



# **Cumulative Impacts: Policy Gaps, Communities' Response**



**ENVIRONMENTAL HEALTH AND  
ENVIRONMENTAL JUSTICE IN PENNSYLVANIA:  
*WHERE TO WE GO FROM HERE?***

**TUESDAY SEPTEMBER 30<sup>TH</sup>, 2014  
8:00 AM TO 6:00 PM**



*Presentation by:*  
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# Current Legal & Policy Regime



- **Federal: National Environmental Policy Act (NEPA)**
  - Any major federal action that could significantly affect the environment requires the submission to EPA of an **Environmental Impact Statement (EIS)** to assess the environmental impact of and alternatives to the action.
  - NEPA requires the EIS to consider the project's cumulative impacts, defined as “the impact on the environment which results from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions regardless of what agency...or person undertakes such actions.”
- **Executive Order 12898**
  - Directs federal agencies to identify and address the disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations.
  - Directs each agency to develop a strategy for implementing environmental justice.
- **Title VI of the Civil Rights Act of 1964: requires proof of *intentional* discrimination**

Source: <http://www.epw.senate.gov/nepa69.pdf>

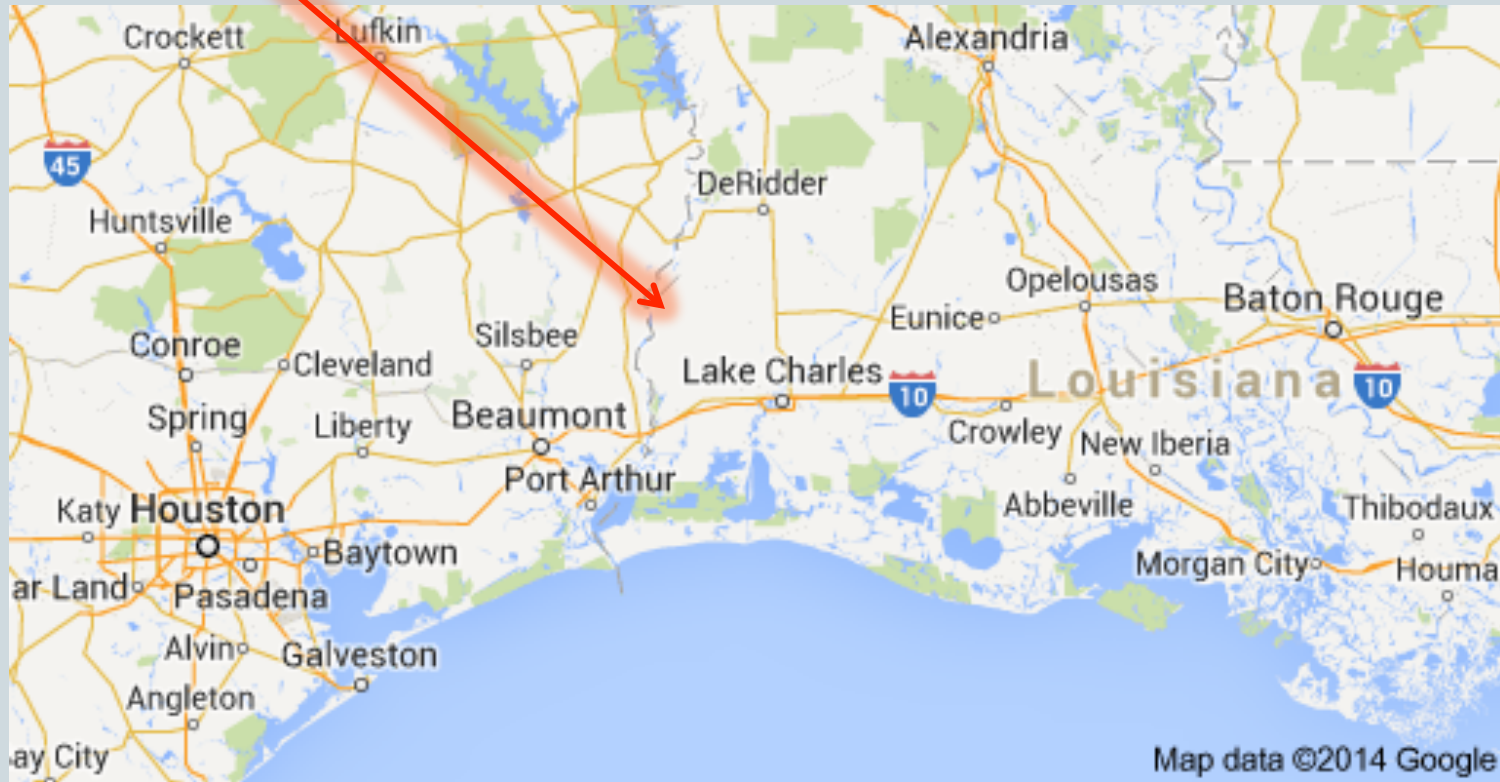
# Current Policy Regime



- **State:**
  - Most states have enacted their own version of the NEPA (“**mini NEPAs**”), through which cumulative impact analyses may be required for permit issuance.
  - Pennsylvania does not have a state-level version of the NEPA; however, the DEP does require an EIS be submitted for certain categories of projects including wetlands projects, municipal waste projects, and storage tank systems.
- **Local:**
  - Zoning ordinances
  - Public and private nuisance law

Source: [http://www.nj.gov/dep/ej/docsejac\\_impacts\\_report200903.pdf](http://www.nj.gov/dep/ej/docsejac_impacts_report200903.pdf)

