



CleanLaw 56: Hannah Perls Speaks with Naeema Muhammad and Alexis Andaman About North Carolina Hog Farm Pollution Impacts on EJ Communities and Legal Tools to Challenge Them – April 6, 2021

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Robin Just: Welcome to Clean Law from the Environmental & Energy Law Program at Harvard Law School. In this episode, EELP Fellow Hannah Perls is speaking with Naeema Muhammad and Alexis Andaman. Naeema is a lifelong activist and the organizing co-director of the North Carolina Environmental Justice Network, where she has worked for the past two decades, leading statewide campaigns and supporting grassroots efforts for environmental and social justice.

Robin: Alexis Andaman is a staff attorney with the Sustainable Food and Farming Program with Earth Justice. This is the first episode in a two-part series in which we will look at some of the legal tools advocates are using to challenge the disparate impacts of pollution in environmental justice communities. In both episodes, we'll be focusing on Eastern North Carolina, where communities are challenging pervasive air and water pollution from industrial hog operations. We hope you enjoy this podcast.

Hannah Perls: In September 2014, Earth Justice and the Center for Civil Rights at the University of North Carolina School of Law filed a complaint under Title VI of the Civil Rights Act on behalf of the Environmental Justice Network, the Rural Empowerment Association for Community Help or REACH, and the Waterkeeper Alliance. In this complaint, they filed it against the North Carolina Department of Environment and Natural Resources or DENR, after DENR issued a general permit allowing over 2000 industrial swine facilities in North Carolina to operate with, 'grossly inadequate and outdated systems for controlling the animal waste that's coming from these facilities.'

Hannah: So, before we really jump into the Title VI process and the complaint that y'all worked on, Naeema, I was wondering if you could first set the stage for us a little bit. So this general permit allowed the continued use of something called a lagoon-and-sprayfield system for these 2000 plus facilities. This is a waste management system that was otherwise banned by the North Carolina General Assembly in 2007 because of the harms to surrounding communities. So what exactly is a lagoon-and-sprayfield system and how does its use impact these communities that you work with and represent as part of the Environmental Justice Network?



Naeema Muhammad: So a lagoon-and-sprayfield system, I always tell people, we are not talking about The Blue Lagoon that Brooke Shields was hanging out in. We are talking about a lagoon that's nothing but where they dug a hole in the ground and then put an underground piping system in that runs from the lagoon into the hog houses and any waste that the animals produce falls through the floor. They have slats in the floor and as a result, there are openings in the floor and all the waste falls through those openings and it's go into the pipe and then it's piped out into the lagoon. The lagoons are open-air lagoons, meaning they don't have any kind of covering to them so they're just sitting out there, open in the environment.

Naeema: The lagoons have what they call a 250 feet floorboards space free where they supposed to allow the waste to come up to that level. Once it reached that point where the 250 feet free void space should be available, they shouldn't be putting any more waste in that lagoon. Once it reached that level, they use industrialized irrigators to spray the waste out of the lagoons out onto crops or in the communities. The waste is then irrigating out and it's just spraying out on the crops.

Naeema: On a windy day, it's even more of a problem because the wind will carry that waste like a mist and then it gets on the people's homes and cars and it will get on your bodies if you're out there. When this is happening, there's a noxious odor that make people sick. People have reported to us of being nauseated. Actually some of them actually throw up, not being able to open their doors, their windows, not being able to hang clothes on the line and they don't come outside because when the odor is there, in the voice of the community, you really don't want to be outside because the odor is so bad. So that's the lagoon-and-sprayfield system.

Naeema: It's an outdated system. We always say nothing is cheaper than being able to dig a hole in the ground and pour your waste in it. They would not allow citizens to set up their waste systems in that manner. They have rules that they have to follow, and if they don't follow those rules, they can literally come in and shut people's homes down, but they will allow an industry to pump 19 million tons of animal waste into these lagoons on a annual basis, and then irrigate it out onto the fields around a community making people sick.

Naeema: We've done health studies to look at the health impacts of living near these industrialized animals. We found elevated blood pressures, upper respiratory problems, high rates of asthma in children, being on more asthma medication, missing more time out of school if they live within a two and a half mile radius versus children live living five miles out. So these are some of the things that happens with this waste system that they use.



