

# Environmental Justice, Camden, and Title VI: Organizing and Litigation to Protect The Community

# What is the Environmental Justice Movement

# The EPA definition of EJ

- Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. This goal will be achieved when everyone enjoys:
  - The same degree of protection from environmental and health hazards, and
  - Equal access to the decision-making process to have a healthy environment in which to live, learn, and work.

# Some early findings of environmental racism

- In 1983, a study found that 3 out of 4 hazardous waste facilities in South were in black communities, although blacks 20% of population
- Commission for Racial Justice found 3 out of every 5 African-Americans live in communities w/ abandoned toxic waste dumps
- Low-income children are 8X more likely to live w/ lead paint problems, and Afr. American children are 5X more likely to be lead poisoned than white children.
- 65% of African-Americans, 80% of Hispanics, compared to 57% of whites, live in communities w/ unacceptable air pollution levels. Non-white persons are 3-4x more likely to be hospitalized or die from asthma than white people.

# A few historical milestones

- 1983 Warren County NC, NAACP
- 1991 EJ Leadership Summit – bringing together env., civil rights, Native American communities – creating networks and national collaboration
- 1994 – 95 – President Clinton’s Exec. Order
- Early administrative complaints to U.S. EPA – Shintech, Select Steel

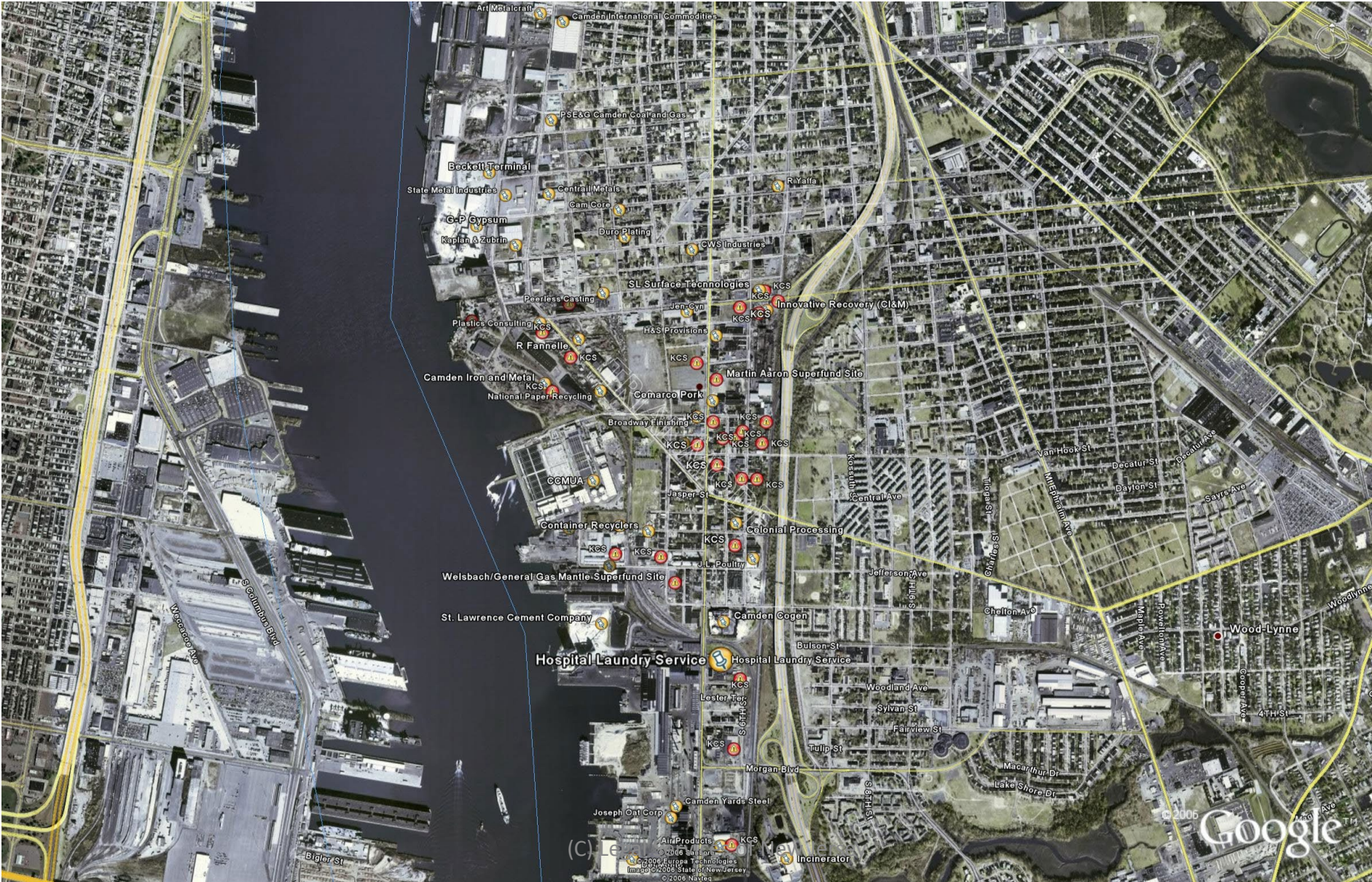
# The Waterfront South Neighborhood

# Camden's Waterfront South, a community devastated by environmental racism

- Waterfront South population was 2,132 people, 63.0% African-American, 28.3% Latino, and 9.0 % non-Hispanic white. 51% of residents had incomes below the federal poverty line.
- Area contained 2 Superfund sites, numerous other contaminated sites, and many operating industrial facilities, including a power cogeneration facility, a trash-to-steam incinerator, the regional sewage treatment plant, four scrap metal companies, a petroleum coke transfer station, chemical companies, machine shops, and food processing companies. Industries generated large volume of diesel truck traffic.
- Residents had high asthma rates.
- Enforcement of polluting industries minimal at best.