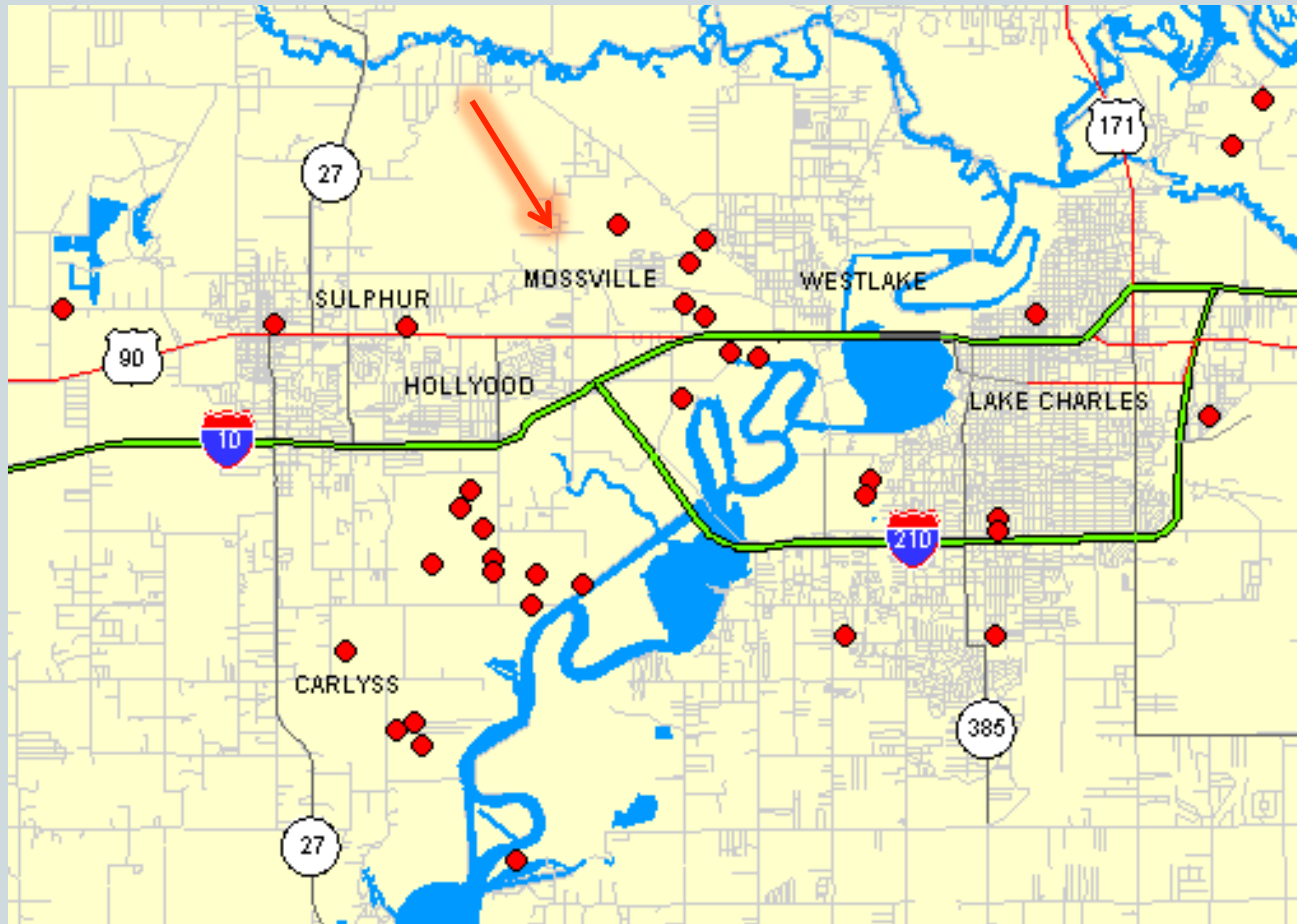
# Case Study: Mossville, Louisiana



Google Maps



# Case Study: Mossville, Louisiana



*Red dots indicate Risk Management Plan Facilities*

# Mossville, Louisiana



- Historic 224 year-old African American Louisiana unincorporated town
- Among the first settlements of free blacks in the South, where Mossville residents have passed down homes and property for generations

Source; Petition to Inter-American Commission for Human Rights

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- Among the first settlements of free blacks in the South and Mossville residents have passed down homes and property for generations

In which . . .

- The State of Louisiana has authorized a total of fourteen industrial facilities facilitated by generous industrial tax incentives and zoning.
- Three facilities are sited within the five square mile town. Eleven are within a half mile radius of Mossville.
- The industry cluster manufactures, processes, stores, and discharges toxic and hazardous substances, and includes petroleum product manufacturers, chemical manufacturers, and plastics manufacturers.

# Cumulative Impacts: Lack of Protection



- The Mossville area has the largest concentration of vinyl production facilities in the U.S. These facilities create dioxin as a byproduct – the “most toxic substance known to science.”
