

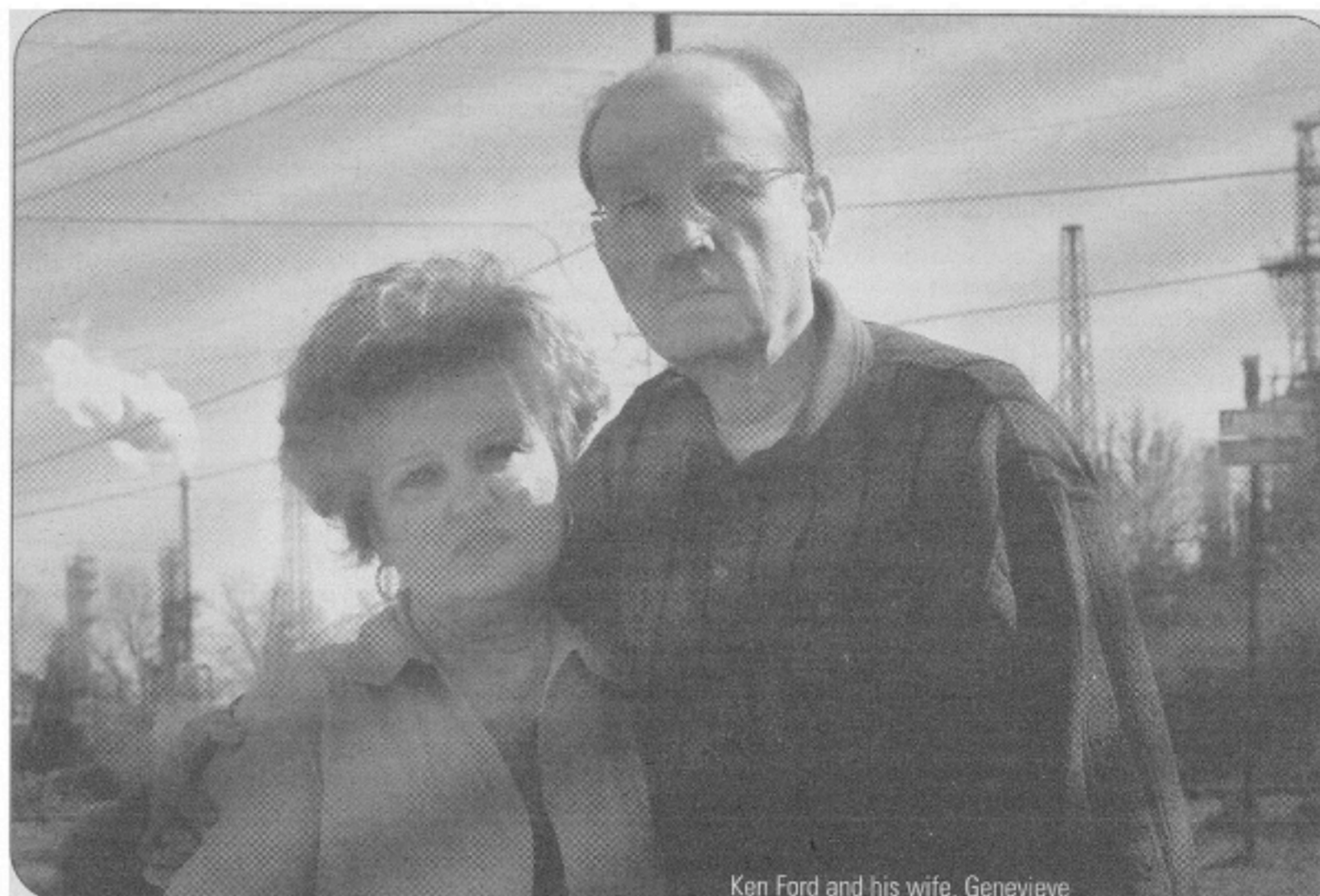
Gambit Weekly

news & views

The Smell Test

Chalmette residents hope a federal lawsuit will finally help the condition of their fenceline communities around the Chalmette refinery.

BY ELIZA STRICKLAND



Ken Ford and his wife, Genevieve

On a recent Thursday morning, a group of neighbors met in Ken Ford's Chalmette living room, a half-mile from the ExxonMobil Chalmette Refinery. The residents, mostly middle-aged homeowners and retired senior citizens, were members of the St. Bernard Citizens for Environmental Quality, and they were fed up. They say they've put up with noxious odors emanating from the refinery for decades, and they're tired of wondering what chemicals are in the air each day and worrying about what effect those chemicals might be having on their health.

