



Hazardous to Your Health:

How the Civil Justice System Holds Corporate Polluters Accountable

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Introduction

In 1989, the Exxon Valdez struck a reef off the Alaskan coast and spilled more than 10 million gallons of oil over 1,000 miles of remote coastline. Exxon's immediate response to what would become one of the most devastating environmental disasters ever to occur was to embark on a campaign to avoid responsibility that would last decades. Now, 20 years later, another tragic oil spill threatens long-term devastation on the environment. If history is any judge, BP will likely fight efforts to hold it accountable for years, if not decades.

Corporations have consistently responded to the environmental disasters they have caused by passing the buck for as long as possible. As time passes they know initial outrage will dim, media scrutiny will move on, political administrations will change, and the regulators will go through the revolving door to join the industry they once watched.

It was in response to disasters like the Gulf of Mexico oil spill that the environmental movement was originally born in the 1960s after a raft of ecological calamities garnered national attention. From the oil-scarred beaches of Santa Barbara in the West to Lake Erie's burning rivers in the East, these ecological disasters woke the consciousness of a generation to the corporate exploitation and abuse of the environment.

The first attempts of the movement to rein in corporate abuse came in the form of several landmark laws. Between 1963 and 1972, Congress enacted, among others, the Clean Water Act, the National Environmental Policy Act, and the Clean Air Act to impose limits on corporate polluters that had polluted with abandon.¹ Though a multitude of laws have been enacted since, these acts remain the pillars of environmental law to this day.

However, laws are only as good as their enforcement. The state and federal agencies charged with implementing new regulations were incapable of dealing with what was a wild west of corporate pollution. Underfunded, undermanned, and overpowered by the influential industries they sought to monitor, regulators were time and again forced to settle for meager fines or overlook corporate misconduct entirely.

It was into this breach that trial attorneys stepped. In 1965, attorneys took on one of the country's largest energy companies, Consolidated Edison, to stop construction of a power generator at Storm King Mountain in New York. Con Ed planned to cut away part of the mountain and turn the nearby Black Rock Forest into a reservoir. The case forced Con Ed to abandon the project, and the mountain still stands today. Storm King became a landmark case, establishing that federal agencies had to take environmental and aesthetic concerns into consideration when granting permits to corporations. It also signaled that the civil justice system would become a critical vehicle for justice in environmental issues.

Oil Spills

In 1989, the oil tanker Exxon Valdez hit a reef and spilled more than 10 million gallons of oil over a thousand miles of Alaskan coastline. The Valdez's captain, a known alcoholic, had been drinking and left the bridge as the ship was maneuvering through a treacherous shipping lane. The third mate left in charge of the bridge was operating on little sleep, a factor directly related to Exxon's decision to cut crew levels to the bone and mislead the National Transportation Safety Board (NTSB) about the amount of overtime they were working. The tanker was also operating without its radar system, which would have prevented the accident had it not been broken for over a year. Exxon had known the ship was operating without radar, but did not repair it to save costs.²

The devastating effects of the spill were magnified by the failure of the oil giant that had for years promised it was prepared for any spill. That company, the leading oil company in the area, was not Exxon, but BP, through its ownership of the Alyeska consortium. Now, two decades later, the same company is following the same pattern: promising no spill could occur, and proving woefully unprepared when one does.⁴

The effect on Alaska's wildlife and the local economy was devastating. More than 2,000 sea otters, 300 seals, and 250,000 seabirds died within days. Two decades later, researchers continued to find significant levels of oil, with some shoreline ecosystems expected to take 30 years or more to recover.⁵

Trial attorneys worked to hold Exxon accountable in court for 20 years, as the corporation did everything it could to avoid liability. Exxon was ordered to pay \$2.5 billion in punitive damages, but eventually succeeded in having that reduced to just over \$500 million. Even so, Exxon was forced to pay over \$3 billion in clean-up costs and civil and criminal settlements.

