



# Protecting Vulnerable Coastal Communities

MEANINGFUL POLITICAL ACTION  
AND STRATEGIES FOR  
ENVIRONMENTAL JUSTICE  
AFTER HURRICANES KATRINA AND RITA

A REPORT BY:  
THE NATIONAL COMMISSION ON  
ENVIRONMENTAL JUSTICE ON THE GULF COAST  
AND  
THE LAWYERS' COMMITTEE  
FOR CIVIL RIGHTS UNDER LAW



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## **TABLE OF CONTENTS**

About The National Commission On Environmental Justice On The Gulf Coast	iii
Acknowledgments	iv
Executive Summary	v
Commissioner Biographies	viii
I. Introduction	1
II. Hurricane Rita: Let Us Not Forget	2
A. Damage To Oil And Gas Production	3
B. Wetland Loss	4
C. Agricultural And Commercial Fishing Losses	5
III. New Orleans And Katrina: “It’s Déjà Vu All Over Again.”	7
A. Chef Menteur Landfill	10
B. The United Houma Nation	11
C. Environmental Assessments	12
D. Independent Environmental Assessments	13
E. Community Skepticism	15
IV. Local Environmental Justice Activism	17
A. Texas Environmental Justice Advocacy Services (TEJAS)	17
B. Community In-Power Development Association	18
C. Deep South Center for Environmental Justice	19
D. Greater New Orleans Fair Housing Action Center	20
E. North Gulfport Community Land Trust	21
F. Turkey Creek Community Initiatives	21
G. Bay Area Women’s Coalition	22
H. Portersville Revival Group	23

V.	Post Katrina/Rita Failures And Continued Threats	25
A.	Lack Of Stakeholder Involvement In Post-Katrina Planning	25
B.	Lack Of Support For Those With Limited English Proficiency	26
C.	Environmental Exposure And Damage: The Creation Of New Environmental Justice Communities	27
D.	FEMA Trailers	28
VI.	Enforcement Deficiencies	32
A.	Community Burdens	32
B.	U.S. Government Accountability Office Recommendations	36
VII.	Key Recommendations	38

## **ABOUT THE NATIONAL COMMISSION ON ENVIRONMENTAL JUSTICE ON THE GULF COAST**

The National Commission on Environmental Justice on the Gulf Coast was formed through the efforts of the Lawyers' Committee for Civil Rights Under Law specifically to address the impact of Katrina *and* Rita on minority and low-income communities that historically have been burdened by environmental threats along the Gulf Coast. The Commission is a panel of prominent academics, local community leaders and civil rights practitioners. This panel was charged with creating a comprehensive report detailing the history of environmental justice activism on the Gulf Coast and in the wake of Hurricanes Katrina and Rita. The Commission held four public hearings at which local community members, officials, policy and lawmakers, and activists testified about local environmental justice issues existing prior to and exacerbated by the hurricanes.

Too often, politically and economically powerless residents bear the disproportionate burden of environmental hazards. The Commission hearings enabled local citizens and experts with particular knowledge of environmental justice issues in the region to provide statements regarding that history and the impact of Hurricanes Katrina and Rita on their environment. From that testimony and other fact-finding, this report was drafted. It includes recommendations for federal and state officials as well as grassroots organizers to fully incorporate environmental justice into the rebuilding and renewal of the Gulf community.

## **ACKNOWLEDGMENTS**

The Commission and the Lawyers' Committee thank the following groups and individuals for their support and continued effort towards equal environmental protection: Deep South Center for Environmental Justice, Environmental Justice Resource Center, Advocates for Environmental Human Rights, Mississippi Center for Justice, Mississippi Workers' Center for Human Rights, Center for Environment and Economic Justice, People's Institute West, Thurgood Marshall School of Law and the Barbara Jordan - Mickey Leland School of Public Affairs at Texas Southern University, TEJAS, and the STEPS Coalition.

Special thanks to Daria E. Neal, Senior Counsel for the Environmental Justice Project at the Lawyers' Committee and Martina Cartwright, Law Professor at the Thurgood Marshall School of Law at Texas Southern University, for their contribution to this report; Tuyet Duong and the Asian American Justice Center, for their support and contribution to this report; Colin Reingold, Juris Doctorate candidate at the University of Michigan, for his research and drafting assistance; Zoe Segal Reichlin, Lawyers' Committee Lindsay Fellow 2006-2007, and Ariele Foster, Lawyers' Committee Legal Assistant, for facilitating the Commission hearings, community outreach and media contact; Raquel Smith, Lawyers' Committee Intern Fall 2007; and Michael Nunez, Lawyers' Committee Paralegal.

Very special thanks also to the Kapor Foundation, Ford Foundation and Newman's Own Foundation whose financial support of the Commission and this Report made this work possible.

Finally, this report attempts to capture the efforts of local residents to protect their health and environment in spite of tremendous obstacles. There are so many stories not told through this report that are worthy of recognition. The Commission thanks all those continuing to fight for their communities and keeping hope and faith that their struggle will not be in vain.

## **EXECUTIVE SUMMARY**

### **Purpose**

This report focuses on the right of people to equal protection under, and enforcement of, the law. When two hurricanes of the magnitude of Katrina and Rita occur, it is mandatory that the emergency response address the environmental threats to all human life.

The voice of the people was paramount to the work of the Commission. Witnesses who testified included environmental justice activists, elected officials, and representatives from state environmental agencies, all with direct knowledge and experience addressing the environmental threats along the coast. This Report documents environmental activism on behalf of minority and poor communities before and after Katrina and Rita, identifies continuing threats to these communities, and provides recommendations to federal and state agencies for achieving environmental equality as recovery goes forward.

### **Key Findings**

- Lack of enforcement of environmental laws before and after Katrina and Rita. Residents of the Gulf Coast have been sacrificial lambs for too long. Not a single enforcement action has been taken by the EPA for the numerous reported illegal wetlands fills since Hurricanes Katrina and Rita. The burden on citizens to enforce environmental laws the federal government is obligated to enforce is overwhelming. Regional non-profit organizations have pursued environmental protection through the citizen suits provision of the Clean Air and Clean Water Acts. However, guidance and commitment from federal agencies charged with enforcement of these laws is needed and demanded by the people.
- Lack of accountability to communities. Enactment of emergency orders that have remained in place for over two years has in many ways threatened the health and security of coastal communities. Debris mismanagement and unregulated development in flood prone areas increase the vulnerability of residents to harmful pollution and future severe flooding. Additionally, the unwillingness of FEMA to listen to residents' complaints about formaldehyde trailers for nearly a year after complaints first surfaced is simply unjust and inhumane.
- Continued neglect of poor and minority communities. The lessons of Katrina and Rita seem to be lost on government agencies. Approval of unfettered wetlands destruction and new facilities for



incineration of poisonous nerve agents demonstrate the careless and neglectful decisions that impact these already over- burdened communities.

## **Key Recommendations**

The Commission's recommendations are directed to both federal and state policymakers to take immediate action that would ensure greater protection for the Gulf Region and its residents. The Commission is also providing recommendations for grassroots organizations to strengthen their local advocacy.

### Federal Action

Amend Title VI of the Civil Rights Act. Failures of the U.S. Environmental Protection Agency and the Army Corps of Engineers to enforce existing laws and regulations exemplify the need to establish a private right of action, which permits citizens to enforce Title VI under a disparate impact standard as well as the existing intentional discrimination standard.

- Codify Executive Order 12898 "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." Every federal agency should be required by law to ensure its policies, practices and programs do not have an environmental impact that disproportionately burdens minority and low-income communities.
- Congress should aggressively oversee the Environmental Protection Agency and the Army Corps of Engineers' enforcement of environmental laws, particularly the Clean Water Act's wetlands protections and the Resource Conservation Recovery Act in communities heavily burdened by polluting facilities. Additional oversight must include the EPA's implementation of the General Accounting Office's recommendations outlined in its 2007 Report.
- Amend the Stafford Act to mandate EPA to perform soil, water and air testing as part of their emergency response in addition to mandating that services and support provided to victims of emergencies not harm the health and safety of the recipients.
- Implementation of the Superfund Tax to ensure funding for clean up of polluted sites in low-income and minority communities.

### State Action

- Enact stronger laws governing debris management during emergency responses to protect the health and safety of residents.
- Strengthen and coordinate efforts of elected officials and grassroots organizations to work together to address community environmental protection needs.
- Strengthen environmental and local health departments, and improve emergency response of these agencies.
- Create contingency emergency plan to communicate with language minorities.

### Community Action

- Hold federal and state agencies accountable by aggressively reporting enforcement concerns to federal and state oversight agencies such as the Office of Inspector General or the Office of Civil Rights for the Environmental Protection Agency and the Army Corps of Engineers.
- Continue to build coalitions across racial, ethnic, socioeconomic and geographic lines through various media outlets (websites, blogs, email, newsletters, and press releases).

## COMMISSIONER BIOGRAPHIES

### **Bishop James L. Black**

Executive Director, Center for Environmental & Economic Justice, Inc.

James Black is Overseer of Faith Covenant Ministries, Inc. and Pastor of Faith Tabernacle of Praise, Inc. He is also President and Founder of Walking By Faith Ministries, Inc. and Owner/General Manager of radio stations WQFX of Gulfport, MS and WAML of Laurel, MS. In addition, he is founder and Executive Director of Center for Environmental and Economic Justice, Inc. a community based 501(c) 3 focusing on economic and environmental related projects.

Bishop Black serves as the: President of the Board of Directors of the STEPS Coalition Biloxi, MS; Lead Advisory Board Member of the Mississippi Department of Health Childhood Lead Poisoning Prevention Program; Advisory Board Member of the Rockefeller Philanthropic Advisors Gulf Coast Fund for Community Renewal and Ecological Health; Board Member of the Gulf Coast Rescue Mission; and is a member of the Mississippi Governor's Commission and Recovery, Renewal, and Rebuilding.

Mr. Black was employed with the Department of Housing and Urban Development (HUD) as a Real-Estate Appraiser and Multi-Family Housing Specialist for six years. Mr. Black was educated at Jefferson Davis Jr. College, Mississippi Valley State, Jackson State University, Lee College in Cleveland, TN, and Real Estate Appraisal (HUD), Kansas City, MO. Numerous other training and academic pursuits have followed. Mr. Black is also an honorably discharged, decorated, Vietnam era combat Marine.

### **Rev. Daniel A. Buford**

Regional Coordinator, People's Institute West; Berkeley, CA

Reverend Daniel A. Buford is the founding organizer of and trainer for the People's Institute for Survival and Beyond based in New Orleans, Louisiana as well as the Vice President of the Meiklejohn Civil Liberties Institute. He is the Regional Coordinator of the People's Institute West in Berkeley, California, a position he has held for nine years.

Since Hurricanes Katrina and Rita, Rev. Buford has been a vocal advocate for the human rights of Hurricane Katrina survivors, speaking on behalf of those survivors around the country and internationally, and seeking innovative "thinking outside of the box" strategies for applying

human rights standards in legal, educational and community organizing spheres. Recently, he spoke at United Nations Human Rights Committee hearings in both New York and Geneva, Switzerland on the struggles and human rights abuses of Hurricane Katrina survivors, opening up a frank discussion of structural racism and marginalization in the United States.

During his tenure as Executive Director of the Ecumenical Peace Institute, he conducted a feasibility study on urban wetlands that lead to the creation of the “Dr. Martin Luther King Jr. Regional Park” in Oakland, California. He also served on a community accountability task force that monitored clean-up of military-industrial toxic waste in Hunter’s Point Naval Shipyard in San Francisco, California.

**Martina E. Cartwright, Esq.**

Managing Attorney, Environmental Law and Justice Center, Thurgood Marshall School of Law; Houston, TX

The Environmental Law and Justice Center is a public interest, university-based environmental institution. It was founded in 1994 to lend the expertise and commitment of the Civil Rights and Environmental Movement to disenfranchised minority and low-income communities in Texas and neighboring states throughout the South, burdened by various environmental abuses.

As Managing Attorney of the ELJC, Ms. Cartwright supervises intern/students in the Center, oversees the drafting and filing of legal motions and pleadings in federal and state court and oversees the community/client intake process. Ms. Cartwright is responsible for developing legal strategies for cases filed and/or pending in the Center. She provides instruction in federal and state environmental law, as well as develops and directs informational community meetings and workshops.

Ms. Cartwright received her Juris Doctorate degree from the American University, Washington College of Law where she pursued a concentration in International and Environmental Law. She received her Bachelors of Arts degree in History from the University of Baltimore, Yale Gordon College of Liberal Arts.

Ms. Cartwright has published several articles and essays on Environmental Justice. She has served as panelist and/or speaker at a number of conferences on Environmental Justice and the Law. She has also taught the following classes at the Thurgood Marshall School of Law: Caribbean Law Clinic; Environmental Law; Environmental Justice Clinic; Hazardous Waste Law; and Toxic Tort.

**Leslie G. Fields, Esq.**

National Environmental Justice Director, Sierra Club

Leslie Fields brings twenty years of international, federal, state and local environmental justice and environmental law and policy experience to the Sierra Club. Fields is the former International Director of Friends of the Earth-US (an environmental NGO) in Washington, D.C. Fields is currently an adjunct law professor at Howard University School of Law (co-teaching international environmental law and co-coordinating the Environmental Law Clinical Externship) She has worked with community groups, nonprofit organizations, the private sector and all levels of government and is particularly interested in the intersection of environmental justice, democracy, corporate and civic governance and globalization. She has worked extensively on oil/gas natural resource extraction issues (e.g. the West African Gas Pipeline), climate change and water privatization in West and Southern Africa. Leslie has also been known to periodically detour into redistricting and voting rights issues. Leslie has spent vast amounts of her spare time on the boards of: Horn Relief (a Somali women's development/environmental organization), CERES (the Coalition for Environmentally Responsible Economies), the National Black Environmental Justice Network (NBEJN), the Texas NAACP and with EPA's National Environmental Justice Advisory Council's International Subcommittee. Leslie Fields is a graduate of Cornell University and the Georgetown University Law Center.

**Jaribu Hill, Esq.**

Executive Director, Mississippi Workers' Center for Human Rights

Jaribu Hill is a civil rights attorney and Executive Director of the Mississippi Workers' Center for Human Rights. Hill has also worked with Amnesty International in Oxford, Mississippi as a Soros Justice Fellow where she did education and advocacy work that focused on issues affecting juveniles and inmates with mental retardation, who are on death row. She is the former Director of the Southern Regional Office of the Center for Constitutional Rights.