# DEP Map





# The WS community's growing awareness of environmental hazards

- Community leaders would not have seen themselves as environmentalists.
- But residents were aware of long history of disinvestment, neglect, and discriminatory practices that hurt the community
- Activism grew out of neighborhood planning project
  - Issues that residents most wanted to address were sewage smells & truck traffic
  - Organizing effort to force enforcement of DEP regulations, get trucks off residential street
- EPA Superfund public process provided further frightening info to residents about radioactive contamination dating back to 1912, w no cleanup to date.

# Arrival of St. Lawrence Cement Company

# St. Lawrence Cement slag grinding facility

- SLC cement factory would grind the granulated blast furnace slag into a fine powder which can be used as a partial substitute for portland cement in concrete.
- SLC proposed transporting raw materials by cargo ship to a port terminal 3 miles transport it to the facility by trucks, store it in open piles, move it through conveyors to a roller mill, mix it with gypsum, grind it, convey to storage silos and transport out by trucks.
- The facility would operate 24/7, processing 848,771 tons of annually.
- The facility would only employ approximately 15 people.
- The facility would emit almost 60 tons per year of PM-10, most of which would be the more dangerous PM-2.5. (Only PM-10 was regulated at the time).
- Fine particulate emissions constitute a serious health hazard linked to increase in cardiopulmonary disease, aggravation of respiratory symptoms, and higher area death rates.

# SLC permitting process

- SLC built its \$21 M facility “at risk” expecting to get permit.
- DEP thought it did very strict application of existing environmental regulations
- DEP did not consider overall condition of neighborhood, other polluting facilities in immediate area – except to evaluate air quality in the general area (but not in middle of WS)
- DEP did not consider race & income of residents
- DEP did not consider air pollution and other harm caused by diesel truck traffic
- DEP did not think it had authority to consider those issues when issuing permit
- Residents protested, attended hearings, wrote letters & petitions, and felt ignored

# The built SLC facility



# The litigation roller-coaster – South Camden Citizens in Action v. NJ DEP & SLC



# The legal team & strategy

- EJ lawyers were eager to test the possibilities of litigating EJ under Title VI of 1964 Civil Rights Act that prohibits discrimination by recipients of federal financial assistance.
  - Permitting agencies like NJ DEP receive federal funds, are subject to T VI.
  - Statute itself was interpreted by US SCT as prohibiting only intentional discrimination
  - EPA regulations prohibit policies & practices that result in discriminatory effect/disparate impact
  - EPA enforcement of regs weak, desire to test out in courts
- CRLS/SJLS Joined by Public Interest Law Center of Phila & Center on Race, Poverty & the Environment as co-counsel

# The legal claims

- Intentional discrimination under Title VI, 42 U.S.C. §§2000d, 2000d-1
- Disparate impact under the EPA civil rights regulations, 40 CFR Part 7
  - No criteria or methods of administering its environmental programs which have the effect of discriminating on the basis of race, color, or national origin, 40 CFR §7.35(b);
  - Cannot choose a site for a facility which has the effect of discriminating on the basis of race, color, or national origin, 40 CFR §7.35(c); and
  - Require grievance procedures that assure the prompt and fair resolution of complaints which allege violation of the EPA's Civil Rights regulations, 40 CFR §7.90(a).
- Intentional discrimination in violation of the Equal Protection Clause applicable to states via 14<sup>th</sup> Amendment– under Sec 1983
- Disparate impact under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3604, the Fair Housing Act;
- Public & private nuisance

# The Court decisions

- April 19, 2001 – Preliminary Injunction issued, SLC cannot start operations, DEP must conduct disparate impact analysis - 145 F.Supp.2d 446 (D.N.J. 2001)
- April 24, 2001 – US SCT issues decision in Alexander v. Sandoval, 532 U.S. 275 (2001) stating there is no implied private right of action to enforce Title VI regulations.
- May 10, 2001 – 2<sup>nd</sup> Dist Ct decision - Preliminary injunction remains in place, Plaintiffs allowed to amend complaint to proceed under Sec 1983 to enforce EPA Title VI regs - 145 F.Supp.2d 505 (D.N.J. 2001)
- June, 2001 – 3d Cir. lifts injunction
- December 17, 2001 – 3d Cir. Issues decision (2-1) that Sec 1983 cannot be used to create private right of action to enforce reg's - 274 F.3d 771 (3d Cir. 2001).

# Legacy of the litigation

- First court decision to recognize that failure to consider race, income, environmental burdens of community in siting and permitting violates civil rights – that finding not disturbed on appeal
- Publicity generated raised awareness locally & statewide
  - New EJ groups formed in Camden, tackled other issues like Superfund cleanups, lead and other contamination in public schools, diesel traffic, drinking water quality
  - EJ groups around the state formed NJEJA
- Public officials, NJ DEP responded to publicity, pressure from community, created new EJ initiatives & legal remedies