- Hannah: Got you. I mean, you touched on a whole bunch of issues. There's a couple more that have been coming up more recently with events like Hurricanes Michael and Florence, the risk of overtopping and spillage that happens when these lagoons are sort of not managed in the way that you described with that 250 foot marker. So there's this risk of surface and groundwater contamination. I was wondering if you could just talk a bit about that, given that this is really happening in a part of North Carolina where upwards of 85% of the households rely on well water. Many of these lagoons were built before the 1990s before there were standards requiring that these lagoons be lined with plastic and compacted clay. So is the groundwater and surface water contamination issue, is that something that you've seen communities dealing with as well?
- Naeema: Yes, definitely. So first of all, all of these animals are in the floodplains of North Carolina, which is in the Eastern part of the state. In Eastern North Carolina, we're in the floodplains. In 1999, we had Hurricane Florence, which broke a 500-year floodplain. It flushed all those animals out of those hog houses and all of the lagoons toppled over and the waste was out in the flood waters and it was millions of pigs. You can see it if you zoom... If you Google Hurricane Flora 1999, you will be able to see pictures of the dead pigs just laying out right outside of the hog houses in the waters so all that waste spilled out as well.
- Naeema: Then in 2016, we had Hurricane Matthew. 2017, we had Hurricane Michael. 2019, we had Hurricane Florence. In each of those hurricanes, the chickens and pigs were toppled out into the areas right outside of the hog houses from the high winds and heavy rain. Of course, because those lagoons have high levels of hydrogen sulfide and other chemicals in it, these things are spilled into the waterways and these are waters where it's people are navigating through this water to try to get to safety.
- Naeema: I think the other thing I'll say about that is, the majority of these communities have very poor infrastructures so people did not have a lot of help trying to get out the way they were trying to navigate the best they could to get out of the way of the flood water and thus exposing themselves to all the contaminants that was in those waterways that was toppling out of all these bad environmental sitings in our communities because the pigs is one thing, but remember we have the chickens and turkeys, we have coal ash. We have a waste treatment plant that spilled over when Hurricane Florence took place, had 600,000 gallons of human waste to spill into the waters along with the coal ash, along with these chickens and pigs and turkeys and along with GenX, which is another contaminant produced by DuPont. That's been contaminating the waterways in Southeastern North Carolina in particular. So you have all these things there and it's just making people sick.



Naeema: I know I had been wondering after all this time, I said, "Okay, so the immediate effects we know about, but what are the long term effects? What happens when all the water has gone away, everything is dried out?" No cleanup took place to get rid of the contaminants that spilled over. So this stuff is drying up in the soil, which means that when people ride through or drive through, or dig up in their yard, or the children go out to playing, and they are playing in the dirt, then they're stirring up these chemicals. So that's further exposing people. So these are the kinds of things that people have to deal with and that they are faced with as a result of all of these things sitting in the floodplain.

Hannah: Wow. You've been talking about the impacts and how they impact people in general, but of course the crux of a Title VI complaint is, who's being impacted in a disproportionate way or in a disparate way? Before we sort of really dig into that disparate impact and which communities are experiencing the brunt of these problems, I was wondering Alexis, if you could help us give a quick primer for our listeners on Title VI and specifically who can be subject to a Title VI complaint? Are we talking about Title VI of the Civil Rights Act as a statute versus agency regulations? What are the nuances there? And if you find that someone has violated Title VI, what are the consequences of that finding?

Alexis Andaman: Sure. Under Title VI of the Civil Rights Act of 1964, programs and activities that receive federal money are prohibited from discriminating on the basis of race, color, or national origin. So in essence, Title VI establishes a basic system of accountability. If a program or activity receives federal money, you can't use that money to discriminate.

Alexis: Title VI connects to health and the environment because many state agencies receive money from EPA and Title VI prevents those agencies from accepting that money and also authorizing pollution that has an unjustified unequal impact. As Naeema has already made clear, I think there is no question that communities of color are disproportionately exposed to pollution in North Carolina and elsewhere. That disproportionate exposure is absolutely unacceptable.

Naeema: If I can add to that, I will just state that Eastern North Carolina is the poorest part of the state, and it's predominantly African-American, Native American and Latinx communities. We have more than 9 million pigs in North Carolina. The majority of those 9 million pigs are in Eastern North Carolina, thus, we called it environmental racism. We say that this was intentionally done because they perceive these areas to have the least amount of economic power or political power to fight off these industries.

Naeema: We know this because when the pork industry first started coming into North Carolina, it tried to go into this community called Pinehurst, North Carolina, which was a white golfing community. They went up in arms and fought the industry off.



They was like, "We are not going to be smelling this animal waste when we trying to golf. As a result of that, the industry turned around and came to Eastern North Carolina. So we know that it was because of what they perceived they could get away with.

Hannah: So, I think for a lot of folks, I mean, certainly we have this clear disparate impact on African-American communities, Latinx communities, indigenous communities, like Naeema said. But I think for a lot of folks, when they think of Title VI, they think of Alexander v. Sandoval, the Supreme Court case that says, Title VI only prohibits intentional discrimination. So Alexis, can you sort of spell out how is it that a community group like the North Carolina Environmental Justice Network can bring a Title VI complaint based just on disparate impact, even if there's no proof necessarily that that discrimination was intentional?

Alexis: Well, Alexander v. Sandoval limits private rights of action under Title VI to claims of intentional discrimination, but EPA's regulations also prohibit recipients of federal funds from administering programs and activities so as to cause discriminatory effects. As a result, people complaining about discriminatory effects can't go directly to court, but they can make their complaints to EPA's External Office of Civil Rights.

Hannah: Got you.