Jaribu Hill is a former Skadden Fellow. While in law school she was awarded a Thurgood Marshall Fellowship and was an Ella Baker Intern with the Center for Constitutional Rights. Jaribu is the Attorney for the Town of Sunflower, Mississippi.

Hill is a graduate of Central State University in Wilberforce, Ohio and received her Juris Doctor from the City University of New York (CUNY) School of Law. Her organizational memberships include the following:

Central State University National Alumni Board, Delta Sigma Theta Sorority, Inc., Association of Trial Lawyers of America, American Bar Association, Amnesty International USA, Magnolia Bar Association, National Lawyers' Guild, National Conference of Black Lawyers, National Employment Lawyers Association, Washington County NAACP, Mississippi Immigrants Rights Alliance (board member), and Mississippi ACLU (board member).

**Reilly Morse, Esq.**

Staff Attorney, Mississippi Center for Justice; Biloxi, MS

Reilly Morse is an Equal Justice Works Katrina Legal Fellow employed by the Mississippi Center for Justice with a focus on housing and community lawyering. MCJ is a statewide home-grown public interest law firm focusing on social justice. Prior to Hurricane Katrina, Mr. Morse was a solo attorney in Gulfport, MS, and for nine years Mr. Morse's practice focused on environmental law and environmental justice. His clients included an alliance between African-American communities and the Sierra Club, who successfully blocked the development of hundreds of acres of wetlands serving historic Turkey Creek. He also represented a coalition of groups that succeeded in preventing the development of three large casino projects in sensitive estuaries in Bay of St. Louis and Biloxi Bay. Mr. Morse was appeal counsel on *Sierra Club v. MDEQ*, a Mississippi Supreme Court decision blocking a \$60 million U. S. Army Corps of Engineers flood control project in the Big Sunflower River in the Mississippi Delta. He was an assistant municipal court prosecutor and judge in Gulfport Mississippi between 1996 and 2002. Mr. Morse is married with two daughters and resides in Gulfport.

## **I. INTRODUCTION**

Let America be the dream the dreamers dreamed--  
Let it be that great strong land of love  
Where never kings connive nor tyrants scheme  
That any man be crushed by one above.

(It never was America to me.)

O, let my land be a land where Liberty  
Is crowned with no false patriotic wreath,  
But opportunity is real, and life is free,  
Equality is in the air we breathe.<sup>1</sup>

Two years after Hurricanes Katrina and Rita pummeled the U.S. Gulf Coast, signs of their destruction still remain. The spotlight is off; new events are capturing the attention of people daily, leaving many thinking everything is back to normal in the Gulf. It is not. Victims of the disasters are still fighting to return home, cleaning and rebuilding their homes, and advocating for enforcement of state and federal laws enacted to protect their safety and health.

Environmental injustice has long been the experience of many communities along the U.S. Gulf Coast. Historic *de jure* and *de facto* housing discrimination forced African-Americans, and other minority groups, to reside in areas prone to flooding, zoned for mixed residential/industrial use, and, in general, the least desirable land. Fifty-four Superfund National Priority List sites were affected by Katrina or Rita.<sup>2</sup> Organizations such as the Environmental Justice Resource Center at Clark Atlanta University and the Deep South Center for Environmental Justice at Dillard University have spent decades fighting for environmental protection for America's poor and minority communities. Numerous other individuals throughout the nation have dedicated their lives to ensure the promise of America is a promise to all, regardless of race, national origin or economic status. The environmental concerns go beyond ozone depletion and rising global temperatures to the value and protection of human life. The very fact that the majority of polluting industries are in poor and minority communities mandates regulations protecting human health from the cumulative impact of pollution.

The National Commission on Environmental Justice on the Gulf Coast was formed through the efforts of the Lawyers' Committee for Civil Rights Under Law specifically to address the impact of Katrina and Rita on

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<sup>1</sup> Langston Hughes, excerpt from *Let America be America Again*.

<sup>2</sup> <http://www.epa.gov/katrina/superfund.html#al>, accessed on October 4, 2007.



minority and low-income communities that historically have been burdened by environmental threats along the Gulf Coast. The Lawyers' Committee and the Commission recognize the pursuit for environmental protection for these communities is ongoing and will endeavor to develop a dialogue with local, state and federal representatives to achieve equal protection for these communities. In this regard, the Commission held four hearings throughout the Gulf Coast to support the continuing dialogue on environmental justice – in Gulfport, Mississippi on October 14, 2006, in New Orleans, Louisiana on October 21, 2006, in Mobile, Alabama on March 10, 2007 and in Houston, Texas on April 22, 2007.

The purpose of this report is to identify the impacts of Hurricanes Katrina and Rita on environmental justice communities (i.e. minority and low-income communities disproportionately burdened by environmental pollution). This report first analyzes the impact of Hurricane Rita. The second part addresses the environmental destruction caused by Hurricane Katrina in New Orleans and its historical significance. Part three examines local activism in Texas, Louisiana, Mississippi and Alabama before and after Hurricanes Katrina and Rita and includes observations and testimony of witnesses from each of the commission hearings. Part four addresses government failures that have impacted the environment of Gulf Coast communities and continued threats to these communities resulting directly from local, state and federal government actions. Part five of the report analyzes deficiencies in the enforcement of environmental laws after Katrina. Finally, part six outlines the Commission's key recommendations.

## **II. HURRICANE RITA: Let Us Not Forget.**

Often forgotten, overlooked, or enveloped in the discussion of Katrina, the impact of Hurricane Rita was equally devastating to the residents of southwestern Louisiana and southeastern Texas. Hurricane Rita was a Category 4 hurricane upon entering the Gulf of Mexico,<sup>3</sup> and made landfall near the Texas-Louisiana border on Sept. 24, 2005 as a Category 3 hurricane.<sup>4</sup> The impact of Rita caused the Federal Emergency Management Agency (FEMA) to declare the majority of southwest Louisiana a federal disaster area eligible for individual and household assistance; this area includes the parishes of Acadia, Allen, Ascension, Cameron, Calcasieu, Beauregard, Evangeline, Iberia, Jefferson, Jefferson Davies, Lafayette, Lafourche, Livingston, Plaquemines, Sabine, St. Landry, St. Martin, St. Mary, Terrebonne, Vermilion, Vernon, and West

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<sup>3</sup> Paula Dittrick, *Industry Still Assessing 2005 Hurricane Damages*, OIL & GAS J., Sept. 4, 2006, at 44, 44.

<sup>4</sup> Randy Schnepf & Ralph M. Chite, *CRS Report for Congress: U.S. Agriculture After Hurricanes Katrina and Rita: Status and Issues* 6, Oct 5, 2005.



Baton Rouge.<sup>5</sup> An estimated 37,000 Louisiana residents were displaced as a result of the hurricane.<sup>6</sup> In southeastern Texas, FEMA declared the counties of Angelina, Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jasper, Jefferson, Liberty, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler, and Walker as eligible for assistance.<sup>7</sup> FEMA estimates 33,000 Texans were displaced by the hurricane.<sup>8</sup>

Over two years after Hurricane Rita, the people of the city of Port Arthur are still living with blue tarp roofs, now tattered and worn from the sun.<sup>9</sup> Many people were not able to return to their homes because mold overtook their houses and they did not have the funds to repair or rebuild. Foundations such as Rockefeller Family Fund provided some assistance to the southeastern Texas community, but even today much remains undone. Funding is still desperately needed to clean up communities.

#### **A. Damage to Oil and Gas Production**

The energy industry bore the brunt of Hurricane Rita's damage. Rita destroyed 69 offshore platforms and damaged 32 others. It also damaged at least 83 offshore pipelines.<sup>10</sup> Together, Hurricanes Katrina and Rita shut down 27 natural gas plants, or 75 percent of the region's processing capacity.<sup>11</sup> In addition, the navigation channel to the Lake Charles terminal was closed for several days after Rita because of debris in the shipping channel, and gas gathering pipelines serving Gulf Gateway Energy Bridge LNG operations were also affected by the storm.<sup>12</sup> Rita also caused temporary shut down of several natural gas fractionators due to lack of water.<sup>13</sup> The fractionators in the Beaumont, Texas area were significantly impacted as well.<sup>14</sup>

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<sup>5</sup> FEMA: *Declared Counties for Louisiana Hurricane Rita*, <http://www.fema.gov/news/eventcounties.fema?id=5025>.

<sup>6</sup> *Hurricane Rita One Year Later – Texas*, <http://www.fema.gov/media/archives/2006/091906b.shtm>

<sup>7</sup> FEMA: *Declared Counties for Texas Hurricane Rita*, <http://www.fema.gov/news/eventcounties.fema?id=5026>.

<sup>8</sup> *Hurricane Rita One Year Later – Texas*, <http://www.fema.gov/media/archives/2006/091906b.shtm>

<sup>9</sup> TX Comm'n Hearing, Apr. 21, 2007, at 25, Testimony of Hilton Kelley

<sup>10</sup> Paula Dittrick, *Industry Still Assessing 2005 Hurricane Damages*, OIL & GAS J., Sept. 4, 2006, at 44, 44.

<sup>11</sup> U.S. Dept. of Energy, *Impact of the 2005 Hurricanes on the Natural Gas Industry in the Gulf of Mexico Region 2*, July 2006, available at

[http://fossil.energy.gov/programs/oilgas/publications/naturalgas\\_general/hurricane\\_report05.pdf](http://fossil.energy.gov/programs/oilgas/publications/naturalgas_general/hurricane_report05.pdf).

Hereinafter *Impact on the Natural Gas Industry*.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> *Id.* at 16.

<sup>14</sup> *Id.* at 17.

Rita temporarily shut down 100 percent of oil production in the Gulf of Mexico, approximately 1.5 million barrels per day,<sup>15</sup> and exacerbated the impact of Katrina on gas processing plants.<sup>16</sup> As a result, the industry's initial recovery after Rita was slower than what it experienced after Katrina. After Katrina, Gulf gas production rebounded to 6.5 billion cubic feet (Bcf) per day within three weeks; after Rita, Gulf gas production did not reach 6.5 Bcf per day for almost two months.<sup>17</sup>

The U.S. Department of Energy discontinued its active monitoring of repair efforts on March 8, 2006.<sup>18</sup> At that time, the repair progress had plateaued, with the majority of repairs completed and the remaining damage either ongoing or unlikely to be worth the repair investment.

Although Rita did most of its damage to the off-shore energy infrastructure,<sup>19</sup> the agriculture and fishing industries also experienced significant impacts, and the environmental effects on wetland loss and air, water, and soil quality are still being assessed.

## **B. Wetland Loss**

In August and September of 2005, 76,000 acres of wetlands were converted to open water in eastern and central Louisiana's coastal areas.<sup>20</sup> Hurricane Katrina directly and significantly impacted Louisiana's coastal wetlands. The effects of Hurricane Rita were less severe.<sup>21</sup> Rips in marshes from Rita were not nearly the size of rips from Katrina. Nonetheless, Rita's surge caused new tears in fresh and intermediate marshes within Barataria and Terrebonne basins and reactivated older hurricane scars.<sup>22</sup> In addition, Rita's surge caused detectable marsh loss west of the Mississippi River to the Texas border that could not be attributed to Katrina.<sup>23</sup> In total, 98 square miles of land changed to water in southwestern Louisiana after the two

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<sup>15</sup> Minerals Management Service, *Impact Assessment of Offshore Facilities from Hurricanes Katrina and Rita*, News Release, Jan. 19, 2006, available at <http://www.gomgov/homepg/whatsnew/newsreal/2006/060119.pdf>.

<sup>16</sup> *Impact on the Natural Gas Industry* *supra* note 11.

<sup>17</sup> *Id.* at 10.

<sup>18</sup> *Id.* at 12.

<sup>19</sup> Randy Schnepf & Ralph M. Chite, *supra* note 4.

<sup>20</sup> Jeffrey Zinn, *Congressional Research Service Report for Congress: Coastal Louisiana Ecosystem Restoration after Hurricanes Katrina and Rita* 4, May 4, 2006, available at <http://ncseonline.org/nle/crsreports/06apr/RS22276.pdf>

<sup>21</sup> *Id.* at 4 (noting that wetlands loss was concentrated south and east of New Orleans, primarily in Plaquemines Parish).

<sup>22</sup> *Id.*

<sup>23</sup> U.S. Geological Survey, *USGS Reports Preliminary Wetland Loss Estimates for Southeastern Louisiana from Hurricanes Katrina and Rita*, Nov. 1, 2005, available at <http://www.usgs.gov/newsroom/article.asp?ID=1409>.

hurricanes, while 119 square miles were converted in southeastern Louisiana.<sup>24</sup> According to the U.S. Geological Survey, “[t]he 217 square miles of potential land loss from the 2005 hurricanes represent 42 percent of what scientists had predicted, before Hurricanes Katrina and Rita, would take place over a 50-year period from 2000 to 2050, even though they had factored storms into their model.”<sup>25</sup> It is too early to determine how much of the land loss will be permanent, and how much might eventually convert back to wetlands or marshlands.<sup>26</sup> Initial indications suggest, however, that a significant portion of the land loss will be permanent.<sup>27</sup>

### **C. Agricultural and Commercial Fishing Losses**

The impact of the hurricanes on the agricultural and fishing industries included both direct damage and long term infrastructure difficulties. High winds and heavy rainfall caused both immediate and long-term crop damage and also moved, freed, or drowned a substantial number of livestock. Loss of electricity and damage to roads and port facilities disrupted the movement and processing of agricultural products.<sup>28</sup>

Although Louisiana, Mississippi, and Texas together account for major portions of the national cotton, rice, and sugarcane production,<sup>29</sup> the majority of these and other agronomic crops were spared more devastating effects because most had been harvested prior to Rita’s landfall.<sup>30</sup> However, the sugarcane, fruits, vegetables, nuts, and nursery crops sustained significant damage.<sup>31</sup>

In addition, as many as 30,000 cattle were lost because of flooding,<sup>32</sup> with estimates of the total value of the loss ranging from \$3 million<sup>33</sup> to \$32 million.<sup>34</sup> For dairy farmers, the loss of power and transportation capability caused a predicted loss of \$400,000 per week.<sup>35</sup>

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> USDA Office of the Chief Economist, *A Preliminary Assessment of the Effects of Hurricane Rita on U.S. Agriculture 2*, Oct. 18, 2005, available at [http://www.usda.gov/oce/newsroom/Ritadamage\\_1\\_1.pdf](http://www.usda.gov/oce/newsroom/Ritadamage_1_1.pdf). Hereinafter *Preliminary Assessment*.

