in the community, ranging from cleft lips or split palates to more fatal conditions, such as heart murmurs.<sup>163</sup> Although community activism led to a state-sponsored study on the birth defects, the study ultimately proved inconclusive, unable to cite a specific reason for the increased number of birth defects in Kettleman City.<sup>164,165</sup> As an investigative article on the topic states,

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<sup>162</sup> “CWM Kettleman Hills Facility RCRA/TSCA Inspections: 1983 – Present,” Department of Toxic Substances Control, 2012, accessed December 2, 2016, <https://dtsc.ca.gov/HazardousWaste/Projects/upload/CWMKettlemanHillsFacilityInspectionEnforcementHistory.pdf>.

<sup>163</sup> “What’s Killing the Babies of Kettleman City?”

<sup>164</sup> Ibid.

<sup>165</sup> Linda S. Adams, Arnold Schwarzenegger, and Mark B. Horton, “INVESTIGATION OF BIRTH DEFECTS AND COMMUNITY EXPOSURES IN KETTLEMAN CITY, CA: PUBLIC REVIEW DRAFT,” California Department of Public Health, November 2010, accessed December 2, 2016, <http://www.cdph.ca.gov/Documents/KettlemanCityReportNovv1English.pdf>.

To find a chemic culprit for the birth defects would require not only identifying substances in the air, water, or soil that are capable of causing such defects but also tracing their pathway to townspeople's bodies. The odds of achieving either are low. For one thing, Kettleman City isn't big enough to support meaningful epidemiological statistics. [...] Even more confounding, clusters – of birth defects, cancers, and other health problems – are not necessarily evidence of environmental harm.<sup>166</sup>

Without being able to pinpoint a specific cause via scientific studies, if one exists, litigation is not a possible remedy for the occurrence of this slow violence, as no evidence is available.

It is important to note, however, that Kettleman's court cases resulted in setting a precedent for other instances of environmental injustice, in terms of overcoming language barriers and creating out-of-court methods of remediation, thus resulting in preemptive potential solutions and mitigating measures for future occurrences of slow violence. Ultimately, while litigation can provide individual successes for environmental justice, the ongoing struggle between communities and those who enact environmental injustices upon them requires multiple instances of litigation to achieve progress, and in some cases, litigation is not a possible route of remedy.

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<sup>166</sup> “What’s Killing the Babies of Kettleman City?”

## Comparative Analysis

### Overview

For both Hinkley and Kettleman, the fight for environmental justice for local residents came to a cusp during the early 1990s, at the same time that the national movement for environmental justice was starting to garner responses from federal and state governments.<sup>167,168,169</sup> In this context, the way that each situation unfolded allows for a deeper look into how different cases of environmental justice were addressed and remediated at the ground level, during an integral time when environmental justice was beginning to be seriously considered by entities such as the courts and government officials, who possessed the power to institutionalize environmental justice via existing laws and regulations. In addition, they provide case studies for looking at the efficacy of litigation via existing laws and regulations in addressing issues of environmental injustice, including the occurrence of slow violence within affected communities. From the way Hinkley and Kettleman played out, it is evident that successes in environmental justice litigation can prove to be noteworthy and capable of setting legal precedents, and can also serve to either help or hurt a community's morale and sense of empowerment. However, environmental justice litigation cannot in and of itself fully address or solve the long term, continuous effects of environmentally adverse practices – otherwise known as slow violence – on local communities.

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<sup>167</sup> R. Gregory Roberts, “Environmental Justice and Community Empowerment: Learning from the Civil Rights Movement,” *American University Law Review* 48, no.1 (October, 1998): 232.

<sup>168</sup> Kathleen Sharp, “‘Erin Brockovich’: The Real Story,” Salon, April 14, 2000, accessed December 3, 2016, <http://www.salon.com/2000/04/14/sharp/>.

