

ENVIRONMENTAL JUSTICE GROUPS IN EPA REGION 4

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina
South Carolina, and Tennessee

November 9, 2010

Ms. Gwendolyn Keyes Fleming
Regional Administrator
U.S. EPA Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303

Dear Ms. Keyes Fleming,

It has now been just over one year since a delegation of environmental justice leaders from more than fifteen environmentally impacted communities from six Region 4 states met with EPA Region 4 Acting regional administrator A. Stanley Meiburg and senior staff in Atlanta on October 27, 2009 and presented written documentation and testimony on a range of EJ issues not being adequately addressed by the agency. As a follow-up, leaders from these and other impacted EJ communities in the region will be meeting with you in Atlanta on November 10, 2010 to provide you with a first-hand account of their concerns, their evaluation, and their assessment of any forward movement or lack thereof by EPA Region 4 on their individual cases over the past year.

Many of us are already engaged with you on how best to transform the Region 4 EPA to address the deeply rooted environmental racism that is responsible for so much illness and suffering. Your arrival is a signal of hope for we who demanded a new EPA Region 4 administration.

Clearly, a fundamental change is needed in EPA Region 4. We need a new culture at Region 4 and a new enforcement framework—one that actually protects the environment and public health. Given your experience as a former DeKalb County, District Attorney, environmental justice communities are excited about the possibility of finally getting equal protection and equal enforcement of our environmental laws in the region, something that has been lacking in the southern states but still experiencing environmental injustice states for decades.

EPA Region 4 has too often operated as a nearly autonomous sub-agency, colluding with state environmental agencies to uphold the rights of industry at the expense of public health. This “look the other way” approach leaves the public to pick up the tab of higher health costs and degraded environments. These wrong-headed policies that lead to unequal protection and unequal enforcement need to end and end now, and we expect from you the bold leadership and an uncompromising dedication to equal protection and environmental justice transition our region to one where public health and environmental protection are truly a top priority.

We understand that all ten EPA regions are quite different and are not created equal when it comes to acceptance and implementation of environmental justice. Thus, we have crafted a “Call to Action” that serves our unique circumstances, history, and culture.

Given the dire circumstances many of our environmental justice communities find themselves in today, we are hereby submitting this urgent, clarion “Call to Action for Reform of EPA Region 4” focused on transparency, accountability, and trust. Working together with this shared vision, we are hopeful that, with your support, that our communities can take possession of their rights for a safe and healthy environment.

1. Reverse the deadly impact of environmental racism and establish accountability by implementing a “polluter pays” policy. Environmental hazards in low-income and people of color communities must be made a Region 4 priority. EPA Region 4 has been working from a flawed protection model that appears to value good relations with state environmental regulators over enforcing the laws—allowing polluters to walk away in many cases unpunished. A polluter-pays policy should be enacted and communicated clearly to industries in Region 4.
2. Establish leadership roles for people who prioritize health and environmental justice. Many people currently in senior level management in the Region made decisions in the past 10 years that have directly harmed communities in our states. EJ residents in Region 4 who live on the frontline of environmental and health assaults are demanding fundamental and significant change at the senior level management. To signify an intentional shift toward greater accountability toward these communities, we urge you to hire and gather the best and the brightest for your Reform Team. An EJ “litmus test” for us in this area is the level of replacement of those senior EPA staff persons who have consistently made and or collaborated in decisions that have exacerbated health and environmental problems in low-income and people of color communities.

We urge EPA to deploy thoughtful leaders on chemical exposure and environmental health, scientific and common sense solutions to the toxic chemical contamination problem, progress in business and industry with Green Chemistry development, and other innovative thinkers to advise the your administration on toxic chemical exposure as a variable in all policy as well as on new appointments. Set a public interest research agenda that coordinates green chemistry with green energy and green engineering technologies and green job programs being developed.

Regulators in Region 4 should be free from ties to the chemical industry or other entities that would attempt to influence their decisions or impact the integrity of community protections. The preferred “stakeholders” in this process must be the people of the United States, not the chemical corporations.