<sup>29</sup> *Id.* at 1.

<sup>30</sup> *Id.* at 2.

<sup>31</sup> *Id.* at 3.

<sup>32</sup> Doug Simpson, *Louisiana Cattlemen Struggle 1 Year after Rita*, USA TODAY, Sept. 24, 2006, available at [http://www.usatoday.com/news/nation/2006-09-24-rita-cattle\\_x.htm](http://www.usatoday.com/news/nation/2006-09-24-rita-cattle_x.htm).

<sup>33</sup> *Preliminary Assessment* supra note 28.

<sup>34</sup> Kurt M. Guidry, *Assessment of Damage to Louisiana Agricultural, Forestry, and Fisheries Sectors By Hurricane Rita 2*, Oct. 5, 2005, available at <http://www.lsuagcenter.com/NR/rdonlyres/02D042F7-EEA6-4CA1-9AE6-8515F9F59EE4/18461/Ritalosses.pdf>.

<sup>35</sup> *Preliminary Assessment* supra note 28.

The Louisiana State University (LSU) AgCenter estimates Rita caused \$227 million in timber losses; \$201 million in agronomic crop losses; nearly \$10 million in losses to fruits, nuts, vegetables, and honey production; \$51 million in livestock and foraging losses; \$49 million in aquaculture losses; and \$34 million in fishery losses. The largest single category losses were in timber (\$225 million), sugarcane (\$141 million), crawfish (\$38 million), and shrimp (\$18 million).<sup>36</sup>

The effects of Rita continue to manifest themselves. Reports during the one year anniversary of Rita's landfall noted that rice farmers were having difficulty growing and irrigating their crops because of the infusion of salt in the land and clogged canals.<sup>37</sup> Farmers who lacked the resources to repair their property were unable to return to their pre-Rita business models. For example, some farmers were forced to lease land on which to keep their livestock while they restore miles of damaged fencing on their own property.<sup>38</sup>

Although the fishing industry has experienced somewhat of a resurgence post-Katrina and Rita, experts suggest that these short-term benefits might be tempered by long-term losses as freshwater fisheries decline in number due to coastal erosion.<sup>39</sup> In addition, "the storm surge from Hurricane Rita caused significant increases in water salinity in many wetlands, killing freshwater fish and invertebrates. Saltwater influx in southwest Louisiana has eliminated crawfish from the production ponds that serve as important habitat for migratory waterfowl and wading birds."<sup>40</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> *U.S. states of Texas, Louisiana mark 1st anniversary of Hurricane Rita*, INTERNATIONAL HERALD TRIBUNE, Sept. 22, 2006, available at [http://www.iht.com/articles/ap/2006/09/23/america/NA\\_GEN\\_U.S.\\_Hurricane\\_Rita.php](http://www.iht.com/articles/ap/2006/09/23/america/NA_GEN_U.S._Hurricane_Rita.php).

<sup>38</sup> Simpson *supra* note 32.

<sup>39</sup> *Impact of Hurricanes on Gulf Coast Fisheries: Hearing Before the Subcomm. on Fisheries, Conservation, Wildlife, and Oceans of the H. Comm. on House Resources*, 109th Cong. (2006) (Statement of Gregory J. Smith Director, National Wetlands Research Center U.S. Geological Survey).

<sup>40</sup> *Id.*

### III. NEW ORLEANS AND KATRINA: “It’s Déjà Vu All Over Again.”<sup>41</sup>

New Orleans is a shallow bowl that sits mostly below sea level, tucked between enormous Lake Pontchartrain to the north and the Mississippi River to the south. Lake Pontchartrain is more than twice the city’s size. The Gulf of Mexico is roughly fifty miles away. As a result, the city is extremely vulnerable to flooding and depends on an aging system comprising 125 miles of levees, along with drainage canals and pumping stations, to push water back into the lake.

Many of the working class and poor African Americans were descendents of residents who had suffered through the catastrophic flood of 1927. According to the *Rising Tide* by John M. Barry, the 1927 flood affected six states, 246 people drowned<sup>42</sup>, and 700,000 people—half of them black—were displaced. In an attempt to divert the floodwaters, the Caernarvon, Louisiana, levee was demolished. Downtown New Orleans was relatively unharmed; however the marsh below the city, with its large black community, was destroyed. Then, as now, haunting pictures and descriptions of the devastation shocked the country. Black men were forced at gunpoint to work nonstop for days to build up the levees while their families suffered in squalid evacuation camps for months. Indeed, historian Rob MacDougall points out that “[n]ational guardsmen were used to keep sharecroppers imprisoned in the refugee camps until they could return to working the land, and local officials charged homeless blacks—on credit, ever deepening their debts—for food and medical supplies the Red Cross had intended to be free.”<sup>43</sup>

In 1965, Hurricane Betsy left a huge amount of debris laden with DDT, lead, asbestos, and industrial waste. This debris was dumped into what became the Agriculture Street landfill (ASL). This landfill, created from Betsy’s waste, was eventually landscaped and the area was promoted for “Negro” housing. Years later, residents started reporting numerous health issues and illnesses. On December 2, 2005, *Solid Waste and Recycling* magazine reported that “300,000 cubic yards of excess fill were removed from [Agriculture Street Landfill] because of ongoing subsurface fires. (The site was nicknamed ‘Dante’s Inferno’ because of the fires.)” After years of advocacy by the predominantly black community, the EPA eventually declared the dump a Superfund site. The only cleanup the landfill underwent was the removal of five inches of soil. A plastic barrier was put down and clean soil thrown on top. Notably, the whole African-

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<sup>41</sup> Quote from Yogi Berra, U.S. baseball player.

<sup>42</sup> John M. Barry, *Rising Tide: The Great Mississippi Flood of 1927 and How It Changed America*, p.286 (1997).

<sup>43</sup> Rob MacDougall, *The Good Flood* (Sept. 6, 2005), [www.robmacdougall.org/archives/2005/09/the\\_good\\_flood.php](http://www.robmacdougall.org/archives/2005/09/the_good_flood.php). See generally John M. Barry, *Rising Tide: The Great Mississippi Flood of 1927 and How It Changed America* (1997).

American neighborhood adjacent to the landfill was submerged by the 2005 flooding.

Prior to Katrina, African-Americans constituted 67% of New Orleans' population of a half a million people.<sup>44</sup> While a quarter of New Orleans' residents lived in poverty, 75% of that number was African-American.<sup>45</sup> An overwhelming number of African-Americans resided in the most flood-prone areas of New Orleans. For instance, prior to Katrina, the Lower 9th Ward and Eastern New Orleans were 98 and 80 percent African-American, respectively, while less flood prone areas, such as the Garden District and the French Quarter, were overwhelmingly white, 90 and 89 percent, respectively.<sup>46</sup> Furthermore, the Houma Indian as well as the Vietnamese communities were also vulnerable to environmental threats before and after Katrina.

Before Katrina, the New Orleans counted 188,000 occupied dwellings—about half occupied by renters and half by owners. The housing stock was much older than the national average, with 43 percent built in 1949 or earlier (compared with 22 percent for the United States) and only 11 percent built since 1980 (compared with 35 percent for the United States). Of those houses, more than 110,000 were flooded, and 90,000 sat for days and weeks in more than six feet of water during the late summer heat. These conditions contributed to serious mold contamination. As many as 30,000 to 50,000 homes citywide are expected to be demolished or extensively repaired. In 1996, there were more than 13,000 public housing units. Before Katrina there were 7,100 units, containing 5,146 families but almost 2,000 were vacant, waiting to be demolished, according to the Advancement Project. As of late June 2006, only about 880 of these families have returned. Now, the Department of Housing and Urban Development—the Housing Authority of New Orleans is in receivership—plans to demolish 5,000 units without a clear plan for bringing back the African-American families who once inhabited them.

The toxic stew and muck left from Hurricane Katrina and every imaginable contaminate will affect living things for years to come. The flood waters that inundated New Orleans carried a mixture of soil, sewage, and industrial contaminants. When the flood receded, it left behind a layer of sediment—in some places up to four inches thick—that still covers the ground and even coated the interiors of people's homes. Testing by the Louisiana-based chemist Wilma Subra, the Natural Resources Defense Council (NRDC), the U.S. Environmental Protection

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<sup>44</sup> 2000 U.S. Census.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*



Agency (EPA), and others revealed that this sediment was contaminated with heavy metals, petroleum, pesticides, industrial chemicals, and polyaromatic hydrocarbons, which are cancer-causing chemicals from soot and petroleum-based products.

According to the Louisiana Department of Environmental Quality, 2,200 underground fuel tanks ruptured within the impacted area. Officials also surmise that thousands of cars, lawn mowers, and weed-eaters are also submerged, leaking gas and oil into the waterways. In addition, tens of thousands of barrels of oil spilled from refineries and drilling rigs in at least thirteen sites between Lake Pontchartrain and the Gulf of Mexico. Katrina damaged fifty-eight drilling rigs and platforms in the Gulf, according to Rigzone.com, an oil and gas industry website. One rig sunk and another was swept sixty-six miles through the Gulf before washing up on Dauphin Island. It remains unclear how badly the hundreds of underwater pipelines connecting the oil to shore have been damaged.<sup>47</sup>

Additionally, Katrina left one hundred million pounds of debris in its wake: enough to fill ten thousand football fields five feet deep. About 1.5 million units of white goods (i.e., refrigerators, freezers, and the like) were destroyed. Half a million electronic goods became useless debris.

Drinking water quality remains a concern in New Orleans. The flooding disabled the East Bank Water Treatment Plant, rupturing over 20,000 pipes, and damaged other facilities. It was initially reported that there were over one hundred million gallons of water leaking daily, down to about forty or fifty million gallons a day as of September 2006. Leaking pipes contribute to low water pressure, which in turn causes contaminants to flow into the water system. The Sewerage and Water Board declared in June 2006 that the water was safe to drink, but it did not test at the tap in areas that had been flooded.

Indeed, the EPA has used its authority in the past to take remedial action, such as relocating residents and communities out of harm's way. The Love Canal scenario of the early eighties comes to mind. Yet in New Orleans, the EPA has not used its federal authority to respond to Katrina. The EPA sent conflicting signals that it was safe to return yet published advisories on proper cleaning and toxic exposure. Thus, returning residents have been exposed to various levels of the leftover contamination.

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<sup>47</sup> Rigzone.com, Special Report: Hurricane Katrina Damage Assessment, September 2, 2005.

## **A. Chef Menteur Landfill**

Ray Nagin, the mayor of New Orleans, under his own emergency powers, reopened a previously closed and unpermitted landfill, the Old Gentilly landfill, to take in the Katrina debris. Community and environmental groups protested. The Chef Menteur Landfill, adjacent to the Vietnamese community of Village d'Est, the African-American community of New Orleans East, and the Bayou Sauvage Wildlife Refuge (the largest urban wildlife refuge in the United States), was proposed by the mayor, raising fears that a new Agriculture Street Landfill situation was being created. The city council, the Village d'Est, and the environmental community vehemently opposed this landfill on Chef Menteur highway. Proper permitting procedures were not followed, and drive-by inspections were allowed to proceed. A battle was waged in the courts and in the press (via the *New Orleans Times-Picayune* and the *New York Times*) against the Chef Menteur landfill most of the summer of 2006. The Stafford Act, 42 U.S.C. § 5121 *et seq.*, permits the Federal Emergency Management Agency to conduct removal actions for temporary disposal of wastes, but not to arrange for the final disposal without completing the National Environmental Policy Act (NEPA) process. NEPA, 42 U.S.C. § 4321 *et seq.*, requires that any federal agency taking an action that might significantly affect the quality of the human environment to analyze the environmental effects of those actions. No formal NEPA process has been considered to evaluate the post-Katrina options for waste disposal. Other permitted landfills have been available to accept debris in nearby areas. In addition, the city should take advantage of opportunities to explore new ways of addressing the debris management problem.

The Asian American Justice Center worked extensively with the Vietnamese community in New Orleans to address the environmental threats uniquely impacting them. New Orleans East is home to more than 6,000 Vietnamese Americans making it the third largest Vietnamese American community in the United States.<sup>48</sup> Approximately 4,000 Vietnamese Americans in New Orleans East live within one mile of Mary Queen of Vietnam Catholic Church, the religious and social center for the community.<sup>49</sup> After Katrina hit, this community was the first to return and rebuild. Unfortunately, a harsh lesson in environmental injustice awaited them.

The Chef Menteur landfill was built less than a mile from their community. In fact, the new landfill is located within the zip code 70129,

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<sup>48</sup> Asian American Justice Center, *In the Aftermath of Hurricane Katrina: The Chef Menteur Landfill & the Effects on the Vietnamese Community*, Aug. 2006.

<sup>49</sup> *Id.*



which is 33.3% and 50.8% Asian-American and African-American respectively.<sup>50</sup> The landfill was authorized to accept 6.5 million cubic yards, or about 2.6 million tons of waste—the majority coming from Orleans, St. Bernard, and St. Tammany parishes.<sup>51</sup> In addition to trees and limbs, the site was to receive moldy contents of gutted homes, household pesticides, and asbestos-containing materials.<sup>52</sup>

On August 9, 2006, the Louisiana Environmental Action Network and the Sierra Club filed suit against the Louisiana Department of Environmental Quality alleging that the state's emergency order is unlawful because it authorizes practices that conflict with the Resource Conservation and Recovery Act, the Clean Water Act, and the Clean Air Act. In the plaintiffs' press release, Adam Babich, Director of the Tulane Environmental Law Clinic and the lead attorney in the lawsuit, stated: "For DEQ to authorize landfills that violate federal health and safety standards is like kicking Louisiana residents when they are down. The people of Louisiana deserve a recovery that meets the same standards for public protection that apply in the rest of the United States."