Naeema: Also, under EPA, they state that the discrimination, whether it has intentional or unintentional intent, which stating that it could be unintentional was the thing that could really help people.

Alexis: I was just going to agree with you that it's absolutely true. That EPA's regulations are looking at discriminatory effects, regardless of whether those effects are the result of intentional discrimination or not.

Hannah: Let's say someone brings a Title VI complaint, and that complaint is successful. What is the consequence for that recipient of EPA funding? So in this case, for DENR, what would be the consequence if EPA finds that they did violate Title VI? What could EPA do?

Naeema: If they find that they violated it, then they can pull back their federal funding. They could lose their federal funding.

Hannah: Alexis, I know, at least with Earth Justice, they've looked at Title VI broadly nationwide. How effective have Title VI complaints been? Particularly when you all brought this complaint in 2014, what were your expectations in terms of what you would get out of this process?



Alexis: Well, if the primary goal of filing a complaint is to stop an action with discriminatory effect, there is no question that Title VI complaints are not as effective or as successful as they really should be. There are certainly examples of smaller victories, including more inclusive processes and attempts at better pollution monitoring that folks have achieved through Title VI complaints. But the bottom line is, EPA absolutely should be doing a much better job of upholding its obligations under the Civil Rights Act.

Alexis: In this situation, we decided to move forward under Title VI in part, because many important environmental laws, including the Clean Air Act and the Clean Water Act exempt, or have been interpreted by courts and agencies to exempt industrial agriculture, even though industrial agriculture is a major source of air and water pollution and a major contributor to health problems among workers and surrounding communities. In this instance in North Carolina, we were concerned about the concentration of industrial hog operations and the inadequacy of the existing state water permit. That's really difficult to attack under the Clean Water Act, especially because many of the operations at issue weren't and still aren't permitted under the Clean Water Act in the first place. Also, what we saw in North Carolina was, as Naeema notes, a problem of environmental racism, and we saw value in acknowledging that fact and proceeding under a law that prohibits racial discrimination instead of just targeting the symptoms of that discrimination by using environmental laws.

Hannah: Got it. I also want to highlight, I mean, obviously you did an incredible amount of work simply in bringing this complaint in 2014, but Naeema, you and the North Carolina Environmental Justice Network and the communities and the groups that you represent along with REACH and Waterkeeper, I mean, there is an incredible amount of work that happened even before considering the complaint itself. So can you talk a bit about sort of the administrative processes and the consultations and the work that went in to try and combat this permit renewal before you decided, "You know what? We got to pursue this Title VI complaint," in the end.

Naeema: First of all, one, and this was one of the basis that we stated when we actually found is, that the DENR at the time, North Carolina Environment Justice Network hold this annual summits each year. In our annual summit, we bring together community, academicians, students and government. It's a time when we sit down and talk about what's going on in the communities in North Carolina and what the effects of some of these actions are and asking government officials to listen. If they have anything that they can advise communities on a way to proceed to try and address these, then they do that.

Naeema: Well, DENR had been sending a representative to the summit each year leading up to the actual renewal of their general permit in 2013. Each time at the summit, they were hearing from communities that were living with this industrial



agriculture and hearing the concerns from the community. They were also present for research presentations that were being done by students and academicians that was showing health effects on living with all this environmental hazards.

Naeema: So, in 2013, the Waste Management Manager from DENR attended the summit. She heard from communities, their concerns about living with these animals. Then she announced that the permits was coming up for renewal in March of 2013. No, that had to be 2012 when she attended the summit, because it was in October. Then she said, "Well, the general permits are coming up for renewal in 2013." So the communities specifically asked, "What are you all going to do to put better protection in place for communities so that once the permits are renewed, the industry can't continue business as usual, and also instituting cleaning technology, which does exist."

Naeema: Under a Smithfield (Foods) agreement in the year 2000, they entered an agreement with the state of North Carolina to get some better technology for handling the waste systems instead of the lagoon-and-sprayfield systems. Smithfield paid a researcher from North Carolina State and gave him \$17.2 million to identify new technology. The researcher was named Mike Williams. He found five new technologies, presented that to the state. Then Smithfield told the state that it was not economically feasible for them to get this technology on the ground. The state didn't do anything about it. They let them get away with that.

Naeema: So, leading up to the renewal of the general permit was like, well, one way to address it is to institute one of those cleaner technology, holds Smithfield feet to the fire. So in March of 2013, the general permit was renewed without any further protections being put in place, without addressing any other concerns that communities have been expressing over and over and over. So they just renewed the permit.

Naeema: At that point, the Waterkeepers, REACH and NCEJN, we were already coalescing together so we said, "Okay, we need to respond to this." So in responding we said, "Okay, what actions can we take?" That's when we decided to file a Title VI complaint.

Naeema: We did declarations with community members. We collected over 100 declarations from community members. We had a DVD that was a documentary with community members telling the story of how they were being affected. We had research results inside the packets, and we had all of this and we presented that as a part of evidence in our complaint. It was those things that really helped and went a long way in telling the story of what was going on in North Carolina with these pigs and why the general permit was not going far enough to protect communities.