EPA should convene a "hot spot task force" to identify priority communities for targeted enforcement and corrective action. Engaging in this investigation and

reform necessitates targeted enforcement in documented environmental justice "hot spot" areas. These include places where multiple petrochemical plants, manufacturing facilities, incinerators or other dumps are sited but also areas where workers and communities are routinely contaminated disproportionately by agricultural chemicals; pollution from coal mining or other fossil fuels extraction; where illness rates are undeniably higher than the state or national averages; or where certain types of rare illnesses appear to be linked to specific contaminants or a "toxic cocktail" of chemicals, or where there are populations more vulnerable to exposures. Better enforcement is not only an issue of accountability and trust, but also of morality and basic human right to clean air, clean water, uncontaminated food and good health.

3. Investigate and reform unjust Region 4 policies on waste facility permitting, hazardous waste cleanup and disposal, and property assessments and relocation. The policy of allowing low-income and people of color communities to become the "dumping grounds" of hazardous waste facilities must not be allowed to continue, and immediate steps must be taken to implement protections for communities in these areas. Corporations, polluting industries, and potentially responsible parties (PRPs) causing harm must be held accountable.

For example it is clear that waste disposal decisions following TVA's coal sludge spill in Tennessee and the BP oil disaster in the Gulf, made jointly between the EPA, the states, and private industry placed environmental justice communities in the direct path of toxic waste dumping. EPA Region 4 must ensure that the dumping of millions of tons of toxic coal ash sludge in the Arrowhead landfill in Uniontown, Alabama poses no present or future threat to the health or environment of the people of Perry County.

4. EPA approved the removal of 3.5 million cubic yards of hazardous coal ash sludge from the mostly white Roane County in east Tennessee to the Arrowhead Landfill (a/k/a Perry County Associates Landfill) located in the heart of the Alabama's "Black Belt" in Perry County. EPA should use all of its enforcement powers and legal authority to abate offensive odors, fugitive dust, and water pollution emanating from the landfill.

Offensive odors. Many residents living near the Arrowhead Landfill have complained about suffering nausea, vomiting, headaches, and respiratory irritation as a result of offensive odors emanating from the Landfill. As discussed in the October 5, 2010 letter from attorney David A. Ludder, EPA Region 4 has the authority to enforce the EPA-approved State Implementation Plan for Alabama via the Clean Air Act. We request that EPA file its own lawsuit or intervene in the pending lawsuit, *Abrahams v. Phill-Con Services, LLC*, No. 2:10-cv-00326 (S.D. Ala. filed June 25, 2010), to ensure that the residents obtain relief from the real injuries they are suffering because of the air pollution emanating from the Arrowhead Landfill.

Fugitive Dust. Many residents living near the Arrowhead Landfill have complained about fugitive dust being blown off the Landfill site. They are justifiably concerned that this dust may contain hazardous constituents such as arsenic. The EPA-approved

State Implementation Plan for Alabama provides that "[n]o person shall cause or permit the discharge of visible fugitive dust emissions beyond the lot line of the property on which the emissions originate." 40 C.F.R §§ 52.50 and 52.53 (incorporating Ala. Admin. Code. r. 335-3-4-.02). The Alabama Supreme Court declared this provision unconstitutionally restrictive and overbroad. *Ross Neely Express, Inc. v. Alabama Dep't of Env'tl. Mgmt.*, 437 So.2d 82 (Ala. 1983). However, Ala. Admin. Code r. 335-3-4-.02 remains a part of the EPA-approved "applicable implementation plan" and remains enforceable by EPA. *See General Motors Corp. v. United States*, 496 U.S. 530, 540-541 (1990); *Safe Air for Everyone v. U.S. Env'tl. Protection Agency*, 488 F.3d 1088, 1097 (9th Cir. 2007); *Env'tl. Defense Fund v. Env'tl. Protection Agency*, 467 F. 3d 1329, 1337 (D.C. Cir. 2006); *Duquesne Light Co. v. Env'tl. Protection Agency*, 698 F.2d 456, 470-471 (D.C. Cir. 1983). [EPA also has the authority to disapprove the State Implementation Plan for Alabama and to promulgate a federal rule to control fugitive emissions. 42 U.S.C. § 7410(c)]. We request that EPA issue a Notice of Violation of the fugitive dust provision of the applicable State Implementation Plan to the Arrowhead Landfill and subsequently issue a compliance order and penalty order for such violation.