## **B. The United Houma Nation**

Among those communities devastated by Katrina's impact were the small Houma Indian settlements in lower Plaquemines, lower St. Bernard, and lower Jefferson parishes. The population of these Indian settlements, approximately 3,500 tribal citizens, was hit hard by the storm. More than 1,000 tribal members were left homeless.<sup>53</sup>

Hurricane Rita entered the Gulf of Mexico and tracked westward towards Louisiana threatening the Houma Indian population, which resided in the lower bayou region of the Lafourche and Terrebonne parishes. Rita pushed a massive storm surge into the bayous further west of New Orleans and devastated homes of 4,000 tribal members.<sup>54</sup> The Houma communities of Dulac, Grand Caillou, Montegut, Pointe-aux-Chene, and Isle de Jean Charles were inundated with seven to eight feet of water. One year after Katrina, United Houma Nation Chief Brenda Dardar Robichaux told Indian Country Today: "We still have more than 1,000 Houma unaccounted for. We assume they are safe, but they have been displaced."<sup>55</sup>

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<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> [http://www.imdiversity.com/Villages/Native/special/reznet\\_katrina\\_houma\\_1005.asp](http://www.imdiversity.com/Villages/Native/special/reznet_katrina_houma_1005.asp), accessed Sept. 18, 2007.

<sup>54</sup> *Id.*

<sup>55</sup> Indian Country Today, "More than 1,000 Houma still unaccounted for," Oct. 7, 2006.

The Houma Nation, located in southern Louisiana, continues to suffer from the environmental impact of Katrina. The Houma's economy relies heavily on fishing and crabbing. When Hurricane Katrina hit, the fish and crab season had to end early. The debris and trash in the water made it impossible for them to continue their work or gather food.

### **C. Environmental Assessments**

The Environmental Protection Agency (EPA) and the Louisiana Department of Environmental Quality (LDEQ) have each undertaken environmental quality monitoring and sampling in hurricane affected areas. The Texas Commission on Environmental Quality (TCEQ) has not released any Rita-specific environmental quality reporting.

Following Hurricane Rita, the EPA began air monitoring in the southeast Texas region with its ASPECT (Airborne Spectral imagery of Environmental Contaminants Technology) monitoring airplane, which flew 18 passes. Most of these tests detected chemicals at or below the instrument's ability to accurately detect the chemicals and therefore the EPA concluded that results did not demonstrate an immediate health effect to the public. However, on at least one flight, glycol (ethylene glycol) and tetrachloroethylene levels appeared elevated near one facility northeast of Angleton, TX.<sup>56</sup>

Overall, the EPA monitored over 61 sites in southwestern Louisiana and southeastern Texas for air, soil, ground water, and surface water contamination. Although the EPA did not disaggregate their data to distinguish between effects of Katrina and effects of Rita, in almost all cases the EPA concluded that the sites were not affected by either hurricane.<sup>57</sup>

The LDEQ has not released air or soil data specific to Hurricane Rita. In its Rita water sampling final report, the LDEQ concluded that "water quality impacts have been largely limited to natural impacts resulting in low dissolved oxygen or increases in chloride levels" and that "fecal coliform concentrations generally remained below Louisiana standards for secondary contact recreation."<sup>58</sup> Additional findings concluded:

Organic results were mostly non-detectable (<0.3% of samples resulted in detectable concentrations); two

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<sup>56</sup> U.S. Env'tl. Protection Agency, *Response to 2005 Hurricanes: Air Screening Data: ASPECT*, Hurricane Rita Flight 5, Sept. 27, 2005, available at <http://www.epa.gov/katrina/testresults/air/aspect.html#rita>.

<sup>57</sup> EPA EnviroMapper for Hurricanes Katrina and Rita, <http://134.67.99.185/katrina/EMkatrina.asp>.

<sup>58</sup> LA Dept. of Env'tl. Quality, *Post-Hurricane Water Quality Assessments: Rita Monitoring* 58, Dec. 20, 2005.

exceedences of non-drinking water human health standards in approximately 19,000 analytical results for organic compounds; and one exceedence of chronic aquatic life standards in nearly 250 analytical results for metals.<sup>59</sup>

In addition, the LDEQ calculated that a total of 39,105 white goods (refrigerators, freezers, air conditioners, washers, and dryers) were damaged and collected in Rita-affected parishes.<sup>60</sup> In southwestern Louisiana parishes, as of Rita's one year anniversary, 1008 of 1009 structures had been demolished; 2,233,384 pounds of hazardous and non-hazardous debris had been properly disposed of; 152,868 orphan containers (drums, cylinders, propane tanks, fuel tanks, etc.) have been properly disposed of; 3,164 electronic goods had been recycled; and 69 school assessments were completed.<sup>61</sup>

Although Hurricane Rita devastated many communities and individual businesses, the majority of publicly available data indicate that long term consequences to the environment and industry were significantly less severe than the effects of Hurricane Katrina. Nevertheless, the financial losses to the energy industry and to several agriculture sectors were significant; although the majority of these areas have since rebounded, many individuals are still struggling to recover. Of greatest concern environmentally is that the large areas of wetlands converted to open water could have dangerous long term consequences for coastal Louisiana.

#### **D. Independent Environmental Assessments**

The Natural Resources Defense Council (NRDC) conducted both independent analyses of EPA's environmental testing and of its own independent testing of sediment, drinking water, mold, and air pollution in the greater New Orleans area following Hurricanes Katrina and Rita.<sup>62</sup> The NRDC found elevated levels of contamination in several of these categories, and concluded that they pose "potentially serious health risks to returning residents of the greater New Orleans area."<sup>63</sup> Of particular concern to the NRDC were the levels of arsenic found in sediment samples. Arsenic "is known to cause cancer of the bladder, skin and lungs; likely causes other cancers; and is responsible for a variety of

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<sup>59</sup> *Id.*

<sup>60</sup> LA Dept. of Env'tl. Quality, *White Goods: Rita*, Aug. 13, 2006, available at <http://www.deq.louisiana.gov/portal/tabid/2402/Default.aspx>.

<sup>61</sup> LA Dept. of Env'tl. Quality, *Lake Charles completes debris cleanup one year after Hurricane Rita strikes*, Press Release, Sept. 26, 2006.

<sup>62</sup> NRDC: New Orleans Environmental Quality Test Results, <http://www.nrdc.org/health/effects/katrinadata/contents.asp>.

<sup>63</sup> *Id.*

other serious health ailments.”<sup>64</sup> Both the NRDC’s own data and its analysis of the data released by the EPA indicated arsenic levels that trigger clean up under state and federal standards, including some areas that reached as much as 200 times EPA soil cleanup standards. Diesel fuel and benzo(a)pyrene levels were similarly elevated.<sup>65</sup>

In addition to the elevated levels of toxic metals in the sediment samples, many of these metals are also present in the greater New Orleans area as particulate matter—including lead, arsenic, and chromium.<sup>66</sup> Lead levels in Orleans Parish exceeded levels indicated by available pre-Katrina monitoring data, and were 27 to 5,200 times higher than those measured in Atlanta, Los Angeles and New York.<sup>67</sup>

Although there is no established regulatory standard for levels of mold spores in the air, the National Academy of Sciences has indicated that “there is sufficient evidence of a causal link between indoor mold and the following health effects: nose and throat symptoms, coughing, wheezing, asthma symptoms in sensitized people, and hypersensitivity pneumonitis in susceptible people.”<sup>68</sup> The NRDC found that the levels of mold spores in the air in New Orleans were “extremely high, and could pose a serious health threat especially to anyone who is allergic to molds, and to people with asthma and other respiratory disease.”<sup>69</sup> Although the NRDC found that for the majority of the city particulate matter levels were within acceptable ranges, it did identify several areas of the region where levels were dangerously elevated, often in areas where contaminated sediment was becoming airborne due to vehicle traffic or where building work was ongoing.<sup>70</sup> Commissioner Leslie Fields worked as a consultant with the Natural Resources Defense Council. Fields listed the following as contaminants of concern in New Orleans: arsenic, diesel organics, benzopyrene, and lead.

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<sup>64</sup>NRDC: New Orleans Environmental Quality Test Results – Sediment, <http://www.nrdc.org/health/effects/katrinadata/sediment.asp>.

<sup>65</sup>GINA M. SOLOMON, MIRIAM ROTKIN-ELLMAN, CONTAMINANTS IN NEW ORLEANS SEDIMENT: AN ANALYSIS OF EPA DATA 3 (2006) *available at* <http://www.nrdc.org/health/effects/katrinadata/sedimentepa.pdf>.

<sup>66</sup>NRDC: New Orleans Environmental Quality Test Results – Metals, <http://www.nrdc.org/health/effects/katrinadata/metals.asp>

<sup>67</sup>*Id.*

<sup>68</sup>NRDC: New Orleans Environmental Quality Test Results – Mold, <http://www.nrdc.org/health/effects/katrinadata/mold.asp>

<sup>69</sup>*Id.*

<sup>70</sup>NRDC: New Orleans Environmental Quality Test Results – Particulate Pollution, <http://www.nrdc.org/health/effects/katrinadata/particulate.asp>

## **E. Community Skepticism**

There has been a continuous lack of response to these concerns by governmental officials. During the hearing in New Orleans, Lois Dejean, of the Gert Town Revival Initiative in the Gert Town community of New Orleans, spoke of the removal of banned pesticides and herbicides from the soil after Katrina and the need to ensure the environmental safety of the schools.<sup>71</sup> She conveyed her frustration with the EPA and Louisiana DEQ's poor communication with her community and with residents being forced to take on environmental protection on their own.

Tom Harris, Administrator of the Environmental Technology Division of the Louisiana Department of Environmental Quality, maintained that contamination levels might not be higher than pre-Katrina levels. In fact, he posited that some of the chemicals found are naturally occurring. To support his position that the soil was safe, Harris appeared on local television eating a sample of the dirt. However, Guest Commissioner Dr. Robert Bullard, Director of the Environmental Justice Resource Center at Clark Atlanta University, questioned whether continuous exposure to the soil over the decades was safe, to which Harris was unable to respond. Of significant concern, Dr. Bullard contemplated the similarities in statements made about the air quality in New York City shortly after the attack on the World Trade Center and reports claiming the soil and air safety in New Orleans after Katrina. Tracie Washington, long time civil rights activist and resident of New Orleans, testified that the government did not adequately communicate possible health risks.

New Orleans' history of environmental racism has led many to distrust the representation of state and federal officials regarding the environmental safety of their community. In 1921, the Agriculture Street Landfill was approved by the City of New Orleans. The landfill was to be the primary receiving point for the city's garbage. By 1959, the landfill closed.<sup>72</sup> Homes were built on top of the closed landfill. In fact, a program was implemented to target low-income African-American families to provide them the opportunity for home ownership. Unfortunately, these families have been subjected to unusually high incidents of breast cancer.<sup>73</sup> In 1997, the EPA implemented a remedial plan to remove two feet of soil from area surrounding residents' homes.<sup>74</sup> However, this plan did not address the soil covered by people's homes, sidewalks and driveways.

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<sup>71</sup> LA Comm'n Hearing, Oct. 21, 2006, at 123, Statement of Lois Dejean.

<sup>72</sup> Alicia Lyttle, University of Michigan, "Agricultural Street Landfill: Environmental Justice Case Study," Dec. 2000 (updated Jan. 2003).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

Mississippi residents were equally skeptical. Following Katrina, the EPA conducted soil sampling in a number of communities. Initial sampling conducted by the EPA at the Naval Construction Battalion Center in Mississippi allegedly demonstrated that on-site dioxin had not migrated off-site.<sup>75</sup> An area of the facility was used between 1968 and 1977 to store drums containing the herbicide Agent Orange, prior to it being shipped to Vietnam. Due to the occasional spill and ruptured drum, dioxin had been released in the area and had migrated to a small wetland area.<sup>76</sup> The wetland area was at 80% completion of cleanup when Katrina hit.<sup>77</sup> Local residents find it unbelievable that given the extent of the flooding after Katrina, the areas of contamination were unchanged. “We had an absolute miracle that occurred with Katrina. It was the largest natural disaster in the history of our nation, but there was not a drop of pollution that escaped from any of the heavy industry sites.”<sup>78</sup>

Reverend Richard Young of Moss Point, Mississippi testified that Hurricane Katrina pushed sludge from the Escatawpa River into nearby homes and its floods submerged a raw sewage plant.<sup>79</sup> Residents complained of an increase in seizures, heart attacks, and/or asthma attacks after the hurricane. Sierra Club’s Mississippi State Chapter President Howard Page told the Commission that the community “literally begged and pleaded and cried with [ATDSR] to actually test the health of individuals who [had cancer]. They refused.”<sup>80</sup>

Becky Gillette noted that prior to Katrina, an article in the *Journal of Shellfisheries Research* found the oysters in Bay St. Louis were contaminated with chemicals from DuPont Delisle, one of the largest producers of dioxin.<sup>81</sup> Despite DuPont Delisle being flooded by Hurricane Katrina, the company claimed that there were no environmental releases as a result of the storm.<sup>82</sup> Gillette further testified that residents were told that it was safe to swim and eat the seafood from Bay St. Louis when clearly it was not. Following the storm, there was a considerable amount of debris in the water. The National Guard prevented residents from the Gulf from returning to their homes

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<sup>75</sup> <http://www.epa.gov/katrina/testresults/index.html#Naval>, released November 16, 2005.

<sup>76</sup> <http://www.epa.gov/katrina/testresults/index.html#Naval>, released November 16, 2005.

<sup>77</sup> <http://www.epa.gov/katrina/testresults/index.html#Naval>, released November 16, 2005.

<sup>78</sup> MS Comm’n Hearing, Oct. 14, 2006, at 65, Testimony of Becky Gillette.

<sup>79</sup> MS Comm’n Hearing, Oct. 14, 2006, at 21-24, Testimony of Rev. Richard Young.

<sup>80</sup> MS Comm’n Hearing, Oct. 14, 2006, at 44, Testimony of Howard Page.

<sup>81</sup> MS Comm’n Hearing, Oct. 14, 2006, at 100, Testimony of Becky Gillette; *see also* Dioxin and heavy-metal contamination of shellfish and sediments in St. Louis Bay, Mississippi and Adjacent Marine Waters, *Journal of Shellfisheries Research*, Jan. 2005.

