

Reflections on Fighting Environmental Racism in St. John the Baptist Parish, Louisiana

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INTRODUCTION

“We are in fear because we do not know if we will be affected more because of what we have been exposed to in our area,” says Mary Hampton during a phone conversation in August 2021. Ms. Hampton lives in St. John the Baptist Parish, Louisiana, which lies along the Mississippi River thirty miles from New Orleans. Ms. Hampton, like many others who live in the parish, grew up there and has stayed to raise her family, living in the house her family built over fifty years ago. “Right now, I couldn’t sell my house for \$50. Who wants to move to Cancer Alley?”¹

Ms. Hampton’s perspective is not surprising considering that her home is less than a mile from the Pontchartrain Works Facility—the only site that produces neoprene in the United States. Neoprene is a synthetic rubber used in products including medical equipment, building and construction materials, and electronics. Manufacturing neoprene requires chloroprene, which is released in the air during production and causes toxic air pollution. In 2015, the U.S. Environmental Protection Agency (“EPA”) published its 2011 National Air Toxics Assessment (“NATA”), which found that residents in St. John face a cancer risk from air pollution that is nearly fifty times higher than in other parts of the country.² Chloroprene, which the EPA has designated as a likely carcinogen,³ is the leading cause of that alarmingly high cancer risk.⁴

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¹ Now This Earth, *A Look at Cancer Alley from the Front Lines*, YouTube (Sep. 22, 2021), <https://www.youtube.com/watch?v=xfxY454NTYE>, archived at <https://perma.cc/9QRX-S9K8>.

² Dinesh Sabu, *Waiting to Die: Toxic Emissions and Disease Near the Louisiana Denka/DuPont Plant*, UNIV. NETWORK FOR HUMAN RIGHTS (2019), <https://www.humanrightsnetwork.org/waiting-to-die>, archived at <https://perma.cc/J6U5-23SP>.

³ *Chloroprene CASRN 126-99-8*, U.S. ENV’T PROT. AGENCY, https://cfpub.epa.gov/ncea/iris2/chemicalLanding.cfm?substance_nmbr=1021, archived at <https://perma.cc/KJ8N-HSA5>.

⁴ The EPA attributes 85% of the cancer risk from air pollution in Census Tract 708, located in St. John, to chloroprene. See Toxicological Review of Chloroprene, U.S. ENV’T PROT.

The high rate of cancer is personal for Ms. Hampton. Even before the 2011 NATA, Ms. Hampton and others in the community knew that too many people were dying from cancer. The first time I met Ms. Hampton, in 2018, she told me that cancer has killed five family members. In addition, many in her family are plagued by other health problems, which are likely connected to long-term chloroprene exposures, such as asthma, cardiovascular issues, and thyroid tumors. Every week, there are days that Ms. Hampton and her family avoid going outside because the air is thick from fumes emitted by the neoprene facility, leaving them unable to breathe.

Despite the shocking results of the 2011 NATA, chloroprene emissions at the Pontchartrain Works Facility remain much higher than the level deemed safe by the EPA.⁵ For example, on September 25, 2021, an air monitor located a few blocks from the facility detected chloroprene levels at 23.677 ($\mu\text{g}/\text{m}^3$).⁶ This amount is 11,838.5% higher than the “safe” threshold.⁷ To make matters worse, efforts to support the St. John community at the state and federal level have been largely absent. The EPA and Louisiana Department of Environmental Quality (“LDEQ”) have failed to implement sufficient regulations and protective measures to reduce chloroprene emissions.⁸ As a result, residents of St. John, including Ms. Hampton, formed the grassroots organization Concerned Citizens of St. John (“Concerned Citizens”). Since the formation of Concerned Citizens, members have self-organized and clearly identified goals for protecting their community. Early on, Concerned Citizens decided that commissioning a community health survey would empower their struggle. Thus, with the aid of a group of lawyers, the organization developed and issued such a survey to their neighbors. The results of the survey, a form of “citizen science,” paved the way for Concerned Citizens to pursue another legal strategy: submitting a petition for the EPA to utilize its emergency powers under the Clean Air Act to reduce chlo-

AGENCY, EPA/635/R-09/010F 144, 146–48 (Sept. 2010), https://cfpub.epa.gov/ncea/iris/iris_documents/documents/toxreviews/1021tr.pdf, archived at <https://perma.cc/6AME-ST5J>.

⁵ The EPA recommended that chloroprene emissions should not exceed the 0.2 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$). See Memorandum from Kelly Rimer, Leader, Air Toxics Assessment Group, Health & Env’t Impacts Div., OAQPS, to Frances Verhalen, P.E., Chief, Air Monitoring/Grants Section, EPA Region 6, Re: Preliminary Risk-Based Concentration Value for Chloroprene in Ambient Air (May 5, 2016) <https://www.epa.gov/sites/production/files/2016-06/documents/memo-prelim-risk-based-concentrations050516.pdf>, archived at <https://perma.cc/8NR3-N5ZJ>.

⁶ EPA Louisiana, *Denka Air Monitoring Data Summaries*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/la/denka-air-monitoring-data-summaries>, archived at <https://perma.cc/Q7S8-YJYL>.

⁷ EPA releases air monitoring data that can be accessed through its website. See Louisiana, *Denka Air Monitoring Data Summaries*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/la/denka-air-monitoring-data-summaries>, archived at <https://perma.cc/P9S6-4ZD2>.

⁸ See generally Emergency Request for Precautionary Measures Pursuant to Article 25 of the Rules of Procedure of the Inter-American Commission on Human Rights on Behalf of Residents of St. John The Baptist Parish, Louisiana, 10–14, <https://law.tulane.edu/sites/law.tulane.edu/files/Files/CCSJ%20Emergency%20Request%20for%20Precautionary%20Measures%20to%20Inter-American%20Commission%20on%20Human%20Rights.pdf>, archived at <https://perma.cc/5RRX-8VRX>.

roprene emissions. The combination of these complementary strategies enabled Concerned Citizens to have direct access to the EPA, request remedies that would be difficult to achieve through traditional litigation, be empowered by information about health in their community, and call attention to chloroprene pollution on an international level.

The strategies employed by Concerned Citizens serve as examples of how lawyers can support communities affected by environmental racism through a community-centered methodology. Environmental racism refers to government policies and decision making that make communities of color face the brunt of environmental hazards.⁹ St. John is a textbook example of environmental racism, given that residents who live within two and a half kilometers of the neoprene facility are over 90% African American¹⁰ and face “extremely improbable rates of cancer and other illness.”¹¹ Because of environmental racism, most communities that are overburdened by environmental harms such as air or water pollution are communities of color. It is an understatement to say that communities’ struggles against environmental racism are daunting. Many communities find themselves challenging actors, such as industry and the government, who benefit from a disproportionate access to resources and power. The law makes any prospect of remedying environmental racism difficult. Attorneys supporting environmental justice communities¹² must reconcile the limitations of seeking an effective remedy and the limitations associated with traditional legal tools for fighting environmental racism including federal regulation, civil rights law, and tort law. None of these legal strategies alone can completely make an environmental justice community “whole again” and address the various manifestations of structural racism that enabled exposure to toxic pollutants.

Given these limitations, attorneys advocating on behalf of environmental justice communities should consider pursuing complementary, nontraditional strategies, such as facilitating citizen science. The community in St. John serves as a helpful case study for how community-centered lawyering can help develop creative strategies. Thus, my goal for this Article is to share reflections from attorneys, Concerned Citizens members, and scientists on some of the lessons learned through advancing these strategies. These reflections may be informative to practitioners and law school students aspiring to work in the environmental justice space through community-centered approaches.

This Article is divided into eight parts. Part II provides an overview of environmental racism and the development of the environmental justice

⁹ Leora Friedman, *Recommending Judicial Reconstruction of Title VI to Curb Environmental Racism: A Recklessness-Based Theory of Discriminatory Intent*, 32 GEO. ENV'T L. REV. 421, 423 (2020).

¹⁰ Emergency Request, *supra* note 9, at 2.

¹¹ Sabu, *supra* note 3.

¹² I use the term “environmental justice community” to refer to communities that have experienced environmental racism.

movement. Part III discusses chloroprene pollution in St. John and the lack of sufficient action from local, state, and federal government to protect the community. Part IV discusses the limitations of traditional legal tools used for supporting environmental justice goals. Parts V and VI discuss community-centered advocacy in general, as well as how community lawyering led to the development of the strategies promulgated by Concerned Citizens: the community health survey and the emergency powers petition. Lastly, Part VII discusses how state permitting law can serve as a helpful vehicle for supporting environmental justice communities who are in the position to prevent the operation or construction of a harmful facility. Part VIII concludes.

II. AN OVERVIEW OF ENVIRONMENTAL RACISM AND THE ENVIRONMENTAL JUSTICE MOVEMENT

Gloria Dumas, a member of Concerned Citizens, notes that it is important to recognize environmental racism because “only certain areas are suffering.”¹³ Because of current laws, policies, and regulations, communities of color are more likely to be located near the source of environmental pollutants such as a chemical facility or a toxic waste site. According to a 2018 EPA study, nonwhites face a 28% higher burden from air pollution and African Americans have a 54% higher burden than the overall population.¹⁴ Due to higher exposure to pollution, communities facing environmental racism experience higher rates of environmentally driven diseases—such as asthma and cardiovascular disease—compared to other demographics.¹⁵ Thus, these communities face disparities in transportation, housing, infrastructure, health and economic opportunity because of environmental racism.¹⁶

The gap between traditional environmental protection and racial justice is clear. Nonprofits dedicated to environmental advocacy are overwhelmingly white, even though environmental racism is rampant.¹⁷ A study of environmental nonprofits in the United States revealed that, on average, 80% of board members and 85% of staff were white.¹⁸ Environmental nonprofits

¹³ Interview with Gloria Dumas, Member of Concerned Citizens (Nov. 1, 2021).

¹⁴ Brian Willis, *New Study Shows Environmental Racism and Economic Injustice in Health Burdens of Particulate Pollution in U.S.*, SIERRA CLUB (Feb. 22, 2018) <https://www.sierraclub.org/press-releases/2019/08/new-study-shows-environmental-racism-and-economic-injustice-health-burdens>, archived at <https://perma.cc/56LL-CBA7>.

¹⁵ Machara McCall, *Environmental Racism: The U.S. EPA’s Ineffective Enforcement of Title VI of the Civil Rights Act of 1964*, 13 S.J. POL’Y & JUST. 49, 50–52 (2019); U.S. Dept. of Health and Human Services, *Environmental Justice*, <https://www.hhs.gov/environmental-justice/index.html>, archived at <https://perma.cc/8HHR-K8TM>.

¹⁶ *Id.* at 50.

¹⁷ Hannah Chinn, *Environmental Groups Say They’re Committing to Racial Equity. What Does That Mean?* WHY?Y (June 30, 2020) <https://why.org/articles/environmental-groups-say-theyre-committing-to-racial-equity-what-does-that-mean/>, archived at <https://perma.cc/B9T6-DG8S>.

¹⁸ *Id.*

run by people of color are less likely to obtain grants as compared to those run by whites.¹⁹ Further, major environmental statutes reflect the priorities of traditional environmentalism which did not consider the intersection of race, poverty, and environmental burdens.²⁰ The major anti-pollution statutes—the Clean Air Act, Clean Water Act, Comprehensive Environmental Response, Compensation, and Liability Act, and Resource Conservation and Recovery Act—were crafted in the 1970s before the birth of the environmental justice movement.²¹ Given this historical context, it is perhaps unsurprising that none of these statutes provide any recourse for racial discrimination in the context of environmental pollution. The effectiveness of these statutes is limited to pollutants that are regulated; unfortunately, however, many environmental harms continue to be unregulated.²² Although the protections granted by these statutes with respect to regulated pollutants may partially remedy the effect of environmental racism by reducing the emissions of a regulated chemical, these environmental statutes do not specifically address the systemic government policies and decision making that lead to environmental racism.

The environmental justice movement brought to light the need to consider the racial implications of environmental harms. The movement began in 1982 when North Carolina agreed to site a waste landfill in the predominantly African American community of Warren County.²³ The landfill would harbor chemicals the EPA considered probable carcinogens.²⁴ The community responded with protests that led to over 500 arrests.²⁵ Even though the landfill was constructed, the U.S. General Accounting Office (“GAO”) issued a 1983 study entitled *Siting of Hazardous Waste Landfills and Their Correlation with Racial Economic Status of Surrounding Communities*.²⁶ According to the study, three out of four off-site commercial hazardous waste landfills in eight states in the South were located in predominantly African American communities even though African Americans made up 20% of the region’s population.²⁷ Four years later, in 1987, the United Church of Christ Commission for Racial Justice issued the report, *Toxic*

¹⁹ *Id.*

²⁰ Jedediah Purdy, *Environmentalism’s Racist History*, THE NEW YORKER (Aug. 13, 2015), <https://www.newyorker.com/news/news-desk/environmentalisms-racist-history>, archived at <https://perma.cc/5H6D-3MPX>.