In the 1990s, more than 134 million gallons of oil was spilled in the United States and nearly a billion gallons was spilled worldwide. The BP catastrophe in the Gulf of Mexico is just the most prominent of the thousands of oil spills that blot American land and water every year. Regulators have proven unable to cope with the deluge. Trial attorneys are the only force capable of taking on corporate pollution on such a scale.⁶

3,586 Number of oil spills in U.S. water in 2008.

645 million Gallons of oil spilled from 1970 to 2000.

3.3 billion Gallons of oil spilled into marine waters worldwide from 1970 to 2000.³



Forcing Clean-Up

- In 2004, oil spills from three pipelines operated by Kinder Morgan Energy Partners discharged more than 200,000 gallons of gasoline into California's Suisun Marsh, one of the largest salt-water wetlands in the United States. The spill killed a large number of birds and mammals and tarred the shoreline with petroleum. When held accountable in court, Kinder Morgan agreed to pay over \$5 million in damages and fund the restoration of the affected area. In addition, the company agreed to implement stricter oil spill prevention policies, and improve the maintenance and inspection of its pipelines.⁷

Dumping Toxic Chemicals

In the 1940s and 50s, Hooker Chemical & Plastic Corp. dumped more than 20,000 tons of hazardous chemical waste in the disused canal that was the centerpiece of the Love Canal neighborhood of Niagara Falls, New York. In 1953, Hooker covered the dump with dirt and sold the property to the local school board for \$1.

Over the next 20 years, the chemicals leached out of the drums and into the surrounding soil. In the 1970s, EPA officials reported seeing obvious evidence of serious contamination. Eckardt C. Beck, an EPA administrator at the time, reported,

“Corroding waste-disposal drums could be seen breaking up through the grounds of backyards. Trees and gardens were turning black and dying. One entire swimming pool had been popped up from its foundation, afloat now on a small sea of chemicals. Puddles of noxious substances were pointed out to me by the residents. Some of these puddles were in their yards, some were in their basements, others yet were on the school grounds. Everywhere the air had a faint, choking smell. Children returned from play with burns on their hands and faces. And then there were the birth defects...”

The contamination leached into basements and school buildings and evaporated into the air the residents breathed. Children suffered burns on their hands and faces just from playing. More than half of all children born between 1974 and 1978 suffered birth defects. Blood tests indicated high white blood cell counts and chromosome damage, precursors to leukemia, were more than 30 times higher in Love Canal residents than in the general population.¹⁸

Attorneys representing the citizens of Love Canal forced the Hooker corporation to pay restitution to those whose lives they had endangered. Eventually, nearly 1,000 families were evacuated from the area, and the national outrage sparked by the case paved the way for the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), otherwise known as Superfund, which empowers federal agencies to hold polluters accountable for their damages and compel cleanup.¹⁹

U.S. corporations produce more than 25 billion pounds of hazardous waste every year. Nearly half a billion pounds of this waste are Persistent Bioaccumulative Toxic chemicals (PBTs). PBTs are toxins, such as lead, mercury and dioxin, that are not broken down in the environment for long periods of time and can accumulate in body tissue.²⁰

25 billion	Pounds of hazardous waste produced by American corporations every year.
498 million	Pounds of PBTs, toxins that remain in the environment for a long period of time and can accumulate in body tissue, released each year.
109	Superfund sites the EPA believes are currently exposing humans to dangerous contamination. ¹⁷

Many of these most dangerous types of chemicals are managed in Superfund sites. While most of the more than 1,500 hazardous waste sites across the country managed by federal agencies pose no immediate danger, more than 100 sites do expose humans to dangerous levels of contamination. Moreover, the EPA only tracks the most serious instances of contamination, and admits the full number of dangerous sites, and their effects on humans, is unknown.²¹



Keeping Communities Safe

- In the 1950s, a compressor station operated by utility company Pacific Gas & Electric began leaking chromium 6 into the surrounding groundwater in Hinkley, California. For more than two decades the residents were slowly poisoned. The company was held accountable in 1993, and eventually paid victims \$333 million. They also agreed to stop using chromium and clean up the affected area. The case prompted other utilities to take similar actions and inspired the film *Erin Brockovich*.²²
- In 2006, Occidental Chemical Corporation settled a court case that alleged the company had released hazardous materials from its chemical manufacturing plant into the nearby Niagara River. The pollution contaminated the river and nearby Lake Ontario and significantly affected the fish population. Occidental agreed to restore the site and paid \$12 million for the damages caused.²³