<sup>82</sup> MS Dept. of Env’tl. Quality, Press Release, September 27, 2005.



for three days “because it was traumatic watching bodies and body parts wash up.”<sup>83</sup> Volunteers who assisted in cleanups in nearby Pascagoula often went home sick from exposure, experiencing rashes and staph infections.<sup>84</sup>

Gillette opined that the EPA often conducts testing that guarantees that no toxins are found, thereby confirming the claims of industry. While independent testing by scientists such as Wilma Subra and NRDC have found elevated arsenic and lead levels in all three states impacted by Katrina,<sup>85</sup> the Louisiana Department of Environmental Quality has dismissed these results, arguing that none were compared to background levels or based on a realistic standard.<sup>86</sup> Even in the face of anecdotal evidence and results from independent testing, the government continues to represent that everything is “okay.”

#### **IV. LOCAL ENVIRONMENTAL JUSTICE ACTIVISM**

The Commission hearings brought out grassroots organizations such as Texas Environmental Justice Advocacy Services, the Community In-Power Development Association, Turkey Creek Community Initiatives, North Gulfport Community Land Trust and the Bay Area Women’s Coalition—all having worked for years prior to Katrina and Rita to protect the health and environment of their communities. Their moving testimony along with that of many others revealed their commitment to equal protection and their disappointment in the failures of state and federal agencies to hold that same commitment. Prior to the hurricanes, these groups built homes for low-income residents, sought enforcement of the laws to preserve wetlands and protect their communities from floods, and challenged industries seeking to increase toxic emission in their towns. They formed networks with traditional environmental and civil rights organizations, and some persevered with little support.

##### **A. Texas Environmental Justice Advocacy Services (TEJAS)**

The everyday person made tremendous steps to help evacuees and document their plight. For more than 30 years, Juan Parras has been a voice for low-income minorities through his work as an international union representative, anti-pollution activist and as a community outreach coordinator.

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<sup>83</sup> MS Comm’n Hearing, Oct. 14, 2006, at 99, Testimony of Becky Gillette.

<sup>84</sup> MS Comm’n Hearing, Oct. 14, 2006, at 67-68, Testimony of Becky Gillette.

<sup>85</sup> Wilma Subra, *Environmental and Human Health Impacts of Hurricane Katrina in Mississippi: Environmental Stressors and Environmental Justice Vulnerabilities in the Coastal Counties of Mississippi*.

<sup>86</sup> LA Comm’n Hearing, Oct. 21, 2007, at 56. Testimony of Tom Harris.

Parras established the Texas Environmental Justice Advocacy Service (TEJAS), which focuses on environmental issues concerning the Houston Ship Channel and provides resources to empower communities and affect legislation.<sup>87</sup> Parras' work concerning Cesar Chavez High School has gained national attention. Chavez High School is located near three petrochemical facilities. Since the school's construction in 2000, Parras has worked tirelessly to relocate the campus citing child safety as a primary issue. Cesar Chavez, founder of United Farm Workers, was one of the pioneers in the environmental justice movement bringing attention to the harmful effects of pesticides sprayed on migrant farm workers. Locating a school bearing Chavez's name near polluting sites is insulting to both Chavez's legacy and the students attending the school.

After Katrina and Rita, Parras's son, Brian Parras, along with John Sullivan of the University of Texas Medical Branch filmed a documentary entitled, "When the Wind Blows, My Child." The film documents the failures of FEMA, EPA, and emergency responders. Parras also worked with Latino evacuees from New Orleans connecting them with local churches and organizations that were providing direct assistance to Spanish speaking evacuees.

## **B. Community In-Power Development Association**

Community In-Power Development Association (CIDA) is a community organization in Port Arthur, Texas, whose mission is to help young people, a) understand the complexities of government and how they can stand together to make change in their community, b) obtain their personal goals in business, homeownership, and politics, and c) address health and environmental issues in their community. The organization fights for environmental protection for residents of Port Arthur, Beaumont, Grove, and Nederland, Texas. Hilton Kelley, Director of CIDA, testified before the Commission about his long struggle for environmental justice in Port Arthur and the devastating impact of Hurricane Rita. CIDA continues its environmental justice advocacy in addition to trying to help people rebuild their homes.

The City of Port Arthur, located in Jefferson County, is quite familiar with government neglect and the harsh realities of being the hotbed of the petrochemical industry. The eruption of the Lucas Gusher at Spindletop in 1901 changed the fate of Port Arthur. The port quickly began to serve the needs of the new petrochemical industry, and companies such as Gulf Oil Corp. in 1901 and Texaco in 1902 set up

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<sup>87</sup> <http://www.cleanhouston.org/heros/parras.htm>, accessed September 19, 2007.



refining facilities in the city. By 1957 Port Arthur was known as the center of the world's prosperous oil refining facilities.<sup>88</sup>

In 2006, Motiva (a Shell Oil subsidiary) applied for a permit from the state of Texas to expand their existing Port Arthur refinery to more than double its current production, which would make it the largest refinery in the nation. Global Community Monitor (GCM) and CIDA Inc. assembled a national team to block the permit and won major pollution reductions, a multi-million dollar community development foundation and community safety measures.<sup>89</sup>

Most recently, CIDA has been challenging the decision to dispose of chemical waste from the destruction of Indiana's deadly VX nerve agent stockpile in Port Arthur, an area already smothered by refineries and chemical plants. Working with the Sierra Club and other environmental groups, CIDA filed a lawsuit in the spring of 2007 against Veolia Environmental Services and the United States Army alleging violations of the Resource Conservation and Recovery Act.

### **C. Deep South Center for Environmental Justice**

The Deep South Center for Environmental Justice (DSCEJ), headed by Dr. Beverly Wright, was founded in 1992 in collaboration with community environmental groups and universities within the region to address issues of environmental justice. The DSCEJ Community/University Partnership, under the auspices of Dillard University in New Orleans, provides opportunities for communities, scientific researchers, and decision makers to collaborate on programs and projects that promote the rights of all people to be free from environmental harm as it impacts health, jobs, housing, education, and general quality of life. In partnership with the Environmental Justice Resource Center at Clark Atlanta University, the DSCEJ has forged a new, culturally sensitive training model designed to meet the specific needs of urban city youth living in environmentally contaminated communities through the implementation of Minority Worker Training Programs and Brownfields Minority Worker Training Programs in New Orleans, Baton Rouge, and Shreveport, LA; Biloxi/Gulfport, MS; West Dallas, TX; Atlanta, East Point, and Savannah, GA, and Ft. Lauderdale and Miami, FL.<sup>90</sup>

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<sup>88</sup>*The Official Website of the City of Port Arthur*, [http://www.portarthur.net/city\\_profile.cfm](http://www.portarthur.net/city_profile.cfm), accessed Oct. 2, 2007.

<sup>89</sup> Global Community Monitor, Press Release Agreement Reached With Shell On Port Arthur Refinery Expansion By Environmental Justice Group (July 26, 2006).

<sup>90</sup> [http://www.dscej.org/who\\_we\\_are.htm](http://www.dscej.org/who_we_are.htm), accessed on Dec. 14, 2007.

A Safe Way Back Home Project is the product of an unusual partnership between labor, environmental and community organizations. It offered neighborhood residents whose homes were flooded by Hurricane Katrina an opportunity to join forces with local Steelworkers and environmentalists to take a proactive approach to cleaning up their neighborhoods -- removing contaminated sediment, soil, grass and other tainted items from yards, streets, and sidewalks. The broader goal of A Safe Way Back Home is to provide a sustained effort as hundreds of thousands of survivors of this disaster-- many of whom are poor, disenfranchised and African American -- begin the long, painful task of rebuilding their lives. "FEMA should replicate this demonstration project on thousands of blocks in hundreds of neighborhoods across the City of New Orleans and the Gulf Coast region," adds United Steelworkers President Leo W. Gerard.<sup>91</sup>

#### **D. Greater New Orleans Fair Housing Action Center**

The Greater New Orleans Fair Housing Action Center was established in the summer of 1995 to eradicate housing discrimination throughout the greater New Orleans area. GNOFHAC has thus far assisted in the recovery of over \$1,200,000 in monetary relief as a result of its enforcement actions and has negotiated numerous consent decrees requiring housing providers to comply with fair housing laws, attend educational seminars, market their properties to protected classes, and engage in other activities to ensure that housing opportunities are provided on an equal basis. After Hurricane Katrina, the GNOFHC has been aggressively working to protect the housing rights of New Orleans residents.

On October 3, 2006, the GNOFHAC filed suit against St. Bernard Parish in the United States District Court for the Eastern District of Louisiana. The suit prays for a permanent injunction restraining St. Bernard Parish from enforcing its single-family and blood-relative ordinances which effectively discriminate against the large minority population who were predominately renters and not homeowners. In April 2007, the organization revealed the results of its recent investigation into race based rental discrimination in the New Orleans area, including Orleans, Jefferson, St. Bernard, and St. Tammany Parishes. The investigation showed that 57.5% of landlords discriminated against African American testers searching for rental housing.

James Perry, Executive Director of GNOFHAC and President of the Louisiana Housing Alliance, has advocated for federal policies to address the lack of affordable housing on the Gulf Coast. He testified before the

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<sup>91</sup> <http://www.dscej.org/asafewayhome.htm>, accessed on Dec. 14, 2007.

U.S. Senate Committee on Banking, Housing, and Urban Affairs on behalf of the National Low Income Housing Coalition in support of Senate Bill 1668, the Gulf Coast Housing Recovery Act of 2007. Perry argued that the bill could be an effective tool in rebuilding healthy affordable housing stock.

#### **E. North Gulfport Community Land Trust**

The North Gulfport Community Land Trust was formed in 2004 to address the environmental degradation and wetlands filling in North Gulfport, Mississippi. This African-American neighborhood, once a vibrant place where children were safe to walk at night and homeowners were proud of their simple, clean homes, had fallen into disrepair, regularly flooding due to the filling of nearby wetlands.

During much of the twentieth century, the City of Gulfport remained underrepresented and underdeveloped. Basic services such as sewage and trash maintenance were nearly non-existent and remain absent in many parts of the community today. Over the past twenty years, urban land parcels in North Gulfport have become vacant and overgrown while nearby development is rapidly filling the surrounding wetlands.

When Rose Johnson and other community members formed the North Gulfport Community Land Trust, they intended to focus on revitalizing the community and protecting the neighborhood from land speculation and gentrification while combating the filling of nearby wetlands. Prior to Hurricane Katrina, Johnson was elected state representative for the Sierra Club continuing her efforts opposing the fill of surrounding wetlands. Johnson has been instrumental in halting a 500-acre wetland fill bordering North Gulfport, as well as forcing the City of Gulfport to produce a Cease and Desist order on its own wetlands fill project. After Katrina, the Land Trust has worked diligently to build “green homes” and to challenge the further destruction of wetlands due to aggressive coastal redevelopment. The Land Trust, along with other coastal environmental groups, sued the U.S. Army Corps of Engineers challenging a Regional General Permit that would allow the dredging and filling of wetlands in violation of the Clean Water Act and the National Environmental Policy Act.

#### **F. Turkey Creek Community Initiatives**

Turkey Creek, an African-American community in Gulfport, Mississippi, was settled by freed slaves after the Civil War. The primary reasons for settling in this area was cheap land as a result of the Southern

Homestead Act of 1866,<sup>92</sup> and an existing ecosystem of deep-well water and an abundance of edible plant, fish and wildlife that could provide for growing families.

Unfortunately, a number of events would turn the Turkey Creek community into an environmental justice community. At the turn of the twentieth century, creosote plants and other industrial activities commenced operations in Turkey Creek. It was not until 1986 that the creosote plants were completely shut down, but not before contaminating the land and air of the local community. During Katrina, the Turkey Creek community flooded, exposing residents to flood waters contaminated by years of soil pollution by the local industries.

To combat a litany of threats to environmental quality, cultural continuity, and community survival, Derrick Evans founded Turkey Creek Community Initiatives in 2003 to "conserve, restore and utilize" the diminishing cultural and ecological resources of the Turkey Creek community and watershed. TCCI has worked diligently to model sustainable coastal and urban redevelopment by integrating the historic preservation and conservation with environmental justice for all. Since Hurricane Katrina struck, Evans and TCCI have provided relief for survivors, facilitated community-based recovery planning, and broadly advocated for a more just and sustainable future for coastal Mississippi's most vulnerable communities.

Evans and numerous others spent countless hours meeting with representatives from Region 4 of the EPA and representatives from the Army Corps of Engineers after Hurricane Katrina. They expressed their concern for the lack of enforcement of the existing environmental laws and the seemingly blind eye the agencies turn to violations of the Clean Water Act in favor of commercial and industrial development. "The narrative is plain and clear. There is local and state incompetence and dysfunction and federal absence."<sup>93</sup>

### **G. Bay Area Women's Coalition**

Mobile, Alabama has received little attention in the aftermath of Katrina; however, its minority and poor communities were and continue to be affected. Founded in 1997, the Bay Area Women's Coalition is located in the Trinity Gardens neighborhood in Mobile County. The neighborhood straddles two cities: Mobile and Pritchard. The former home of baseball greats Hank Aaron and Satchel Page currently consists of five thousand

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<sup>92</sup> The Southern Homestead Act opened up 46 million acres of public land for sale in 160-acre plots in the Southern states of Alabama, Arkansas, Florida, Louisiana, and Mississippi.

<sup>93</sup> MS Comm'n Hearing, Oct. 14, 2006, at 49. Testimony of Derrick Evans.

residents, approximately fourteen hundred households, and is predominantly low-income and African-American. The Bay Area Women's Coalition has been aggressively working to improve the quality of life for residents in Trinity Gardens by addressing crime and neglect in the neighborhood. The organization built a senior living facility, homes for low-income individuals and repaired over one hundred roofs after the area was hit by Katrina.

The organization is most concerned about children's lead exposure and the high number of "special education" children in the neighborhood elementary schools. The CEO and Housing Director of the organization, Leevones Dubose, told the Commission that because the residents of the community are so poor, many use lumber from old houses (likely painted with lead based paints) to burn in order to keep warm. She testified that recent tests revealed three out of every fifteen Trinity Garden residents have elevated blood lead levels. Of the two elementary schools in the area, sixty out of three hundred children enrolled are in Special Education. "It's something wrong with the environment the children are living in."<sup>94</sup>

Unfortunately, one year after Katrina, the Mobile County Health Department closed its lead poisoning prevention program due to a loss of funding from the Center for Disease Control.<sup>95</sup> Under the program, the staff conducted site inspections to identify lead sources, provided lead prevention education to health care providers, and monitored certain identified lead poisoning cases. Currently, the Alabama State Department of Public Health has assumed responsibility for lead poisoning investigations; however, state employees do not provide the lead poison prevention education that county employees once offered to healthcare providers. The Bay Area Women's Coalition is connecting with other local organizations to bring attention to the deficiencies in their communities and to seek additional support.