Water Pollution. Multiple complaints have been filed with EPA concerning stormwater management and pollution of waters near the Landfill. Following a February 22-23, 2010 inspection of the Landfill by EPA, on July 14, 2010 EPA issued a "Letter of Concern" to Phill-Con Services concerning stormwater management at the Landfill. The findings of the inspection and "Letter of Concern" indicate numerous violations of NPDES Permit Nos. ALG160167 & ALG140902. Considering the hazardous nature of the wastes being disposed at the Landfill, a lower threshold for formal enforcement action (including penalties) should apply. We request that EPA issue an administrative compliance order and penalty order to the Arrowhead Landfill under the Clean Water Act.

5. Protect our young people and their educators in the places where they learn and teach. Work with community-based environmental justice groups to monitor air quality near local schools and possible migration pathways to inside schools and develop a plan to address, reduce, or eliminate toxic air contaminants. Such plans should, in addition to parent and school administration, involve local industry and local, state, and federal governments. Where possible, outdoor air monitors should be located near schools. EPA Region 4 should analyze and report the results regularly to communities on current ambient air toxic monitoring. EPA Region 4 should also fully fund the Healthy School Environments program.
6. Require environmental justice analysis in disaster response decisions to avoid, minimize, or mitigate disproportionately high and adverse human health or environmental effects, including social and economic effects, on minority and low-income populations; to ensure the full and fair participation by all potentially affected communities in the transportation decision-making process; and to prevent the denial of, reduction in or significant delay in the receipt of benefits by minority and low- income populations. Make environmental justice reporting and analysis public via posting on EPA Region 4 website.

7. Instill better right-to-know practices and implement the *Precautionary Principle* so that Region 4 policies are consistent with modern global chemical policies.

A gross lack of knowledge currently exists about the potential hazards of chemical substances produced, imported, exported, and used in the U.S. This serious data deficiency demands utmost priority for chemicals that are suspected of being mutagens, carcinogens, reproductive or neurodevelopmental toxicants, endocrine disruptors, and persistent bioaccumulative toxic chemicals. The general public's body burden of these chemicals is already too high considering the chronic illnesses linked to exposure and that is reason enough to act. The disproportionate impacts on low-income communities and communities of color also requires a precautionary approach.

In order to fully implement the Precautionary Principle, resources must be immediately directed toward environmental monitoring of air, water, and soil where chemical exposure is suspected in order to prevent, not just manage, exposure to workers and communities. When toxic chemical exposure is identified, immediate action and resources must be available to halt the exposure and protect communities, especially children.

8. Design an action plan to protect Region 4 communities from chemical security threats and vulnerabilities. Derailments of trains with hazardous cargo, explosions of refineries and chemical facilities, or leaks of chemicals at water treatment plants or other similar facilities can be prevented – often with savings to industry – with review and implementation of safer substitutions or technologies.

Assessment of toxic chemical exposures must be an immediate mandated component of all relief efforts for communities in times of disaster, with protection mitigations in place to prevent additional and new exposures (e.g. rampant exposure to formaldehyde in FEMA trailers following Hurricane Katrina and the levee collapse in New Orleans) compounding existing tragedy. Region 4 should increase the use of the Supplemental Environmental Projects (SEPs) mechanism to address pollution prevention and environmental justice issues.

9. Establish a climate of access, transparency and direct input on regulatory decisions. The people of Region 4 need to have access and the ability to participate in the decision making process for remediation and resolve, which requires resources for capacity building and access to expertise to represent their interests.

We ask that you make available new research findings, information on chemical and other harmful emissions sources, company non-compliances and permit information available on its website and in publicly accessible locations throughout the Region. EPA administrators should at minimum make themselves available to meet with community members on request. Information should be made available in multiple languages (e.g. Spanish) to further break down the language and cultural barriers that can otherwise contribute to disproportionate health impacts.

In addition, you should also commit to quarterly meeting with environmental health justice leaders, who are connected directly to local health and environmental problems, can work collectively with government agencies to identify and build support for tangible solutions, and build trust among community members and EPA leaders willing and interested in earning that trust.