Lou Troyani has lived in the neighborhood around the Chalmette refinery for 28 years. "My husband had a garden," she says. "He would have beautiful bell peppers and mirlistons, and then after a while we'd go out and look at the bell peppers, and on top they were burnt; they were like from outer space. They were kind of crinkled up and black, and they were horrible." She shudders. "We had to stop growing stuff."

John Lewis has lived in the area all his life. He blames the refinery for the severe health problems he has seen all around him over the years. "In my neighborhood, there's always somebody that's dying or has cancer," he says. "In my own family, my wife has had cancer, I've had cancer, my daughter died from cancer, the lady across the street, her daughter died from cancer, my grandson had cancer. I just wonder why there's so much cancer in my neighborhood."

So with complaints like these, the group met that Thursday morning and finally took the law into their own hands: they filed a citizen's suit against the refinery in federal court.

Ford, president of the St. Bernard citizens group, says he has been trying to work with the Chalmette refinery on air issues for almost 25 of the 40 years he has lived in the neighborhood. He has met with council members and congressmen, and complained to the Louisiana Department of Environmental Quality (DEQ), the Environmental Protection Agency (EPA), and the refinery.

Over the years, Ford says, he has grown frustrated by the government's lack of action

and the refinery's flat denial of any problems. Finally, the citizen's group began discussing what it could do about the problem on its own under the Clean Air Act. "When you can't talk things over (with the refinery)," says Ford, "when you sit in your yard and it smells so bad you have to go inside, and when you look at your windowsill and see it's covered with this petroleum coke and you worry that it's hurting somebody, and when you call them and you get no answers, what else can you do?"

ExxonMobil representatives declined to comment on the lawsuit or their environmental practices for this article.

Adam Babich, director of the Tulane Environmental Law Clinic, filed the suit on behalf of the St. Bernard Citizens for Environmental Quality and the Louisiana Bucket Brigade. He explained that citizen-suit provisions are written into most environmental laws to give people a chance to

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Ken Ford says he agreed to file the suit after years of trying to talk with the Chalmette refinery about his concerns. "When you sit in your yard and it smells so bad you have to go inside, and when you look at your windowsill and see it's covered with this petroleum coke and you worry that it's hurting somebody, and when you call them and you get no answers, what else can you do?"

act when governmental enforcers fail to go after polluters.

"[Congress] borrowed it somewhat from civil rights statutes," Babich says. "Essentially what Congress concluded was that the agency alone, the government alone,

couldn't be trusted to always enforce a law." Lawmakers recognized that deputizing private citizens would have several benefits, says Babich. "[Congress] wanted to supplement agency enforcement, it wanted to help prod agencies into increasing their enforcement, and also just wanted to increase compliance."

The lawsuit alleges that the Chalmette refinery violates its permit by emitting harmful levels of pollutants during frequent equipment breakdowns and accidents, and that it doesn't properly maintain the flares that are meant to incinerate harmful pollutants released in an accident. The suit also claims the refinery's storage tanks are leaking benzene, a known carcinogen, at levels above permitted limits and that it doesn't properly report violations to the DEQ and the St. Bernard Emergency Planning Commission.

"All of the information on which the suit is based comes from ExxonMobil's own records," says Anne Rolfes, founding director of the Bucket Brigade. "It's not as if we made any suppositions or we did our own investigations, we just looked at their own reports that they had to file (with the DEQ). So all of this stuff about the leaks on their benzene tanks, their frequent and preventable accidents, their failure to report adequately, all of that is from letters and files written by ExxonMobil."

The Bucket Brigade is an environmental group that focuses on organizing and supporting "fenceline communities," the neighborhoods directly adjacent to refineries and other industrial facilities. The group takes its name from the large plastic air sampling buckets it provides to community

members. The buckets allow citizens to take air samples when they smell or see something unusual happening at their neighborhood facility — rather than wait hours, or sometimes days, for facility representatives or DEQ inspectors to investigate. The samples are then sent to a lab for analysis.

The Bucket Brigade relies on citizen action and scientific data to convince facilities to clean up their acts. Past successes include Norco, where after two years of pressure from the Bucket Brigade and its affiliated citizen group, the Shell Chemical facility bought out the properties on its fenceline and helped the citizens relocate.