- The State of Louisiana continues approving and issuing environmental permits that allow industrial facilities to generate massive amounts of toxic chemicals close to the Mossville community.
- The State continues to present misleading information about the significance of the dioxin exposure.
- Mossville has experienced inferior and unequal environmental protection from the Agency of Toxic Disease Registry, EPA, and other regulatory agencies.
- Mossville’s fate is determined by the Calcasieu Parish government decisions on zoning and tax incentives. Yet, Mossville is disproportionately burdened by toxic exposure as compared to the rest of Calcasieu Parish.

Source: <http://search.oas.org/en/iachr/default.aspx?k=mossville&s=CIDH>

# Health Impacts on Mossville Residents



- Toxic chemicals present in the Mossville air and water exceed quality standards established by the state of Louisiana.
- Serious problems suffered by Mossville residents are associated with exposure to toxic industrial pollution.
- 91% of the persons surveyed reported at least one health problem known to be related to exposure to the chemicals produced by the local industrial facilities.
- 84% of the Mossville residents surveyed presented nervous system problems; 71% cardiovascular problems (irregular heartbeat, stroke, heart disease, and chest pain); 57% skin problems.
- Toxic exposure also impacts the mental health of Mossville residents.
- Many residents have been displaced due to contaminated drinking water, severe and persistent illness, and encroaching industry.

