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V WATERFRONT FRONTLINE

By Lisa Burroughs

Can Creating Community Rights Change Ashtabula's Environmental Status as a "Sacrifice Zone"?

Lisa Burroughs for Ashtabula County Water Watch interviews Tish O'Dell, a leading Ohio activist from the Community Legal Defense Fund (CELDF). CELDF is a non-profit, public interest law firm which champions the democratic process by assisting communities to create laws that address environmental protection, as well as social justice concerns within communities. Tish is an educator in the global Community Rights and Rights of Nature Movement.

LISA: Ashtabula faces the incoming Petmin pig iron plant, to be built for a South African corporation, and now that we have the Risberg fracked-gas pipeline in place, Ashtabula is likely to face more polluting industry coming to the area. Based on the levels of legacy pollution in Ashtabula, I have to ask whether we are officially viewed as a "sacrifice zone"?

What is a "sacrifice zone" and how do we stop being one?

TISH: The official definition of a sacrifice zone is a geographic area that has been permanently impaired by environmental damage or economic disinvestment, often through continuous detrimental land use unwanted by the community. From what I understand, Ashtabula is indeed a sacrifice zone, evidence being the Superfund site, known as Fields Brook.

Many communities become sacrifice zones in low income areas because industrialists understand the people there don't have the monetary resources to fight back by challenging them in court. These communities become the locations for continuous use by polluting industries because the corporations know the community will also welcome any promise of income. Unfortunately, the jobs and local revenue come at a high price to both the community members and the environment.

The only way to stop being a sacrifice zone is to join together and fight for the rights for a healthy environment.

LISA: So how do we protect our communities?

TISH: By standing up for what you believe in. By joining with your neighbors and discussing what is beneficial for the community as a whole. By leaving politics out of the conversation and not focusing on what you have in common and not what divides you. Everyone, no matter their party affiliation or religion or race, needs clean water to drink, clean air to breathe, and healthy food to eat. Lake Erie's health directly impacts the health of everyone. Today, Ashtabula lives

with the environmental impacts of a Superfund site dating back to the 40's. This site still requires careful management to avoid further contamination reaching the Lake and the community.

One thing that might be important to Ashtabula is whether you have a choice in what kind of industry can operate here. For instance, communities can stipulate project approval, rejecting projects that create negative impacts in their communities. That is how a democracy should work. The welfare of the community should be a primary concern. The decisions made today impact the present residents but also generations to come. We have an obligation to consider the long-term impacts of decisions made today.

LISA: If this community does not want a certain industry to operate here because it might threaten our health and welfare, how do we change the methods or laws that allow such things to happen to us? In the case of Petmin, the community at large was unaware of the plans and monies spent over eight to ten years, and 8 million dollars, to bring this company to our shore.

TISH: Well the first step is to get an understanding of how the system is actually set up and working. Does it sound right to anyone living here - that this project was going on behind closed doors for eight years before the residents of the community were even made aware? Unfortunately, this happens all the time because this is how the system is set up to work. You may have heard of the LEEDCO wind turbine project off Cleveland's shore? The state leased the land for the project, the federal government gave the project a grant (tax dollars), and a foreign corporation was brought in as a partner, all before the people were even made aware of the project.



Tish O'Dell from Community Legal Defense Fund



At CELDF we teach Democracy School, a four module, 9-hour course (via Zoom since COVID) to help people unlearn that "we can do nothing" thinking, in order to change the existing system, which works against us. We cannot solve problems we don't understand. So, in Democracy School we share ideas on how to change the system. But we think it is important to understand the laws that have put us in this position, laws which actually prevent communities from protecting themselves by stopping harmful projects.

In Democracy School we teach a more direct and constructive method, focusing on creating a system and laws created by the community; laws that protect people and the environment. It is a paradigm shift, but an important one in which we change our thinking, replacing our acceptance of the culture of boom and bust economies at any price, with an understanding and the practice of sustainability. As an aside, CELDF will be offering Democracy School in this area in January, 2021.

LISA: That's exciting, I'll be there for that. Now we know the Ohio Environmental Protection Agency (OEPA) has granted two air permits to Petmin, and ACWW has noted the absence of a water permit, which has been glossed over by the that regulatory agency. After our concerned community asked the OEPA fifty excellent questions about Petmin, they provided a one-hundred-page document illustrating some interesting loopholes. The biggest loophole is something you like to say: "The EPA, through issuing permits, actually legalizes levels of pollutants that are detrimental to health." That is also the elephant in the room, isn't it? So, when the EPA is failing us, and Lake Erie, and an entire ecosystem - as if it is insignificant - what do we do?

TISH: Here we are living with the consequences of the current system, so we have three choices: One - Do nothing and Lake Erie and Ashtabula's population will continue to be harmed. Two - Participate in the system as is - but based on 40 years of historical data, we can surmise that Lake Erie will continue to be harmed if the system continues as is. Three - Challenge the system - challenge what is unjust and destructive. Then, problem solve by proposing new ideas to truly protect Lake Erie and Ashtabula. Rights of Nature is one example of this option. Every movement in the past has had to expose, educate, organize, challenge and fight for something new.

LISA: What kind of laws can we introduce in answer to environmental degradation and injustice? Explain, what is LEBOR?

TISH: You can introduce laws that expand rights to include people in the community, making them effective decision makers who can also create laws establishing the rights of nature. I am referring to laws that protect the ecosystems and the natural world on which we all depend for life. These laws are really about leveling the playing field that is very skewed towards benefitting corporate commerce and a small percent of privileged interests.