In Chalmette, community members have been using the buckets and other devices to gather data about the air. Their results have shown high levels of sulfur dioxide, a known respiratory irritant, as well as a variety of other chemicals. Because the Chalmette refinery hasn't replied to the citizens' requests to set up air monitoring stations in the community, they'll continue to do it themselves, says Rolfes. "The lawsuit is just one tool in our toolbox. We're continuing our citizens' campaign; we're going to continue our air sampling."

ST. BERNARD CITIZENS FOR Environmental Quality is not trying to shut down the plant, Ford says, noting that it's the largest private employer in St. Bernard Parish. "We need industry, we welcome industry, we want industry; it creates jobs," he says. "And the people who work at the refinery are hardworking people, it's not these people that we're complaining about. We're complaining about the corporation, the higher echelons, who are more interested in making money than in the health of the people of St. Bernard Parish."

The lawsuit requests the full penalty fee of \$27,500 for each day that the refinery violated its permit, as specified by the Clean Air Act. The sum would be paid to the United States Treasury. "We're not looking for money for ourselves, no personal gains," Ford says. "This is strictly for the Clean Air Act they're violating."

Under the Clean Air Act and the Emergency Planning and Community Right to Know Act, the Chalmette refinery is required to submit a report to the DEQ and the St. Bernard Parish Emergency Planning Committee after a major "upset" results in a release of chemicals that exceeds the permitted amount. These reports, which are

available to the public, are the basis of many of the lawsuit's allegations.

The Bucket Brigade examined these upset records and found that from January to October of 2003, the refinery averaged one accident every six days. "One of the key points in this lawsuit is that their constant accidents are preventable," Rolfes says. "They could put in new equipment if they had the will. Exxon Mobil made \$21.5 billion profit in 2003, the most they've ever made. It's time to put some of that profit into cleaning up this plant."

Andre Shiromani, a law student working with the Tulane Environmental Law Clinic, says that the refinery's frequent use of its flares to incinerate chemicals after an upset is not considered acceptable practice by the industry. "Looking at other plants, Chalmette refinery's upsets are definitely higher than the average," Shiromani says. "Chalmette refinery has so many, it almost seems as if it's become part of their regular method of doing business."

remedy, when we're the people who know at least some of the problems."

Ford says the St. Bernard citizens will keep up the pressure until they see — and

smell — real results. No matter what happens next with the lawsuit, he thinks it has already forced the Chalmette refinery to take the concerns of the citizens more seriously. "Hopefully we'll get clean air out of this," he says.

THE ST. BERNARD CITIZENS FOR Environmental Quality's lawsuit states that neither the DEQ nor the EPA is taking legal action to redress the refinery's violations. But Bruce Hammatt, the assistant secretary for the office of environmental compliance at the DEQ, says that the agency is working on it. "Although I can't comment on an ongoing investigation, we do have an ongoing investigation with the Chalmette refinery. We have three outstanding enforcement actions currently with the Chalmette refinery."

In 2001, the DEQ notified the refinery of a potential penalty for air and water violations, and in 2002 and 2003 the department

issued two more notices of potential penalties combined with compliance orders instructing the facility to cease violating its permit. The 2003 enforcement action was based on self-reported violations, as well as 12 violations discovered during an in-depth inspection the DEQ staff conducted at the refinery site.

In light of these pending enforcement actions, Hammatt says he objects to a statement by a Chalmette refinery spokeswoman reported in *The Times-Picayune* on Friday, Feb. 13. "[The article] said, 'A plant spokeswoman said the plant complies with all state and federal environmental regulations,'" Hammatt says. "That is something I have to take exception to. If we thought they were complying with all of the regulations then we would not have issued these enforcement actions."

The DEQ is working toward a resolution of the refinery's violations, Hammatt says. "I won't go into details on [our ongoing investigation], but generally speaking, when a major company gets a notice of potential penalty, they know we're looking at them, and they commonly come in and start talking to us regarding some settlement of that noncompliance. In many cases it takes an extended period of time to reach an agreement to settle all of these issues."

But Rolfes says that just isn't good enough for her. "Let's see some action, not just words," she says. "Mr. Ford has been complaining about this facility for 20 years, and there's never been an action. I don't accept those words as any assurance whatsoever."

"Unfortunately, the way they have chosen to exclude the public is by not including us in these enforcement conversations," Rolfes says. "So even though it might be our work that prompted them to start to look into the issue, we are excluded from suggesting a

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