10. Require assessments of multiple, cumulative and, where possible, synergistic exposures, unique exposure pathways, and impacts to sensitive populations when considering environmental permits and regulations. This should apply to the Resource Conservation and Recovery Act, the Clean Air Act, the Clean Water Act, the Federal Insecticide, Fungicide and Rodenticide Act and other applicable federal laws. Similar assessment should be made in establishing site-specific clean-up standards under Superfund and Brownfields Programs, in the restoring or reclaiming of natural coastline, wetland, mountain or forest areas and the like. These assessments will better gauge the full impacts of exposure to toxic chemicals or destructive practices on the general population as well as determine disproportionate impact or harm.
11. Develop a specific timeline for implementing important environmental justice priorities designed for a speedy repair of the long broken EPA Region 4 system. It has taken decades for the toxic contamination through our region to reach this critical level but we cannot wait decades more for relief. We realize that comprehensive reform of the broken regulatory system will take some time to do well. But that should not prevent Region 4 from taking practical steps, starting now, to reduce the burden of illness from toxic contaminants and to prevent our young people and future generations from this fate.

We thank you for your time and consideration of our principles and recommendations for advancing environmental justice, health equity, and sustainability for communities that have too long suffered from pollution, environmental degradation, and unequal enforcements of our laws and regulations.

Finally, the undersigned groups and leaders are eager to assist with designing and building support for transformational change to Region 4's new administration—changes and improvements that will stop the illness and harm in low-income and people of color communities.

Sincerely,

Dr. Robert D. Bullard, Director, Environmental Justice Resource Center, Clark Atlanta University (Atlanta, GA)

Barbara Evans, Organizing Coordinator, WildLaw (Burkville, AL)

Debra E. Harris, President, Lowndes Citizens United for Action (Lowndes County, AL)

William Gibson, President, Blackbelt Citizens Fighting for Health & Justice-Perry County (Uniontown, AL)

Robin Young, President, Lowndes Citizens United for Action (Lowndesboro, AL)

Helen Butler, Executive Director, Georgia Coalition for the People's Agenda (Atlanta, GA)

Dr. Mildred McClain, Executive Director, Harambee House, Inc. and Citizens for Environmental Justice, Inc. (Savannah, GA)

Charles Utley, Blue Ridge Environmental Defense League and CRSR Brownfields Commission (Augusta, GA)

Justine Thompson, Executive Director, GreenLaw (Atlanta, GA)

Leigh Touchton, President, Valdosta-Lowndes NAACP (Valdosta, GA)

Phyllis Stallworth, Vice President, Valdosta-Lowndes NAACP (Valdosta, GA)

Annie Laura Stephens, Blue Ridge Environmental Defense League (Augusta, GA)

Larry Lockey signing for Edward Dubose, President, Valdosta-Lowndes NAACP (Valdosta, GA)

Ralph Paige, Executive Director, The Federation of Southern Cooperatives/Land Assistance Fund (East Point, GA)

Jeanne Zokovitch Paben, Assistant Professor of Law, Barry University (Orlando, FL)

Jeannie Economos, Pesticide Safety and Environmental Health Coordinator, Farmworker Association of Florida (Apopka, FL)

Wanda Washington, President and Vice President, FOCUS (Tallest, FL)

Rachel Gelbmann, Florida Programs Assistant, WildLaw (St. Petersburg, FL)

Cathryn Young, Barry University, Environmental Law Society, President (Orlando, FL)

Berry Gray, Greater Sylvania Heights Front Porch (Fort Walton Beach, FL)

Debi Riley-Broadnax, Greater Sylvania Heights Front Porch (Fort Walton Beach, FL)

Mrs. Maria Parsons, Stephen Foster Neighborhood (Gainesville, FL)

Dr. Michael Parsons, Stephen Foster Neighborhood (Gainesville, FL)

Francine Ishmael, Executive Director Citizens Against Toxic Exposure (Pensacola, FL)

Elizabeth Crowe, Executive Director, Kentucky Environmental Foundation (Berea, KY)

Greg Capillo, Kentucky Environmental Foundation (Berea, KY)

Eboni Cochran, Co-Coordinator, Rubbertown Emergency Action (Louisville, KY)

Julia Peckinpaugh, Regional Coordinator, Kentucky Student Environmental Coalition (Lexington, KY)

Sherri Jones, Founder and Organizer, Forrest County Environmental Support Team (Hattiesburg, MS)

Tennie White, President, Environmental Consultant Trouble Shooters, Inc. (Jackson, MS)

Rev. Steve Jamison, Pastor, Marantha Faith Center (Columbus, MS)