## **H. Portersville Revival Group**

Coden, an un-incorporated community, lies on the coast of southwest Mobile County, Alabama across from the Mississippi Sound with a population of more than three thousand residents. The community is unique in character, with a predominately multi-ethnic, multiracial population. Many Coden residents trace their ancestry to regional African-American, Colonial French, and Native American populations. Most of the residents have incomes below the federal poverty level. The

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<sup>94</sup> AL Comm'n Hearing, Mar. 10, 2007, at 77-78, Testimony of Leevones Dubose.

<sup>95</sup> Telephone Interview of a current Mobile County Health Department employee who formerly worked for the county's lead poisoning prevention program. The employee refused to provide her name.

majority of residents' income and food supply rely on seafood production from Portersville Bay. Many are self employed as commercial crabbers, oystermen, and shrimpers.<sup>96</sup>

Portersville Revival Group was organized to preserve and repair the environment, rich history and unique culture of South Mobile County (also known as the French Coast of Alabama). Their mission is to educate and bring public awareness to issues impacting this region.<sup>97</sup> Activist Edwina Bates testified that industrial development has taken land away from the community, destroyed cultural resources, and currently threatens an historic site and a Native American burial ground. For instance, in response to one environmental impact statement prepared for an impending project, Bates testified that John Salter, a cultural anthropologist, investigated claims surrounding the development and concluded that Coden has a unique culture. Salter recommended the creation of a trust fund, preservation of historic sites, and other mitigation efforts.<sup>98</sup>

Since 1990, the natural gas industry has placed pipelines in Coden, including the Gulf Stream Pipeline. According to Edwina Bates, industry representatives promised numerous benefits to residents, but never delivered on those promises. In addition to the burdens imposed by the natural gas industry, the Portersville Bay has been listed on the EPA's 303(d) list of the nation's most impaired waters since 1996.<sup>99</sup> The list specifically cites the Bayou la Batre Utilities' sewage outfall among the main culprits for contamination.<sup>100</sup> Domestic and industrial sewer outfall lines run into the bay. Sewer spills and raw sewage flows into the waters and chlorine has decreased the marine life. The result has been putrid waters and residents routinely falling ill.<sup>101</sup>

The storm surge from Hurricane Katrina flooded the treatment plant and damaged equipment.<sup>102</sup> Floodwater and uprooted trees damaged many of the city's sewer lines.<sup>103</sup> As a result, the sewer system handles less wastewater and has overflowed several times.<sup>104</sup> After Katrina, residents of Coden came home to find sewage on their land and in some cases up to four

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<sup>96</sup> AL Comm'n Hearing, Mar. 10, 2007, at 17, Testimony of Barbara Reid.

<sup>97</sup> <http://www.portersvillerevivalgroup.org/>, accessed on October 4, 2007.

<sup>98</sup> AL Comm'n Hearing, Mar. 10, 2007, at 33, Testimony of Edwina Bates.

<sup>99</sup> Alabama 2006 303(d) list,

[http://www.adem.state.al.us/WaterDivision/WQuality/303d/2006%20Alabama%20303\(d\)%20List%20\(Final\).pdf](http://www.adem.state.al.us/WaterDivision/WQuality/303d/2006%20Alabama%20303(d)%20List%20(Final).pdf).

<sup>100</sup> *Id.*

<sup>101</sup> AL Comm'n Hearing, Mar. 10, 2007, at 20, Testimony of Barbara Reid.

<sup>102</sup> See Press Release, State of Alabama, Riley Awards \$1 Million for Hurricane Ivan Repairs in Mobile County (Sept. 8, 2005)

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*



feet in their home.<sup>105</sup> Portersville Revival Group has been working with groups such as Alabama Arise and the Center for Fair Housing to ensure funds allocated for hurricane assistance actually get to the residents that need them. They are also working to challenge the siting of a new wastewater treatment facility in a designated flood plain.

## **V. POST KATRINA/RITA FAILURES AND CONTINUED THREATS**

### **A. Lack of Stakeholder Involvement in Post-Katrina Planning**

Cynthia Willard-Lewis, New Orleans City Council Member for District E,<sup>106</sup> testified about the Mississippi River Gulf Outlet (“Mr. Go”), a 40-year old man-made shipping canal many local residents consider to be a “hurricane highway” to their communities.<sup>107</sup> Furthermore, the inequity in the quality of the levees threatened these same communities. Post-Katrina initiatives have not been kind to New Orleans’ minority community. Councilmember Willard-Lewis testified that lower-income and minority residents are not adequately represented on the “Bring Back New Orleans Commission” having only one elected official on the board.<sup>108</sup> Quite troubling, traditionally minority neighborhoods are being recommended for conversion to green space without proper public notice or hearings. The dispersal of the overwhelmingly African-American electorate of New Orleans has further alienated evacuees from participating in the City’s redevelopment. Dr. Kimberly Gallo, Director of the Community Industry Relations Group at the Louisiana Department of Environmental Quality, testified about LDEQ’s lack of communication to the community and the failures of including them in the decisionmaking process.<sup>109</sup> This is, in part, directly related to

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<sup>105</sup> AL Comm’n Hearing, Mar. 10, 2007, at 23, Testimony of Barbara Reid.

<sup>106</sup> District E includes Lower Ninth Ward, the Desire, most of New Orleans East, Village D’lest, Venetian Isles, and Lake Catherine.

<sup>107</sup> See Michael Grunwald, *Canal May Have Worsened City’s Flooding*, Wash. Post, Sept. 14, 2005, at A21.

<sup>108</sup> LA Comm’n Hearing, Oct. 21, 2006, at 28-38, Testimony of Councilmember Willard-Lewis. The members includes Mel Lagarde, President & CEO of the Delta Division of HCA; Barbara Major, community organizer; Boysie Bollinger, Chairman of the Board and Chief Executive Officer of Bollinger Shipyards, Inc.; Kim Boyle, Partner at the law firm Phelps Dunbar (Ms. Boyle is also a board member of the Lawyers’ Committee for Civil Rights Under Law); Cesar Burgos, managing partner at the law firm of Burgos & Evans, LLC; Joe Canizaro, President and Chief Executive Officer of Columbus Properties L.P.; Dr. Scott Cowen, President of Tulane University; Archbishop Alfred Hughes, Archbishop of New Orleans; Reverend Fred Luter, Pastor of Franklin Avenue Baptist Church; Wynton Marsalis, internationally recognized jazz musician; Alden McDonald, President and CEO of Liberty Bank and Trust Company; Dan Packer, President and CEO of Entergy New Orleans, Inc.; Anthony Patton, President/CEO and Founder of EBONetworks, L.L.C.; Jimmy Reiss, appointed Chairman of the Regional Transit Authority; Gary Solomon, venture capitalist; Oliver Thomas, councilmember District B; David White, businessman and member of the New Orleans Aviation Board.

<sup>109</sup> LA Comm’n Hearing, Oct. 21, 2006, at 49-52, Testimony of Dr. Kimberly Gallo.

Louisiana's Emergency Order—still in place—waiving environmental regulations and requirements for public participation as well as the vast displacement of New Orleans residents.

Civil rights activist and author Eric Mann spoke to the Commission about the significant role the media played in contributing to discrimination by portraying evacuees in a negative light. Parnell Herbert of the People's Institute for Survival and Beyond agreed with this assessment, adding that the majority of the media's negative portrayal is less factual and more "spin." Juan Parras, Director of Texas Environmental Justice Advocacy Services, shared Herbert's opinion that there has been active "stereotyping of displaced residents," and not just by the media. Houston Councilmember Ronald Green spoke of cultural stereotypes Houstonians have of New Orleanians and of incidents where evacuees were not called for job openings simply because they were evacuees.<sup>110</sup>

Furthermore, coastal residents have very few allies in the state legislatures. In Mississippi, State Senator Deborah Dawkins, member of the Environmental Committee, testified about the difficulty of bringing "progressive" ideas that benefit her constituents to the legislature. She emphasized the need for the African-American Legislative Caucus to demonstrate leadership on environmental issues impacting their residents.<sup>111</sup>

## **B. Lack of Support for those with Limited English Proficiency**

Outreach and education to the Latino community regarding post-Katrina assistance has been woefully inadequate.<sup>112</sup> Unfortunately, a number of corporate interests have taken advantage of undocumented workers. Companies like BFI Waste Management and other contractors actively seek Latino workers and have them working with post-Katrina debris. Workers are often mistreated and do not know their rights because policies and handbooks are written in English only.<sup>113</sup> Too often individuals do not report these violations because they fear challenges to their immigration status.

Even when they do report violations, many workers do not have insurance and the language barrier makes it difficult for them to communicate with doctors. On one occasion, a worker translating at

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<sup>110</sup> TX Comm'n Hearing, Apr. 21, 2007, at 101-102, Testimony of Houston Councilman Ronald Green.

<sup>111</sup> MS Comm'n Hearing, Oct. 14, 2006, at 133, Testimony of State Senator Deborah Dawkins.

<sup>112</sup> MS Comm'n Hearing, Oct. 14, 2006, at 126-132, Testimony of Andy Guerra.

<sup>113</sup> *Id.*



the Jackson County Health Department was fired for “giving out too much information...that these people know where to go.”<sup>114</sup> In Houston, Texas, many Latino evacuees found refuge in Latino churches where they could easily communicate with those helping them. Juan Parras of TEJAS indicated that many Honduran and El Salvadoran evacuees were not accounted for in the federal government’s analysis of Katrina’s impact because they were not eligible for FEMA assistance due to their immigration status.

The National Alliance of Vietnamese American Service Agencies noted in their report, *The Invisible Tide: Vietnamese Americans in Biloxi, MS: An Update One Year After Hurricane Katrina*, the critical need to ensure that all programs are designed to include approaches that are culturally and linguistically competent in all aspects of delivery. This includes development, outreach, and implementation.<sup>115</sup>

**C. Environmental Exposure and Damage: the creation of new environmental justice communities**

Housing opportunities in New Orleans are extremely limited, particularly for minorities. James Perry, Executive Director of the Greater New Orleans Fair Housing Action Center, testified about discriminatory online postings and restrictive zoning in white enclaves such as St. Bernard Parish. Specifically, Perry cited the National Fair Housing Alliance’s study, *No Home for the Holidays*, which revealed blatant discrimination against African-American evacuees and white evacuees seeking housing. In one instance, a white tester, seeking housing in an Atlanta apartment complex, was given a waiver of the deposit and credit check requirements. At the same complex, an African-American tester was not only obligated to provide a deposit and submit to a credit check, but was also charged additional fees.<sup>116</sup> In the 2006 follow up report, *Still No Home for the Holidays*, tests once again uncovered differential treatment in the following areas: failure to tell African-Americans about available apartments; failure to return telephone messages left by African-Americans; and failure to provide information to African-Americans.<sup>117</sup> The extreme discrimination and marginalization across the gulf coast is forcing African-American evacuees to fringe areas that are likely to be near old and emerging polluting facilities.

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<sup>114</sup> *Id.*

<sup>115</sup> National Alliance of Vietnamese American Service Agencies, *The Invisible Tide: Vietnamese Americans in Biloxi, MS: An Update One Year After Hurricane Katrina*, p. 5, Aug. 26, 2006.

<sup>116</sup> LA Comm’n Hearing, Oct. 21, 2006, at 91-92, Testimony of James Perry; *see also* National Fair Housing Alliance, “Still No Home for the Holidays,” Dec. 22, 2006.

<sup>117</sup> National Fair Housing Alliance, “Still No Home for the Holidays,” Dec. 22, 2006.

Housing opportunities for evacuees in other regions of the country are equally as disturbing. Parnell Herbert testified that some of the apartments offered to hurricane victims in Houston contained mold worse than that of the flooded homes in New Orleans.<sup>118</sup> In Gulfport, Mississippi, over a year after Katrina, little work had been done to rebuild homes devastated by Katrina. Becky Gillette testified that most of the homes in the area had mold and/or mildew problems. “The rich people, they could go off and live at their second home in the Smokeys. The poor people are left back here shut inside a FEMA trailer. . . . [W]hen [people] had trouble with the FEMA trailers poisoning them, they went out and bought a trailer. . . . The low-income and minority people did not have that option.”<sup>119</sup>

#### **D. FEMA Trailers**

In evaluating emergency response, it is crucial that the government be mindful of the health of those it is trying to protect. In the wake of the hurricanes, the Federal Emergency Management Agency (FEMA) offered emergency direct housing assistance to hurricane victims in the form of travel trailers or mobile homes.<sup>120</sup> Since 2005, over 120,000 households have utilized travel trailers and manufactured homes as temporary housing.<sup>121</sup> Unfortunately, soon after the trailers were dispersed, reports surfaced that occupants were experiencing negative health effects and that high levels of formaldehyde were being detected in the trailers.<sup>122</sup>

Complaints of respiratory problems, nose bleeds, burning eyes, sore throats, chest congestion and repeated illness led to testing of trailers by the Sierra Club. The results were astounding. The Sierra Club found that 83% of the trailers had formaldehyde levels over the recommended limit.<sup>123</sup> Unfortunately, few people were willing to complain about the smells and the effects as they were afraid of losing their trailers. In October 2006, Becky Gillette identified for the Commission the high levels of formaldehyde and the health problems many residents were experiencing as a result of living in these trailers. Initially, FEMA denied any problems with the trailers.

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<sup>118</sup> TX Comm’n Hearing, Apr. 21, 2007, at 34, Testimony of Parnell Herbert.

<sup>119</sup> MS Comm’n Hearing, Oct. 14, 2006, at 101, Testimony of Becky Gillette.

<sup>120</sup> Federal Emergency Management Agency: Frequently Requested National Statistics Hurricane Katrina - One Year Later, <http://www.fema.gov/hazard/ftr/canel2005katrina/anniversaryfactsheet.shtm>

<sup>121</sup> *Id.*

<sup>122</sup> See e.g. *Couple Discovers High Levels of Formaldehyde in FEMA Trailer* (WLOX television broadcast Mar. 16, 2006).

<sup>123</sup> Sierra Club, “Toxic Trailers: Tests Reveal High Formaldehyde Levels In FEMA Trailers,” May 2006.