Hannah: Part of the research that y'all did was, you conducted your own disproportionate impact analysis. That was one of the issues that you brought up in the Title VI complaint that DENR had not conducted this analysis for the potential of disproportionate health and environmental impacts on the basis of race and national origin. I just wanted to pull out some of the stats that y'all found, because they're pretty extraordinary.

Hannah: So, just this finding that of course communities of color, they have a statistically significant greater number of these swine facilities. For example, within that three mile radius, you talked about communities of color one and a half times more likely than non-Hispanic whites to have these facilities in their neighborhoods. But also that the more people of color that there are, the worse the impacts get. So for each 10% increase in the combined populations of African-Americans, Latinx folks and native Americans, the amount of hog waste within that three mile radius was found to increase anywhere from 47,000 to 165,000 pounds. So there's this linear relationship between race and ethnicity and the total waste produced, or the density of hogs in these communities. This was based on a study that that you did.

Hannah: So, you filed this complaint and you raised this issue that they didn't require, by they I mean DENR, didn't require robust waste management technologies, even though those technologies exist there wasn't sufficient oversight and control. They didn't conduct a disproportionate health and environmental impact assessment on the basis of race.

Hannah: But you also then filed a second complaint. This was in July of 2016 after starting and then withdrawing from an alternative dispute resolution process. This was based on separate regulations under EPA. I was wondering if you could talk just a bit about what the second complaint dealt with?

Naeema: The second complaint we filed as a complaint of intimidation by the pork industry on those of us that were attending the alternative dispute resolution process. That's just nothing but like a mediation process, but it was supposed to be a confidential process. The only people that should have known the date, time and location of that process should have been DENR and the complainants, which was NCEJN, REACH and the Waterkeepers, and our attorneys.

Naeema: When we showed up for the first day of mediation, when I pulled up in the parking lot, there was a car sitting out there, and there was two white men sitting in the car. They was watching me real hard as I parked and got out the car and walked up to the building. So I looked at them, I was like, "What are you looking at?" I went on inside. So when I got inside, I told the mediator and my comrades inside that the pork industry was in the parking lot.



Naeema: The mediator went outside. When he came back in, he told us that that was in fact, the North Carolina Pork Council representative sitting in that car. That they had not come in because they were waiting for three other people, one from Washington, DC, and two out of Charlotte, they were coming from the National Pork Producers. So my question was, "How did they know about this process and where to come and what time to come?" If we didn't tell them and EPA didn't tell them, then that only left DENR as the one that could have revealed the information." As it turned out, that's in fact who it was.

Naeema: We had already informed them, prior to this day that we began the mediation, we had informed the National Pork Producers, DENR, EPA, and all of the claimants that the National Pork Producers had sent a letter to Lillian Dawkins, who was the head of the Office of Civil Rights at the EPA, in the Washington DC. They sent a letter to her saying that they had been informed that the Title VI case was going to mediation and they wanted to know why they weren't informed and that this letter to EPA was to serve as a notice that they intend to intervene. Lillian Dawkins sent the letter out to everybody, all parties involved.

Naeema: When we got the letter, Marian Lado, who was our attorney at that time, who also worked at Earth Justice where Alexis is, sent an email to each of us with the letter attached. In her email, she was explaining that she was sending us this letter because she needs to know what we want to do. So when we looked at letter, I responded to her immediately and I said, "Hell no, they can't come in because they have no place at this table." I said, "Because this is a mediation between DENR and NCEJN Waterkeepers and REACH, because of the regulatory agency's behavior and not because of the industry's behavior. The industry is not the regulator, so they have no place at this table. If they come in, if they are allowed to intervene, the NCEJN is walking. We're not going to talk with them. We just going to leave the process altogether."

Naeema: So, we spent the first hour and a half of that day trying to get rid of them because they were refusing to leave. When the other three parties got there, all five of them came inside and wanted to come into the room, the conference room where we were. We refused to let them in, but they were insistent that they were going to come in and DENR was trying to help them get in.

Naeema: When then finally Elizabeth went out and told... Elizabeth was one of the attorneys from the Civil Rights Law Center who was hosting the mediation that day, and she told them they had no place in there and that they need to get out of their building. She was not as nice as I stated about it. So of course at that point, they left, but were totally pissed off about it. The way it came out is, that they then turned around and sent a letter to the board of governors of the UNC school system, informing them that those lawyers at the Civil Rights Law Center needs to be prevented from doing litigation work. The board went along with it



and held a hearing and the public was able to participate, for what reason, I don't know, because they didn't listen to anything that the public had to say and they wound up terminating Elizabeth and Mark Dawson who, Mark was the managing attorney for the Civil Rights Law Center. So they wound up being terminated and all because this guy Steve Long from the North Carolina Pork Council, who sits on the Board of Governors at UNC School System wrote that letter to them asking them to prevent them from doing the litigation work.