Dirty Air

The working class community of Globeville near Denver, Colorado, had stood in the shadow of a large metal processing smelter for a century before any of its residents became aware of the dangers it posed. The smelter was built in 1889, but it was not until the 1980s that residents discovered that the smelter's owners, Asarco, had known all along the plant was spewing lead, cadmium and arsenic into the neighborhood air. Asarco defended itself, saying the toxic emissions had not broken regulations at the time.

The contamination spread to the soil, resulting in dangerous levels of lead, cadmium and arsenic. Residents of Globville and the surrounding neighborhoods were exposed to high risks of cancer, lead poisoning and other diseases. Health authorities warned residents not to eat too much home-grown produce because of the danger of contracting cancer, and children were told to wash after playing outside because of the cadmium-contaminated soil.²⁴

The state of Colorado began pursuing Asarco under the Superfund law, which requires corporations to clean up the pollution they cause. But the proposed settlement only covered 50 of the nearly 500 affected homes. The other homes and the neighborhood at large were left with little hope. Finally Globeville's residents turned to their last resort: trial attorneys. The attorneys who took up their case pursued Asarco vigilantly. When funds ran out, the attorneys took out second mortgages on their homes, cashed in retirement plans and ran up charges on credit cards, eventually going into debt and financing more than \$275,000 out of their own pockets. Asarco finally agreed to a settlement after protracted litigation and paid the residents \$35 million and replaced the soil and landscaping for everyone in the town. Eventually, litigation would force Asarco to pay \$1.8 billion to clean up more than 80 contaminated sites across 19 states.²⁶

According to the American Lung Association, more than 50 million U.S. residents live with unhealthy air. Though the U.S. Congress has enacted various iterations of a Clean Air Act, it has taken the courts to ensure enforcement. In 2007, the U.S. Supreme Court ruled that the Environmental Protection Agency had not done enough to enforce the act.²⁷ It has been left to private citizens and attorneys, such as those who risked their livelihood for Globeville, to hold corporations accountable for the pollution they have produced and the damage they have caused.

30% Percentage of the 3.9 billion pounds of industrial toxic chemicals which are released into the air. The rest are disposed of in landfills or injected underground.

175 million Americans suffering pollution levels often too dangerous to breathe.

9.6% Percentage of Americans that live in areas with year-round unhealthy particle pollution.

1 in 28,000 Average U.S. risk of contracting cancer from breathing airborne toxins.²⁵



Watching Over the Air We Breathe

- In 1963, W.R. Grace Co. bought the Zonolite vermiculite mine in Libby, Montana. Right from the start, the company knew that the facility was exposing the miners and their families to asbestos. For years, the company actively hid the dangers while hundreds were sickened or died from asbestosis, mesothelioma and lung cancer. Eventually, at least 1,200 people would be found to suffer some form of asbestos-related health problem. Hundreds of civil actions on behalf of the sickened residents forced W.R. Grace to close the mine in 1990.²⁸
- In the 1990s, residents in Western states decried the increasing levels of pollution across both urban communities and wilderness areas. One attorney, a solo practitioner from Wyoming, took on three of the largest utility companies in the West, accusing them of polluting lakes, rivers and air. After three years of litigation, the companies finally agreed to install \$130 million in pollution control equipment. The settlement reduced the amount of pollutants emitted by 20,000 tons per year.²⁹
- In 2005, Marathon-Ashland Petroleum LLC agreed to pay more than \$1 million to nearby homeowners to settle claims its oil refinery in Michigan was discharging high levels of soot in the air. Marathon-Ashland initially blamed the neighboring homeowners, saying it was their fault for moving to a location with obvious soot contamination in the air.³⁰
- In 2007, Massachusetts and several other states brought the EPA to court over its refusal to regulate auto emissions. The states argued that the greenhouse gas emissions the EPA refused to regulate were a significant contributor to climate change and thus to the ecological damage and human health repercussions the states were facing. The U.S. Supreme Court stated that “harms associated with climate change are serious and well recognized” and held that damage to the Massachusetts coast was a real effect of climate change. As such, it became the first case to state that global climate change is a threat, and prompted federal agencies to re-evaluate their stance. In light of the decision, the EPA admitted that greenhouse gases “in the atmosphere may reasonably be anticipated both to endanger public health and to endanger public welfare.”³¹