FEMA contracted with the major trailer makers—such as Gulf Stream Coach, Fleetwood Enterprises, Monaco Coach, and others—to provide more than 100,000 travel trailers. The majority were stripped-down models, described as “no frills units” by the marketing director of Gulf Stream; workers on some assembly lines reported that they were expected to produce a trailer in eight to ten minutes.<sup>124</sup> According to one report, “[s]cientists and housing experts believe that the materials used to fabricate the FEMA trailers may have been imported from countries that produce high-formaldehyde-emitting particle board and composite woods.”<sup>125</sup> Thad Godish, a professor of environmental management at Ball State University in Indiana, observed that “[t]he levels of formaldehyde that have been reported down there you don’t see in the average American-made mobile home.”<sup>126</sup>

Formaldehyde is a chemical widely used in building materials, often as a component of glue, adhesives, paint, or coatings. The quality of the materials decreased as regular suppliers could not keep up with demand. Even employees of the trailer manufacturers reported negative health effects.<sup>127</sup> Formaldehyde has been classified as a “known carcinogen” by the International Agency for Research on Cancer and can cause a number of adverse health effects at elevated levels, including: watery eyes; burning sensations in the eyes, nose, and throat; nausea; coughing; chest tightness; wheezing; skin rashes; and allergic reactions.<sup>128</sup> Formaldehyde exposure may also trigger attacks in those with asthma.<sup>129</sup> At extremely high levels, exposure to formaldehyde can be fatal.<sup>130</sup> Children and senior citizens may be more susceptible to the negative health effects associated with formaldehyde exposure.<sup>131</sup>

Formaldehyde is regulated by a number of federal laws. EPA regulates formaldehyde as a hazardous air pollutant under the Clean Air Act and as hazardous waste under the Resources Conservation and Recovery

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<sup>124</sup> Amanda Spake, *Dying for a Home*, THE NATION, Feb 15, 2007.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> See <http://monographs.iarc.fr/ENG/Meetings/88-formaldehyde.pdf>, accessed Dec. 14, 2007.

<sup>129</sup> <http://www.epa.gov/iaq/formalde.html>

<sup>130</sup> Memorandum from the Comm. on Oversight and Govt. Reform Majority Staff to Members of the Comm. on Oversight and Govt. Reform regarding FEMA Documents 3-4 (July 19, 2007) *available at* <http://oversight.house.gov/documents/20070719111406.pdf> (hereinafter Oversight Memorandum) (citing Consumer Product Safety Comm’n, *An Update on Formaldehyde* (1997 Revision) *available at* <http://www.cpsc.gov/cpscpub/pubs/725.html>; Env’tl. Protection Agency: An Introduction to Indoor Air Quality *available at* <http://www.epa.gov/iaq/formalde.html>; Occupational Safety and Health Administration, *Formaldehyde OSHA FactSheet* (2002) *available at* [http://www.osha.gov/OshDoc/data\\_General\\_Facts/formaldehydefactsheet.pdf](http://www.osha.gov/OshDoc/data_General_Facts/formaldehydefactsheet.pdf)).

<sup>131</sup> *Id.* at 4 (citing California Environmental Protection Agency, *Indoor Air Quality Guideline: Formaldehyde in the Home, No. 1* (August 2004)).

Act.<sup>132</sup> The Occupational Safety and Health Administration limits occupational exposure to formaldehyde.<sup>133</sup> HUD regulates certain home construction materials that contain formaldehyde.<sup>134</sup> The National Institute for Occupational Safety and Health (NIOSH), a part of the Centers for Disease Control and Prevention, has set guidelines for what it considers to be acceptable levels of exposure to formaldehyde. NIOSH has a guideline for the maximum exposure level for a short-term 15-minute exposure. This level is 0.1 ppm.<sup>135</sup> Consistent with the NIOSH guidance, EPA has identified 0.1 ppm as a level at which acute health effects can occur. Some studies, however, have reported that acute adverse health effects may occur at formaldehyde exposure levels as low as 0.04 ppm.<sup>136</sup>

Disaster victims experienced the negative effects of the unsafe trailers soon after their delivery. Becky Gillette, co-chair of the Mississippi chapter of the Sierra Club, reported back in October 2006 “[w]idespread complaints with respiratory problems” and that “83 percent of [tested] trailers had formaldehyde levels over the [recommended] limit.”<sup>137</sup> Similarly, Zack Carter, an organizer for Alabama Arise, a statewide coalition that advocates for statewide policy for low-income individuals, found that “the level of chemicals inside [a hurricane victim’s FEMA] trailer was 50 percent higher than what EPA recommends.”<sup>138</sup> In addition, Gillette relayed personal stories about individuals struggling with health problems since moving into FEMA trailers. “I can tell you story after story of families that have been sick that remained sick. I know of a two-and-a-half-month-old baby that died in [a trailer] in Bay St. Louis and his six-month-old twin brother is now struggling to breathe and has to see a doctor every week,” she said. “I know people who have had older relatives that have died in FEMA trailers.”<sup>139</sup> However, it is difficult to concretely link formaldehyde to an individual’s health problems. “You can’t, for example, take someone into an emergency room and test them for formaldehyde toxicity. . . . So it’s not going to be on the death certificates.”<sup>140</sup> Some families continued to live in their

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<sup>132</sup> *Id.*

<sup>133</sup> *See* 29 CFR 1910.1048

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> Env’tl. Protection Agency: An Introduction to Indoor Air Quality, <http://www.epa.gov/iaq/formalde.html>.

<sup>137</sup> MS Comm’n Hearing, Oct. 14, 2006, at 68; *See also* Oversight Memorandum *supra* note 131 at 5 (“In Apr. 2006, the Sierra Club conducted tests to determine the formaldehyde levels in travel trailers provided by FEMA in the Gulf Coast. Levels above 0.1 ppm were found in 83% of 52 tested trailers. In April, May, and June 2007, the Sierra Club conducted additional testing on FEMA-provided trailers in the Gulf Coast. In this round of testing, 94% of trailers had formaldehyde levels above 0.1 ppm.”)

<sup>138</sup> AL Comm’n Hearing, Mar. 10, 2007, at 141.

<sup>139</sup> MS Comm’n Hearing, Oct. 14, 2006, at 68.

<sup>140</sup> MS Comm’n Hearing, Oct. 14, 2006, at 85–86.

dangerous trailers even after experiencing negative health effects for fear that FEMA would not be able to provide any alternatives. “[T]hey say, well, I’m afraid if I complain, FEMA will take away my trailer and I don’t have anywhere to live.”<sup>141</sup>

FEMA’s initial response to reports of elevated formaldehyde exposure levels was to distribute a brochure to trailer occupants advising them of the risks of formaldehyde exposure. However, the brochure did not include any information about how to contact FEMA with complaints or questions.<sup>142</sup> Internal emails indicate that this omission was intentional.<sup>143</sup>

Nearly a year later, this issue is just beginning to get attention from Congress and the national media.<sup>144</sup> Congressional inquiries are finally revealing the extent to which FEMA officials intentionally withheld information from the public and declined to take proactive measures to protect the health of trailer occupants.<sup>145</sup> The House Committee on Oversight and Government Reform issued subpoenas and held hearings to inquire into FEMA’s internal cover-up.<sup>146</sup> The investigation uncovered that despite the efforts of FEMA’s field staff to implement testing and safety precautions, FEMA’s officials and lawyers repeatedly refused to engage in the issue for fear of acknowledging liability and risking litigation.<sup>147</sup> Email chains uncovered by the Committee revealed that despite FEMA field reports of dangerously high formaldehyde levels and possible deaths in trailers, FEMA’s Office of General Counsel did not want “FEMA to test to determine if formaldehyde levels are in fact unsafe.”<sup>148</sup>

Following Congress’s investigational hearing in July, 2007, FEMA announced in August 2007 that it would suspend donations and sales of trailers until further investigations into the formaldehyde situation are completed.<sup>149</sup> Immediately prior to the hearings, “FEMA reversed course on the issue and said it has asked federal health officials to help conduct a new assessment of conditions in trailers under prolonged use.”<sup>150</sup>

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<sup>141</sup> MS Comm’n Hearing, Oct. 14, 2006, at 70.

<sup>142</sup> Oversight Memorandum *supra* note 131.

<sup>143</sup> *Id.*

<sup>144</sup> See e.g. *House Panel Reviews Toxic FEMA Trailers* (CBS television broadcast July 19, 2007) available at <http://www.cbsnews.com/stories/2007/07/19/katrina/main3075743.shtml>; Claudia Lauer, *FEMA Suppressed Health Warnings*, LA TIMES, July 20, 2007.

<sup>145</sup> Oversight Memorandum *supra* note 131.

<sup>146</sup> *Id.* at 1.

<sup>147</sup> *Id.* at 9.

<sup>148</sup> *Id.* at 14.

<sup>149</sup> Associated Press, *FEMA Stops Selling Disaster Trailers*, NY TIMES (Aug 3, 2007) available at [http://www.nytimes.com/2007/08/03/U.S./03brfs-trailers.html?\\_r=1&oref=slogin](http://www.nytimes.com/2007/08/03/U.S./03brfs-trailers.html?_r=1&oref=slogin).

<sup>150</sup> Spencer Hsu, *FEMA Knew of Toxic Gas in Trailers*, WASH. POST, July 20, 2007, at A01.

Although Congress's investigation into FEMA's mishandling of the situation is welcome, the sluggish pace in discovering these health and safety failings reveals severe shortcomings in the structures in place to protect our neediest populations following disasters. The harmful consequences of relaxing quality control to meet contractual production goals illustrate the importance of ensuring that hurricane victims are supported with resources that meet standard quality control measures and comply with national health and safety laws.

## **VI. ENFORCEMENT DEFICIENCIES**

What I do question is the justice of the richest country in the world that is pouring billions of dollars into this area, putting it on the backs of citizens who are trying to rebuild after a disaster to enforce these laws for themselves.

Robert Wiygul, Environmental Attorney

Under the National Contingency Plan, 42 U.S.C. § 9605 *et seq.*, the EPA is responsible for assessing and curing numerous environmental health threats. Instead, according to the NRDC, the EPA has been deferring to the local agencies regarding the pronouncements of whether New Orleans was safe to return after the flooding. The EPA's legal authority exists under the Clean Water Act (33 U.S.C. § 1251 *et seq.*), the Resource and Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9604), and the Oil Pollution Act (33 U.S.C. § 2706). According to the NRDC, the National Contingency Plan regulations impose numerous obligations on the EPA to ensure that its responses to releases of hazardous substances or oil protect exposed residents. The NRDC maintains that all the major statutes include language—usually along the lines of “imminent and substantial endangerment”—that permits the EPA to go to court and/or issue administrative orders to permit any action the EPA feels would protect public health or the environment from imminent and substantial endangerment due to exposure to hazardous chemicals or petroleum.

### **A. Community Burdens**

Despite the devastation inflicted on coastal residents and the demonstrated vulnerability, they continue to be subjected to reckless decisionmaking by federal and state officials. Residents of coastal Mississippi are contending with illegal wetlands filling. The State of Mississippi and the Army Corps of Engineers have, through acts and omission, permitted unregulated wetlands filling. Howard Page of the Sierra Club noted that developers have been allowed to illegally fill



wetlands in the Gulfport area because the Army Corps of Engineers does not have sufficient staff to enforce the law. According to Page, similar claims of inadequate staffing and funding have also been made EPA Region 4 office in Atlanta, Georgia. Robert Wiygul, environmental and housing attorney in Biloxi, Mississippi, testified that a representative of Army Corps told him that not one enforcement case has been sent to the regional EPA offices from the Gulfport community.<sup>151</sup>

Derrick Evans, Howard Page, and several other Mississippi witnesses identified the very serious issue in coastal Mississippi of the failure to protect wetlands: the lack of enforcement of the law and the nearly absent presence in the region of any state or federal official charged with environmental protection. The burden has fallen on individuals to challenge unlawful activity in the midst of rebuilding their lives.

In response to the lack of enforcement on the government's part, private citizens have had to force the City of Gulfport and the Army Corps of Engineers to issue "cease and desist" orders against illegal filling of wetlands. For instance, the Forest Heights subdivision – an historic low-income African-American community in the Turkey Creek Watershed – has had approximately 100 acres of wetlands cleared just recently, exposing it to exacerbated flooding.<sup>152</sup> In May 2007, the Army Corps of Engineers issued a Regional General Permit that allows the discharge of dredged and fill materials into wetlands in six Mississippi coastal counties. This region contains many acres of vital wetlands, which serve to buffer inland communities from the ravages of hurricanes and inclement weather. The purpose of the permit was to encourage redevelopment after Katrina. Unfortunately, the safety of the coastal residents, still recovering from Katrina, again took a backseat to other interests. Turkey Creek Community Initiatives and the North Gulfport Community Land Trust sued the Army Corps for issuing a general permit that violates both the Clean Water Act and the National Environmental Policy Act.<sup>153</sup>

Becky Gillette spoke of Chevron's plan to double the size of its refinery in Pascagoula and of DuPont's plan to relocate its Teflon Plant to Pascagoula. Unfortunately, the community is overburdened and does not have the resources to challenge these developments or to expose the environmental impacts they will have on the community.

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<sup>151</sup> MS Comm'n Hearing, Oct. 14, 2006, at 75-76, Testimony of Robert Wiygul.

<sup>152</sup> MS Comm'n Hearing, Oct. 14, 2006, at 31, Testimony of Derrick Evans.

<sup>153</sup> The Lawyers' Committee for Civil Rights represents Turkey Creek Community Initiatives and the North Gulfport Community Land Trust in the lawsuit.



For the residents of Port Arthur, Texas, the fact that they are overwhelmed with petrochemical facilities and refineries has made them *attractive* to companies and the federal government for continued dumping of toxic waste. In 2007, the U.S. Army and Veolia Environmental Services decided to dispose of chemical waste from the destruction of Indiana's deadly VX nerve agent stockpile in Port Arthur, an area already smothered by refineries and chemical plants. The Community In-Power Development Association ("CIDA") and other residents were forced to file a lawsuit against the U.S. Army and Veolia Environmental Services to stop the shipment of the deadly nerve agent VX from Indiana to be incinerated in Port Arthur.<sup>154</sup>

The Coden, Alabama community continues to battle a decision to relocate the Bayou La Batre waste water treatment plant in their community and less than 1500 feet from Portersville Bay. Additionally, the encroachment of natural gas pipelines on the Coden community, the destruction of their cultural resources, and the constant threat of losing their property through eminent domain have been devastating. Residents have been labeled "trouble makers" for demanding environmental protection. The historical and ongoing lack of governmental enforcement of environmental laws and regulations continues to threaten the health of Coden residents and their environment.