Naeema: So, that was another form of intimidation. Just the fact that they were going to insist on coming into a room where community people were, was another form of intimidation because they already knew that they had been for years intimidating community members to the degree of following them to meetings, beating up workers for trying to become unionized, causing people to lose their jobs. Then people, all of a sudden who have been able to get credit might go and apply for credit somewhere were unable to get it, because they done put them on a list. So people were felt intimidated that they would come in the building and see them in that room. That's why we filed that second complaint.

Hannah: We should mention that Elizabeth Haddix one of the attorneys you mentioned is going to join us for the second episode in this two-part series to talk more about a follow-up complaint that is with you Naeema and the North Carolina Environmental Justice Network. But just sticking on this second complaint and these claims on intimidation and retaliation, Alexis, I think this centers on some little-known regulations that are part of, or can be part of the Title VI process. So what obligations do these regulations impose on DENR as a recipient of federal funds? Do these obligations extend beyond DENR in terms of the behavior of individuals that maybe partner with or work for or are sub employees of the state agency?

Alexis: Well, EPA's regulations prohibit anyone from intimidating or retaliating against anyone who files a Title VI complaint, participates in an investigation or opposes unlawful discrimination. EPA has also made clear that the recipients of federal funds have an affirmative obligation to implement effective Title VI compliance programs. That includes measures to identify, prevent, and resolve interference with the exercise of rights under Title VI. So it's important to note that EPA's prohibition against intimidation and retaliation applies not only to the recipients of federal funds like DENR, but also to applicants for funds and other persons. Nobody is off the hook.

Hannah: Also, this was a complaint that was filed in July of 2016. So again, we're two and a half years from when the first complaint was filed and many, many years since these impacts have started in North Carolina. We forgot to mention these general permits are good for five years. So this 2013 permit by the time you're filing the second complaint has now been in effect for almost three years. Based on what



you say in the first complaint, it's without these enhanced monitoring requirements, without these improved technologies to manage the waste. So as we go forward in this timeline, I just want to sort of highlight for our listeners that these impacts continue to accumulate as this process continues at EPA.

Hannah: Finally in 2017, EPA issued sort of a preliminary summary of its findings. It's in a public letter of concern. This was on January 12th, 2017. They said some pretty extraordinary things in terms of Title VI and what we typically see come out of the External Civil Rights Compliance Office up until this point. They expressed quote unquote, 'deep concern about the possibility that African-Americans, Latinos and native Americans have been subjected to discrimination as the result of DEQ.' At some point, DENR changed their name from DENR to DEQ so you might hear us mix and match in this episode, but, they've been subjected to discrimination as the result of DEQ's operation of the Swine Waste General Permit program. So this isn't just the reissuance of the permit in 2013, but the operation of the program in general. So that was a pretty significant finding. Alexis, I don't know if you could speak to what this letter meant in terms of recognition of the complaints that you and the complainants, so, NCEJN, Waterkeeper and REACH, the complaints that you brought forward, but also in terms of the settlement agreement that you ultimately reached. How did this help or bolster the work that you'd done so far?

Alexis: It was a significant letter. I think we've touched on this a little already, but EPA does not have a good record of complying with the Civil Rights Act. EPA has only issued a formal finding of discrimination once. So it was really meaningful to us to have EPA acknowledge these concerns, acknowledge what Naeema and others have been saying for so long about North Carolina's program, but didn't go as far as we wanted it to. It wasn't a formal finding of discrimination and it didn't give our clients the kind of relief that they needed.

Hannah: When you all reached a settlement agreement in May of 2018, so this was a 13-month settlement process after restarting negotiations, following the situation Naeema described with the Pork Council trying to come in and join this supposedly confidential alternative dispute resolution session, you finally get the settlement agreement in 2018. In this agreement, DEQ commits to new policies to ensure compliance with Title VI. Alexis, you mentioned that previously EPA found that DEQ was actually out of compliance with these other Title VI and Civil Rights Act requirements.

Hannah: In the settlement agreement, there's also a language access program, the development of a new environmental justice tool to assess these types of impacts, but there was also a lot of stuff missing in this agreement in terms of what you were looking for in terms of concrete relief and acknowledgement of the severe health impacts people had experienced up until this point. So what in



this agreement were you excited to see and where did you see there was room for improvement?

Alexis: All right, I'll give one example. We worked hard to make sure that DEQ would agree to monitor pollution so that it could generate its own data showing that industrial hog operations were causing health problems in southeastern North Carolina. There is no shortage of peer reviewed, published literature, making clear that these problems are real, that people are suffering, that the industry is causing harm, but we felt it was important to have DEQ saying that directly and DEQ gathering its own data, showing that that problem exists.

Alexis: In the settlement agreement, DEQ agreed to conduct an air monitoring study in and around Duplin County to try to get a sense of what folks are actually breathing. We were really excited to get that, but when we saw DEQ's air monitoring report, we were ultimately really disappointed. DEQ concluded that there was no significant air quality issue in or around Duplin County and that's a conclusion that just directly absolutely conflicts with community members' own experiences, the weight of the scientific evidence, and even DEQ's own data that it collected as part of this study and elsewhere.