²¹ *Id.*

²² Todd S. Aagaard, *Environmental Law Outside the Canon*, 89 IND. L.J. 1239, 1241–42 (2014).

²³ Leora Friedman, *Recommending Judicial Reconstruction of Title VI to Curb Environmental Racism: A Recklessness-Based Theory of Discriminatory Intent*, 32 GEO. ENV’T L. REV. 421, 422–23 (2020).

²⁴ *Id.*

²⁵ McCall, *supra* note 16, at 55.

²⁶ U.S. GOV’T ACCOUNTABILITY OFFICE, RCED-83-168, SITING OF HAZARDOUS WASTE LANDFILLS AND THEIR CORRELATION WITH RACIAL AND ECONOMIC STATUS OF SURROUNDING COMMUNITIES (Jun. 1, 1983) <https://www.gao.gov/products/rced-83-168>, archived at <https://perma.cc/8NQ7-2E5V>.

²⁷ McCall, *supra* note 16, at 55–56.

Wastes and Race in the United States.²⁸ The report noted that race was the most significant variable in terms of predicting the location of waste facility sites.²⁹

The birth of the environmental justice movement led to the creation of environmental justice policies at the national level. The National Environmental Justice Advisory Council was established in 1993.³⁰ Today, the Council provides advice and recommendations related to environmental justice to the EPA Administrator.³¹ In 1994, President Bill Clinton issued Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.³² The order mandates that “each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its progress, policies, and activities on minority populations and low-income populations. . . .”³³ Although the Executive Order acknowledged the importance of environmental justice, executive orders themselves are unenforceable and lack meaningful accountability mechanisms for federal agencies.³⁴ Nevertheless, federal agencies have incorporated environmental justice initiatives in their mandates. For example, the EPA, which defines environmental justice as “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,”³⁵ has an Office of Environmental Justice which integrates environmental justice goals into all EPA programs, policies, and activities.³⁶ More recently, in January 2021, President Biden issued an executive order entitled “Restoring Science to Tackle the Climate Crisis,” which outlined the need for the federal government to advance environmental justice.³⁷ At this time, it is too early to tell what impact President Biden’s executive order will have on improving environmental justice throughout the country.

The COVID-19 pandemic has called further attention to environmental racism given how exposure to pollution increases COVID-19 mortality.

²⁸ Commission for Racial Justice, *Toxic Wastes and Race in the United States: A National Report on the Racial and Socio-economic Characteristics of Communities with Hazardous Waste Sites*, UNITED CHURCH OF CHRIST (1987).

²⁹ McCall, *supra* note 16, at 56.

³⁰ *National Environmental Justice Advisory Council*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council>, archived at <https://perma.cc/8WFA-XPE7>.

³¹ *Id.*

³² Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 16, 1994).

³³ *Id.*

³⁴ McCall, *supra* note 16, at 56.

³⁵ *Learn about Environmental Justice*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>, archived at <https://perma.cc/U2Z5-4PP7>.

³⁶ *About the Office of Policy*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/aboutepa/about-office-policy-op#OEJ>, archived at <https://perma.cc/2KEZ-JTAR>.

³⁷ Exec. Order No. 13,990, 86 Fed. Reg. 2037 (Jan. 20, 2021).

Black and Latinx individuals infected with COVID-19 are three times more likely to be hospitalized and nearly two times more likely to die from the illness compared to whites.³⁸ Although various factors contribute to these COVID-19 health disparities, environmental racism plays a large role in COVID-19 patient outcomes.³⁹ Fine particulate matter (“PM_{2.5}”), which is a dangerous pollutant connected to industrial activity, contributes to heart and lung disease, asthma, decreased lung function, and difficulty breathing.⁴⁰ Unfortunately, people of color are disproportionately exposed to PM_{2.5} regardless of location and income.⁴¹ According to a study on 5,000 emission source types by researchers at the Center for Air, Climate, and Energy Solutions, white people have, on average, 60% overall exposure to PM_{2.5} pollution while people of color on average have 75% overall exposure.⁴² The comorbidities associated with PM_{2.5} exposure overlap with COVID-19 risk factors identified by the Centers for Disease Control and Prevention.⁴³ Indeed, exposure to PM_{2.5} increases vulnerability from a COVID-19 infection. According to a Harvard University study, long-term exposure to PM_{2.5} affects COVID-19 mortality rates.⁴⁴ The results of the study “underscore the importance of continuing to enforce existing air pollution regulations to protect human health both during and after the COVID-19 crisis.”⁴⁵ Although it is unclear exactly why PM_{2.5} exposure affects COVID-19 mortality rates, it is possible that long-term exposure both impairs the immune system and increases the spread of the COVID-19 virus.⁴⁶

The link between toxic air pollution and COVID-19 outcomes is clear in St. John where residents are even more vulnerable to COVID-19 compared to the country’s population.⁴⁷ Last year, St. John had the highest

³⁸ Colin Hughes, *Environmental Justice and the COVID-19 Pandemic: Why the EPA Needs a Funding Boost*, CPRBlog (Jul. 19, 2020) <https://progressivereform.org/cpr-blog/environmental-justice-and-covid-19-pandemic-why-epa-needs-funding-boost/>, archived at <https://perma.cc/PH63-63SJ>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Study Finds Exposure to Air Pollution Higher for People of Color Regardless of Region or Income*, U.S. ENV’T PROT. AGENCY (Sep. 20, 2021) <https://www.epa.gov/sciencematters/study-finds-exposure-air-pollution-higher-people-color-regardless-region-or-income>, archived at <https://perma.cc/87M3-YR7A>.

⁴² *Id.*

⁴³ Hughes, *supra* note 39.

⁴⁴ Xiao Wu, Rachel C. Nethery, Benjamin M. Sabath, Danielle Braun, and Francesca Dominici, *Air pollution and COVID-19 mortality in the United States: Strengths and limitations of an ecological regression analysis*, 6 SCI. ADVANCES (Nov. 4, 2020), <https://www.science.org/doi/10.1126/sciadv.abd4049> archived at <https://perma.cc/FH4M-4YJ2>.

⁴⁵ *Id.*

⁴⁶ Pippa Neil, *PM2.5 Is Associated with a Higher Risk of ICU Treatment for COVID-19*, AIR QUALITY NEWS (Jul. 9, 2021) <https://airqualitynews.com/2021/07/09/pm2-5-is-associated-with-a-higher-risk-of-icu-treatment-for-covid-19>, archived at <https://perma.cc/AJ7Y-C74L>.

⁴⁷ See generally Michael Petroni, Dustin Hill, Lylla Younes, Liesl Barkman, Sarah Howard, Brielle Howell, Jaime Mirowsky & Mary Collins, *Hazardous Air Pollutant Exposure as a Contributing Factor to COVID-19 Mortality in the United States*, 15 ENV. RES. LETT. (Sep. 11, 2020); Sara Sneath, *Louisiana’s River Region Residents Seek Scrutiny of Pollution’s Role in Coronavirus Deaths*, NEW ORLEANS ADVOCATE (Apr. 16, 2020), <https://www.nola.com/news/>

COVID-19 death rate per capita in the United States.⁴⁸ A study from Tulane University confirmed that across parishes in Louisiana, higher COVID-19 deaths were associated with higher exposure to PM_{2.5}.⁴⁹

III. ENVIRONMENTAL RACISM IN ST. JOHN THE BAPTIST PARISH

St. John the Baptist Parish is one of the parishes located in the eighty-five-mile-long corridor between Baton Rouge and New Orleans, disturbingly known as Cancer Alley. Cancer Alley is aptly named given the over 150 plants and refineries located in the region, which lead to high cancer rates and disproportionately affect communities of color.⁵⁰ St. John the Baptist Parish is itself home to numerous pollutant-emitting chemical plants and oil refineries, including the only neoprene manufacturing unit in the country. While St. John is 58.4% Black, 94% of the population within one mile of the neoprene facility is Black.⁵¹ The neoprene facility was originally owned by E.I. DuPont de Nemours and Company (“DuPont”), which sold the facility to Denka Performance Elastomer (“Denka”) in 2015.⁵²

DuPont began neoprene production in St. John in 1969 and from then on, the operations of the facility have greatly affected the quality of life for St. John residents. For years, residents have been exposed “every hour” and “every day” of their lives but “never understood a lot of the things that were happening.”⁵³ At first, they did not know that DuPont was the cause of many problems in the community.⁵⁴ But eventually the link between their decreased quality of life and DuPont’s activities became clearer. “If I had known about all of the impacts, I would never have moved to the area.”⁵⁵ Often, the odors from neoprene production are so strong, “being inside is not a refuge because there is no place to go.”⁵⁶ Because the smell is so

coronavirus/article_773badc2-7a6c-11ea-bb14-d325aeecfb71.html, archived at <https://perma.cc/ZD4Q-BANJ>.

⁴⁸ Ashley Killough & Ed Lavandera, *This Small Louisiana Parish Has the Highest Death Rate Per Capita for Coronavirus in the Country*, CNN (Apr. 16, 2020) <https://www.cnn.com/2020/04/15/us/louisiana-st-john-the-baptist-coronavirus/index.html>, archived at <https://perma.cc/MDT5-MXXX>.

⁴⁹ Kimberly A. Terrell & Wesley James, *Racial Disparities in Air Pollution Burden and COVID-19 Deaths in Louisiana, USA, in the Context of Long-Term Changes in Fine Particulate Pollution*, LSU DIG. COMM., 1 (Sep. 1, 2020).

⁵⁰ Trymaine Lee, *Cancer Alley: Big Industry, Big Problems*, MSNBC (Aug. 10, 2015), <https://pulitzercenter.org/stories/cancer-alley-big-industry-big-problems>, archived at <https://perma.cc/77A2-FQYV>.

⁵¹ This data is 2014-2018 American Community Survey data shown on EPA’s Environmental Justice Screening and Mapping tool. *EPA’s Environmental Justice Screening and Mapping Tool (version 2020)*, U.S. ENV’T PROT. AGENCY, <https://ejscreen.epa.gov/mapper/>, archived at <https://perma.cc/S55D-FQFM>.

⁵² Anna Larionova, *Denka Completes Purchase of Dupont Chloroprene Rubber Business*, MRC HUB (Nov. 2, 2015), <https://www.mrchub.com/news/313201-denka-completes-purchase-of-dupont-chloroprene-rubber-business>.

⁵³ Interview with Robert Taylor, Executive Director of Concerned Citizens (Aug. 6, 2021).

⁵⁴ *Id.*

⁵⁵ Interview with Geraldine Watkins, Member of Concerned Citizens (Nov. 1, 2021).

⁵⁶ Interview with Robert Taylor, *supra* note 54.

strong, odor permeates the homes of residents, often awakening them in the middle of the night.⁵⁷ They cannot use air conditioning because it exacerbates the smell.⁵⁸ This is especially miserable during the Louisiana summers. And breathing outside is difficult. “If I take a deep breath, my eyes burn, my nose starts to drip, and I start coughing.”⁵⁹ Gloria Dumas, who would like to enjoy her retirement by sitting out in her backyard, cannot even do that because the air is bad.⁶⁰ She also feels trapped due to the fact that her property value has gone down and she cannot move out of the area.⁶¹ Residents do not want to drink tap water because chemicals are discharged into the Mississippi River.⁶² Because of this, they are forced to buy bottled water.⁶³ Further, the facility currently discharges chloroprene in the water and air in the surrounding region.⁶⁴ Chloroprene, a likely human carcinogen, causes many health issues including heart palpitations, anemia, stomach problems, impaired kidney function, and rashes.⁶⁵ Seven people in Gloria’s family have died from cancer.⁶⁶ The wife and daughter of Robert Taylor, the Executive Director of Concerned Citizens, developed rare health conditions while living in St. John and now they have to live elsewhere.⁶⁷

Although the community in St. John had been aware of the high cancer rate in the area for years, the EPA finally confirmed the link between environmental toxins and cancer in 2015.⁶⁸ Mary Hampton recalls learning about a meeting at a local church concerning DuPont but did not know that the EPA would reveal shocking statistics about cancer in the community.⁶⁹ “We had no idea what was going on.”⁷⁰ That year, the EPA published the 2011 National Air Toxics Assessment (“NATA”) which concluded that the risk of cancer from the air pollution in St. John is hundreds of times higher than other parts of the country.⁷¹ Due to the high cancer rate, the EPA recommended that chloroprene emissions should not exceed 0.2 $\mu\text{g}/\text{m}^3$. According to data from Denka, the DuPont/Denka plant chloroprene emissions were

⁵⁷ Interview with Robert Taylor, *supra* note 54; Interview with Geraldine Watkins, *supra* note 56.