<sup>169</sup> Barry E. Hill, *Environmental Justice: Legal Theory and Practice*, 2nd ed. (Washington, D.C.: ELI Press, Environmental Law Institute, 2009),

### Comparison of Environmental Justice Issues

As fairly isolated, small, rural, and low-income communities, Hinkley and Kettleman both fit the profile for where environmental injustice are likely to occur, as systemic barriers to knowledge and information, both unintended and intended, allow for corporations to carry out environmentally unfriendly practices without the awareness of residents. Environmental classism in the form of access to knowledge and expertise is present in both cases. In Hinkley, the residents, who were unversed in legal issues, relied on their attorneys' advice, which resulted in a partially inaccessible private arbitration process and settlement amounts incongruent with medical ailments for a number of community members.<sup>170</sup> A lack of means to move out of the community continues to leave residents at the mercy of chromium pollution, which was proven to have spread despite PG&E's cleanup efforts, leading to further distrust of the corporation.<sup>171</sup> In Kettleman City, the residents were also largely farm workers, who were unversed in the laws and regulations that the Kings County government and Chem Waste company understood and took advantage of, as evident in the original siting of the facility and the numerous violations carried out by the facility in the 1980s and 1990s.<sup>172</sup>

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<sup>170</sup> Kathleen Sharp, "'Erin Brockovich': The Real Story," Salon, April 14, 2000, accessed December 3, 2016, <http://www.salon.com/2000/04/14/sharp/>.

<sup>171</sup> Mike Lambstaff, "Hinkley 'will never come back,'" Victorville Daily Press, March 27, 2015, accessed December 3, 2016, <http://www.vvdailynews.com/article/20150327/NEWS/150329776>.

<sup>172</sup> Luke W. Cole, "The Struggle of Kettleman City: Lessons for the Movement," *Maryland Journal of Contemporary Legal Issues* 5.1 (1994), accessed December 3, 2016, [http://heinonline.org/HOL/Page?handle=hein.journals/mjcolei5&div=10&g\\_sent=1&collection=journals#71](http://heinonline.org/HOL/Page?handle=hein.journals/mjcolei5&div=10&g_sent=1&collection=journals#71), 68-70.

Kettleman City's case of environmental injustice, unlike Hinkley, also involved environmental racism, as the community was overwhelmingly Latino and composed of 40 percent monolingual Spanish speakers. The barriers to knowledge and expertise perpetuated by the lack of wealth associated with class was thus further exacerbated by the language barrier associated with race, which prevented a sizable proportion of the community from being able to understand and engage with public notices or information about the facility and its operations.<sup>173</sup> Thus Kettleman is demonstrative of how the intersections of race and class can combine in creating issues of accessibility to meaningful involvement and self-advocacy for communities that are both low-income and of color, while Hinkley reminds that classism is also a large factor in allowing for environmental injustice.

#### Comparison of Litigation Methods and Processes

Looking more specifically at the litigation methods and processes of each case, there are congruencies with the literature that purports that litigation is a short-term method to a long-term problem, and the articles by activists and organizers that espouse community empowerment and engagement over litigation as a means to fight for environmental justice.<sup>174</sup> Although both Hinkley and Kettleman achieved wins for the residents through legal action, the methods of litigation were varied and culminated in different results for the plaintiffs. In addition, the satisfaction and empowerment that residents felt as a result of legal action were contrasting, which in turn led to different scenarios for the two communities today.

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<sup>173</sup> Hill, *Environmental Justice*, 417.

<sup>174</sup> *Ibid*, 271.

For Hinkley, litigation was pursued via a class action suit that claimed negative health impacts at the hands of PG&E chromium pollution, which eventually proceeded into private arbitration between PG&E and the plaintiffs' attorneys, in order to circumvent the longer process it would take for the case to be tried in open court.<sup>175</sup> While this led to the largest settlement amount in U.S. history, a total of \$333 million, agreed upon lawyer fees and an undisclosed disbursement process led to a number of dissatisfied and focused residents, some of whom did not receive enough funds to help mitigate their medical fees, resulting in a sense of deception and disenfranchisement.<sup>176</sup> As a result of this process and the spread of chromium pollution in the area, which litigation failed to address, Hinkley is now a dying community, with residents moving out to escape pollution or economic hardship.<sup>177</sup>

In comparison, Kettleman's original litigation under the CEQA, a traditional environmental act, was carried out in open court and achieved a precedent for translating documents for the CEQA's public participation component of the EIR process.<sup>178</sup> Residents were able to halt the addition of a toxic waste incinerator to the facility, although subsequent permitting in later years allowed the facility to expand activity, to

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<sup>175</sup> Sharp, "Erin Brockovich: The Real Story."