Alexis: The conclusion also overstated the reach of the air monitoring study. It involved 12 months of data collection at only two monitoring sites. Both of those sites failed to capture the areas in which people and industrial swine operations are most densely concentrated. That's a concern that our clients tried hard to raise with DEQ as the study was being designed and carried out and something they ultimately failed to address. So it was a great promise. It was a great idea for DEQ to go out and collect this data. Of course, we understand that they have limitations in terms of their ability to get equipment and carry out a long-term study, but we were really disappointed that they came to this conclusion that just flatly conflicts with everything our clients knew to be true and everything that other well-established scientists had shown about air quality in Eastern North Carolina.

Naeema: She stated it well. Then can you also talk about the water monitoring because that was a part of it as well?

Alexis: Say some stuff about the water monitoring. You might know more than I do, but my understanding of the water monitoring process was again, we got really strong commitments. We were excited again, that DEQ was going to be using some of its own data to give further weight and credence to what other researchers and our own clients had found and knew to be true about water quality in the area. Ultimately, we struggled to get DEQ to carry out its commitments in the way that we hoped they would. I know that there were some problems with communication and transparency and timing, and ultimately these



commitments that we were really excited about just didn't bear fruit in the way we hoped that they would.

Naeema: Correct, and I don't have anything to add to that. I would just be repeating.

Hannah: Naeema, maybe I can ask you, so now we're sort of post-settlement agreement and the monitoring data that Alexis mentioned, this is part of a May, 2020 report that DEQ released and this was a report that was required under the settlement agreement. So this is now seven years after that first general permit had been issued and you're working directly with the communities that are bearing these impacts. How do you explain this process and set expectations in terms of people rightfully are hoping that this is a process where the impacts they are feeling on a daily basis will be addressed in a meaningful way. This is a drawn out administrative process where there's promises made and then often promises that aren't kept. So how do you manage those expectations and then where do you go from here in terms of strategy and organizing?

Naeema: One of the first things we say to people is not to give up hope and we just have to keep fighting and it may be somebody will hear somewhere along the way. But the other part of it is, that a large part of what's keeping this industry able to do what it's doing is our General Assembly. Because if you follow the pork money in North Carolina, it's going to lead you straight to our General Assembly. They are paid off by this pork industry and they will override anything anybody's trying to do in opposition of that industry.

Naeema: They've proven that to us twice, by writing bills that eradicated people's ability and right to appeal to their elected officials for redress in harm being done to them. So we had 500 citizens in Eastern North Carolina to file a class action lawsuit against Smithfield and Murphy Brown. Murphy Brown was the largest hog grower in North Carolina prior to Smithfield coming to town. They just went wholeheartedly in business with Smithfield.

Naeema: Then when the Murphy went to the general assembly, he became a state representative and he went to Raleigh and he wrote up every kind of deal and law that would help the pork industry to be able to do business in the way that they're doing it. Then now for everything that you try to do, you get these legislators that will come out and oppose it and write bills and laws in place that will protect this industry.

Naeema: So, when the class action lawsuit was going forth in federal court in 2016, the 500 people that filed a class action lawsuit was broken up into 26 groups by the federal court. So they were hearing each group separately and after the first five groups had their time in court, the juries that were sitting in place for those hearings awarded like \$75,000 in punitive damages and 5 million compensatory



to each claimant. They clearly sent a message that, "You've been doing this to people for years, you could have done different. You chose not to do different so now it's time for you to pay up."

Naeema: So, the first five cases went and forward with these huge awards. Then the court came back and said, "Well, they can't get that amount because based on a law that's been on a book forever in North Carolina, compensatory damages cannot exceed three times the amount of punitive damages or not more than \$250,000 cumulative damages." So as a result of that, the lawyer for the claimants of course appealed that decision, but Smithfield appealed the awards. So everything went on hold at that point.

Naeema: But prior to them going on hold, the General Assembly who had a state representative to write up a bill, sponsored a bill for it on behalf of the pork industry. It was called House Bill 467, which stated that people could not sue agriculture and forestry industry for harms done to them beyond property value. So that was a insult to the people, first of all, and a great injustice to people.

Naeema: Then that was House Bill 467 in 2016. Then in 2017, the same representative came back and sponsored another bill called Senate Bill 711 and under Senate Bill 711, it states that they cannot sue the industry for anything, it can't be it property rights or anything, and that no lawsuit could be brought against the industry unless it was a new operation that was harming people. Because of the moratorium that was put in place in 1997, it should be no new businesses based on the moratorium and there had not been any new businesses since the moratorium went in place. So that was like just moot.

