

To: Governor McDonnell, Governor McCrory, North Carolina and Virginia Legislators, Environmental, Ecumenical, and Civil Rights Leaders, and the News Media

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Subject: In Defense of Chatham, Virginia, and of all Targeted Communities: The Limits of Waste Management vs. Aspirations for Democracy and Justice

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In Defense of Chatham, Virginia, and of all Targeted Communities: The Limits of Waste Management vs. Aspirations for Democracy and Justice

The Limits of Waste Management

At the center of industrial civilization, materially speaking, is economic development. Economic development depends on the availability of natural resources, which, along with race and religion, tend to be what wars are fought over.

The problem is that at the center of the industrial economic system is a rationale for selective human, community, and regional sacrifice -- a nihilistic rationale that cannot be reconciled with aspirations for democracy and justice.

Waste is intrinsic to the economic industrial model. The intention to target and to sacrifice a community or region by establishing toxic, hazardous, and nuclear waste facilities, which continue to contaminate the environment, is why targeted communities prepare a case for self-defense. These targeted communities know the waste is persistent (lasts in perpetuity), environmentally mobile (moves around in the environment), bioaccumulative (builds up in the body, often reaching a threshold sufficient to cause disease and possibly death), and cannot be contained over time.

Because of the foreknowledge that the waste cannot be contained, maximum "safe" exposure levels (purely speculative) are authorized. It is believed that beyond authorized limits, exposure to the waste can cause cancer and other diseases, and eventually death. But the limits (thresholds) may vary from person to person, and therefore authorizing

unknown “safe” exposure levels is arbitrary and capricious, having a purely experimental status with possibly exterminating implications.

For example, concerning chlorinated hydrocarbons such as polychlorinated biphenyls (PCBs), research focusing on the number and location of chlorine atoms within the molecular structure may indicate which kinds of PCBs can be metabolized and excreted and which will be bioaccumulative beyond “safe” levels. But determining “safe” exposure levels is scientifically speculative, hypothetical, and is often politically and economically based.

Communities are targeted for toxic, hazardous, and nuclear waste disposal facilities, even though it is known that waste management industries of past and present do not have the science and the technology to contain the waste long enough to render it harmless.

Waste Management Containment Theory Fails in Practice. Regulatory Frameworks Authorize Contamination of Targeted Communities

Communities such as Chatham, Virginia, targeted for uranium mining, milling, and radioactive waste disposal are referred to as “sacrifice zones” or “sacrifice areas.” Risk benefit analyses used to justify the siting of these facilities is a misnomer because the fundamental fact is that the issue is not risks; the issue is that destructive and irreversible contamination inevitabilities will last in perpetuity.

Concerning containment theory, the Environmental Protection Agency (EPA) began basing its waste management regulatory framework on the theory of “zero percent discharge,” meaning nothing entering or leaving a containment structure once it was capped. But the “state-of-the-art” landfill has been tested and has failed over and over again. So EPA abandoned its “zero percent discharge” theory.

The Nuclear Regulatory Commission (NRC) based its argument for “best practices,” not on “zero percent discharge,” but on the baseless prediction that the inevitable “radiological exposure to workers and environment would be as low as reasonably achievable” (ALARA). But the ALARA standard is based (1) on the purely speculative position that maximum safe contaminant limits can be known, (2) on an assurance to try to contain the contamination within the hypothetical (hence scientifically uncertain) safe exposure limits, and (3) on the regulatory authorization to extend contamination boundaries as needed to be in compliance. The ALARA standard is therefore arbitrary, capricious, and unacceptable.

Aspirations for Democracy and Justice

Although waste management legislation may authorize the preemption of the rights of targeted communities to have the final say concerning the siting of toxic, hazardous, and nuclear waste facilities, destructive to persons and properties, and may authorize the use of force as needed (as in North Carolina's *1981 Waste Management Act*), targeted communities opposed to these facilities will argue that unalienable rights cannot be preempted, that people cannot be alienated (separated) from unalienable rights because people are born with them, live with them, die with them, and when necessary, die defending them.

It seems that the only way the government can facilitate the siting of such facilities is to take the community politically from within by creating the perception that the community wills the facilities -- in other words, wills its own destruction -- or take the community from without by state police and National Guard force backed by state waste management legislation as was the case in Warren County, North Carolina. Nearly ten-thousand truckloads of PCB-contaminated soil were forcibly buried in a landfill there in 1982, and in response citizens launched the environmental justice movement with six-weeks of protests, 550 arrests, and a rationale for resistance that would become a model for targeted communities everywhere.