⁵⁸ Interview with Robert Taylor, *supra* note 54.

⁵⁹ Interview with Geraldine Watkins, *supra* note 56.

⁶⁰ Interview with Gloria Dumas, *supra* note 14.

⁶¹ *Id.*

⁶² Interview with Robert Taylor, *supra* note 54.

⁶³ *Id.*

⁶⁴ Third Am. Compl. at ¶8, Taylor et al. v. Denka Performance Elastomer LLC et al., (E.D. La. Aug 09, 2017) (No. 2:17-cv-07668).

⁶⁵ Sharon Lerner, *The Plant Next Door*, THE INTERCEPT, <https://theintercept.com/2017/03/24/a-louisiana-town-plagued-by-pollution-shows-why-cuts-to-the-epa-will-be-measured-in-illnesses-and-deaths/> (Mar 24, 2017). *archived at* <https://perma.cc/LPT7-FAS4>.

⁶⁶ Interview with Gloria Dumas, *supra* note 14.

⁶⁷ Interview with Robert Taylor, *supra* note 54.

⁶⁸ Lerner, *supra* note 66.

⁶⁹ Interview with Mary Hampton, President, Concerned Citizens, (Aug. 6, 2021).

⁷⁰ *Id.*

⁷¹ U.S. ENV’T PROT. AGENCY, DENKA PERFORMANCE ELASTOMER, LLC – PONTCHARTRAIN FACILITY: ACTION PLAN, 1 2006.

much higher than the $0.2 \mu\text{g}/\text{m}^3$ threshold from 2011–2015.⁷² More specifically, Denka’s data indicated that emissions were as high as $7.88 \mu\text{g}/\text{m}^3$ in 2011, $9.88 \mu\text{g}/\text{m}^3$ in 2012, $12.07 \mu\text{g}/\text{m}^3$ in 2013, $8.23 \mu\text{g}/\text{m}^3$ in 2014, and $7.22 \mu\text{g}/\text{m}^3$ in 2015.⁷³

Despite the alarming results from the 2011 NATA, to this day chloroprene emissions remain dangerously high in St. John. As Robert Taylor, founder of Concerned Citizens, puts it: “no one is stopping them.”⁷⁴ For example, on September 25, 2021, an air monitor located a few blocks from the facility detected chloroprene levels at $23.677 (\mu\text{g}/\text{m}^3)$.⁷⁵ This amount is 11,838.5% higher than the “safe” threshold.⁷⁶ The high levels of chloroprene may, in part, be attributed to insufficient technology for controlling chloroprene emissions at the Denka facility. For example, an EPA inspection report found that Denka failed to have appropriate emissions controls for a storage tank, combustion chambers, and surge control vessels.⁷⁷ The high level of chloroprene in St. John today, and the staggering cancer rates, beg the question: why has remedial action not been taken?

The answer is complicated. The lack of adequate protection in St. John can be linked, in part, to the EPA, the Louisiana Department of Environmental Quality (“LDEQ”), and the Louisiana Department of Health (“LDH”). The EPA first directly informed the St. John community about the high rates of cancer in their community during community meetings with LDEQ and local government leaders in 2016.⁷⁸ That year the EPA issued an Action Plan “to inform interested parties and report the status of activities planned and in progress to address the NATA data, chloroprene emissions from the DPE – Pontchartrain Facility, and community concerns about these emissions.”⁷⁹ The Action Plan noted that in 2015, the EPA issued information requests to DuPont and Denka to gauge compliance with the Clean Air Act.⁸⁰ At the time the Action Plan was issued, the EPA was reviewing the information.⁸¹ To this day, it is not publicly known if the EPA identified any violations of the Clean Air Act and if any recourse was taken against DuPont and Denka. The Action Plan also pledged that the EPA would begin collecting data and

⁷² Third Am. Compl. at ¶ 23, *supra* note 65.

⁷³ *Id.*

⁷⁴ Interview with Robert Taylor, *supra* note 54.

⁷⁵ U.S. ENV’T PROT. AGENCY, DENKA AIR MONITORING SUMMARY SHEET, (May 25, 2016–September 26, 2020), https://www.epa.gov/system/files/documents/2021-12/r6_summary_through_september_26_2020.pdf, archived at <https://perma.cc/PWT2-DX3P>.

⁷⁶ U.S. ENV’T PROT. AGENCY, CONTINUOUS AIR MONITORING SUMMARY RESULTS FOR CHLOROPRENE, (March 10, 2020–January 26, 2022), https://www.epa.gov/system/files/documents/2021-10/continuous-monitoring-summary-march-10-2020-through_august-26-2021.pdf, archived at <https://perma.cc/7YUU-LRG8>.

⁷⁷ Third Am. Compl. at ¶ 30, *supra* note 65.

⁷⁸ U.S. ENV’T PROT. AGENCY, *supra* note 72, at 5.

⁷⁹ *Id.* at 1.

⁸⁰ *Id.* at 4–5.

⁸¹ *Id.*

monitoring the air quality through six monitoring sites in St. John.⁸² But in 2020, the EPA announced that it would stop regular air monitoring for chloroprene even though chloroprene emission levels were high.⁸³ Denka has also attempted to lobby the EPA to reconsider the threshold for safe exposure to chloroprene.⁸⁴ The company hired the environmental consulting company Ramboll Group and formally filed a request for reconsideration.⁸⁵ Although the EPA denied this request, Denka submitted another request for correction on July 15, 2021, which was denied the following year.⁸⁶

In the Action Plan, the EPA also noted that three Clean Air Act permits for the neoprene facility would expire by 2020.⁸⁷ LDEQ, which has the authority to approve or renew permits for a facility under the Clean Air Act, has not renewed any of these permits even though Denka has submitted actions for renewal. This lack of action is significant because under Louisiana law, a facility must have an appropriate permit if the facility will discharge air pollutants such as chloroprene.⁸⁸ In a promising moment, LDEQ signed an Administrative Order on Consent (“Administrative Order”) with Denka in 2017.⁸⁹ Through the Administrative Order, Denka agreed to lower chloroprene emissions from the facility by 85%.⁹⁰ Although the Administrative Order seemed encouraging, in reality chloroprene emissions have remained high. LDEQ even confirmed this in 2019 when it wrote a letter to the company noting that it failed to reach the 85% reduction in emissions target.⁹¹ The letter noted that LDEQ was filing a lawsuit against Denka and DuPont.⁹² But LDEQ never filed a lawsuit, and it has not enforced the Administrative Order.

⁸² U.S. ENV’T PROT. AGENCY, DENKA AIR MONITORING SUMMARY SHEET, (May 25, 2016–September 26, 2020), https://www.epa.gov/system/files/documents/2021-12/r6_summary_through_september_26_2020.pdf, archived at <https://perma.cc/7C95-57NM>.

⁸³ See Nick Reimann, *Denka Air Monitoring Will Continue in 2020, But Using Different Method, EPA Says*, NEW ORLEANS ADVOCATE (Dec. 23, 2019, 5:04PM), https://www.nola.com/news/environment/article_96330f60-25d8-11ea-8117-63278db78249.html, archived at <https://perma.cc/W6RX-39MH>.

⁸⁴ Sharon Lerner, *EPA Rejects Denka’s Request to Weaken Assessment of Chloroprene*, THE INTERCEPT (Mar 17, 2012), <https://theintercept.com/2022/03/17/epa-cancer-chloroprene-denka/>, archived at <https://perma.cc/UA25-RS29>.

⁸⁵ *Id.*

⁸⁶ Letter from Denka Performance Elastomer LLC, to U.S. Env’t Prot. Agency, (July 15, 2021); Lerner, *supra* note 85.

⁸⁷ U.S. ENV’T PROT. AGENCY, *supra* note 72, at 1–4.

⁸⁸ La. Stat. Ann. § 30:2055.

⁸⁹ LDEQ and Denka sign AOC designed to reduce chloroprene emissions at LaPlace facility, LA. DEP’T. ENV’T QUALITY (Jan. 10, 2017), <https://deq.louisiana.gov/news/ideq-and-denka-sign-aoc-designed-to-reduce-chloroprene-emissions-at-laplace-facility>, archived at <https://perma.cc/8GXA-MHFX>.

⁹⁰ *Id.*

⁹¹ Oliver Laughland & Jamiles Lartey, *Chemical Companies at Centre of Guardian’s Cancer Town Series Face State Legal Action*, THE GUARDIAN (June 12, 2019, 2:47 PM), <https://www.theguardian.com/us-news/2019/jun/12/louisiana-chemical-companies-sued-cancer-town-reserve-clean-air-act>, archived at <https://perma.cc/5GEZ-9Q9C>.

⁹² *Id.*

Rather than address the problem, LDH has tried to downplay the risk of cancer in St. John. In 2018, LDH reviewed the rates for lung and liver cancers in St. John and Louisiana overall, looking at data spanning from 1988 to 2014.⁹³ LDH concluded that the cancer rates in St. John from this period were comparable to cancer rates in the state.⁹⁴ But LDH's evaluation was too broad and did not consider how proximity to the Denka facility affected cancer rates. LDH only considered cancer rates for the entire parish of St. John without looking specifically at cancer rates in the neighborhoods near the Denka facility. These neighborhoods have alarmingly high cancer rates linked to chloroprene exposure; they also have substantially higher Black populations.⁹⁵ Additionally, the results of the evaluation contradicted the EPA's finding that the risk of cancer from the air pollution in St. John the Baptist Parish is fifty times higher than other parts of the country.⁹⁶

LDH has also failed to relocate the Fifth Ward Elementary School, which is only a few blocks away from the Denka facility. At Fifth Ward Elementary School, 78.6% of the students are Black and 11.8% are Hispanic/Latinx, and overall, 71% are from economically disadvantaged households.⁹⁷ Despite having found that students from the school face a higher cancer risk due to chloroprene emissions, LDH concluded that "transferring children from the current Fifth Ward Elementary School location to another location within the community would not greatly decrease their theoretical risks of developing excess cancers from exposure to chloroprene."⁹⁸

⁹³ LA. DEP'T. OF HEALTH, A REFERENCE DOCUMENT FOR THE PRELIMINARY ASSESSMENT OF CHLOROPRENE LEVELS IN ST. JOHN THE BAPTIST PARISH: EVALUATION OF POTENTIAL HEALTH RISKS FOR ELEMENTARY SCHOOL STUDENTS BASED ON EARLY SAMPLING RESULTS FOLLOWING EMISSIONS REDUCTIONS 10 (2008).

⁹⁴ *Id.*

⁹⁵ Emergency Request for Precautionary Measures Pursuant to Article 25 of the Rules of Procedure of the Inter-American Commission on Human Rights on Behalf of Residents of St. John The Baptist Parish, Louisiana, 2, <https://law.tulane.edu/sites/law.tulane.edu/files/Files/CCSJ%20Emergency%20Request%20for%20Precautionary%20Measures%20to%20Inter-American%20Commission%20on%20Human%20Rights.pdf>, archived at <https://perma.cc/5RRX-8VRX>.

⁹⁶ Dinesh Sabu, *Waiting to Die: Toxic Emissions and Disease Near the Louisiana Denka/DuPont Plant*, UNIV. NETWORK FOR HUMAN RIGHTS (2019), <https://www.humanrightsnetwork.org/waiting-to-die>, archived at <https://perma.cc/36U5-23SP>.

⁹⁷ Overview of Fifth Ward Elementary School, U.S. NEWS AND WORLD REPORT, <https://www.usnews.com/education/k12/louisiana/fifth-ward-elementary-school-226709#:~:text=Overview%20of%20Fifth%20Ward%20Elementary%20School&text=the%20school's%20minority%20student%20enrollment,enrolls%2071%25%20economically%20disadvantaged%20students>, archived at <https://perma.cc/T6ZR-HB9T>.