Savi Horne, Executive Director Landloss Prevention Project (Durham, NC)

Gary Bullwinkel, Greater Fredonia Community for Environmental Justice (Fayette County, TN)

Rita Harris, Organizer Sierra Club (Memphis, TN)

Margaret L. Jones, Citizen for Environmental Justice for All (CEJA), Scarboro Community in (Oak Ridge, TN)

Laura Winholt, President Daufuskie Island Conservancy (Daufuskie Island, SC)

J. Herman Blake, PhD, Property Owner, (Daufuskie Island, SC)

Sallie Ann Robison, Native of Daufuskie Island (Daufuskie, SC)

Jacqui Patterson, Director, Climate Justice Initiative, NAACP National Office (Baltimore, MD)

ADDENDUM REPORT

To Letter Submitted to EPA Region 4 Administrator Gwendolyn Keyes Fleming

By Coalition of Region 4 Environmental Justice Groups

November 9, 2010

Burying “Dumping in Dixie” Practices and the Legacy of Unequal Protection

Healthy places and healthy people are highly correlated with the poorest of the poor within the United States having the worst health and the most degraded environments. One of the best indicators of an individual’s health is one’s street address, Zip Code, or neighborhood. Race and class map closely with vulnerability. More than 100 studies now link racism to worse health. More than 200 environmental studies have shown race and class disparities. It is no accident that six of the Forbes “Top 10 Unhealthiest States” in 2009 were found in Region 4. Mississippi was ranked the 50th unhealthiest state in 2009. Above Mississippi were Oklahoma (49th), Alabama (48th), Louisiana (47th), and South Carolina (46th), Nevada (45th), Tennessee (44th), Georgia (43rd), West Virginia (42nd), and Kentucky (41st).

A 2005 Associated Press investigative study, “More Blacks Live with Pollution,” found that people of color and poor people live with more pollution than the rest of the nation. African Americans are 79 percent more likely than whites to live in neighborhoods where industrial pollution is suspected of posing the greatest health danger. African Americans in 19 states are more than twice as likely as whites to live in neighborhoods with high pollution and a similar pattern was discovered for Hispanics in 12 states and Asians in 7 states.

A 2008 study by researchers at the University of Colorado found that blacks experience such high pollution burden that black households with incomes between \$50,000 and \$60,000 live in neighborhoods that are, on average, more polluted than the average neighborhood in which white households with incomes below \$10,000 live.

Americans are paying a high price for air pollution. Air pollution accounts for over three-quarters of the total pollution-related public health costs and could be as high as \$182 billion annually. Asthma alone costs Americans nearly \$18 billion each year. Asthma hospitalization rate for African Americans and Latinos is 3 to 4 times the rate for whites. According to the Asthma and Allergy Foundation of America 2010, five of the “Top 10 Asthma Capitals” are located in Region 4: Richmond, VA (1st), St. Louis, MO (2nd), Chattanooga, TN (3rd), Knoxville, TN (4th), Milwaukee, WI (5th), Memphis, TN (6th), Tulsa, OK (7th), Philadelphia, PA (8th), Augusta, GA (9th), and Atlanta, GA (10th).

Nearly four decades of Region 4 harmful and discriminatory decisions have turned too many low-income and people of color communities into the dumping grounds for the most dangerous toxic chemicals, lowering nearby residents’ property values, stealing their wealth, and exposing them to unnecessary environmental health risks. Landfill sitings have created toxic hazards for Region 4 communities.

As early as 1983, the U.S. General Accounting Office (GAO) documented the disparate hazardous waste siting pattern in EPA Region 4. The GAO found that three-fourths of the hazardous waste facilities in the region are located in majority African American communities even though African Americans made up only one-fifth of the region's population.

In 1987, the United Church of Christ (UCC) Commission for Racial Justice *Toxic Wastes and Race in the United States* and the NAACP in the 1994 *Toxic Wastes and Race Revisited* report found race was the most potent factor predicting where the location of hazardous waste facilities—more powerful than poverty, land values, and home ownership. The 1994 report found that people of color were 47 percent more likely to live near a hazardous waste facility than white Americans.