<sup>176</sup> Ibid.

<sup>177</sup> Jim Steinberg, "Hinkley continues to shrink: Desert town set to lose only market, gas station, Post Office," San Bernardino County Sun, March 18, 2015, accessed December 3, 2016, [http://www.sbsun.com/environment-and-nature/20150318/hinkley-continues-to-shrink-desert-town-set-to-lose-only-market-gas-station-post-office?source=most\\_viewed](http://www.sbsun.com/environment-and-nature/20150318/hinkley-continues-to-shrink-desert-town-set-to-lose-only-market-gas-station-post-office?source=most_viewed).

<sup>178</sup> Jane Kay, "The Kettleman City Story," *EPA Journal*, Volume 18, Number 1 (March/April 1992): 47-48, accessed December 3, 2016, <https://nepis.epa.gov/Exe/ZyPDF.cgi/4000083P.PDF?Dockey=4000083P.PDF>, 47.

the disappointment and opposition of residents.<sup>179</sup> Unlike in Hinkley, Kettleman's population size remains roughly the same today as it was when environmental injustices first surfaced, and residents have stayed galvanized against activities by Chem Waste at the toxic waste facility that they have believed to be detrimental to public health. The recent win via the settlement argument with state agencies exemplifies the commitment of residents to fighting environmental injustice in their community.<sup>180</sup>

Within these two case studies, then, the more successful method of litigation was under traditional environmental law, the CEQA, which falls in line with environmental justice litigation reviews that have looked at the efficacy of different methods of litigation and determined that environmental laws result in the most success, followed by civil rights claims under Title VI of the Civil Rights Act.<sup>181</sup> Further, Kettleman, which was conducted publically, with more access and participation for the residents, did not result in the same level of disenfranchisement that Hinkley, which was conducted privately, did.

Although a number of environmental justice activists and organizers have criticized litigation as a means of pursuing environmental justice, because it takes away the power from the people, they have also admitted to the necessity of litigation in some

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<sup>179</sup> "Assemblymember Alejo Opposes Kettleman Hills Expansion," Central California Environmental Justice Network, October 10, 2013, accessed December 3, 2016, <https://ccejn.wordpress.com/2013/10/10/614/>.

<sup>180</sup> Lewis Griswold, "State, Kettleman City Advocates Settle Dispute over Toxic Waste Landfill," *The Fresno Bee*, August 10, 2016, accessed December 3, 2016, <http://www.fresnobee.com/news/local/article94948467.html>.

<sup>181</sup> Luke W. Cole, "Environmental Justice Litigation: Another Stone in David's Sling," *Fordham Urban Law Journal* Volume 21, Issue 3, (1993): 532-545, accessed December 3, 2016, <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1398&context=ulj>.

circumstances, and detailed publicity and community engagement during the litigation process as ways to maintain participation in instances where litigation becomes necessary.<sup>182</sup> Kettleman, which was carried out in a manner that largely fit into these recommendations, appears to have resulted in a more empowered community than Hinkley, which was carried out in a largely opposite manner, thus supporting the efficacy of methodologies backed by these environmental justice advocates.<sup>183</sup>

### *Slow Violence*

In both cases, litigation proved ineffective in offering solutions to the long term effects and struggle for environmental justice, as neither set of results for litigation addressed the occurrence of slow violence via negative health effects and community dissatisfaction with local facilities. However, the nature of legal action is to remediate the immediate issue brought to court in each case, and as such, litigation could be reframed and viewed as an ongoing process within the larger fight for environmental justice, as a means used when necessary. This comes with its own implications, since litigation can be both costly and slow, which make it less accessible to low-income communities and contributes to slow violence by taking a longer time for redress, respectively. Additionally, as litigation has been billed a method that moves the power from the people to the court, an undesirable litigation process and result could lead to an exacerbation of slow violence, as seen in the case of Hinkley, where a number of disenfranchised residents ultimately chose to move out of the community, or avoid further action in order to keep their settlement amount and move on with their lives.<sup>184</sup>

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<sup>182</sup> Roberts, "Environmental Justice and Community Empowerment," 232.