Additionally, Simone Washington, Policy Analyst for Alabama Arise, spoke of her organization's work with the Alabama Department of Environmental Management Reform Coalition to increase the number of environmental impact assessments they do when issuing permits. On at least two occasions, residents inquired as to whether impact studies were going to be performed in relation to the new wastewater treatment plant. On both occasions they were told "no."<sup>155</sup>

In New Orleans, the Deep South Center for Environmental Justice, working with the United Steelworkers, conducted environmental clean up and safety training in part due to the failure of government to do the clean-up. The initiative removed several inches of tainted soil from properties in New Orleans, replacing the soil with new sod, and safely disposing the contaminated dirt.<sup>156</sup> This demonstration project served as a catalyst for a series of activities that will attempt to reclaim the New Orleans East community following the devastation caused by hurricane Katrina. Ultimately, it is the government's responsibility to provide the

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<sup>154</sup> See *The Sierra Club et al. v. Dr. Robert Gates, Secretary of Defense, et al.*, **2:07-cv-0101 LJM-WGH (S.D. Ind. May 8, 2007)**

<sup>155</sup> AL Comm'n Hearing, Mar. 10, 2007, at 110-111, Testimony of Zack Carter.

<sup>156</sup> See <http://www.uswa.org/uswa/program/content/2830.php>, accessed Oct. 1, 2007.

resources required to address areas of environmental concern and to assure that the workforce is protected,” Dr. Beverly Wright, DSCEJ’s Executive Director, said at a press conference held on March 23, 2006.<sup>157</sup> In Biloxi, Mississippi, the Center for Environmental and Economic Justice also took on the responsibility of training residents to handle the removal of and proper disposal of hazardous material after the storm, in the absence of government assistance.<sup>158</sup>

Unfortunately for Katrina and Rita communities, governments’ statutory clean-up obligations are not being fulfilled. Emergency orders issued by Louisiana and Mississippi waived responsibilities for complying with federal and state environmental and health protections. In Louisiana, the original emergency order issued on August 30, 2005 was amended eleven times and was set to expire on September 30, 2007.<sup>159</sup> The orders include authorizing discharges from construction and demolition landfill sites, waiver of the 24-hour oral notification before discharge from wastewater treatment systems, waiving prior permitting requirements for waste disposal sites accepting hurricane debris, authorizing open burning without prior notice to the Louisiana Department of Environmental Quality, a waiver of asbestos inspection requirements for renovation and demolition activities and modification of asbestos certification requirements.<sup>160</sup> In Mississippi, the August 26, 2005, Proclamation of a State of Emergency has been renewed eleven times, the latest on September 7, 2007, relieving regulatory and proprietary requirements of the Mississippi Department of Environmental Quality—including suspending MDEQ approval requirements for liner construction quality assurance plans and a waiver of prior notification requirements for emergency demolition or emergency cleanup of asbestos-containing material.<sup>161</sup>

One hundred million cubic pounds of debris were generated in New Orleans by the storm. Unfortunately, post-Katrina, with no regulations for disposing of toxic material, large trucks were often seen hauling away a mixture of hurricane debris without concern for how different materials should be handled. In Mississippi, there was so much debris, unregulated burning (of not just wood, but of plastics as well) was rampant. Gillette spoke of a man who was bulldozing debris and discovered a human body. No steps were taken to retrieve the human

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<sup>157</sup> <http://www.uswa.org/uswa/program/content/2830.php>, accessed Oct. 1, 2007.

<sup>158</sup> MS Comm’n Hearing, Oct. 14, 2006, at 38-39, Testimony of Derrick Evans; *see also* <http://www.envirojustice.com/>, accessed Oct. 1, 2007.

<sup>159</sup> LA Dept. of Env’tl. Quality, <http://www.deq.state.la.us/portal/tabid/2570/Default.aspx>.

<sup>160</sup> *Id.*

<sup>161</sup> Proclamation of State of Emergency: Hurricane Katrina, August 26, 2005; Resolution of Governor Haley Barbour, September 13, 2007; Emergency Order, MS Dept. of Env’tl. Quality, September 13, 2007.

remains, which frequently were hauled off with the rest of the hurricane debris.<sup>162</sup>

The burning continued for months, releasing terrible smoke that caused irritation to eyes, asthma attacks, and other health problems. Furthermore, residents observed a failure by local officials to take proper precautions in retrieving human remains. Strikingly, both Louisiana and Mississippi changed the definition of solid waste management to permit mixed debris to go into a construction demolition landfill.<sup>163</sup> These landfills are commonly referred to as Class 3 or Class 4 landfills depending on the state. These landfills do not have leachate collection systems; i.e. they do not have liners or gas collection systems that more protective Class 1 or Class 2 landfills have.<sup>164</sup> Everything one finds in a household was being dumped in these landfills. As observed by environmental attorney Robert Wiygul, this included household hazardous waste, electronics, paint, and debris consisting of lead based paint and asbestos.<sup>165</sup> “We do believe . . . that there are going to be problems in later years from this and it very much points out the need for detailed thorough and realistic planning for this situation.”<sup>166</sup>

“You cannot expect these communities to shoulder the burden of enforcement of these environmental laws themselves, because not only does it take money, . . . it takes resources to do that, even if you have an attorney, [communities] put themselves at risk because they put themselves at risk for countersuits. And if you get countersued, . . . you have to put your home insurer on notice and have to sit up at night and worry about it.”<sup>167</sup> Witness Becky Gillette has been a victim of two such SLAPP suits.<sup>168</sup>

## **B. U.S. Government Accountability Office Recommendations**

Even the U.S. government has identified the lack of environmental enforcement after Katrina and Rita. In June 2007, the U.S. Government Accountability Office issued its report: “Hurricane Katrina, EPA’s Current and Future Environmental Protection Efforts Could Be Enhanced by Addressing Issues and Challenges Faced on the Gulf Coast.” The GAO recommended the EPA: 1) implement an asbestos

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<sup>162</sup> MS Comm’n Hearing, Oct. 14, 2006, at 64, Testimony of Becky Gillette.

<sup>163</sup> MS Comm’n Hearing, Oct. 14, 2006, at 81, Testimony of Robert Wiygul.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> MS Comm’n Hearing, Oct. 14, 2006, at 90, Testimony of Robert Wiygul.

<sup>168</sup> SLAPP suits (strategic lawsuit against public participation) are often used against plaintiffs threatening them with huge damages unless their lawsuit is dropped.

monitoring plan that addresses the potential health impacts in New Orleans from on going extensive demolition and renovation activities, 2) improve its future communications to the public on environmental risks resulting from disasters, and 3) take several actions to better enable the agency to minimize environmental risks following disasters. The GAO noted:

To facilitate the removal of extraordinary amounts of debris in Louisiana and Mississippi after Hurricane Katrina, EPA is not enforcing certain Clean Air Act emissions standards for asbestos in the case of government-ordered demolitions of homes. In addition, these emissions standards generally do not apply to the demolition or renovation of homes by or for individual homeowners. Nevertheless, because asbestos inhaled into the lungs can cause cancer, *it is important for EPA to ensure that public health risks are minimized during the demolition and renovation of buildings containing asbestos, activities that can release asbestos fibers into the air.*<sup>169</sup>

The EPA has agreed with the recommendations to provide additional asbestos air monitoring in New Orleans, improve environmental health risk communications following disasters, provide more guidance to states on managing debris disposal following disasters, and clarify debris management roles with the Army Corps of Engineers.<sup>170</sup>

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<sup>169</sup> “Hurricane Katrina, EPA’s Current and Future Environmental Protection Efforts Could Be Enhanced by Addressing Issues and Challenges Faced on the Gulf Coast,” June 2007, p.2 (emphasis added).

<sup>170</sup> *Id.* at 8.

## **VII. KEY RECOMMENDATIONS**

The overriding theme of the testimony received was a fundamental lack of trust in government: local, state and federal. Environmental Justice communities have historically been abused, ignored and discounted. The lack of environmental protection minority and poor people receive was exacerbated by Rita and Katrina. Interpretation of tests in a way that favors government inaction is appearing to be a frightening pattern for this region. In light of the tremendous burden gulf coast communities must bear, local, state and federal agencies must ensure the laws are enforced and create new regulations where necessary to protect the health of these communities. The Commission makes the following recommendations with this in mind.

### **FEDERAL ACTION**

Tracie Washington testified to the need for clearer lines of accountability between government agencies. According to Councilman Ronald Green, no national organization effectively coordinated the infusion of displaced people in Houston. In reality, post-Katrina responses have demonstrated significant failures in federal/state responses to national disasters. Commissioner Leslie Fields testified that preparations need to be made for future disasters. During the hearings a number of complaints were lodged at individual federal agencies. For instance, Juan Parras testified that homeland security funding was being used to protect the petrochemical industry, not the people. Witness Robert Muhammad opined that the Department of Homeland Security's first duty should be guarding neighborhoods and ensuring that the most vulnerable populations are cared for post-disaster.

#### Recommendations:

- Pass legislation requiring assessment of cumulative impact of releases by industrial facilities in areas affected by major weather events.
- Aggressive Congressional Oversight of Environmental Protection Agency and the Army Corps of Engineers' enforcement of environmental laws, particularly the Clean Water Act's wetlands protections and the Resource Conservation Recovery Act, in communities heavily burdened by polluting facilities as well as EPA's implementation of the GAO's recommendations outlined in its 2007 Report.
- Indoor Air Quality Guidelines – educate people as to whether the air they breathe in their home is safe. Provide

recommendations to eliminate poor and dangerous air quality in homes and schools. Provide grants to support testing of indoor air in public housing and homes of low-income individuals or renters, particularly after major weather events.

- Enact legislation incorporating U.S. treaty obligations to provide a healthy environment for all. This can be achieved through the codification of Executive Order 12898.
- Amend the Stafford Act to mandate EPA to perform soil, water and air testing as part of their emergency response in addition to mandating that services and support provided to victims of emergencies not harm the recipients' health or safety.
- Reinstate the Superfund Tax. The tax on chemical and oil industries that paid for Superfund cleanups expired in December 1995. According to a 1998 report by the U.S. Public Interest Research Group, an environmental and health advocacy agency, \$4 million for cleaning up hazardous waste sites goes uncollected every day the tax is not restored.

### STATE ACTION

According to Robert Wiygul, in Louisiana and Mississippi, the state departments of environmental quality signed emergency orders after the storm that allowed mixed debris to go into construction demolition landfills. These are landfills without leachate collection systems,<sup>171</sup> liners or gas collection systems. People dumped debris containing lead paint, asbestos, pesticides and other toxins into these sites.

#### Recommendations:

- Enact emergency debris removal plan.
- State and local officials need to develop working relationships with grassroots organizations to effectively address community needs and environmental concerns.
- Contingency emergency plan to communicate with language minorities.
- Finally, better efforts should be made to integrate environmental justice considerations into long term and long

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<sup>171</sup> Leachate collection systems are systems for draining liquids out of the landfill.

range planning. As Robert Muhammad testified, “Development is not sustainable when it is not equitable.”

## COMMUNITY ACTION

Information gathering and coordination efforts were discussed at length as potential solutions to post-Katrina dilemmas. For instance, Commissioner Cartwright discussed the importance of there being more coordination between environmental justice attorneys, advocates, and planners regarding emergency plans. Carroll Robinson, Associate Dean of External Affairs at Jordan-Leland School of Public Affairs, maintained that there needs to be a data repository so that in the future there can be a more coordinated response based on the abilities of the community-based organizations along the Gulf Coast. Without a resource data repository, resources and funds will continue to flow only to the established national level organizations, never reaching community based organizations that might be able to respond most quickly. Robinson emphasized the need for better coordination between all the different types of groups that are meeting post-Katrina so response efforts do not get “experts in silos.”

### Recommendations:

- Community activists and organizations should file complaints with the appropriate federal agency’s Office of the Inspector General when federal agencies fail to fulfill their statutory obligations to the community.
- Community groups should continue gathering anecdotal information. Community groups should coordinate efforts to keep residents informed. Better efforts should be undertaken by non-profit organizations and law firms to bring enforcement actions against recalcitrant state agencies and/or private entities.
- Better relations should be developed between universities and community groups to ensure continued research as well as interpretation and sharing of data derived from studies.
- Community based organizations should also tap into the history of their community and search for funds designated for historical preservation that may assist in obtaining greater protections for the community from environmental pollutants.



- Work with local chapters of national environmental and civil rights groups like the Sierra Club and the NAACP. These organizations have resources or alternatively can direct the community to resources that can strengthen the community's advocacy efforts.
- Develop contacts with local media outlets and keep them informed of the community's work.

## **GLOSSARY OF WITNESSES<sup>172</sup>**

Alabama Arise  
Bay Area Women's Coalition  
Chastang Landfill Group  
Gulf Coast Latin American Association  
Houston Area Urban League  
Louisiana Department of Environmental Quality  
Louisiana State Representative Cynthia Willard Lewis  
Mississippi Chapter of the Sierra Club  
Mississippi State Senator Deborah Dawkins  
North Gulfport Community Land Conservancy  
People's Institute for Survival and Beyond  
Portersville Revival Group  
Texas Environmental Justice Advocacy Services  
Texas Councilman Al Green  
Turkey Creek Community Initiatives  
Robert Wiygul, Waltzer and Associates  
Eric Mann  
Tracie Washington  
Greater New Orleans Fair Housing Action Center  
Reverend Richard Young  
Representative Al Edwards  
Jim Fuller, American Consulting Group, LLC  
Teresa Fox Bettis, Executive Director, Center for Fair Housing, Inc.  
Alabama

### **Supporting Organizations**

Lawyers' Committee for Civil Rights Under Law  
Deep South Center for Environmental Justice, Dillard University  
Steps Coalition  
Texas Southern University, Thurgood Marshall School of Law  
Texas Southern University, Barbara Jordan - Mickey Leland School of Public Affairs

### **Resources for Communities**

National Resource Conservation  
Environmental Protection Advocacy Allies.

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<sup>172</sup> U.S. Senators and House Representatives were invited to participate either in person or by providing written testimony.



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