In 1990, sociologist Robert D. Bullard's *Dumping in Dixie: Race, Class, and Environmental Quality*, the first environmental justice book, graphically illustrated that all communities in the South are not created equal. The book clearly illustrates that to be poor, working-class, or a person of color in the United States often means bearing a disproportionate share of the country's environmental problems. Starting with the premise that all Americans have a basic right to live in a healthy environment, *Dumping in Dixie* chronicles the efforts of five African American communities, empowered by the civil rights movement, to link environmentalism with issues of social justice.

The 2007 United Church of Christ *Toxic Wastes and Race at Twenty* report found Race continues to be a significant independent predictor of commercial hazardous waste facility locations when socioeconomic and other non-racial factors are taken into account. People of color make up the majority (56%) of those living in neighborhoods within two miles of the nation's commercial hazardous waste facilities, nearly double the percentage in areas beyond two miles (30%). People of color make up a much larger (over two-thirds) majority (69%) in neighborhoods with clustered facilities. People of color in 2007 are more concentrated in areas with commercial hazardous sites than in 1987.

The *Toxic Wastes and Waste at Twenty* report also found that commercial hazardous waste facilities in EPA Region 4 states have been disproportionately located within two miles or less of communities of color: Alabama (66.3%), Florida (52.7%), Georgia (55.6%), Kentucky (51.5%), Mississippi (50.6%), North Carolina (55.9%), South Carolina (43.9%), and Tennessee (53.8%). People of color comprise 28.5 percent of EPA Region 4 population.

The Clean Air Task 2002 *Air of Injustice: African Americans and Power Plant Pollution* report found African Americans are more likely to live near dirty coal fired power plants. More than 68 percent of African Americans live within 30 miles of a dirty coal-fired power plant compared with just 56 percent of whites. In 2007, the Environmental Integrity Project identified the "Dirty Dozen," twelve states with the heaviest concentrations of the dirtiest power plants—in terms of total tons of carbon dioxide emitted are found in EPA Region 4. They include: Texas (five, including two of the top 10 dirtiest plants); Pennsylvania (four); Indiana (four, including two of the top 10 dirtiest plants); Alabama (three); Georgia (three, including two of the top three dirtiest plants); North Carolina (three); Ohio (three); West Virginia (three); Wyoming (two); Florida

(two); Kentucky (two); and New Mexico (two). Five of the “Dirty Dozen” are located in Region 4.

While movement to clean and renewable energy sources is touted as the wave of our nation's green energy future, three coal-fired power plants are on the drawing board in Georgia. All three of these coal-fired power plants are proposed in environmental justice communities. The plants include: Greenleaf Coal Power Plant in Early County (50.2 % black); Fitzgerald Power Plant in Ben Hill County (32.6 % black) near Fitzgerald, GA (49.5% black in 2000); and Washington County Plant (53.2% black).

Georgia's mostly African American and poor communities are also being targeted for risky nuclear power plants. Such facilities are often hyped as providing jobs for local residents. However, most studies show that low-income and people of color residents get few jobs at these plants. They get more promises than jobs--and they get pollution and they get sick. For example, the first nuclear power plants to be built in decades are being proposed in Region 4 with an \$8.3 billion federal loan guarantee. The loan guarantee will help the Atlanta-based Southern Company build two more nuclear reactors in the mostly African American Shell Bluff community in Burke County, GA. The county is 51.1 percent black. The two new reactors would each produce 1,000 megawatts, and would work with two existing reactors at a site near Waynesboro, GA (62.5% black). The next three nuclear power plants in the queue are projects in southern Maryland, San Antonio, and Fairfield County, South Carolina.

EPA Region 4 officials have responded badly to environmental disasters. Two recent high profile examples involved waste disposal decisions in the 2008 Tennessee Valley Authority (TVA) toxic coal ash spill waste disposal and the 2010 British Petroleum (BP) oil spill waste disposal. Both decisions sent toxic wastes to environmental justice communities.

On December 22, 2008, a wall holding back 80 acres of sludge from the Tennessee Valley Authority (TVA) Kingston Fossil Fuel power plant broke spilling more than 525 million gallons of toxic coal ash over a dozen homes and up to 400 acres of the surrounding landscape, endangering aquatic life and the water supply for more than 25,000 residents. EPA Region 4 approved the TVA decision to ship 5.4 million cubic yards of toxic coal ash 300 miles south by railcar from the mostly white east Tennessee Roane County to a landfill located in Perry County (69 percent African-American with more than 32 percent of its residents living in poverty).