Contaminated Water

In 1964, officials in Tennessee ordered Velsicol Chemical Company, a pesticide manufacturer, to stop pouring chemical byproducts into city sewers. Instead, Velsicol began burying its toxic chemicals in 55-gallon drums on farmland near Toone, Tennessee. The company buried over 300,000 drums between 1964 and 1973, many of which were broken by bulldozers making room for more. Velsicol took no preventative measures to keep the chemicals from leaking other than piling three feet of dirt atop the drums. The chemicals seeped into the water supply, and by 1977 residents in the area were developing serious health problems. The EPA found carbon tetrachloride, chloroform, toluene and xylenes in the surrounding soil, and concluded the local groundwater supply was in danger.⁸

Attorneys representing nearby residents took the company to court in 1978. Only after the court case began did the company finally place a clay cap over the site. The attorneys fought Velsicol for 10 years, finally obtaining approximately \$14 million for the townsfolk. More importantly, the Velsicol verdict became a landmark case, as it represented the first time a court found that chemical dumping was inherently dangerous.¹⁰

As many as 49 million Americans have water supplies that violate provisions of the Safe Drinking Water Act regarding acceptable levels of arsenic, radioactive substances, and coliform bacteria. In fact, the number of affected Americans may be even higher because urban utilities, particularly in poor areas, routinely understate or even falsify contamination levels. Federal agencies are reluctant to pursue such violations, sanctioning only three percent of violators nationwide. The extent of the damage to Americans' health is unknown because so many of the pollutants are associated with cancer and other health problems that take years to develop.¹¹

Reports indicate more than 23,000 corporations have at one point violated the Clean Water Act, many times by illegally dumping toxic chemicals into rivers, streams and groundwater sources. According to Representative James L. Oberstar, chairman of the House Transportation and Infrastructure Committee, which has jurisdiction over many water-quality issues, "The E.P.A. and states have completely dropped the ball. Without oversight and enforcement, companies will use our lakes and rivers as dumping grounds — and that's exactly what is apparently going on."¹²

21%	Percentage of shallow wells where nitrate concentrations exceed safe drinking standards.
1 in 10	Number of Americans exposed to drinking water with dangerous carcinogens.
500,000	Violations of the Clean Water Act by corporations and others.
3%	Violations of the Clean Water Act pursued by federal regulators. ⁹

While regulators have had little success in curbing corporate contamination of the nation's water, attorneys have fared better. Since the landmark Velsicol decision, many more companies have been stopped from polluting, or made to pay for the effects of pollution, by the civil justice system.



Protecting the Nation's Water Supply

- In 1982, trial attorneys representing residents of Woburn, Massachusetts, filed a class action lawsuit against W.R. Grace and Beatrice Foods Co. for contaminating city wells with toxic chemicals in the 1960s and 1970s. Many children in the community suffered from leukemia, and at least five people died. W.R. Grace settled the case and paid more than \$70 million for remediation. The case was later the basis for the movie *A Civil Action*.¹³
- In 2004, DuPont paid \$300 million to settle a lawsuit brought by 60,000 residents of Ohio and West Virginia whose drinking water was contaminated by a chemical used to make Teflon. Traces of the chemical, PFOA, have been found in 92 percent of Americans.¹⁴
- In 2008, several large oil companies paid over \$400 million and agreed to cover the bulk of cleanup costs after citizens held them accountable for leaking methyl tertiary butyl ether (MTBE)—a gasoline additive that can cause dangerous contamination of drinking water even at low levels—into groundwater supplies in one of the largest water pollution cases on record. Internal documents revealed the companies knew of the dangers all along but publicly declared the chemical posed no significant risk. Significant levels of contamination have now been found in at least 28 states.¹⁵
- In 2008, attorneys representing residents of the small Alaskan fishing village of Kivalina successfully took on one of the world's biggest zinc producers, Teck Cominco. Teck Cominco's Red Dog Mine, the largest zinc mine in the world, dumped waste into the same river the villagers used for drinking water and fishing. The mining corporation made nearly one billion dollars a year in profit while violating the Clean Water Act more than 800 times. Kivalina's attorneys forced the corporation to build a pipeline to carry waste away from the village's water supply, and provide villagers with filtration units.¹⁶