Naeema: So, our question was, why do they need 711? You got 467, so why do you need 711? Their intent was to shut down those nuisance cases and the reason we know that is, that in that first bill 467, the representative tried to write in separate endorsement of that bill and making an amendment to that bill stating that it should include retroactive actions as well. So if it had been retroactive, if that retroactive amendment had been accepted by the legislators, then the nuisance cases would have been shut down right there at that point.

Naeema: So we knew that their whole reason they brought that bill, those two bills, was to shut down the nuisance cases, but they did not succeed in that because and the people showed up at Raleigh at the legislative hearings and they testified about the effects on them and about why they needed the bill to go forth and get some redress from everything that had been happening. There were some legislators that listened and they called out the legislator that was sponsoring the bill. They called him out right in the hearing and saying, "So from listening to the people, what we see is that you're doing the dirty business of the industry here and we



not getting ready to vote for that. So that retroactive statement will not be accepted into any bill that we endorse." So that's what happened with that.

Naeema: So the whole gist of this is, they can't get anything done because we need a change at the legislative body. We've got to get changes there because they override folk and they cut funding from DEQ if they do anything that they don't like.

Hannah: That's an amazing introduction to the second episode in the series. So we should tell everyone who's going to listen to that episode to first listen to this one, because those two bills are exactly what we're going to focus on. Again with you Naeema and with Elizabeth Haddix.

Hannah: I also wanted to pull out of what you said, sort of extrapolate to the federal level and the environmental justice commitments that the Biden administration has made. They're these very lofty, important goals about taking a whole of government approach to reinvesting in environmental justice communities, whether it's through the Justice40 Initiative or enhanced enforcement, enhanced monitoring.

Hannah: But I think everything that you and Alexis have talked about up until this point highlights a couple of things. One, what the language is at the federal level, whether it's in policy or regulations, does not necessarily translate to the state and local level, particularly where you're living at these intersections of racism, capitalism, agency capture, legislative capture. So, I mean, this is the million dollar question and Naeema, you already answered parts of it, but what actually has to happen in the implementation of the administration's goals, whether it's how money is spent, who controls how that money is spent, who is able to receive those funds, who's able to be at the table when decisions are made regarding those funds? So what is the nitty gritty that needs to happen in order for these lofty commitments and all these federal resources to actually make a meaningful difference in places like Eastern North Carolina?

Naeema: Well, I think I feel that it should be number one, they need, we always say, and seeing is believing. Hearing is one thing seeing is another. They need to get from behind those desks and come take a look at Eastern North Carolina up close and personal. Senator Cory Booker did that. He came down here and spent some time in North Carolina after hearing from people that have dealt with a part of the Title IX complaint.

Naeema: That also, I think if President Biden is really going to bring about change in these EJ communities and change some of the ways that businesses are operating, he's going to have to really put some power over at the EPA, some teeth I'd say, over at EPA so that they can feel empowered to do the kind of rulemaking that they



need to do in order to change some of these conditions that exist. Without them having that power, nothing different is going to happen if they don't change the way things are set up right now at the EPA, because for the last 12 years, all we've been hearing from EPA employees is, they don't feel that they have the power to put in place the kinds of things that need to be done to change some of these existing conditions for people that are suffering and that they feel threatened that if they do the right thing, they're going to probably lose their jobs. So if he don't change the way people feel about doing the right thing or being able to do it, then we're not going to get the changes that we need. He needs to put some teeth to some of those things he talked about.

Alexis: I absolutely agree. I think you're totally right. There are so many activists and attorneys who have thought carefully about how to improve enforcement of Title VI and how EPA and DOJ could do a better job. There are so many ideas out there and as Naeema, I think hinted at, it's crucial that EPA and DOJ start by ensuring that community members have the opportunity to participate at every stage of decision-making, including decisions about how best to strengthen the legal tools that are available and make sure that these programs work in the way they were intended to. EPA and DOJ already have the power to begin enforcing Title VI. Even the existing imperfect legal tools would be a lot more powerful if state agencies believed that there was a real risk of losing their federal funding if they don't stop discrimination.

Alexis: Because Naeema brought up the nuisance suit and the fourth circuit decision, I just want to flag Hannah to the extent that your audience consists of people who like reading court opinions and I point people toward Judge Wilkinson's concurrence in the McKiver v. Murphy-Brown decision that came out last November. Judge Wilkinson said among other great things, "At the end of all this wreckage lies an uncomfortable truth. These nuisance conditions were unlikely to have persisted for long or even to have arisen at all had the neighbors of Kinlaw Farms," the operation at issue in that case, "been wealthier or more politically powerful."

Alexis: I think that's the point that we were trying to make with the Title VI action. That is what Naeema and so many others have been saying for so long. I thought it was really gratifying to see that in a judge's opinion. I hope folks will carry that forward. Although as Naeema notes, state laws are making follow up actions more difficult. I think it's powerful that that statement exists, it's out there in the world and that there are people ready to take action.