⁹⁸ Nick Reimann, *St. John School Board panel suggest study on moving students from school near chemical plant*, NEW ORLEANS ADVOCATE (Aug. 27, 2019), https://www.nola.com/news/education/article_275fc7d2-c83a-11e9-8fa9-87f1f4a3225a.html, archived at <https://perma.cc/C9DU-CWK5>; St. John the Baptist Parish School Board, *Proceedings* 14 (Aug. 15, 2019), <https://4.files.edl.io/a7b7/08/21/19/170128-caa64fa9-39c6-45b3-83fd-be5c1091fce6.pdf>, archived at <https://perma.cc/C2U6-T86W> (CCSJ advocating to School Board for the relocation of Fifth Ward Elementary School); LA. DEP'T OF HEALTH, A REFERENCE DOCUMENT, *supra* note 94, at 14–15.

From an environmental justice perspective, the disproportionate effect of chloroprene exposure on Black residents in St. John is staggering. 94% of the population within one mile of the Denka facility is Black.⁹⁹ The EPA's 2014 NATA found that residents in the census tract next to the Denka facility, 91% of whom are Black,¹⁰⁰ have a cancer risk that is forty-seven times the national average.¹⁰¹ These alarming statistics further reiterate that the harm caused by the Denka facility is a form of environmental racism.

IV. LIMITATIONS OF TRADITIONAL LEGAL TOOLS FOR SUPPORTING ENVIRONMENTAL JUSTICE GOALS

Attorneys supporting environmental justice communities that are interested in pursuing litigation face the challenge of fashioning lawsuits that can provide some remedy or mitigation of the environmental harm. Many lawsuits promoting environmental justice utilize claims based on federal legislation, civil rights laws, or common tort law. Although claims under federal legislation and tort law can highlight the racial aspect of environmental harms, the applicable law is facially race neutral. Any remedy for these types of cases would address a violation of a federal environmental law or the causation between pollution and a personal harm instead of addressing the circumstances that led to a community of color being burdened by environmental harms. Under federal civil rights law, a viable lawsuit must prove that intentional discrimination led to an instance of environmental racism.¹⁰² Such proof is very challenging given that government decision-makers are often strategic about hiding their racist intent.

A. *Federal Statutes*

There are various federal environmental statutes that are facially neutral regarding racial discrimination and do not specifically provide redress for racism but may be used indirectly to support environmental justice causes.¹⁰³ These statutes include the Clean Water Act; Safe Drinking Water Act; Clean Air Act; Resource Recovery and Conservation Act; Comprehensive Envi-

⁹⁹ This data is 2014–2018 American Community Survey data shown on EPA's Environmental Justice Screening and Mapping tool. U.S. ENV'T PROT. AGENCY, *EPA's Environmental Justice Screening and Mapping Tool (version 2020)*, <https://ejscreen.epa.gov/mapper/> (last visited Apr. 29, 2021), archived at <https://perma.cc/U3N6-BJFT>.

¹⁰⁰ Census Reporter, Census Tract 708, St. John the Baptist, LA, <https://censusreporter.org/profiles/14000US22095070800-census-tract-708-st-john-the-baptist-la/>, archived at <https://perma.cc/FBF2-XP37>.

¹⁰¹ U.S. ENV'T PROT. AGENCY, 2014 NATA: Assessment Results, <https://www.epa.gov/national-air-toxics-assessment/2014-nata-assessment-results>, archived at <https://perma.cc/2GGZ-UTGW>; Sabu, *supra* note 97.

¹⁰² For example, an Equal Protection Clause claim related to environmental racism must provide a discriminatory intent. *See* *Washington v. Davis*, 426 U.S. 229, 241 (1976).

¹⁰³ Catherine Millas Kaiman, *Environmental Justice and Community-Based Reparations*, 39 SEATTLE U. L. REV. 1327, 1341–42 (2016).

ronmental Response, Compensation, Conservation Recovery Act; Endangered Species Act; and Emergency Planning and Community Right to Know Act.¹⁰⁴ For this Article, I will primarily focus on the Clean Air Act (“CAA”), which is of particular relevance to the St. John community because chloro-pene emits through the air.

The CAA authorizes the EPA to issue standards and take action to protect public health from hazardous air pollutants.¹⁰⁵ Although enforcement of the CAA primarily lies with the federal government, § 7604 contains a “citizen suit” provision which allows an individual or an organization to file a civil suit when there is a violation of an emission standard or a proposal to construct a facility with major air emissions.¹⁰⁶ Through a citizen suit, a plaintiff has standing to bring a lawsuit against both the violator of the CAA and the government for its lack of enforcement.¹⁰⁷ Although a plaintiff cannot win damages through a citizen suit, she may obtain injunctive relief and recover litigation costs and attorney’s fees.¹⁰⁸ Theoretically, a community may promote an environmental justice agenda by pursuing a citizen suit if the violation of the CAA is connected to disproportionate environmental harm affecting communities of color. Even though an injunction could help mitigate the harm from an ongoing violation, attempting to even partially remedy the harm that has already been suffered would be impossible.

B. *Civil Rights Litigation*

After the evolution of the environmental justice movement, many environmental justice cases focused on civil rights theories including the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act.¹⁰⁹ These strategies, however, depend on the affected community proving that intentional discrimination led to the environmental harms. In *Washington v. Davis*, the Supreme Court held that a violation of the Equal Protection Clause requires proving a discriminatory racial purpose.¹¹⁰ Although the Equal Protection Clause is critical for addressing racial discrimination, the Supreme Court made clear that it is insufficient to show that a state’s action has caused a disproportionate impact that correlates with race for an Equal Protection claim without also demonstrating a discriminatory intent.¹¹¹

¹⁰⁴ *Id.*

¹⁰⁵ *Summary of the Clean Air Act*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/laws-regulations/summary-clean-air-act> (last visited Mar. 12, 2020), *archived at* <https://perma.cc/XUA2-EABF>.

¹⁰⁶ 42 U.S.C. § 7604 (a).

¹⁰⁷ *Id.*

¹⁰⁸ Kaiman, *supra* note 104.

¹⁰⁹ R. Gregory Roberts, *Environmental Justice and Community Empowerment: Learning from the Civil Rights Movement*, 48 AM. U. L. REV. 229, 234 (1998).

¹¹⁰ *Washington v. Davis*, 426 U.S. 229, 241 (1976).

¹¹¹ *Id.*

In the context of environmental justice, proving a discriminatory racial purpose is extremely difficult. Environmental justice cases seeking to challenge the location of a facility under the Equal Protection Clause have been unsuccessful. Although the plaintiffs in these cases demonstrated a disproportionate effect on their community, they could not prove intentional discrimination.¹¹² For example, in *Bean v. Southwestern Waste Management Corp.*, the plaintiffs filed a lawsuit challenging the Texas Department of Health's decision to grant a permit for the operation of a solid waste facility in Houston and Harris County.¹¹³ The facility would be placed within 1,700 feet of a predominantly Black high school.¹¹⁴ The plaintiffs argued that the Texas Department of Health's decision was motivated, at least in part, by racial discrimination.¹¹⁵ They requested a preliminary injunction from the court because the waste facility would affect the land value, tax base, aesthetics, and health and safety of the community.¹¹⁶ The court denied the preliminary injunction because the plaintiffs would likely not succeed on the merits of their Equal Protection claim.¹¹⁷ Citing *Washington v. Davis*, the court concluded that the plaintiffs could not prove a discriminatory intent even though the waste facility would disproportionately affect African Americans.¹¹⁸

Another civil rights law that has been used to promote environmental justice is Title VI. Title VI prohibits entities receiving federal funds, including local and state agencies, from discriminating against an individual based on race, color, or national origin.¹¹⁹ Section 601 of Title VI prohibits intentional discrimination, while Section 602 prohibits conduct that has a discriminatory effect or a disparate impact. Theoretically, environmental justice advocates could use Title VI to obtain a remedy related to an environmental harm or a threatened environmental harm. Historically, a claim under Section 602 in particular was viable because plaintiffs only had to prove a discriminatory effect, or disparate impact, instead of intentional discrimination.

The utility of Title VI diminished, however, after the Supreme Court issued an opinion on Title VI in *Alexander v. Sandoval*. In *Sandoval*, an individual sued the director of the Alabama Department of Public Safety because the agency decided to administer driver's license examinations only in English.¹²⁰ The plaintiff argued that the Alabama Department of Public Safety discriminated against non-English speakers on the basis of their na-

¹¹² Roberts, *supra* note 110 at 235–36 (1998); see *R.I.S.E. v. Kay*, 768 F. Supp. 1144, 1150 (E.D. Va. 1991); *Bean v. Southwestern Waste Management Corp.*, 482 F. Supp 673, 677 (S.D. Tex. 1979).

¹¹³ *Bean*, 482 F. Supp. at 675.

¹¹⁴ *Id.* at 679.

¹¹⁵ *Id.* at 675.

¹¹⁶ *Id.* at 677.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ 42 U.S.C. § 2000d.

¹²⁰ *Alexander v. Sandoval*, 532 U.S. 275, 278–79 (2001).

tional origin and that, because the agency received federal funding from DOJ and DOT, such discrimination violated Title VI.¹²¹ The Title VI claim relied on a disparate impact theory. The district court enjoined the policy and the Eleventh Circuit affirmed the opinion.¹²² The Director of the Alabama Department of Public Safety then filed a cert petition arguing that there is no private right of action under Title VI to challenge a disparate impact regulation.¹²³ The Supreme Court agreed with the director. After examining the structure of Title VI and congressional intent, the Supreme Court concluded that a private right of action under Title VI only applies to individuals seeking a remedy for intentional discrimination.¹²⁴ But no private right of action exists for enforcing Section 602.¹²⁵ Instead, enforcement of Section 602 lies with the federal agencies that provided funding to the violator of Title VI.¹²⁶

The effect of *Sandoval* is significant. Environmental justice advocates are now limited to Title VI lawsuits that concern intentional discrimination. As explained earlier in this section, proof of intentional discrimination is almost impossible in the context of environmental justice. For Title VI violations that entail a disparate impact, advocates must rely on the complaint mechanism process of a federal agency. The EPA in particular enforces Title VI through the External Civil Rights Compliance Office. EPA's implementing regulations of Title VI state:

No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving EPA assistance on the basis of race, color, national origin, or on the basis of sex in any program or activity receiving EPA assistance under the Federal Water Pollution Control Act, as amended, including the Environmental Financing Act of 1972.¹²⁷

Although the EPA's Title VI complaint mechanism provides an avenue for raising environmental justice concerns, until recently, enforcement from the agency has been very limited. In 2015, the Center for Public Integrity found that the EPA never in its history made a formal finding of a Title VI violation.¹²⁸ The Center also found that a majority of Title VI complaints filed by communities were rejected or dismissed.¹²⁹ Other communities had

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.* at 288–90.

¹²⁵ *Id.* at 293

¹²⁶ *Id.* at 289–90.

¹²⁷ 40 C.F.R. Part 7 (2010).

¹²⁸ Kristen Lombardi, Talia Buford, & Ronnie Greene, *Environmental Racism Persists, and the EPA Is One Reason Why*, CTR. FOR PUB. INTEGRITY (Aug. 3, 2015), <https://publicintegrity.org/environment/environmental-racism-persists-and-the-epa-is-one-reason-why/>, archived at <https://perma.cc/F3ET-VXBF>.

¹²⁹ *Id.*

Title VI complaints pending for more than a decade.¹³⁰ The prioritization of Title VI complaints at the EPA may change, however, given that EPA Administrator Michael S. Regan has made civil rights enforcement an EPA priority.¹³¹

C. Common Law Tort Litigation

In general, tort litigation concerning environmental racism serves as a vehicle for seeking accountability from the source of the environmental harm. Tort law recognizes each individual's right to be free from harmful personal contact and unreasonable interference with her property.¹³² Plaintiffs may obtain both damages and injunctive relief. For environmental harms in particular, some states, including New York, Maryland, Illinois, and Washington, offer medical monitoring damages in applicable tort cases.¹³³ A common-law claim for medical monitoring requires proving that a plaintiff was exposed to a hazardous substance at levels greater than normal due to the defendant's negligence.¹³⁴ As a result of the exposure, the plaintiff has a significantly increased risk of contracting a serious disease, and a medical monitoring procedure exists to make early detection possible.¹³⁵ The medical monitoring is reasonably necessary according to scientific principles.¹³⁶ But numerous issues render these lawsuits difficult. Litigating against the source of pollution, such as a multinational corporation, requires substantial financial resources since litigation will likely take many years and expert data will be necessary. Additionally, the tort claims that can address personal harm from environmental pollution, such as battery or negligence, require proving causation. Proving that a certain pollutant caused the injury may be difficult, especially if the plaintiff has been exposed to multiple pollutants.¹³⁷ An added difficulty is that certain illnesses caused by pollutants may take years to develop, leading a plaintiff to notice the harm after the statute of limitations expires.¹³⁸

Environmental justice communities may also assert claims related to property damage, including nuisance or trespass. Similar to personal injury torts, causation for property damage claims is also complicated. Successfully

¹³⁰ *Id.*

¹³¹ U.S. ENV'T PROT. AGENCY, EPA National Environmental Justice Community Engagement Call (May 19, 2021), https://www.epa.gov/sites/default/files/2021-05/documents/national_environmental_justice_community_engagement_call_slides_for_may_19_2021.pdf, archived at <https://perma.cc/RV7B-NRLN>.