Poisoning the Poor

Camden, New Jersey is one of the poorest cities in the country. Once heavily industrialized, by the 1970s it had become overpopulated and overpolluted. In 2001, it was discovered that Camden's water supply had been contaminated for more than 20 years with chromium and other chemicals linked to cancer.

In 2000, the EPA granted draft permits to the St. Lawrence Cement Co. to build a plant that would process nearly a million tons of industrial waste. In the same neighborhood there were already 15 contaminated sites, and four more under investigation for possible release of hazardous substances. Camden's citizens organized and complained first to state authorities and then to the EPA. Neither took action.³²

For the residents of Camden, exploited and poisoned by corporations and rebuffed by regulators, it was attorneys who finally made a stand. Attorneys acting on behalf of Camden's population took the case to court. They were initially successful, but lost on appeal, and the industrial plant went ahead. Soon after the plant hit full operation, residents began complaining of asthma and excessive noise from the constant trucks. Again, citizens organized and, represented by attorneys, this time were successful in court.³³

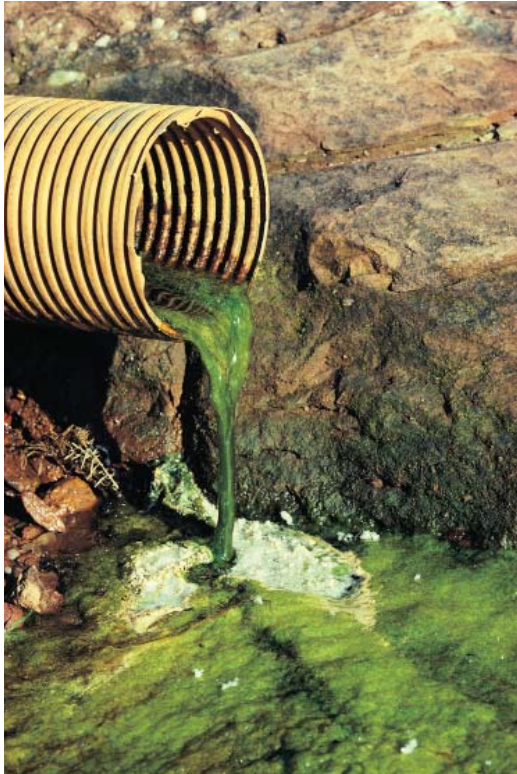
For decades, waste disposal companies, chemical companies, and others handling hazardous materials targeted low-income communities as locations for chemical processing plants, hazardous waste dumps and landfills. The industry looked for communities that had no political influence, lacked the resources to negotiate a good deal and were too poor to turn down a bad one.³⁵

State and federal agencies not only offered little help, but were also often part of the problem, by routinely allowing permits for sites in economically vulnerable communities and fining polluters less in poor areas than in more affluent areas. In 1991, for instance, Bush administration officials asked 65 Indian tribal leaders across the country, representing reservations that formed some of the poorest communities in the country, if they would accept

- 56%** Percentage of the 9 million Americans living in the vicinity of hazardous waste facilities that are people of color.
- 79%** Percentage by which African Americans are more likely to live with industrial pollution suspected of posing the greatest danger to health.
- 50%** Factor by which poverty rates are higher in areas hosting hazardous waste facilities.
- 61%** Percentage of African American children that live in areas that exceed acceptable ozone standards. Only 50% of white children live in such areas.
- 5** Factor by which African American children are more likely to die from asthma than white children.
- 60%** Percentage of African Americans and Latino Americans living in communities with abandoned toxic waste sites.³⁴

increased funding for health care and education in return for allowing the placement of a 450-acre nuclear waste dump.³⁶