An August 2010 investigative report jointly produced by the Environmental Integrity Project, Earthjustice, and Sierra Club, *In Harm's Way: Lack of Federal Coal Ash Regulations Endanger Americans and Their Environment*, reveals 39 new sites in 21 states where toxic coal waste has contaminated groundwater or surface water with toxic metals and other contaminants. Currently, more than 137 cases of coal ash contamination have been found in 34 states. This total is a threefold increase in the number of damage cases EPA identified in its 2000 Regulatory Determination on the Wastes from the Combustion of Fossil Fuels.

Damage cases are disproportionately located in environmental justice communities. Several environmental agencies in Alabama, Mississippi, and Tennessee in Region 4 require no monitoring of waters near toxic coal ash sites. The report found that nearly 70 percent of the toxic coal ash generated nationwide is dumped in states that don't require monitoring to see if toxic contamination is leaking from coal ash sites.

A 2009 EPA report, *Regulatory Impact Analysis for EPA's Proposed Regulation of Coal Combustion Residues Generated by the Electric Utility Industry, Office of Management and Budget (OMB) Review Draft*, found that throughout EPA Region 4, coal-fired utility plants are sited in areas with disproportionately high poverty and minority populations, particularly when compared to national averages, but also when compared to state averages. Vulnerable populations are therefore unfairly impacted by the production and storage of toxic coal ash.

This environmental justice trend for coal ash presents itself nationally to some degree, but is magnified in Region 4. For example, Mississippi and Alabama are the two states in the nation with the worst disproportionate impact for populations living below the poverty line and Tennessee is among the top 5 with the worst disproportionate impact to minorities.

The greatest disparity in Region 4 as compared to the nation as a whole is in regards to minority populations. Nationally, at 21.7 percent the minority population surrounding coal-fired utility plants is 13 percent *lower* than the national average percent minority population of 24.9 percent. In EPA Region 4, the minority population near coal plants, 30.0 percent, is 21 percent *higher* than the national average. The minority populations near coal plants in Region 4 also cumulatively exceed their respective state averages by 19 percent. In a few particular states, this metric soars far higher than 19 percent. In Alabama, the minority population near coal plants is 46 percent higher than in the state as a whole; in Mississippi it is 34 percent higher; and in Tennessee there is nearly twice as high a share of non-white individuals living near coal plants as would be expected given the state average (an 89% exceedance).

The burden of coal ash storage and, ultimately, the threat of contamination, is also borne unequally by poverty populations nationwide, with a more dramatic disproportionate impact in Region 4. The national average percent poverty population is 11.9 percent. Near coal plants nationwide, the poverty rate is 12.9 percent, or 8 percent higher than the national average. In Region 4, the poverty rate near coal plants is 14.9 percent, a figure which exceeds the national average by 25 percent. As with the minority population, the poverty population is particularly concentrated near coal plants in Alabama, Mississippi, and Tennessee. In Alabama and Mississippi, the poverty rate near coal plants is more than twice the national average. At 24.5 percent near coal plants in Alabama, the poverty rate is 106 percent higher than the national average; at 26.5 percent in Mississippi, it is 115% higher than the national average. Finally, the poverty rate near coal plants in Tennessee exceeds the national average by 41 percent.

Federal regulation of coal ash is necessary in part because, under the path-work of current state regulations, minority and low-income populations face unfair exposure to the risks of coal ash.

The April 20, 2010 BP Deepwater Horizon oil disaster killed eleven workers and leaked more than 200 million gallons of crude into the Gulf of Mexico over 87 days—making it the worst offshore oil disaster in U.S. history. Although people of color make up 26 percent of the coastal counties in AL, LA, FL, and MS, nearly 60 percent of the BP oil spill waste is disposed in landfills located in people of color communities. Six of the nine EPA approved landfills are located in areas where the percentage of people of color is larger than the people of color percent in the corresponding county—amounting to more than 80 percent of the total BP waste disposed.

As of August 29, 2010, more than 55,319 million tons of BP oil spill solid waste had been disposed in nine Subtitle D landfills in Alabama, Florida, Louisiana, and Mississippi. Of this total, more than 20,760 tons of BP wastes (38%) were dumped at one lone landfill—the Spring Hill Regional Landfill in Campbellton, FL (Jackson County). More than 76 percent of the residents who live within a one-mile radius of the Spring Hill Landfill are people of color. People of color make up 29.8 percent of Jackson County.