¹³² Kathy Seward Northern, *Battery and Beyond: A Tort Law Response to Environmental Racism*, 21 WM. & MARY ENV'T L. & POL'Y REV. 485, 492 (1997).

¹³³ 25 AM. JUR. 3d *Proof of Facts* § 1.3 (1994).

¹³⁴ *Id.* at § 1.5.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ See Hannah Reed, Note, *Indiana's Public Health is in Jeopardy: Lessons to Learn from Toxic Chemical Contamination in East Chicago*, 15 IND. HEALTH L. REV. 109, 133 (2018).

¹³⁸ See *id.*

proving these claims may require testing real property to demonstrate the presence of a pollutant.¹³⁹ Although tort litigation concerning personal injury or property claims can lead to damages, these cases do not address future harm related to environmental pollution and do not address the role racism plays in harming the plaintiff.¹⁴⁰

Nevertheless, a recent Third Circuit case highlights the potential for tort law to benefit an entire environmental justice community. In *Baptiste v. Bethlehem Landfill Co.*, a group of property owners filed a lawsuit against a landfill operator on behalf of those who resided within a two and a half mile radius of the landfill.¹⁴¹ The property owners filed public nuisance, private nuisance, and negligence claims because of pollutants, air contaminants, and odors that were released from the landfill.¹⁴² The U.S. District Court for the Eastern District of Pennsylvania dismissed the lawsuit concluding, in part, that too many residents were affected by the landfill and that the landfill was too far away to create a private nuisance.¹⁴³ The Third Circuit reversed and remanded the district court's decision, noting that the number of affected people and proximity to the landfill should not be barriers to filing tort claims.¹⁴⁴ Although this lawsuit is still pending, the Third Circuit's decision affirms the power that communities have in using tort law to address collective environmental harm.

V. COMMUNITY-CENTERED ADVOCACY FOR THE ST. JOHN COMMUNITY

A. *An Overview of Community-Centered Lawyering*

Given the limitations posed by traditional legal strategies, environmental justice advocates can incorporate a community-centered approach to advocacy to identify complementary means to support environmental justice communities. Community-centered lawyering has various forms including “rebellious lawyering, cause lawyering, political lawyering, social change lawyering, third-dimensional lawyering, collaborative lawyering, revolutionary lawyering, and law and organizing.”¹⁴⁵ Regardless of the name, these approaches to lawyering entail attorneys collaborating with communities and working together to identify solutions.¹⁴⁶ Through a community-centered approach, members of the community take ownership of social change.¹⁴⁷

¹³⁹ Kaiman, *supra* note 104, at 1352.

¹⁴⁰ Northern, *supra* note 133, at 543–44.

¹⁴¹ *Baptiste v. Bethlehem Landfill Co.*, 965 F.3d 214, 218 (3d Cir. 2020).

¹⁴² *Id.* at 217.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 217, 223.

¹⁴⁵ Monika Batra Kashyap, *Rebellious Reflection: Supporting Community Lawyering Practice*, 43 N.Y.U. REV. L. & SOC. CHANGE 403, 404 (2019).

¹⁴⁶ See Shauna Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 CLINICAL L. REV. 147, 147–48 (2000).

¹⁴⁷ See Kashyap, *supra* note 146.

In practice, a “community lawyer” takes steps to challenge the common notion that lawyers serve as saviors for a community and that litigation is the only answer to a community’s problems.¹⁴⁸ During representation, community lawyers build partnerships with communities and incorporate members into problem solving.¹⁴⁹ Community lawyers develop relationships with various community partners, such as grassroots organizations, unions, and worker and tenant associations.¹⁵⁰ Through community lawyering, attorneys partake in true dialogue with communities and can identify creative solutions for advocacy besides litigation.¹⁵¹ Attorneys should collaborate with communities to identify a shared vision of justice that they can pursue together.¹⁵²

From a community lawyering perspective, understanding the limitations of litigation prevents disempowerment of a community. This means disrupting status quo assumptions that the legal system is the only way to promote positive change and that the law provides enough remedies to support a community. Community lawyers help communities understand the limits of litigation and how a lawsuit may complement other forms of community organizing. It is crucial to recognize that many social movements gained momentum through advocacy that did not center on litigation. For example, racial justice advocacy in the United States has been greatly advanced through grassroots organizing and influencing public opinion.¹⁵³ Litigation complemented these organizing strategies but did not direct the movement.

In the context of environmental justice, community lawyering requires a lawyer to adopt various roles. Engaging with a community affected by environmental racism requires understanding the local politics specific to that community.¹⁵⁴ Understanding these politics includes learning about how local institutions such as a coalition, government, or places of worship interact with the community and whether these institutions play a role in how a community obtains information. In addition to mapping the various players relevant to the community, the community lawyer must understand the full extent to which the source of the environmental pollution has caused harm. The harm may not just be the environmental contamination. Corporations complicit in pollution have access to numerous legal, financial, and political resources; they often leverage those resources to inflict harm on communities by pressuring the government to enable them to act with impunity, or by attempting to take advantage of the community by trying to buy their prop-

¹⁴⁸ Charles Elsesser, *Community Lawyering—The Role of Lawyers in the Social Justice Movement*, 14 LOY. J. PUB. INT. L. 375, 387 (2013).

¹⁴⁹ See Kashyap, *supra* note 146, at 405.

¹⁵⁰ Elsesser, *supra* note 149, at 384–85.

¹⁵¹ Marshall, *supra* note 147, at 160–62.

¹⁵² Cf. Benjamin Hoffman & Marissa Vahlsing, *Collaborative Lawyering in Transnational Human Rights Advocacy*, 21 CLINICAL L. REV. 255, 265 (2014).

¹⁵³ See Elsesser, *supra* note 149, at 382–83.

¹⁵⁴ Interview with Ruhan Nagra, Dir. of Env’t Justice Initiative & Senior Clinical Supervisor, Univ. Network for Human Rights (July 26, 2021).

erty. Understanding this harm also necessitates an examination of how structural racism enabled the corporation to overburden environmental justice communities through local, state, and federal policies.

As discussed later in Part VI, lawyers must also make sense of scientific information to demonstrate how a pollutant has harmed or will harm a community. Providing communities access to scientific information helps them understand the risks and harms associated with exposure to a pollutant. “Citizen science” entails the involvement of a community in scientific research to help achieve community goals.¹⁵⁵ In other words, “[C]itizen science aligns with the communicative, nonviolent, and conscientious nature of political acts that are intended to bring about change in the law or government policies.”¹⁵⁶ Lawyers must strategically engage with scientists to counteract the science relied on by the people in power who permit a toxic emitting facility.¹⁵⁷ Decision makers often weaponize science or design faulty studies claiming that exposure to a chemical is safe.¹⁵⁸ Many lawyers incorrectly believe that scientists are most helpful as experts for a lawsuit, but leveraging scientific expertise can be strategic even before an environmental harm occurs.¹⁵⁹ Lawyers can obtain scientific expertise during the permitting process before a site for a facility is approved.¹⁶⁰ Scientists can review a company’s permit application and identify misuse of data or a flawed model, thus preventing the approval of the permit.¹⁶¹

B. Applying a Community-Centered Approach to the St. John Community

Community-centered approaches supporting the St. John community most clearly appear in the advocacy of Concerned Citizens of St. John. St. John residents created Concerned Citizens in 2016 after learning from the EPA that the community faced high rates of cancer because of chloroprene emissions.¹⁶² The organization wanted to stay informed about what was happening in the community.¹⁶³ Since its inception, Concerned Citizens has prioritized monitoring the health of their community, ensuring independent air monitoring for air quality, and relocating Fifth Ward Elementary School,

¹⁵⁵ See George Wyeth, LeRoy C. Paddock, Alison Parker, Robert L. Glicksman, & Jecoliah Williams, *The Impact of Citizen Environmental Science in the United States*, 49 ENV’T L. REP. NEWS & ANALYSIS 10237, 10238 (2019).

¹⁵⁶ Emily Hammond, *Toward a Role for Protest in Environmental Law*, 70 CASE W. RES. L. REV. 1039, 1061 (2020).

¹⁵⁷ Interview with Kimberly Terrell, Research Scientist, Tulane Env’t Law Clinic (July 28, 2021).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² Interview with Robert Taylor, *supra* note 54; Interview with Lydia Gerard, Sec’y, Concerned Citizens (Sept. 9, 2021).

¹⁶³ Interview with Mary Hampton, *supra* note 70.

located blocks away from the Denka facility.¹⁶⁴ Concerned Citizens wants Denka to reduce the chloroprene emissions from the neoprene facility to a safer level that does not exceed $0.2 \mu\text{g}/\text{m}^3$.¹⁶⁵ Concerned Citizens also serves as an avenue for community members to get information on how the Denka facility is affecting them.¹⁶⁶ “We have to come together to not let the company destroy our lives for profits.”¹⁶⁷ “We need to fight for the next generation.”¹⁶⁸

For years, Concerned Citizens sought support from the local and state governments, but they have been dismissed. Robert Taylor, founder and Executive Director of Concerned Citizens, believes that the government accommodates industry without interference because the families in St. John are “expendable.”¹⁶⁹ He recalls that when he first tried to get local support at the time he formed Concerned Citizens in 2016, locals told him that he was crazy.¹⁷⁰ Many asked, “how can you fight DuPont and win?”¹⁷¹ Geraldine Watkins, a member of Concerned Citizens, feels like the community is collateral damage because industry does not care about them.¹⁷² The Secretary of LDEQ, Chuck Carr Brown, called Concerned Citizens a group of “fear mongers” during a meeting.¹⁷³ LDEQ claimed that the cancer rate in St. John was not higher than the cancer rates of other parts of Louisiana, even though the community knew that many people were dying of cancer.¹⁷⁴ Two members of Concerned Citizens even traveled to Tokyo, Japan, where Denka is headquartered, to present evidence that the neoprene facility is responsible for high rates of cancer.¹⁷⁵ Officials from Denka, however, refused to meet with them.¹⁷⁶

In response to the lack of action from the local and state governments and Denka, Concerned Citizens turned to similarly situated organizations, attorneys, and scientists to help accomplish their agenda. The organization adopted various strategies to amplify their voices. Concerned Citizens joined a coalition with other organizations fighting environmental racism in Cancer

¹⁶⁴ Interview with Robert Taylor, *supra* note 54.

¹⁶⁵ Univ. Network for Human Rights, *Concerned Citizens of St. John Parish Meet with EPA in Washington, D.C.*, UNIV. NETWORK FOR HUMAN RIGHTS (Nov. 21, 2019), <https://www.humanrightsnetwork.org/press/2019/11/20/concerned-citizens-of-st-john-parish-meet-with-epa-in-washington-dc>, archived at <https://perma.cc/QB3A-MJ7U>.

¹⁶⁶ Interview with Lydia Gerard, *supra* note 163.

¹⁶⁷ Interview with Robert Taylor, *supra* note 54.

¹⁶⁸ Interview with Gloria Dumas, *supra* note 14.

¹⁶⁹ Interview with Robert Taylor, *supra* note 54.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Interview with Geraldine Watkins, *supra* note 56.

¹⁷³ Lerner, *supra* note 66.

¹⁷⁴ Interview with Mary Hampton, *supra* note 70.

¹⁷⁵ Justin McCurry, *Japanese Owners of Plant at Heart of US Cancer Town Refuse to Meet Activists*, THE GUARDIAN (Oct. 8, 2019) <https://www.theguardian.com/us-news/2019/oct/08/cancer-town-japan-factory-owners-refuse-meet-activists>, archived at <https://perma.cc/JJ5V-4W6B>.