The Equal Protection & Involuntary Servitude Argument: Preemption of Rights of Targeted Communities and Regions is Unconstitutional

Targeted communities and regions opposing waste facilities will argue for the same rights as communities and regions not targeted. They will argue that although toxic, hazardous, and nuclear waste is pervasive and crosses geographical boundaries, there is, nevertheless, a disproportionate impact, a lack of equal protection concerning the targeted community and region. Targeted communities are therefore discriminated against, forced to live within dense pockets of exterminating materials, and reduced to a condition of involuntary servitude to a waste management environment destructive to persons and properties.

The targeted communities would argue further that legislation preemptive of unalienable rights is not worth the paper the legislation is written on because the preemptions are unconstitutional, null and void.

Sovereignty: The Final Say Concerning the Siting of Toxic, Hazardous, and Nuclear Waste Facilities

A review of U.S. Supreme Court cases may find that the court has yet to decide who has the final say concerning the siting of these waste facilities: governments, corporations, or the people of the targeted communities and regions, people who have invested their lives, their hearts and minds, and their resources -- people who have pursued life, liberty, and happiness, in not just any community, but in a community and region whose families, traditions, and way of life often go back generations, perhaps hundreds of years.

Preemption of Property Rights and Sovereignty Rights of Targeted Communities and Regions

In Thomas Jefferson's day, property rights were understood to be unalienable, bestowed by the Creator, but later, in modern society, property rights were understood to come from government, having the right to revoke property rights for the public interest.

The purpose of waste management legislation governing the siting of toxic, hazardous, and nuclear waste facilities is to legally revoke all property and sovereignty rights of the targeted community as needed to site the waste facilities and to legally authorize force as needed to achieve the siting objective.

The psychological purpose of such legislation is to isolate the targeted community, to create the public perception that unlike communities not targeted, the targeted community has no dignity (no intrinsic worth, no value for its own sake) because dignity is grounded in freedom of choice the legislation legally preempts.

Without freedom and dignity, and without rights, the community has no legal protection of its environment, natural resources, and public health. The community must therefore appeal to the principles of the *U.S. Constitution* (since something can be legal but not constitutional) and the *Declaration of Independence* to back resistance. The alternative is to submit to sacrifice or to do whatever it takes for self-defense.

Transformation of People into Property

Legally stripped of their freedom and dignity by waste management legislation, the people of the targeted community and region are regarded as property, for it can no longer be said of them, legally speaking, that they have the intrinsic worth that other people in communities not targeted have. Therefore, unlike people in communities not targeted, the people in the targeted communities can be used as property, as a means to an end that has devastating, irreversible, and exterminating inevitabilities -- namely, the pervasive toxic, hazardous, and radioactive contamination of their lives and lands.

Waste Management legislation (1) preempts the targeted community's freedom and dignity concerning the siting of toxic, hazardous, and nuclear waste facilities. (2) It preempts the people's right to equal protection of their persons and properties (14th Amendment of the *U.S. Constitution*). It legally transforms the people of the targeted community into the status of property, the status of chattel slaves, because they are reduced to a condition of involuntary servitude to environmental conditions having nihilistic implications that enslave them and generations to come. Therefore the legislation violates the 13th Amendment of the *U. S. Constitution* as well.

In short, the purpose of waste management legislation concerning the siting of toxic, hazardous, and nuclear waste facilities is to legally but unconstitutionally preempt the 14th and 13th amendment rights of targeted communities and to create the perception that unlike communities not targeted, the people of the targeted community are not people but property and can therefore be legally experimented with and legally sacrificed.

Environmental Injustice Occurs Regardless of Demographic Considerations

Environmental injustice is intrinsic to economic development that generates toxic, hazardous, and nuclear waste. **The siting of waste management facilities has a discriminatory impact on the targeted communities and regions, regardless of the racial demographics. The targeted community and region are the locations that are directly contaminated, causing a disproportionate impact (lack of equal protection) and therefore a preemption of the protections that communities not targeted enjoy. Also preempted, as stated above, is the 13th Amendment right of the targeted communities and regions not to be reduced to a condition of involuntary servitude to toxic, hazardous, and nuclear environmental conditions detrimental to their very survival.**

Purpose of EPA and NRC Regulations

The purpose of EPA and NRC regulations is to authorize, legalize, and facilitate inevitable pervasive and continuous contamination of persons and properties of targeted communities and regions and to protect the companies (and the government) from liability for effecting the transformation of communities and regions into wastelands.