A 2009 *New York Times* investigative report, “Toxic Waters - Clean Water Laws Are Neglected, at a Cost in Suffering,” is clear evidence that protection of water quality by EPA Region 4 has been far from a resounding success. Nationally, polluters in the last five years have violated federal clean water laws more than 500,000 times with many violators escaping fines and punishment. About 60 percent of the polluters were deemed in “significant noncompliance” which translates into the most serious violations like dumping cancer-causing chemicals. The *New York Times* research also found ten percent of Americans have been exposed to drinking water that contains dangerous chemicals or fails to meet a federal health benchmark and 40 percent of the nation’s public water systems violated the Safe Water Drinking Act at least once.

This legacy of neglect prompted a coalition of fourteen Alabama environmental groups in January 2010 to petition the EPA to withdraw the state’s authority over Alabama’s water pollution permitting program because it does not meet the minimum requirements of the Clean Water Act. The coalition contends that the water pollution permitting program administered by the Alabama Department of Environmental Management (ADEM) is fundamentally broken and does not meet minimum federal standards and the failures of the current system leave the citizens and environment of Alabama unprotected. EPA has threatened to take over enforcing part of the Clean Water Act if ADEM doesn’t force cities to comply with higher standards for keeping waterways clean. EPA intervention is long overdue.

In tracking pollution from individual companies to specific communities, researchers at the University of Massachusetts developed the “Toxic 100 Air Polluters” index. The index relies heavily on the EPA Risk Screening Environmental Indicators (RSEI), which assesses the chronic human health risk from industrial toxic releases. In 2010 for the first

time, the Top 100 Polluters includes an Environmental Justice Report Card—information the disproportionate risk burden from industrial air toxics for people of color and low-income communities. The Environmental Justice Report Card reveals that the most polluted places tend to have significantly higher-than-average percentages of people of color. Of the Top 10 companies on the “Toxic 100 Polluters” list, people of color bear more than half of the human health impacts from the companies’ toxic air releases.

The UMass researchers’ 2009 report, *Justice in the Air: Tracking Toxic Pollution from America’s Industries and Companies to Our States, Cities, and Neighborhoods*, found that pollution from Fortune 500 and other industrial companies are not equal opportunity polluters and that people of color and poor people generally live on the “wrong side of the environmental tracks.” Pollution is unevenly distributed within states, as well as between states. Some of the most dramatic differences between the share of people of color in the total human health risk from industrial air toxics and their share in the state’s population are found in the South. Tennessee, for example, has the highest disparities in exposure where the people of color share of the health risk is 43 percent, while the people of color share of the state’s population is 21 percent. Other Region 4 states with larger than average disparities included Alabama and South Carolina.

Large discrepancies exist between the share of people of color in the health risk from industrial pollution and their share in the population in U.S. metropolitan areas. For example, Birmingham, Alabama tops the list of the Top Ten Metropolitan Areas with the greatest disproportionate impact on people of color. People of color in the Birmingham metro area account for 65 percent of the health risk as compared to 34 percent of the population, a discrepancy of 31 percentage points. Other metropolitan areas in Region 4 states that made the Top Ten list include Memphis, Tennessee (people of color account for 70 percent of the health risks as compared to 48.1 percent of the population, a discrepancy of 22.5 percentage points) and Louisville, Kentucky (people of color account for 36.5 percent of the health risk as compared to 18.0 percent of the population, a discrepancy of 18.8 percentage points).

As detailed in the Lawyers’ Committee for Civil Rights Under Law 2010 report, *Now is the Time: Environmental Injustice in the U.S. and Recommendations for Eliminating Disparities*, current circumstances amount to a slow-moving disaster and necessitate immediate attention to environmental health threats to low-income and people of color communities. The *Now is the Time* report was presented to the Obama Administration and its various agencies, including the EPA and the Department of Justice and outlines recommendations on how the Administration can effectively utilize existing law to eliminate disparities in environmental protection and the agencies can fulfill their responsibilities under Executive Order 12898, “Federal Actions To Address Environmental Justice In Minority Populations and Low-Income Populations,” signed more than sixteen years ago.