¹⁷⁶ *Id.*

Alley including Rise St. James and Bayou Bridge.¹⁷⁷ Known as the Coalition Against Death Alley, members of the coalition meet monthly to share their ideas and increase visibility of Cancer Alley.¹⁷⁸

Through collaboration with attorneys and scientists, Concerned Citizens launched a community health survey, a study on the relationship between chloroprene exposure and COVID-19 mortality, and an emergency powers petition for the EPA. For the community health survey in particular, Concerned Citizens gained critical data demonstrating the link between chloroprene exposure and cancer rates in the community.¹⁷⁹ Before the survey, many people in the community did not realize how much danger they faced from chloroprene exposure.¹⁸⁰ The launch of the results of the community health survey led to the creation of media talking points that reflected the data from the survey and helped raise awareness of the dangers of chloroprene at a national and international level.¹⁸¹ Due to the significance of the community health survey, Concerned Citizens finally gained access to Japanese media and state government, where they directly spoke about the impacts of chloroprene and how the community was dying of cancer.¹⁸² Additionally, since the launch of the community health survey and the submission of the emergency powers petition, Concerned Citizens has also met with scientists and staff from the EPA and former Representative Cedric Richmond. To Concerned Citizens, meeting with the EPA in Washington and remotely was important to demand results and present the information gained by the community health survey directly.¹⁸³ As Mary Hampton noted, they expect the EPA to take more action if staff could hear the stories of Concerned Citizens members directly.¹⁸⁴

Through the emergency powers petition, Concerned Citizens presented a thorough narrative that incorporated their perspective and provided an overview of Denka's conduct.¹⁸⁵ The comprehensive nature of the petition was significant because Concerned Citizens could leverage the fact that the EPA is led by a relatively new presidential administration that has decided to prioritize environmental justice. Soon after the submission of the petition, the EPA took the following concrete actions: (1) convened a meeting with Concerned Citizens and included EPA staff from various offices, and (2) issued an information request letter requiring Denka to conduct fence line monitoring of chloroprene and to provide information on various issues concerning the facility including chloroprene emissions.¹⁸⁶

¹⁷⁷ Interview with Mary Hampton, *supra* note 70.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ Interview with Gloria Dumas, *supra* note 14.

¹⁸¹ Interview with Ruhana Nagra, *supra* note 155.

¹⁸² *Id.*; Interview with Mary Hampton, *supra* note 70.

¹⁸³ Interview with Mary Hampton, *supra* note 70.

¹⁸⁴ *Id.*

¹⁸⁵ Interview with Michelle Mabson, Staff Scientist, Earthjustice (Sept. 30, 2021).

¹⁸⁶ Interview with Emma Cheuse, Staff Attorney, Earthjustice (Sept. 30, 2021).

For members of Concerned Citizens, lawyers are most helpful when they help amplify the voice of the community, help the community better understand its options under the law, and provide access to stakeholders normally out of reach for the community.¹⁸⁷ Lawyers need to understand that a community may not necessarily be interested in money and care more about results that can mitigate the harms of environmental pollution.¹⁸⁸ From the perspective of Concerned Citizens, lawyers can be a barrier to progress if they are too preoccupied with litigation.¹⁸⁹ Instead, lawyers should understand the feelings of the community and what members of it have experienced to build trust and strong relationships.¹⁹⁰ Lawyers can more effectively communicate with a community if they are open minded and collaborate with its members to identify their best interests.¹⁹¹ Effective communication, in part, requires lawyers to be honest and open about why they are interested in working with the community.¹⁹² Community members will assume that a lawyer has something to gain from community engagement.¹⁹³ And it is true—we all have something to gain from community engagement even if the reasons are altruistic.¹⁹⁴ Being upfront about these gains can help mitigate the distrust that communities feel towards lawyers.¹⁹⁵

VI. REFLECTIONS ON COMMUNITY CENTERED ADVOCACY IN ST. JOHN

A. *Community Health Survey*

Employing a community centered approach to advocacy, Ruhan Nagra, an attorney at the University Network for Human Rights, collaborated with Concerned Citizens to conduct a groundbreaking community health survey to document the correlation between illnesses and proximity to the Denka facility. The survey was the first of its kind to provide this type of data for a community in Cancer Alley. Successfully working with Concerned Citizens required Nagra to build trust with the community.¹⁹⁶ During initial meetings with Concerned Citizens, Nagra made clear that even though she is an attorney, the community did not have to automatically accept a legal approach.¹⁹⁷ Instead, she facilitated discussions, asking the community, “what do you want in a perfect world?”¹⁹⁸ During these discussions, community members

¹⁸⁷ Interview with Mary Hampton, *supra* note 70; Interview with Lydia Gerard, *supra* note 163.

¹⁸⁸ Interview with Mary Hampton, *supra* note 70.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*; Interview with Gloria Dumas, *supra* note 14.

¹⁹¹ Interview with Lydia Gerard, *supra* note 163.

¹⁹² Interview with Ruhan Nagra, *supra* note 155.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

made clear that they needed a household health survey to effectively advocate on behalf of themselves.¹⁹⁹ Concerned Citizens wanted to commission its own study on the health of its community to have concrete data on the effects of chloroprene.²⁰⁰ They knew that many people in the community were dying of cancer and wanted to document this impact, including for community members who live close to the Denka facility.²⁰¹ The survey was necessary to “show from the community standpoint of what they are going through.”²⁰² “We want to bring awareness to the world of what we have been suffering and what we have been living through. Why we are so ill. Why our immune systems are so compromised. Why our children are born with health issues.”²⁰³

According to Mary Hampton, president of Concerned Citizens, the organization did not trust the data from the Louisiana Tumor Registry which does not take into account cancer rates at a localized level.²⁰⁴ In other words, the Tumor Registry only evaluates the total cancer rate of a parish without further analysis of whether a particular neighborhood within the parish had an unusually high cancer rate. The high rates of cancer in the area immediately surrounding the Denka facility are diluted by the broader survey utilized by the Tumor Registry. In St. John, the highest cancer rates are found in the census tracts near the vicinity of the Denka facility. Concerned Citizens believed that it was more effective to have an outsider conduct the survey so the results would be taken more seriously.²⁰⁵ They were concerned that if they completed the survey themselves, the credibility of the results would be questioned.²⁰⁶

For the community health survey, Nagra and her colleagues conducted a household health survey of residents who lived within two and a half kilometers of the Denka facility.²⁰⁷ The results of the study confirmed that neighborhoods next to the facility faced “extremely improbable rates of cancer and other illness.”²⁰⁸ According to their findings, nearly 40% of those surveyed within one and a half kilometers of the plant “regularly experience chest pain, heart palpitations, or both; one-third regularly experience wheezing and/or difficulty breathing; more than half regularly experience headaches, dizziness, and/or lightheadedness; nearly half regularly experience eye pain/irritation and/or watery eyes; more than 40% experience cough,

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ Interview with Mary Hampton, *supra* note 70; Interview with Lydia Gerard, *supra* note 163.

²⁰² Interview with Lydia Gerard, *supra* note 163.

²⁰³ Interview with Geraldine Watkins, *supra* note 56.

²⁰⁴ Interview with Mary Hampton, *supra* note 70.

²⁰⁵ Interview with Ruhan Nagra, *supra* note 155.

²⁰⁶ *Id.*

²⁰⁷ Univ. Network for Human Rights, *Waiting to Die: Toxic Emissions and Disease Near the Louisiana Denka/DuPont Plant*, <https://www.humanrightsnetwork.org/waiting-to-die>, archived at <https://perma.cc/WQ7R-JJNV>.

²⁰⁸ *Id.*

sneezing, and/or sore/hoarse throat most of the time; more than one-third regularly experience skin rash/irritation and/or itchy skin; and nearly 30% experience fatigue/lethargy most of the time.”²⁰⁹ These rates are unusually high compared to what would otherwise be expected for a community in this region.²¹⁰

The community health survey served as a catalyst for non-legal and legal advocacy. With the results of the community survey, Concerned Citizens had data to concretely demonstrate the high cancer risks in their community without having to rely on any information from the state government. The data validated the mission of Concerned Citizens.²¹¹ Concerned Citizens released the results of the report when two members, Robert Taylor and Lydia Gerard, traveled to Japan to protest at the Denka annual shareholder meeting and participate in interviews with Japanese media.²¹² Having Concerned Citizens directly participate in press conferences and meetings helped raise international awareness about how Denka’s operations harm the St. John community.²¹³ After Concerned Citizens engaged in strategic media advocacy to highlight the harms of chloroprene, the governor of Louisiana commissioned an audit of the Louisiana Tumor Registry.²¹⁴ Although the audit found that the Tumor Registry had found all “reportable” cases from 2009 to 2018, the report summarizing the results of the audit made clear that it in “no way implies that there are no health effects from long-term exposure to chloroprene.”²¹⁵

In addition to obtaining a response from the governor about the findings from the community health survey, Concerned Citizens utilized the data to oppose Denka’s attempt to diminish the EPA’s chloroprene cancer risk value.²¹⁶ As explained in Part III, Denka unsuccessfully lobbied the EPA to reconsider the threshold for safe exposure to chloroprene. Before the EPA denied Denka’s request, Concerned Citizens sent a letter to the EPA explaining why it is critical to uphold the chloroprene cancer risk value and requested a meeting to discuss the community’s concerns in person.²¹⁷ The

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ Interview with Gloria Dumas, *supra* note 14.

²¹² Interview with Ruhan Nagra, *supra* note 155.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ David J. Mitchell, *Louisiana Tumor Registry Hasn’t Missed Cancers Around Denka, LSU Says, but Can’t Speak to Causes*, NEW ORLEANS ADVOCATE (Mar. 1, 2021), https://www.theadvocate.com/baton_rouge/news/article_8ed5b334-7aa1-11eb-88b6-4be749a395f7.html, archived at <https://perma.cc/ZJE5-DL8J>.

²¹⁶ Univ. Network for Human Rights, *Concerned Citizens of St. John Parish Meet with EPA in Washington, D.C.*, (Nov. 21, 2019), <https://www.humanrightsnetwork.org/press/2019/11/20/concerned-citizens-of-st-john-parish-meet-with-epa-in-washington-dc>, archived at <https://perma.cc/A9GB-SWET>.

²¹⁷ Letter from Concerned Citizens of St. John et al., to John Vandenberg, Dir. of Rsch., E.P.A. (August 2, 2019) <https://static1.squarespace.com/static/5b3538249d5abb21360e858f8/5dd6384ff3784826f8dfe6e4/1574320208532/EPAMeetingrequest+-+IRIS@chloroprene+assessment.pdf>, archived at <https://perma.cc/4TFJ-G7YR>.

EPA granted Concerned Citizens' request and during the meeting, data from the community health survey was shared directly with the EPA while Robert Taylor and Mary Hampton explained to the EPA that their community is dying. After the meeting with the EPA, they met with former Representative Cedric Richmond where they spoke about the reality of living with constant chloroprene exposure. And as explained below, Concerned Citizens' citizen science provided evidence for their petition to the EPA to utilize its emergency powers under the Clean Air Act. Overall, Concerned Citizens feels empowered by the information they have gained from the study.²¹⁸ According to Lydia Gerard, they now have more information to bolster their requests to improve conditions in St. John and to help spread more awareness.²¹⁹

B. Emergency Power Petition

The data gathered from the community health survey provided evidentiary support for Concerned Citizens' emergency powers petition. For this strategy, EarthJustice, with support from the Lawyers' Committee for Civil Rights Under Law, represented Concerned Citizens. Under § 7603 of the Clean Air Act, the EPA may file a civil action against a facility if the facility's air emissions present "an imminent and substantial endangerment to public health or welfare, or the environment."²²⁰ The exercise of this power is purely discretionary and the EPA rarely exercises its power under this provision. One of the first known exercises of the power occurred in 2007 when the EPA issued a consent decree addressing hydrogen sulfide gas affecting residents in Bridgeport, Illinois.²²¹ The gas leaked from oil wells and oil storage facilities near Bridgeport and led to various health ailments including headaches, nausea, watering eyes, sleeplessness, fainting, difficulty breathing, asthma, and allergies.²²² After establishing air monitoring stations in the area, the EPA was able to confirm that the levels of hydrogen sulfide were high enough to cause health problems.²²³ Once the health risk was confirmed, the EPA exercised its emergency powers under the Clean Air Act.²²⁴ The EPA relied on this authority to negotiate a consent decree with PennTex, the company that owned the oil wells and oil storage facilities.²²⁵ Under the terms of the consent decree, PennTex agreed to monitor and reduce hydro-

²¹⁸ Interview with Lydia Gerard, *supra* note 163.

²¹⁹ *Id.*

²²⁰ 42 U.S.C. § 7603.

²²¹ EPA REGION 5, EPA REGION 5 – THE BEST OF 2007 4–5 (2008).