# Mossville: Human Rights Strategy



- In 2008, members of resident group Mossville Environmental Action Now (MEAN) filed a petition with and won a hearing before the Inter-American Commission on Human Rights (IACHR), arguing that the U.S. government failed to protect the human rights of the residents of Mossville.
- This was the first U.S. environmental case to go before the Commission.
- The case required Mossville to have exhausted all legal remedies unless domestic law does not provide due process.
- Former EPA head Lisa Jackson described the case as follows: “[I]n order to get heard . . . they basically had to make the case that the laws of this country do not provide them an opportunity for redress. And it is true that at this point there are no environmental justice laws; there’s nothing on the books that gives us the ability to do it.”
- IACHR ruled the Mossville petition to be admissible, recognizing possible violations of the American Declaration of the Rights and Duties of Man
  - Article II: *right to equality before the law*
  - Article V: *right to protection or honor, personal reputation, and private and family life*



# Mossville: Human Rights Strategy



- MEAN residents seek the following relief:
  - United States government provide medical services and health monitoring,
  - Relocate residents that are willing to move,
  - Cease issuance of permits for increased pollution or new facilities in the area, and
  - Create a buffer zone between residents and toxic industry.
- Further, MEAN requests that the United States reform its current environmental regulatory system to address cumulative impacts of multiple industries.
- United States government contends that IACHR recommendations would be unenforceable.
- The decision is still pending.

*Source: Pace International Law Review Online Companion (<http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1030&context=pilronline>)*

# Mossville: Shareholder Action



- **Interfaith Center on Corporate Responsibility**
  - 2009: Conducted factfinding trip to Mossville
  - 2010, 2011: Introduced Community Accountability Shareholder Resolutions directed at Conoco Phillips and PPG Industries
  - 2012: Delivered investor letter to EPA asking to reconsider ruling on emissions standards for the PVC industry
- **Results according to ICCR**
  - EPA, industry, and local government are now collaborating to improve Mossville's water quality and infrastructure
  - ConocoPhillips and PPG participating in a water engineering study to explore ways to help mitigate impacts
  - Improved communications with community and increased transparency
  - Review of EPA rulings on standards

Source: Interfaith Center on Corporate Responsibility Website

# Mossville: Relocation?



- Now, South African chemical giant SASOL is planning the largest industrial facility in the state in Mossville's backyard – a gas to liquid plant.
- Louisiana Department of Environmental Quality has projected the plant to emit 10 million cubic tons of greenhouse gases per year, but with no impact on soil or air quality and no significant changes to water supply.
- Sasol proposes buyouts of Mossville residents ancestral homes.
- Retired Lieutenant General Russel Honore: "The parish council want the plant and the parish council want to see the people of Mossville go away. That is the problem we have. It's a problem of fairness and equity." (Sept. 25, 2014)

Source: <http://www.kplctv.com/story/26631502/general-honore-visits-mossville-to-address-sasol-property-buy-out>; <http://www.motherjones.com/environment/2014/03/sasol-mossville-louisiana>