<sup>183</sup> Cole, "The Struggle of Kettleman City," 78-80.

<sup>184</sup> Steinberg, "Hinkley continues to shrink."



On the other hand, as demonstrated in Kettleman, there are cases where litigation, while not offering solutions to slow violence, can set precedents that serve to mitigate the occurrence of slow violence in the future, either indirectly or directly. Through *El Pueblo v. Kings County*, Kettleman residents were able to achieve judicial support for Spanish translations of documents under CEQA's public participation process, an accomplishment that empowered the Latino residents in future permitting processes, as the language barrier was eliminated and they were able to access information and participate in later environmental decision-making that would affect their community.<sup>185</sup> This indirectly mitigates slow violence, not only by creating a sense of empowerment that will bolster the community, but also by removing barriers to information, which allow the residents to react more quickly to new developments in permitting and operations at the facility. Through *El Pueblo; Greenaction v. DTSC and CalEPA*, residents achieved a settlement agreement where state agencies agreed to consider environmental justice factors in future EIRs, increasing the likelihood of preventing future occurrences of slow violence by instituting preemptive measures against it.<sup>186</sup> In the same settlement agreement, state agencies also agreed to installing a water treatment plant and looking for ways to improve public health in terms of air quality – both actions that serve to mitigate the effects that slow violence, in terms of water quality and air quality, have enacted upon the community.<sup>187</sup> Thus, litigation has actually served to partially address slow violence in Kettleman, although the same cannot be said for Hinkley.

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<sup>185</sup> Cole, "The Struggle of Kettleman City," 78-79.

<sup>186</sup> Griswold, "State, Kettleman City Advocates Settle Dispute."

<sup>187</sup> Lewis Griswold, "Environmentalists, State Settle Differences over Hazardous Waste Site," *The Fresno Bee*, September 5, 2016, accessed December 3, 2016, <http://www.fresnobee.com/news/local/article100013267.html>.

## **Conclusion**

Based on the case studies of Hinkley and Kettleman City, environmental justice litigation should be used in tandem with other means to address environmental injustice, and not by itself, in order to best ensure success and a redress of issues of slow violence. When environmental justice litigation is effective and coupled with community engagement and empowerment, it can be useful in mitigating and partially addressing slow violence within the affected community. However, when taken out of the hands of the residents, it can actually exacerbate slow violence by discouraging the local community and leading to disenfranchisement, where residents' inaction disables them from organizing in resistance to environmental injustices and instead allows for their continuation.

Rather than relying on singular methods of addressing environmental injustice, communities should approach the issue from multiple angles, first ensuring group buy-in and maintaining it throughout the process, especially when the fight moves away from the community and into the courts. Although litigation is critiqued for its limitations to each individual case and its results, the method still holds merits, as successful litigation can result in legally enforceable actions that community activism cannot necessarily achieve, and precedents set in court pave the way for future cases and possible legislative measures. It is imperative that community engagement remain a priority in local fights for environmental justice, especially in situations such as Hinkley and Kettleman City, where residents ultimately turned to litigation as a means to seek justice.

Through a combined approach, organizers and communities can reap the benefits of both community empowerment, which is effective in ensuring that local residents will

maintain their struggle for environmental justice, and litigation, which offers the possibility of legal and institutional power when cases are won in favor of local residents. This way, an active effort on the part of communities to address issues of slow violence, coupled with litigation when necessary, can achieve measures through which negative environmental impacts are mitigated or can be prevented in the future.

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