²²² *Id.*

²²³ *Id.* at 5.

²²⁴ *Id.*

²²⁵ *Id.* at 6.

gen sulfide emissions.²²⁶ As a result, the company reduced emissions by roughly fifty tons each year.²²⁷

Community-led petitions requesting that the EPA exercise its emergency powers are not common but recent evidence suggests that they are a powerful tool. In 2015, residents and grassroots activists from Flint, Michigan submitted a petition requesting that the EPA exercise its emergency powers under the Safe Drinking Water Act, 42 U.S.C. § 300i, because the area's water was contaminated with lead.²²⁸ The emergency powers provision of the Safe Drinking Water Act is similar to the provision of the CAA giving the EPA the authority to mitigate imminent and substantial danger to human health.²²⁹ The EPA exercised its power a year after the Flint community submitted the petition.²³⁰ In an order confirming the exercise of its power, the EPA began sampling and analyzing lead levels in the water to provide the public with accurate information.²³¹ The order also required the City of Flint to utilize certain technologies to improve water quality, reduce pollutants, and regularly monitor water quality.²³² This instance seems to indicate that the EPA is willing to consider community petitions in circumstances where the environmental justice harm is severe.

During conversations with EarthJustice and the Lawyers' Committee, Concerned Citizens made it clear that they wanted to pursue a strategy that would help reduce the level of chloroprene emissions from the Denka facility and relocate Fifth Ward Elementary School, which is just blocks from the facility. Concerned Citizens also wanted to continue direct interactions with the EPA to illustrate how the community is harmed by the Denka facility and why the EPA needs to take more action.²³³ Lydia Gerard, Secretary of Concerned Citizens, wants to make the EPA "more aware of the things we are suffering and the things that have not been done."²³⁴ Concerned Citizens also wants to create actual regulations for chloroprene emissions instead of

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ Petition for Emergency Action under the Safe Drinking Water Act, 42 U.S.C. § 300i, to Abate the Imminent and Substantial Endangerment to Flint, Michigan Residents from Lead Contamination in Drinking Water, from Coalition for Clean Water et al., to Gina McCarthy, Administrator, U.S. E.P.A., and Susan Hedman, Regional Administrator, U.S. E.P.A. Region 5 (Oct. 1, 2015), <http://flintwaterstudy.org/wp-content/uploads/2015/10/100115-FINAL-Emergency-SDWA-Petition.pdf>, archived at <https://perma.cc/YXP7-PCGX>; City of Flint, Mich., U.S. Env't Prot. Agency, Emergency Administrative Order (Jan. 21, 2016), https://www.epa.gov/sites/default/files/2016-01/documents/1_21_sdwa_1431_emergency_admin_order_012116.pdf, archived at <https://perma.cc/P2MT-748F>; see also Petition for Emergency Action under the Safe Drinking Water Act, from Calumet Lives Matter, to Scott Pruitt, Administrator, U.S. Env't Prot. Agency (Mar. 2, 2021).

²²⁹ Compare 42 U.S.C. § 7603, with 42 U.S.C. § 300i.

²³⁰ City of Flint, Mich., U.S. Env't Prot. Agency, Emergency Administrative Order (Jan. 21, 2016), https://www.epa.gov/sites/default/files/2016-01/documents/1_21_sdwa_1431_emergency_admin_order_012116.pdf, archived at <https://perma.cc/P2MT-748F>.

²³¹ *Id.* at 9.

²³² *Id.* at 13.

²³³ Interview with Lydia Gerard, *supra* note 163.

²³⁴ *Id.*

relying on “guidelines” from the EPA on what is considered a safe amount of chloroprene exposure.²³⁵ Gloria Dumas, a Concerned Citizens member, stressed that the petition is necessary because too many people are sick and have died from cancer.²³⁶

According to Emma Cheuse, one of the attorneys who drafted the petition, attorneys have to consider whether an emergency powers petition is strategic for a community given the high standard for the EPA to utilize its emergency authority.²³⁷ Submitting a petition on behalf of Concerned Citizens made sense given the severity of environmental injustice in the community.²³⁸ Additionally, the emergency powers petition paves the path for more immediate action from the EPA as opposed to a longer-term strategy such as traditional litigation.²³⁹ From a scientific perspective, submitting the emergency powers petition helped reinforce why the EPA should not adjust the safety threshold for chloroprene exposure, despite Denka’s attempt to do so.²⁴⁰ As Michelle Mabson, a scientist at EarthJustice noted, the safety threshold is based on valid scientific approaches and any change that favors Denka would be a manipulation of valid scientific research and more harmful for the community.²⁴¹

Section 7603 of the CAA provides the EPA broad authority, so Concerned Citizens submitted a petition requesting that the agency utilize its emergency powers to accomplish these goals.²⁴² More specifically, the petition requested that the EPA (1) inspect, investigate, and enforce any relief necessary to reduce chloroprene emissions, (2) strengthen the standards for safe levels of chloroprene exposure, (3) implement permanent and effective air monitoring of chloroprene, and (4) support local efforts to relocate schools located near the Denka facility and investigate the impact of chloroprene emissions on school children.²⁴³ The petition also requested that the EPA initiate a Title VI investigation.²⁴⁴ To demonstrate the urgency of the environmental racism in St. John, the petition in part cites to the findings of the community health survey commissioned by Concerned Citizens.²⁴⁵

One month after Concerned Citizens submitted the petition, the EPA sent a response confirming that the petition had been shared with relevant

²³⁵ *Id.*

²³⁶ Interview with Gloria Dumas, *supra* note 14.

²³⁷ Interview with Emma Cheuse, *supra* note 187.

²³⁸ *Id.*

²³⁹ Interview with Deena Tumeh, Staff Attorney, Earthjustice (Sept. 30, 2021).

²⁴⁰ Interview with Michelle Mabson, Staff Scientist, Earthjustice (Sept. 30, 2021).

²⁴¹ *Id.*

²⁴² Petition for Emergency Action under the Clean Air Act and Petition for Rulemaking under the Clean Air Act, from Concerned Citizens of St. John, to Adm’r Michael Regan, U.S. Env’t Prot. Agency (May 6, 2021); *Oljato Chapter of Navajo Tribe v. Train*, 515 F.2d 654, 658 (D.C. Cir. 1975).

²⁴³ *Id.* at 23–28.

²⁴⁴ *Id.* at 26.

²⁴⁵ *Id.* at 3.

EPA offices and is under review.²⁴⁶ Although the letter did not say if the EPA will invoke its emergency authority, the letter noted “we will be considering use of all relevant Clean Air Act authorities available to achieve further emissions reductions and health protections for the citizens of St. John the Baptist Parish.”²⁴⁷ The letter also requested a meeting with Concerned Citizens to discuss the content of the petition.²⁴⁸ The following week, on June 15, 2021, the EPA sent a mandatory information request letter to Denka.²⁴⁹ According to the letter, Denka must answer a list of survey questions including a request for a detailed emissions inventory and the applicable EPA regulation.²⁵⁰ For chloroprene emissions in particular, Denka must submit a detailed analysis on how it has gauged the level of emissions.²⁵¹ Additionally, the letter mandates that Denka install and use monitoring equipment at its facility to monitor chloroprene emissions. Denka must develop a protocol for monitoring subject to EPA approval and must routinely share the monitoring results with the EPA.²⁵² On July 16, 2021, members of Concerned Citizens had a virtual meeting with the EPA where they shared how they have been harmed by chloroprene emissions and demanded the EPA take affirmative action to help their community.

Although the EPA has not yet formally announced if it will utilize its emergency authority at the time this Article was drafted, the EPA’s response to the petition has already signaled that it is at least taking Concerned Citizens’ requests seriously.²⁵³ This is significant given that environmental justice communities normally face difficulty in gaining the attention of a federal agency due to lack of access.²⁵⁴ Through the emergency powers petition, Concerned Citizens elevated the harms from chloroprene across offices within the EPA.²⁵⁵ During the July 2021 meeting, various offices from the EPA participated, which signifies that these offices are working together.²⁵⁶

Another promising development occurred on November 16, 2021, when EPA Administrator Michael Regan visited St. John as part of his Journey to Justice Tour.²⁵⁷ During his visit, Administrator Regan met with Robert

²⁴⁶ Letter from Joseph Goffman to Emma Cheuse, June 7, 2021 (on file with author).

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ Letter from Penny Lassiter Director Sector Policies and Programs Division Office of Air Quality Planning and Standard and Evan Belser, Acting Director Air Enforcement Division Office of Civil Enforcement. U.S. Env’t Prot. Agency (June 15, 2021), <https://edms.deq.louisiana.gov/app/doc/view?doc=12754954>, archived at <https://perma.cc/7P2W-N9GD>.

²⁵⁰ *Id.* at 2–3.

²⁵¹ *Id.*

²⁵² *Id.* at 10.

²⁵³ Interview with Emma Cheuse, *supra* note 187.

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ Press Release, U.S. ENV’T PROT. AGENCY, EPA Administrator Regan Announces Bold Actions to Protect Communities Following the Journey to Justice Tour (Jan. 26, 2022), <https://www.epa.gov/newsreleases/epa-administrator-regan-announces-bold-actions-protect-commu->

Taylor, president of Concerned Citizens, and learned about how Denka's operations were adversely impacting the community.²⁵⁸ Months later, on January 26, 2022, the EPA issued a statement announcing a series of actions based on Administrator Regan's observations from the Journey to Justice Tour.²⁵⁹ The statement specified both agency-wide actions and measures specific to three parishes in Louisiana, including St. John.²⁶⁰ The EPA will launch a new Multi-Scale Monitoring Project that will combine air pollution monitoring and on the ground inspections to improve community protections.²⁶¹ For St. John in particular, the EPA announced that the Office of Enforcement and Compliance Assurance will work with the Department of Justice to seek avenues of relief for the community.²⁶² The statement also announced that Administrator Regan wrote a letter to the CEOs of Denka and DuPont stating, ". . . I remain extremely concerned about the over 500 children at the elementary school. I am writing to you today to reiterate what I hope are our shared concerns and expectations over the health and well-being of the students. EPA expects DuPont and Denka to take other needed action to address community concerns."²⁶³

Through this process, Concerned Citizens maintained ownership over a legal strategy. Such community-level ownership is crucial to pursuing a community-centered legal strategy. Concerned Citizens felt that their voice was directly heard by the EPA and that they could share the goals of the community in a means not limited by traditional litigation.²⁶⁴ "We wanted to go to DC and present the information ourselves."²⁶⁵ Some of the relief requested in the petition, such as relocating schools near the Denka facility, would be difficult to obtain as injunctive relief through a traditional lawsuit. Although the EPA's power is discretionary, it is also broad, making the prospect of relief even more possible. Even if the EPA decides to take no additional action, the petition serves as a powerful advocacy tool for the community. The text of the petition itself provides a detailed account of the harms in St. John due to chloroprene exposure and the lack of sufficient action at the local, state, and federal level. The information in the document itself equips Concerned Citizens to continue pressuring the government to take action and hold Denka accountable.

nities-following-journey, *archived at* <https://perma.cc/Q8Y6-BARY>; Michael Regan (@EPAMichaelRegan), TWITTER (Nov. 16, 2021, 4:32 PM), <https://twitter.com/EPAMichaelRegan/status/1460722426992541697>, *archived at* <https://perma.cc/43VT-WGLE>.

²⁵⁸ Bobbi-Jeanne Misick, NEW ORLEANS PUB. RADIO, *Louisiana's Most Vulnerable Residents Share Their Stories During EPA's 'Journey to Justice Tour'* (Nov. 19, 2021, 2:26 PM), <https://www.wno.org/news/2021-11-19/louisianas-most-vulnerable-residents-share-their-stories-during-epas-journey-to-justice-tour>, *archived at* <https://perma.cc/78HK-L68T>.

²⁵⁹ Press Release, *supra* note 258.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ Interview with Mary Hampton, *supra* note 70.

