

Fall 2023



Dear friends and alumni,

This *lengthy* newsletter reflects three realities. First, 2023 featured so much changemaking that we failed to take a breath to report mid-year results. Second, this issue cumulates work of 50 student clinicians and five ELC attorneys — our biggest cohort yet. And: the newspapers are so bleak that it feels a moral obligation to share all good news.

So: Kindly read below how our clinic and clients this year took on the military complex (radioactive waste case against the Navy); made progress taming the industrial complex (PFAS, phthalates, and the toxic chemicals used to disperse oil spills); fortified a local regulator's will to protect its constituents' air (settlement to improve Bay Area pollution control); worked to decolonize environmental policy (advice and counsel work for Tribal governments and Indigenous-led nonprofits); and helped regulators to curb corporate greenwashing (advocacy at the SEC).

We transmit these results with delight; with pride in our students' enormous professional growth while making real-world impact; with admiration for the tenacity of our clients, and gratitude for the trust they repose in us; and with thanks to all of you for making the whole shebang possible!

Claudia Polsky  
Director, Environmental Law Clinic

# Clinic News



Bradley Angel, executive director of client Greenaction for Health and Environmental Justice (with folder), and community organizer Leotis Martin (far right) talk to Supervising Attorney Steve Castleman (back to camera) and ELC students (left to right) Jordan Barton '25, Ellie Rubinstein '25, Will Reynolds, '25, Ryan Laws '25, and Connor Hughes '25 about radioactive contamination at the Hunters Point Naval Shipyard in San Francisco.

## **Breaking news:** Litigation announced over radioactive waste in San Francisco

On Pearl Harbor Day, 12/7/23, the clinic served a [Notice of Intent to Sue](#) on the U.S. Navy and EPA on behalf of Greenaction for Health and Environmental Justice, seeking to enforce the federal Superfund law (CERCLA). The controversy, featured on [NBC-TV](#), is over inadequate cleanup of San Francisco's former Naval Shipyard at Hunters Point. The Navy for decades used the site to clean vessels that were contaminated with radioactive fallout from World War II activity in the Pacific. Unfortunately, "clean-up" methods such as sand-blasting broadcast radioactive debris across hundreds of acres, including many now poised for residential development.

Still worse, the corporate cleanup contractor committed outright fraud in its remediation and site testing work. The Navy's partial re-testing has since found radioactive material still on site. Assuming there is no adequate response to ELC's letter, we will file suit in early 2024 to obtain a court order requiring 100% site retesting, and periodic Navy recertification that any cleanup protects human health and the environment.

## **Breaking news:** U.N. acts on clinic allegations that domestic PFAS pollution is a human rights crisis



*Clinic students visit a North Carolina water treatment plant with client Emily Donovan (far left), co-founder of Clean Cape Fear, which fights for clean drinking water. The group and the clinic filed a complaint with the United Nations, alleging that chemical companies discharged toxic PFAS chemicals into the Cape Fear River for decades. Also pictured left to right: Linda Gordon '24, water resources manager Glenn Walker, Noah Lesko-Kanowitz '24, Julia Herrmann '24, and Ellen Kamps M.P.A. '23.*

In summer 2023, the United Nations Special Rapporteur on Toxics took up a [detailed clinic communication](#) on behalf of the North Carolina community action group Clean Cape Fear. In it, we alleged that the Chemours Fayetteville Works PFAS factory along the Cape Fear River has rendered drinking water toxic for hundreds of thousands of local residents, creating a [human rights crisis](#). In September, the Rapporteur issued Letters of Allegation to multiple corporate and government actors, and in November, he published those letters and the responses received. As a result of substantial ELC and client press work, the allegations, responses, and associated revelations of PFAS harms and human rights infringement have garnered more than 20 print and TV stories thus far (see, e.g., [Bloomberg](#), [Mother Jones](#), and [North Carolina TV news](#)), with immediate policy impacts.