You ask about LEBOR, (Lake Erie Bill of

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Rights). It is a law that the people in Toledo passed in 2019. They tried for years to stop harm to Lake Erie and their drinking water and of course they were working within the existing system. In 2014, when the community suffered a water crisis that shut off all water in the city for three days, people were ready to try something new. It became obvious that the state and the state agencies were not interested in protecting the people or Lake Erie. However, they were actually protecting industrial agricultural entities that were the very cause of the harm. A group of people in Toledo worked with CELDF and drafted the law known as Lake Erie Bill of Rights (LEBOR). They faced many challenges attempting to prevent the law from going on a ballot, but they succeeded. The people voted and passed the law, the first of its kind in the United States. And, as expected, it was immediately challenged. LEBOR created a new path for others to follow. And though the controversy continues, it raises some big questions such as, if a corporation has the "rights" of a person (and they aren't even living entities) why shouldn't nature?

LISA: Why don't candidates seem to care about environmental issues anymore?

TISH: Because our entire system is built on making more profits and shifting wealth to a privileged minority. We have corporatized our electoral process from utilities to education to healthcare. Politicians' constituents are those who donate the most money to their campaigns, which

could leave their communities without representation. This is not to say that all people who run for office are bad, but they are attempting to function within a system that is failing communities. So, until the system is changed, the good politicians are prevented from doing much good. Democracy scholar Art Pearl, in the documentary "Rights of Nature, Invisible Hand," pointed out that "capitalism's one enemy is democracy".

LISA: How can creating community rights be a shortcut to change?

TISH: Well, I don't know if we can say it is a "shortcut" because it is a lot of hard work. However, that doesn't mean we shouldn't undertake it. Changing the system is not about focusing on any single issue. The system, as it exists, prevents all kinds of positive changes from happening, not just environmental changes.

But if we can make the system work for people, then that means they don't have to keep waging the same fights issue after issue, or generation after generation. For example, when corporations won "religious rights" in the Hobby Lobby case, it wasn't just Hobby Lobby that benefitted. That new legal precedent will be used repeatedly to benefit other corporations and to squash people's basic rights.

LISA: What are your thoughts on how we can all work together effectively and where we are at right now?

TISH: Many times, grassroots groups are fighting to stop a single harm in a single community, working to stop a permit from being issued or trying to drive a project out of "their" community, which ends up in someone else's. These efforts just mean that the next project or next community has to fight the same fight.

If people had started working thirty years ago to create laws protecting the rights of nature, or working to shift more power into the hands of people, we would be so much further ahead - in terms of the environment, climate, and sustainability. So, we need to start now. We have seen tremendous growth in the past decade in the number of communities pushing back and looking at systemic change.

The Black Lives Matter movement and COVID have really shifted thinking to local community problem solving, instead of reliance on state or federal government solutions. This is the silver lining. The privileged one percent of the US population has greater control over the higher levels of government, and for those of us working at the grass root level, there is a chance to make real change where it matters most - in our own communities.

LISA: Why are the courts failing us even when we do manage to get disputes into the courts?

TISH: Interesting how that works. When we at CELDF speak of living in a "corporate state", we are talking about how all three branches of government, including the judicial branch, are looking out for corporate interests, relying on precedents to do so. When one judge rules in favor of corporate "rights," specifically over the peoples' rights, that precedent continues to be

used in court cases for the benefit of corporate interests until that precedent is overturned.

The truth is, corporations are actually writing laws and handing them to our elected officials through lobbyists. This means we the people are obediently following laws written by corporations for corporate benefit and of course, the courts are there to uphold the law. When we try to stop a project for which the state has issued a permit or license, even if that permit is harmful - such as pollution - that harm is then made legal in the court's eyes.

Our state and federal legislators also use something called pre-emption. Pre-emption allows those legislators to replace (pre-empt) laws made by local communities. The state or federal laws could effectively overwrite local laws and prevent communities from using the legal system to protect themselves. Add corporate "rights" to the mix and you can see how the system all fits together to benefit polluting industries and to oppress communities. We spend a lot of time covering these topics in our Democracy School.

LISA: Can we win these battles without becoming lawyers and scientists and having deep pockets?

TISH: Yes, I believe we can. But it will take creativity, courage and a collective community effort. We have to open our minds to new ways of thinking - that is, if we want to live in just and sustainable communities. We need to make the effort to understand the successes and failures of the past so we don't simply "rinse and repeat."

The doubt in our own minds is one of our greatest obstacles to making change. If we don't believe we have the authority, or the knowledge to make change, we defeat our own efforts. That is a democracy problem.

LISA: Thank you, Tish. We are very grateful. Any last words of wisdom?

TISH: We have been taught we live in a democracy by and for the people. We have been taught that democracy rests in the hands of elected officials, however, power and corporate profit has created an imbalanced and skewed system where elected officials are beholden to minority interests. Even when we go to the polls, the ballot has limited choices, which have been influenced by a powerful minority.

And though we expect our government to protect our rights, that requires participation. People must engage in the process. Democracy is not a spectator sport! Participation goes beyond casting a ballot once a year, it is also about paying attention to what is happening in your community. Don't be complacent. Don't assume your community is being protected. Ask questions. Demand answers. Fight for what you care about.

A CELDF Democracy School for Ashtabula residents is being planned for January 2021. Please send your contact info to Lisa Burroughs, acwaterwatch@gmail.com.

Interviewer Lisa Burroughs is the former Creative Photography Director of Newsweek and a member of Ashtabula County Water Watch.

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