# Case Study: Eastwick, Philadelphia



# Historic Eastwick and Environmental Justice

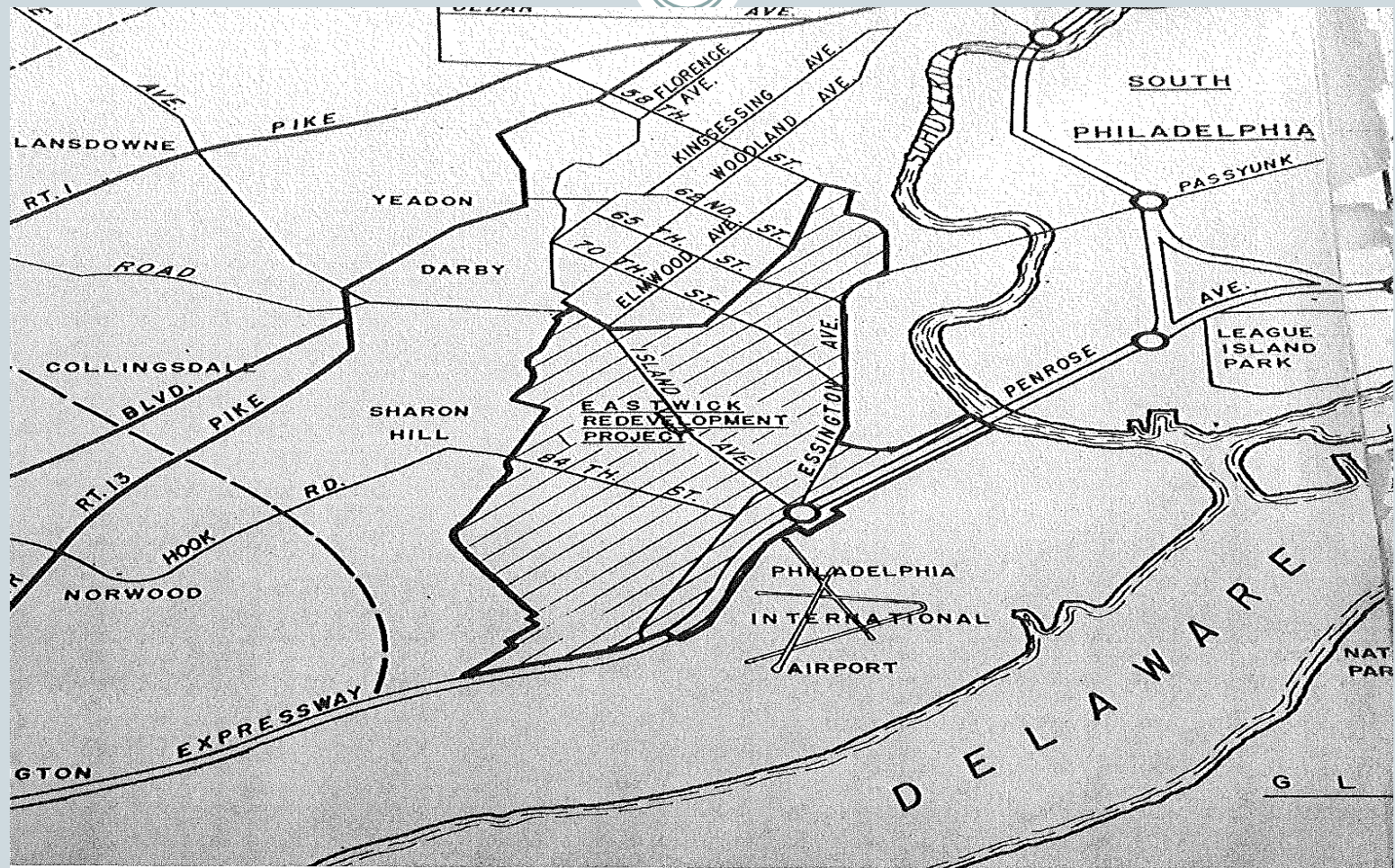


- 1950s Eastwick: predominately African American and immigrant residents, working class and poor, living in a semi rural setting – farm land and marsh land.
- Lacked infrastructure for sewer and water service
- Tidal marshland, located 8 feet below river level, led to consistent flooding
- Site of multiple landfills and burning refuse dumps
- Heavy concentration of industry and commercial traffic
- Adjacent to Philadelphia International Airport

*Sources: Harris Dechant, Phase I Report: Eastwick Redevelopment Project (1955); Institute for Urban Studies, Housing Market Implications of Negative Environmental Factors.*



# 1950s “Blighting” of Eastwick: Urban Renewal





# Building New Eastwick



The Eastwick Urban Renewal Project was the largest urban renewal effort in history.

- Seized 2140 acres within Eastwick, Elmwood, and Clearview neighborhoods
- Displaced 8636 residents without a coordinated relocation plan
- Filled in acres of marshland with Schuylkill River dredge spoil
- Neighborhood resettled using illegal racial quotas

# Building New Eastwick Atop Environmental Problems



## Persistent Urban Renewal Problems

- 175-200 sinking homes built on insufficient pilings & fill and overall subsidence

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- Air quality burdens due to 1) concentration of light and heavy industry, including the largest oil refinery on the East Coast, 2) Philadelphia International Airport, and 3) I-95 Corridor, among others.