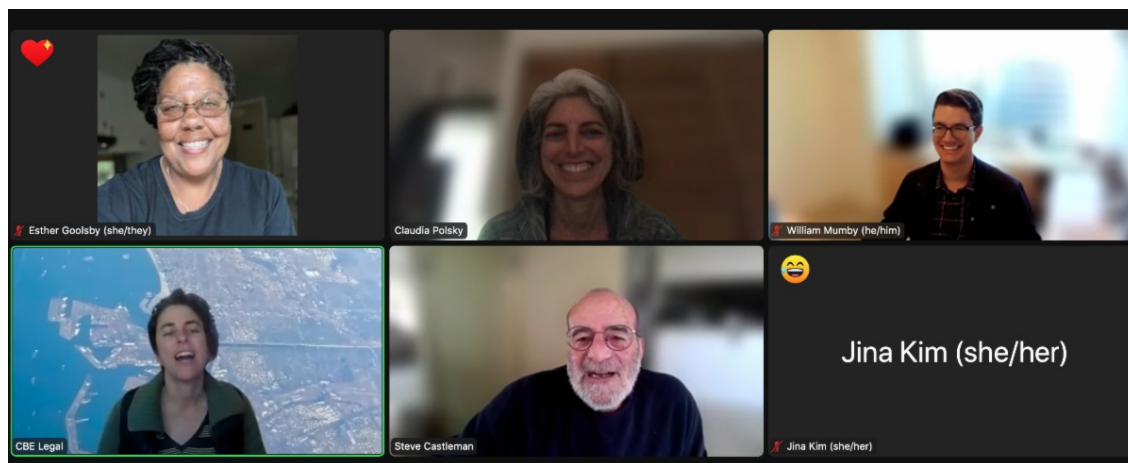
Most dramatic is that revelations about Chemours' plans to import hazardous PFAS waste from its factory in Dordrecht, Holland for reprocessing at Fayetteville and disposal in Texas caused sufficient public outrage that EPA quickly withdrew the required authorization, forcing the waste to be disposed instead in the European Union. (See reporting in [The Guardian](#).) The U.N.'s action also prompted filing of a letter by the plaintiff in a consequential Fourth Circuit proceeding that challenges EPA's refusal to require epidemiological studies of the North Carolina communities most heavily exposed to PFAS. Plaintiffs cited the U.N.'s action as evidence that EPA had denied them relief essential to their health protection. ELC and its client continue work to make the U.N.'s intervention and pronouncements ramify as widely as possible.

## **Breaking news: EPA's clinic-prompted rule for oil spill response takes effect**

As we go to press, a new EPA rule has just gone into effect (12/11/23) that greatly improves the "National Contingency Plan" that governs U.S. response to offshore oil spills. This [Clean Water Act regulation](#), which is significantly more protective of human health and the environment than its predecessor, was issued under court order in response to a clinic [litigation victory](#) against the EPA.

The clinic's work involved 11 students and three attorneys, representing six clients for nearly four years. Our client coalition included three individuals who have long played leadership roles in opposing the use of low-efficacy and toxic "dispersant" chemicals to address oil spills — Rosemary Ahtuanguak, an Inupiaq leader and mayor of Niqsit, Alaska; Gulf Coast fisher Kindra Arnesen; and marine toxicologist Dr. Riki Ott of Earth Island Institute's ALERT Project — and the nonprofit groups Alaska Community Action on Toxics, Cook Inletkeeper, and the Center for Biological Diversity (CBD). CBD additionally served as co-counsel. [The Guardian](#) describes the import of this win.