Naeema: The reason being is everything that we've talked about today is the reason we don't need this biogas, because if they calling it clean energy, it's a false solution because it does nothing to relieve the suffering of the communities living with this animal waste, because they're wanting to take this animal waste now and call



it clean energy. But in order to capture this gas, they going to have to put tops on over lagoons and forced the methane, which is also going to force greater contamination into the grounds in these communities.

Naeema: People have already been forced off their wells, and if this goes forth, I guess they don't ever have to worry about using those wells again. But the biogas, and the other part of the problem is, then they going to have a plant in the heart of the community that's going to be giving off its own sources of pollution that's going to further exacerbate the sufferings of people that's living in these communities.

Naeema: They're also having to lay 30 miles of pipeline, and these pipelines are going to be running across people's property. So you got this whole eminent domain law where they can just take your property at will, for what they call the greater good. So people are going to be losing property, they're going to lose even more value on it, the little bit of property that they're able to maintain.

Naeema: But also the waste system that that's already outdated and the fact that there's clean technology that exists that Smithfield has refused to institute, telling the tale that they can't afford it, but prior to them thinking about biogas as a way of them making more money, they told the contract growers who grow the pigs for them, that everything about these industrialized animals, everything about them belong to Smithfield except the waste and the contract growers, it's their responsibility to figure out what to do with this waste. Smithfield had no parts in that. They contested every manner that people put forth of how to better handle this waste so it wouldn't be such a problem for community people living nearby.

Naeema: Now, all of a sudden that they can make money calling it biogas and partnering up with Dominion, now they want to own the waste again and take this waste and then make even more money than they've already made and the contract growers who are going to be continuing to grow these animals and creating this waste and making it available to them will not get any more than they've been getting from the deal. It's a form of slavery that they're dealing with under this contract and design of growing these animals. So the biogas is just a huge problem any way you look at it. It's just another means of environmental exposure for communities, destroying people's property, way of life, just continuing the problem that already exists. And nobody's going to make any money off of it but Smithfield and Dominion.

Alexis: As we made clear in the Title VI complaint, I think, these industrial hog operations cause so many problems. They damage the climate, but they also pollute the air, pollute the water, make surrounding communities sick, introduce truck traffic, draw pests, do all sorts of things that interfere with rural life and people's health. Biogas helps to address part of the climate impact of industrial hog operations, but it doesn't solve the air and water pollution. It doesn't keep workers or



community members safe. It doesn't stop the truck traffic. So as Naeema says, it's an incomplete solution and it really just opens up a new revenue stream that will further entrench this industry that's making a lot of people sick.

Hannah: As we think about moving forward and these transitions to a more environmentally just future, one of the things that comes into play is this tension between renewable energy promises and the continued environmental injustice that goes with it. So, for example, the North Carolina DEQ is currently considering the first permit approval for an industrial scale biogas project, the quote unquote, Grady Road Project in North Carolina, which would cap these waste lagoons from these industrial pig farms, capturing the methane, and then transporting that methane through pipelines to a processing plant. But again, this means keeping that lagoon-and-sprayfield system in place, despite the fact that we have better technologies available to make these systems obsolete.

Hannah: So I'd love to hear from you both in terms of what this system means and whether you think this permit should be granted.

Naeema: We are already opposing it. Here in North Carolina, there's been several public hearings held by DEQ where the public has come forth stating their opposition, and the reason why they oppose because of the continuous impact on their lives and in their inability to just enjoy their property or even protect their property and to protect the health of their families. So those are the things that people are stating along with everything you just said about the continuance of this system without any kind of relief for communities.

Naeema: The other thing that I was going to say about it is, that these communities again are in the floodplains in North Carolina. So the infrastructures of these communities are very, very weak. They could not get people out of the way of the flood waters. So we've asked the question, what's going to happen when there's an explosion at that plant? How are you going to get people out of harm's way? How many lives are going to be lost? Because you can't move people because you don't have the means to move people out of harm's way at a rapid pace. So that's another big reason we don't need this biogas or plant sitting in the heart of a community.

Hannah: Absolutely. As we come to the end of the podcast, I would encourage listeners, if you're interested in learning more about this work, definitely visit ncejn.org. Of course, you can check out Earth Justice's work on Title VI at earthjustice.org.

Hannah: I definitely want to thank you both for just sharing these experiences on the work that you've done. I also want to give you an opportunity. Is there anything else that we haven't discussed yet that you want to make sure that we talk about before signing off?



Naeema: I don't have anything, but I would like to thank Hannah and Robin and Andy for handling the technology for the day, because we're all challenged in some way or another, but we appreciate that. I just want to say thank y'all for giving ENCJN a opportunity to tell the story and to hopefully gain more support for the work that we do. So if people want to do anything, they can just call DEQ and tell them that enforce the Smithfield agreement and they can call our attorney general Josh Stein as well, tell them they heard about what's going on North Carolina. They support the communities' desire to have the Smithfield Agreement enforced in North Carolina.

Hannah: Thank you both. Again, thank you for the work that you do and continue to do. We just appreciate you both for taking the time.

Naeema: The same here. Yeah.

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