

La. Suit Could Set New Enviro Justice Litigation Paradigm

By **Michael Leslie, Cynthia Stroman and Alan Dial** (April 25, 2023, 4:10 PM EDT)

On March 21, activists filed *Inclusive Louisiana v. St. James Parish*, an environmental justice lawsuit against their local government, in the U.S. District Court for the Eastern District of Louisiana.

The activists claim that the parish's land use system directed industry into primarily Black communities and away from primarily white communities — resulting in racially disparate adverse health effects from pollution, and the inability of the descendants of slaves to access their ancestors' unmarked graves.

In what might become a template for other environmental justice lawsuits, the complaint chronicles centuries of the parish's racial history, and makes wide-ranging and novel constitutional and statutory claims based on that history.

Although they are sure to be challenged, if the plaintiffs can sustain their novel legal theories and prove their case, the litigation could have significant implications for a wide range of commercial activity and industries operating in environmental justice communities. Compliance with permits and local zoning laws — even over many years — might not provide companies with assurance that their activities will go unchallenged in similar lawsuits.

The plaintiffs challenge the parish's land use policies, practices and customs that they allege allowed for the continued approval of heavy industry in the 4th and 5th districts — whose residents are predominantly Black — without the construction of any new facilities in areas with predominantly white residents in the last 46 years.

They claim the parish ignored years of residents' pleas to stop building heavy industry in overburdened areas — while imposing a moratorium on clean solar farms in majority-white districts in 2019 to allow time to study their economic and environmental impacts.

Moreover, the plaintiffs link the current land use system to historical practices dating back to before the Louisiana Purchase, and continuing through slavery, Reconstruction, Jim Crow and the current day.

The complaint chronicles the history of slavery, the failure of Reconstruction-era programs intended to



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give former slaves plantation land, and the eventual location of former slaves and their descendants on small pieces of property near the parish's plantations, where they continued to labor.

At the same time, the complaint alleges, Louisiana's political system evolved to vest local governments like St. James Parish with authority over land use decisions. The complaint asserts that, beginning in the 1950s, plantation owners began to sell their land to companies to build heavy industrial facilities in close proximity to these small pieces of property owned by the descendants of slaves — now the residents of the 4th and 5th districts — all with the parish's active support.

On the basis of this history, the complaint asserts that the parish's land use system violates various federal and state constitutional provisions and statutes, including:

- The 13th Amendment of the U.S. Constitution;
- The 14th Amendment's equal protection and substantive due process protections, including the right to bodily safety and integrity;
- Title 42 of the U.S. Code, Section 1982, guaranteeing the right to inherit, purchase, lease, sell, hold and convey property;
- Title 43 of the U.S. Code, Section 2000cc(a), allegedly prohibiting construction that destroys or prevents access to the unmarked graves of enslaved people, on the grounds that such construction is a substantial burden on the exercise of religion;
- Title 43 of the U.S. Code, Section 2000cc(b)(2), allegedly establishing that prohibiting heavy industry near predominantly white Catholic churches but allowing such construction near predominantly Black Baptist churches is unlawful discrimination on the basis of religion; and
- Article XII, Section 4 of the Louisiana Constitution, allegedly establishing that construction that destroys or prevents access to the unmarked graves of enslaved people prevents their descendants from preserving and fostering their cultural origins.

The plaintiffs seek various forms of injunctive relief, including:

- Enjoining the local government from siting more industrial facilities in the 4th and 5th districts;
- Appointing an independent monitor to enforce and measure compliance with monitoring and reporting obligations;
- Creating a community board to advise on additional remediation measures; and
- Ordering a study to identify unmarked cemeteries.

The complaint's use of hundreds of years of racial history to support novel constitutional and statutory claims will no doubt be litigated on motions to dismiss and for summary judgment that will present questions of first impression for the Eastern District of Louisiana.

Key Takeaways for Industries

While the complaint names only St. James Parish and related government entities, it has implications for a wide range of commercial activity and industries operating in environmental justice communities.

If granted, the injunctive relief sought in the complaint would affect facilities operating in St. James, but it might also serve as a model for similar lawsuits in other communities — particularly in states where environmental regulators and attorneys general are less active in pursuing environmental justice issues.

In addition, the requested relief contemplates engagement between the parish, affected local residents and unnamed stakeholders — almost certainly including local industry.

At times in the past, well-meaning companies engaged with the communities in which they operated, in part through engagement with elected officials, and supported these communities by funding local government projects. But that paradigm may no longer suffice when the community and its local government are not aligned.

Throughout the complaint, the plaintiffs cite numerous examples of community members pleading unsuccessfully with their local government for relief from negative health effects allegedly caused by nearby facilities. Claiming to have been ignored by the parish, the plaintiffs are now asking the court to order air monitoring, a moratorium on new construction and other remedial measures.

Given the legal and practical complexities of operating in environmental justice communities, companies would do well to identify and assess environmental justice considerations in their operations and business plans — and should consider proactive measures to try to mitigate those considerations before a lawsuit like the St. James Parish complaint brings additional scrutiny to their permits and operations.

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