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- Widespread short dumping



# Building New Eastwick Atop Persistent Environmental Problems



## Recent Challenges

- Remediation of Superfund site at Cobbs Creek
- Proposed floodplain area development
- Shuttered school properties and commercial centers
- Ongoing disinvestment
- Historic disenfranchisement from planning and development

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# Building New Eastwick Atop Persistent Environmental Problems



## Results

- Uncertain health impacts, stress, and trauma
- Protracted efforts to enact change – e.g. Superfund designation, sinking homes, flooding issues
- Disenfranchisement from political process



# Eastwick's Last Straw: Catalyst for Change, Organizing, and Advocacy



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## Problem:

- 1957 Urban Renewal Plan
- 1961 Purchase Option, renewed over fifty years
- Proposal for 722 units of middle income rental and 1034 parking spaces,
  - Partially in and wholly surrounded by 100 year flood zone,
  - Adjacent to Heinz National Wildlife Refuge,
  - Adjacent to residents experiencing chronic stormwater management problems, and
  - On soil of unknown environmental quality.
- Negotiated through settlement agreement with no public input.
- No longer a federal nexus (urban renewal project, but HUD monies spent decades ago).
- No confidence that state law provides check and balance.

# Eastwick's Last Straw: Catalyst for Change, Organizing, and Advocacy



Solution: Organizing and advocacy effort to halt rezoning of parcel.  
Development has been halted for almost two and a half years.



# Eastwick's Last Straw: Catalyst for Change, Organizing, and Advocacy



Solution: Organizing and advocacy effort to halt rezoning of parcel and stop development for almost two and a half years.

*Positive Collateral consequences:*

- Attention brought to flooding issues for the first time since Hurricane Floyd in 1999.
- Historic meeting with the Philadelphia Redevelopment Authority and Planning Commission.
- Preliminary discussions for the first planning process for Eastwick since 1957.
- Renewed engagement with EPA in anticipation of the release of the proposed plan and record of decision for the Superfund sites.
- Engagement with Army Corp, FEMA, and Phila. Water Department to coordinate flood mitigation with Superfund remediation.
- Community based strategy to address short dumping.
- Renewed attention to sinking homes, with plan in the works.



# Where do we go now?



- Locally based solutions
- International Human Rights Law
- Federal:
  - Since 2004, the EPA has issued Environmental Justice Collaborative Problem Solving (CPS) grants, which fund “projects that address local environmental and public health issues within an affected community.” 30 grants up to \$100,000 each were granted in 2004. Recent grantees include a river cleanup project in Massachusetts and an initiative to repurpose dump sites into green spaces in Detroit.
- California:
  - CALEPA is in the late stages of developing a cumulative impacts screening tool that identifies communities that are vulnerable to and overburdened by pollution. This tool incorporates health data, pollution emissions and concentrations data, socio-economic data, and land use information.
- New Jersey:
  - NJ EJ Advisory Council (NJEJAC) to the N J Department of Environmental Protection (NJDEP), Ironbound Community Corporation, Environmental Research Foundation, and Center for Urban Environment, as well as the NJ Clean Air Council, have created recommendations on how to incorporate cumulative impacts analysis into state permitting as protections for EJ communities.
- Pennsylvania:
  - The recent *Robinson Township* plurality interpreting the Environmental Rights Amendment to the Pennsylvania constitution indicated that all levels of government have a responsibility to protect the public trust and a healthy environment on behalf of “all the people,” equitably and for the benefit of future generations.

# Where do we go now?



- Working within the Implementation Advisory Committee (IAC), PILCOP attorney Jerome Balter and others proposed an environmental justice standard based on “disparate public health evaluations.”
- Jerome Balter spoke to the first Congressional Environmental Justice Symposium on May 25, 1999, on the issue of cumulative impacts. He said:
  - *“We have offered an alternative. The alternative is simple. What is the health of the community now? We can found out what their health is now. How does their health compare to other parts of the State, other parts of the county. If their health is far worse than the other parts then they should not have to take an additional burden on their health.”*