Time after time, attorneys have proved to be the only ones willing and able to stand up to both corporations and the regulators who bend over backwards for them. Attorneys working on behalf of low-income communities like Camden and environmental advocacy groups eventually forced federal agencies to take on board the principle of “environmental justice,” establishing that no socioeconomic, racial or ethnic group should bear an unfair share of negative environmental consequences.³⁷



Standing Up for the Poor

- In 1994, residents of Grand Bois, Louisiana, a small community comprised of descendants of Houma Indians, began suffering headaches, dizziness, nausea and diarrhea after breathing toxic fumes from sludge dumped in a nearby disposal site by Exxon Corp. The sludge was not officially categorized as hazardous because the industry had lobbied to obtain an exemption from federal rules for petroleum exploration waste, no matter whether that waste truly was hazardous. The effect of that exemption was that an untold number of sites across the country were filled with potentially hazardous material unbeknownst to nearby residents. In fact, the sludge in Grand Bois contained toluene, benzene, xylene, barium, hydrogen sulfide, arsenic and other hazardous materials. The attorney representing the community obtained compensation from both Exxon and the site’s owner Campbell Wells-U.S. Liquids, and the facility’s buffer zones were increased. In addition, the Louisiana Department of Conservation introduced more stringent rules on waste management.³⁸
- In the 1990s, Duval County, Florida, residents suffered unusual levels of cancers, birth defects and other serious health problems after they were exposed to hazardous chemicals from a 17-acre landfill owned by WMX Technologies, Inc. Attorneys representing 670 injured residents obtained an \$18.5 million settlement against the company.³⁹

Conclusion

It is the nature of many environmental problems that the dangers only become apparent years or decades after contamination is caused. For every sudden catastrophe, like the Exxon Valdez, there are many more Globevilles being unwittingly poisoned for decades at a time, with potential health repercussions not fully understood for years. Carcinogens such as arsenic were once tolerated at levels that scientists now know to be deadly. It is only with the passage of time that we have begun to understand how deadly many of these commonplace pollutants truly are.

Furthermore, the experience of the last few decades has done nothing to persuade us that corporations, despite billions spent on lobbying and PR, care more for the environment than they do for maximizing profits. Corporations routinely fight accountability for years, and spare no expense doing so.

The power and tenacity of such corporations has often proved to be too much of a match for industry watchdogs. When corporations fight accountability over decades and with seemingly bottomless war chests, it is naïve to expect regulators to hold them to account. Government agencies have neither the resources nor the willpower to take on such powerful, wealthy and implacable foes. Thus agencies often ignore the environmental impacts of corporate polluters, or resolve cases through meager settlements and vague promises to clean up. In some cases they are worse than ineffective, having been found to be so close to the industries they monitor that they protect the polluters more than they do the environment.

Trial attorneys have proven to be worthy adversaries of even the most powerful corporations, and have even held the federal agencies themselves accountable when enforcement has been sabotaged by corporate power and influence. Trial attorneys have long been on the front lines of the environmental movement, opposing corporate plans to wipe out forests, cut down mountain tops, and destroy entire ecosystems. When corporate acts have resulted in devastation for ecosystems and communities, the initial outcry of politicians and regulators has often died out as time has gone by. However, the attorneys seeking justice for such acts fight on, sometimes over decades and against the most powerful corporations on the planet.

BP's Gulf of Mexico disaster will undoubtedly result in long-term devastation. Given the history of corporate behavior in the wake of such disasters, it is clear trial attorneys will play a vital role in holding BP accountable, and helping to return the Gulf to the state it once was.

Endnotes

- ¹ Including the *National Environmental Policy Act (NEPA)*, *Clean Air Act (CAA)*, *Clean Water Act (CWA)*, *Endangered Species Act (ESA)*, *Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)*, and *Resource Conservation and Recovery Act (RCRA)*.
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- ¹⁹ Eckardt Beck, *The Love Canal tragedy*, EPA Journal, January, 1979.
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