Toxic, hazardous, and nuclear waste facilities inevitably fail to contain the waste and contribute to the pervasive contamination of the globe. The waste is persistent, bioaccumulative, potentially deadly, uncontainable, environmentally mobile, and, therefore, a threat to backyards far beyond the borders of the targeted community. Therefore, “not in my backyard” must mean “not in anyone’s backyard.” Or, as the saying goes, “not here, not there, not anywhere.”

Failure of Waste Management Theory and Practice Substantiated in EPA and NRC Regulatory Frameworks

The failure of waste management theory and practice to contain toxic, hazardous, and nuclear waste is an inescapable historical reality, an empirical fact, and is substantiated in the language of EPA and NRC regulatory frameworks. Therefore, it is necessary to consider the significance of the *Declaration of Independence* and the *Constitution of the United States* for all targeted communities in light of toxic, hazardous, and nuclear transformations.

From its beginning, the prevailing industrial model for toxic, hazardous, and nuclear economic development has been based on a delusional science of “waste management” and a delusional democracy at the expense of people and their communities. Although the “long train of abuses” of sacrificed communities and regions continues, these abuses must end. To quote Thomas Jefferson:

But when a long train of abuses and usurpations pursuing invariably the same object, evinces a design to reduce [mankind] under absolute despotism, it is their right, it is their duty, to throw off such Government, and to provide new guards for their future security, (*Declaration of Independence*, 1776)

The Challenge

We have reached a crisis. The need to resolve the toxic, hazardous, and nuclear waste management problem in a way that is environmentally and democratically sustainable is the challenge confronting the EPA and the NRC; it is the challenge confronting our civilization, and specifically, the challenge confronting those who intend to mine uranium in Virginia and those who will prevent the mining. It is the critical challenge of our time, and a sustainable future hangs on how we meet this challenge.

The crisis is due partly to the fact that today's "best practices" science and technology cannot back regulations needed to protect the environment, natural resources, and public health in a toxic, hazardous, and nuclear-driven industrial civilization.

There seem to be three alternatives to attempt to resolve the crisis:

(1) The first alternative is the use of force to site toxic, hazardous, and nuclear waste facilities. But the use of force is nihilistic in intention and effect and would end even the pretense of democracy, causing social and political chaos that would be heard across the nation and around the world.

(2) The second alternative is a consent-based approach. However, to expect a grassroots-driven opposition to consent to the siting of these facilities would be to expect the community to will its own destruction, to expect it to contradict its instinct for self-preservation. So a consent-based approach to siting these facilities would lack credibility, require deceptive political tactics from within and without the targeted community, and would have the same result as mentioned above -- social and political chaos that would be heard across the nation and around the world.

(3) The third alternative is an environmental justice-pollution prevention approach. This approach is based on unfettered and independent scientific research and development and would hopefully lead to a model for economic development that is democratically and environmentally sustainable. As targeted communities continue to stand their ground, they will help effect the transition to a sustainable model. A delusional science and a delusional democracy cannot resolve the crisis; they perpetuate it.

It follows from the above analysis that the prevailing model for economic development is informed by a nihilistic rationale for selective human, community, and regional sacrifice. Therefore, the attempt to mine and mill uranium and to store radioactive waste in Chatham,

Virginia, near the Banister and Dan Rivers and at the headwaters of the Roanoke River Basin, the water supply for millions of North Carolinians and Virginians, or in other places, would be interpreted as an arbitrary and capricious act of radioactive aggression and would be met with resistance having the most serious local, state, national, and international implications.

Commercial Mega-Solid Waste Landfills

Establishing commercial mega-solid waste landfills, some consisting of hundreds or more than one thousand acres, would provide the incentive to solicit waste from other states and possibly from overseas as well and would inevitably contain various categories of wastes (solid, toxic, hazardous, and possibly low-level radioactive waste) detrimental to the environment and public health of targeted communities and regions. The attempt to site commercial mega-solid waste landfills would therefore cause serious resistance as well.

Conclusion

A delusional science and a delusional democracy, once exposed, cannot sustain an environmentally and democratically unsustainable model for economic development, a model nihilistic in intention and in effect.

Change will come from grassroots communities and regions targeted for sacrifice. It will come from their instinct for self-preservation, from their aspirations for democracy and justice, and from their absolute and unyielding resistance to a rationale for selective human, community, and regional sacrifice under the guise of sound science and sound technology.