## Clinic settlement with air district to enhance air quality and environmental justice

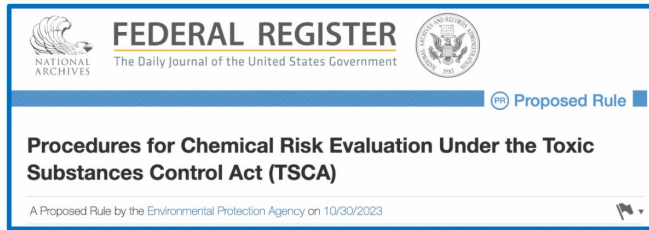


ELC and client Communities for a Better Environment (CBE) scored a victory for clean air in the Bay Area by favorably [resolving a suit](#) against the Bay Area Air Quality Management District over its lax regulation of 40 highly polluting industrial facilities. The suit was predicated on the novel theory that aspects of the district's rulemaking constituted unlawful "underground" regulation under California law, making the resulting rule invalid because it was promulgated without sufficient opportunity for public involvement. ELC alumna **Jina Kim '21** helped formulate strategy as a CBE legal fellow, and ELC alumnus **Wil Mumby '17** (above), associate at Kaplan, Kirsch, Rockwell, served as pro bono co-counsel for plaintiffs. (Director **Claudia Polsky**, Supervising Attorney **Steve Castleman**, and **Esther Goolsby** and **Shana Lazerow** of CBE are also pictured on their victory call.)

The settlement requires the district to develop timelines for controlling air pollution from the worst-polluting stationary sources in its entire nine-county jurisdiction. It also provides environmental justice groups improved access to district decisionmakers, while eliminating backdoor routes by which industry has historically pressured the district to relax and delay implementation of health-based air quality standards. The settlement additionally improves transparency surrounding the public's recurrent complaints about pollution emissions and district responses.

## EPA proposes more protective and environmental justice-focused rule for evaluating chemical risks

In October 2023, the EPA proposed a [substantial overhaul of Trump-era](#)



[rules](#) for evaluating toxic risks from chemicals in U.S. commerce under the Toxic Substances Control Act (TSCA). The EPA’s draft regulation would more accurately assess risk, and would better protect vulnerable

populations, such as workers in toxics-intensive settings (like nail salons), and communities geographically proximate to sources of toxic releases (“fenceline communities”). The EPA also expressed openness to considering racially and socioeconomically marginalized sub-populations as “potentially exposed and susceptible subpopulations” under the law, because they experience both high cumulative exposure to toxics and greater-than-average health effects from these exposures.

The EPA stated that “exposure to a chemical substance may disproportionately impact communities already experiencing disproportionate and adverse human health or environmental burdens.” The issue of disproportionate toxics exposure and impacts that are defined by demography rather than geography was unique to [comments](#) that ELC submitted to the EPA on behalf of client Defend Our Health. The clinic’s comments focused on disparate exposure to and health impacts of phthalate chemicals (a family that includes known-toxic plasticizers), explaining that they present a powerful example of differential chemical exposure and risk based on race.

## **Working with California Native Nations to advance land and resource sovereignty**

Clinic students undertook multiple projects this year to affirm the sovereignty of and advance environmental justice for California Native Nations. These included a project to help a Tribe gain jurisdiction over water quality regulation on its reservation and adjacent lands; a project to help another Tribe negotiate for preferential access to culturally significant sites on state-managed land; and a project to help a third Tribe gain federal recognition as such from the Department of the Interior, and thereby obtain the right of consultation under various environmental statutes. We are excited by the potential for meaningful impact, and will report results in due course.

## **Preventing corporate greenwashing of resource extraction projects**



*Claudia Wang LL.M. '23, Anjali Katta M. Sci. '24, Renee Serota '24, Supervising Attorney Sabrina Ashjian, and Maria Fernanda Quintero LL.M. '23 (left to right) visit Washington, D.C. to strategize with their client and meet federal regulators.*

The clinic this year represented the nonprofit Amazon Watch in analyzing corporate filings with the Securities and Exchange Commission that misrepresent oil and gas extraction, mining, and dredging projects that severely impact Indigenous communities. Clinic students presented their work to commission staff, and our client will transmit their research to the agency with a request that it investigate and sanction offending companies for misleading investors about the environmental and human rights implications of their operations. Stay tuned!

## Clinical Program releases 2022-2023 annual report



More than 300 students enrolled in clinics last year, demonstrating their commitment to social justice and developing the skills to be effective advocates. Please take a look at the [Clinical Program's annual report](#) to learn more about how clinics stand with threatened individuals and communities in pursuit of transformative justice.

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