²⁶⁵ *Id.*

It is important to note that although the community health survey and emergency powers petition fall outside the scope of traditional environmental justice advocacy, these strategies should be seen as community driven advocacy that complements traditional litigation strategies. In 2017, thirteen residents of St. John the Baptist filed a class action lawsuit in state court against DuPont and Denka requesting injunctive relief for nuisance and trespass.²⁶⁶ This is one of more than twenty lawsuits by St. John residents against Denka.²⁶⁷ In the EPA emergency powers petition, Concerned Citizens also requested a Title VI investigation against LDEQ and LDH. The petition argues that lack of sufficient action from LDEQ and LDH led to the failure to protect the St. John community where African Americans disproportionately suffer from the health effects of chloroprene. The Lawyers' Committee for Civil Rights Under Law and EarthJustice filed a formal Title VI complaint against LDEQ and LDH on January 20, 2022.²⁶⁸ All of these strategies together address various aspects of the environmental racism plaguing St. John: (1) the community health survey empowered the community with information after state authorities belittled the community's cancer risk, (2) the emergency powers petition requests that the EPA exercise its federal law authority to reduce and mitigate chloroprene emissions, (3) the class action lawsuit seeks accountability from DuPont and Denka, and (4) the Title VI investigation request addresses the role race discrimination played in the harm suffered by the St. John community.

Additionally, I should acknowledge that at the time this article was drafted, the total outcome of the emergency powers petition is still unknown. It is possible that there will not be any tangible results from the EPA's information request letter to Denka. Nevertheless, this type of strategy is still worth consideration. It can empower communities to share their stories and request remedies that complement their goals. For example, as the secretary of Concerned Citizens noted, the petition empowered Concerned Citizens to make the EPA more aware of their community's suffering and why they need protection.²⁶⁹ From Concerned Citizens' perspective, the petition served as an avenue for the community to hold the EPA accountable and urge the agency to create actual regulations for chloroprene emissions.²⁷⁰ Having direct ac-

²⁶⁶ Third Am. Compl., Taylor et al., v. Denka Performance Elastomer LLC and E.I. DuPont de Nemours and Company, (No. 17-CV-07668).

²⁶⁷ Mark Schkeifstein, *Judge Tosses Second Lawsuit Blaming Denka's Reserve Plant for Health Problems*, NEW ORLEANS ADVOCATE (Feb. 25, 2021, 6:07 PM), https://www.nola.com/news/courts/article_00ab689c-77a9-11eb-81cc-43b7aaae177a.html, archived at <https://perma.cc/2VGB-L38J>.

²⁶⁸ Press Release, EARTHJUSTICE, Louisiana Has Failed to Protect Black Communities from Toxic Air (Jan. 20, 2022), <https://earthjustice.org/news/press/2022/louisiana-has-failed-to-protect-black-communities-from-toxic-air>, archived at <https://perma.cc/3BFD-H93L>.

²⁶⁹ Interview with Lydia Gerard, *supra* note 163.

²⁷⁰ *Id.*

cess to the EPA is significant for members as they continue their fight for environmental justice.²⁷¹

VII. A PROMISING PRECEDENT ESTABLISHED BY *FRIENDS OF BUCKINGHAM V. STATE AIR POLLUTION CONTROL Bd.*

Although Concerned Citizens is limited to advocacy against ongoing pollution in their community, other environmental justice communities may consider preemptive strategies against future environmental harms. Environmental justice advocates may find success in leveraging state permitting laws to prevent the construction or operation of an environmentally harmful facility. Kimberly Terrell, Director of Community Engagement and Research Scientist at Tulane University’s Environmental Law Clinic, noted that lawyers do not utilize permitting processes enough to mobilize a legal strategy on behalf of a community.²⁷² “Lawyers should be thinking more creatively on how to use scientists instead of just as experts for litigation.”²⁷³ Although Concerned Citizens did not advance a strategy related to permits for the Denka facility, other environmental justice communities may want to consider doing so. *Friends of Buckingham v. State Air Poll. Control Bd.*²⁷⁴ is a groundbreaking case that demonstrates how state-level permitting law can help accomplish environmental justice goals. The case specifically examines the relationship between Virginia environmental law and the requirements of the Clean Air Act. As explained above, the CAA²⁷⁵ is a federal law that regulates air pollution. Under the CAA, the EPA must establish National Ambient Air Quality Standards (“NAAQS”) to regulate hazardous emissions in each state. NAAQS are standards for pollutants that affect human health and public welfare.²⁷⁶ The CAA directs each state to develop a State Implementation Plan (“SIP”) to achieve compliance with the NAAQS. SIPs are highly specific to pollutants in each state and must be approved by the EPA.

In Virginia, the Virginia Department of Environmental Quality (“VDEQ”) is the state agency tasked with enforcing state and federal environmental regulations and developing Virginia’s State Implementation Plan. Within the VDEQ is the Virginia State Air Pollution Control Board (“Board”)—the regulatory body that approves permits for the construction and operation of natural gas facilities in the state in accordance with the VSIP. Under Virginia’s administrative code, the Board is supposed to properly evaluate the suitability of the site for a facility by considering various

²⁷¹ Interview with Mary Hampton, *supra* note 70.

²⁷² Interview with Kimberly Terrell, *supra* note 158.

²⁷³ *Id.*

²⁷⁴ *Friends of Buckingham v. State Air Pollution Control Bd.*, 947 F.3d 68, 87 (4th Cir. 2020).

²⁷⁵ 42 U.S.C. §7401 et seq. (1970).

²⁷⁶ *NAAQS Table*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/criteria-air-pollutants/naqs-table> archived, at <https://perma.cc/9MHP-Y992>.

factors and circumstances including environmental justice.²⁷⁷ This provision under Virginia law is significant given that the suitability of a site must also be based on environmental justice factors instead of solely on NAAQS.

VDEQ and the Board's environmental justice obligations were affirmed in *Friends of Buckingham v. State Air Poll. Control Bd.*²⁷⁸ This case challenged the proposed location of a compressor station for the Atlantic Coast Pipeline in Union Hill, an African American community located in Buckingham County, Virginia. The community was founded by formerly enslaved people immediately after the Civil War.²⁷⁹ Many Union Hill residents have enslaved ancestors who are buried in the unmarked graves of a Confederate graveyard in the area.²⁸⁰ That graveyard was sold to Dominion Power and was the proposed site for the Atlantic Coast Pipeline Compressor Station.²⁸¹ The Atlantic Coast Pipeline was a proposed 600-mile underground pipe that would transport natural gas across three states including Virginia.

Compressor stations are industrial facilities designed to assist in the transportation of natural gas. Although the machinery for the proposed Union Hill compressor station would be indoors, the Union Hill community was concerned about environmental harms from the site. A group of Buckingham residents formed an organization called Friends of Buckingham and sought to educate locals on harms linked to the compressor station. A pamphlet circulated by the organization states:

This compression for the 42" pipeline is approximately 1400psi, that's about 40 times the pressure in an automobile tire. To achieve this—four giant turbines run 24/7 to produce horsepower equivalent to two hundred NASCAR race cars. Imagine 291-2,005 (depending on the toxin measured) diesel school buses running 24/7. That's the toxic result of this incessant, industrial activity.²⁸²

The NAACP sent a letter to the VDEQ emphasizing environmental justice concerns applicable to the compressor station:

Less than 17% of the residents of Union Hill within 1.1 miles of the proposed compressor station are white. In addition, the household Study revealed that 59% of residents have a pre-existing medical condition, including asthma, allergies, multiple sclerosis,

²⁷⁷ 9 VA. ADMIN. CODE § 9VAC5-170-170 (1998).

²⁷⁸ *Friends of Buckingham*, 947 F.3d 68, 87 (4th Cir. 2020).

²⁷⁹ Letter from Rev. Kevin Chandler, President, VSC NAACP, and Karen Campblin, VSC NAACP Chair, to David Paylor, Dir., Va. Dept't of Env't Quality (Jan. 4, 2019) (on file with author).

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *Compressor Station Proposed for Buckingham County*, FRIENDS OF BUCKINGHAM, <https://www.friendsofbuckinghamva.org/friends/learning-center/compressor/>, archived at <https://perma.cc/PK9V-SJ6R>.

lupus, CD, chronic bronchitis and pneumonia, congestive heart disease, heart disease and diabetes.²⁸³

Despite public opposition and environmental justice concerns, the Board approved the permit for the Union Hill Compressor Station on January 8, 2019.²⁸⁴ Friends of Buckingham and Chesapeake Bay Foundation, Inc. appealed the permit's approval to the Fourth Circuit Court of Appeals on February 8, 2019. Section 7 of the Natural Gas Act, 15 U.S.C. Section 717 (f), regulates interstate natural gas pipelines and accordingly grants the Court of Appeals "original and exclusive jurisdiction over any civil action for the review of an order or action of a . . . State Administrative agency acting pursuant to federal law to issue . . . any permit . . . required under Federal law."²⁸⁵ Based on the Natural Gas Act, the Fourth Circuit had jurisdiction to review the Board's permit approval because the agency implemented CAA standards during the approval process.

Friends of Buckingham and Chesapeake Bay Foundation, Inc.'s appeal focused on two main arguments: (1) the Board's failure to consider zero-emission alternatives for certain technologies at the compressor station and (2) the Board's failure to consider the disproportionate health impacts the compressor station would have on the predominantly African American community of Union Hill.²⁸⁶ In a remarkable ruling, the Fourth Circuit agreed with these arguments and vacated and remanded the permit to the Board.

In terms of the Board's obligation to consider environmental justice, the Fourth Circuit agreed that the environmental justice review was insufficient.²⁸⁷ The Court noted,

Even if all pollutants within the county remain below state and national air quality standards, the Board failed to grapple with the likelihood that those living closest to the Compressor Station—an overwhelmingly minority population according to the Friends of Buckingham Survey—will be affected more than those living in other parts of the same county. The Board rejected the idea of disproportionate impact on the basis that air quality standards were met. But environmental justice is not merely a box to be checked, and the Board's failure to consider the disproportionate impact on

²⁸³ Letter, *supra* note 280.

²⁸⁴ Gregory S. Schneider, *Virginia Regulators Approve Permit for Pipeline Compressor Station*, WASH. POST (Jan. 8, 2019), https://www.washingtonpost.com/local/virginia-politics/virginia-regulators-approve-permit-for-pipeline-compressor-station/2019/01/08/dd6e3ab0-12d5-11e9-803c-4ef28312c8b9_story.html, archived at <https://perma.cc/9TGL-QA3X>.

²⁸⁵ *Friends of Buckingham v. State Air Pollution Control Bd.*, 947 F.3d 68, 80 (4th Cir. 2020).

²⁸⁶ *Id.* at 71–72.

²⁸⁷ *Id.* at 87.

those closest to the Compressor Station resulted in a flawed analysis.²⁸⁸

Because the Board's environmental justice review was cursory, it did not fulfill its statutory obligation, thus invalidating the approval process for the compressor station permit.²⁸⁹ Roughly six months after the Fourth Circuit's opinion, Dominion Energy and Duke Energy canceled the Atlantic Coast Pipeline.²⁹⁰

From an environmental justice perspective, the Fourth Circuit's invalidation of the compressor station permit is noteworthy. The appellate court confirmed that under Virginia law, a permitting approval process cannot just rely on air quality standards. The process must also take into account the environmental justice impacts. Although the utility of challenging a permit for environmental justice purposes depends on a state's permitting law, Virginia law provides an example of how states can incorporate environmental justice into their legislation. Even if an environmental justice community facing the threat of pollution is located in a state with a permitting law less robust than Virginia's, communities have the right to participate in the permitting process and can flag their concerns through citizen science.²⁹¹

VIII. CONCLUSION

When it comes to advocating on behalf of an environmental justice community, the law is not always favorable. Any potential legal theory based on federal regulation, civil rights law, or tort law may provide some form of accountability against the perpetrator of environmental pollution and relevant government decision-makers through injunctive relief or damages. But these types of lawsuits cannot completely address the roots and effects of environmental racism. Given these limitations, it is crucial for attorneys to employ a community centered approach to identify complementary strategies to these lawsuits. Concerned Citizens of St. John serves as an example of how attorneys can support thoughtful and empowered community organizing. Although Concerned Citizens is still fighting for the protection of their community, they have been able to advocate on behalf of themselves in a way that reflects their priorities through the community health survey and emergency power petition. And supporting the resilience and drive of a community is the most critical step in the long fight for environmental justice.

²⁸⁸ *Id.* at 91–92.

²⁸⁹ *See id.* at 93.

²⁹⁰ Press Release, Dominion Energy, Dominion Energy and Duke Energy Cancel the Atlantic Coast Pipeline (Jul. 5, 2020), <https://news.dominionenergy.com/2020-07-05-Dominion-Energy-and-Duke-Energy-Cancel-the-Atlantic-Coast-Pipeline>, archived at <https://perma.cc/4U4U-2RYF>.

²⁹¹ For example, 42 U.S.C. Section 7661a(b)(6), implemented in relevant regulations at 40 C.F.R. Section 70.7(h) requires public participation for Clean Air Act permits which are granted by the state.

