

Bias by the State in the Shintech Permitting Controversy

(Louisiana Officials Favor Shintech and Are Prejudiced Against Local Residents)

Actions and Statements of Governor Foster in Favor of Shintech:

The Governor addressed a letter to the president of Shintech prior to the company's applications to the Louisiana Department of Environmental Equality (LDEQ) **pledging "full support of my administration to assist your company with the project."** (Letter from Foster to President of Shintech, Feb. 13, 1996)

During a meeting held at the Governor's mansion with representatives of the U.S. Environmental Protection Agency (EPA), Governor Foster stated that **he wanted the Shintech facility issued a permit.** (Meeting, Aug. 29, 1997)

Governor Foster called the EPA the "enemy" because of their efforts to enforce the Clean Air Act and Title VI of the Civil Rights Act of 1964 against the DEQ and Shintech. (*Times-Picayune*, Sept. 28, 1998)

Actions and Statements of Governor Foster Against the Tulane Environmental Law Clinic:

In the Spring of 1997, Governor Foster **called Eamon Kelly, the President of Tulane University, to complain** about the Clinic's efforts and voice his belief that the Clinic's actions were anti-economic development and should be curbed.

In a speech at a May 1997 meeting of the New Orleans Business Council, Governor Foster referred to the Clinic as **"modern-day vigilantes"** and he said that the New Orleans Business Council should **"get that bunch at Tulane under control."** He also urged members to **reconsider any donations to Tulane.** (*The Gambit*, July 29, 1997; *Times-Picayune*, Jan. 16, 1998)

The discussion with Governor Foster at the May 1997 meeting of the New Orleans Business Council lead to a proposal to petition the Louisiana Supreme Court to **restrict the Clinic's ability to represent local residents.** (*Counter Punch*, July 16-31, 1997)

During a broadcast on Louisiana Public Broadcasting regarding the Shintech controversy, Governor Foster described the Clinic using the terms **"vigilantes," "bunch of yahoos"** and **"big fat professors drawing the big salaries"** and accused the Clinic of being a **"law unto themselves.** The Governor also stated that **"their [the Clinic's] job is to make sure we turn Louisiana back into a swamp and don't have any more jobs around here"** and that the Clinic **"would like to see the whole state trees."** (Louisiana: The State We're In, July 11, 1997)

During a broadcast on CBS Evening News regarding the Shintech controversy, Governor Foster referred to the Clinic as **"bullies"** that represent people who are not, in his mind, in need of assistance. (CBS Evening News, Oct. 19, 1998)

Benefits Governor Foster Receives from Shintech:

Governor Foster received the maximum amount allowable in **donations to his reelection campaign, totaling \$15,000,** from Shintech and Shintech's public relations firms, Harris, Deville & Associates, Inc. and Spradely & Spradely. (*Counter Punch*, July 16-31, 1997)

Governor Foster **received \$50,000 in dividends** in 1997 from Merrill Lynch, the biggest United States institutional shareholder in Shintech's parent corporation, Shin-Etsu. (*The Advocate*, Feb. 3, 1998)

Actions and Statements of Governor Foster's Liaisons:

Kevin Reilly, in his capacity as Governor Foster's liaison on Shintech, attacked the Clinic in a letter dated August 8, 1997 to the President of Tulane University using the terms **"irresponsible," "reckless"** and **"corrupting the legal system"** to characterize the Clinic and its representation of the citizen groups. He described the Clinic's activities as constituting **"environment diletantism," "pursuing elitist social engineering goals corrupting the legal system,"** and **"environmental ambulance chasing."** (*The Advocate*, Aug. 14, 1997)

Kevin Reilly, on numerous occasions, has expressed his strong support for Shintech and **criticized the Clinic for providing legal representation to the citizen groups.** (*The Advocate*, Aug. 14, 1997)

In a memo to Harold Price, Secretary Reilly, as head of the Department of Economic Development (DED), wrote "I want to be sure **we do everything we can to prevent them [the Clinic and citizen groups] from tying up the permit application process.**" (Memo, Nov. 15, 1996)

citizen groups and the Clinic.]” (*The Advocate*, Nov. 5, 1997)

Kevin Reilly called the Tulane Environmental Law Clinic **“environmental fascists” and “brown shirts.”** (Metro Vision, June 17, 1998)

Governor Foster’s pollster, Bernie Pinsonat, has made insulting comments regarding the Clinic including that Louisiana **“want[s] to give Tulane away but no state would take them”** and **“Clinic’s student lawyers sabotage Louisiana industry and then go home and brag about it.”** (*The Gambit*, Aug. 19, 1997)

Foster Money to Plant Supporters:

Governor Foster approved a **\$2.5 million unsecured loan** to a group headed by Ernest Johnson, the president of the Louisiana chapter of the NAACP, who until this approval, remained neutral in the Shintech matter. Within hours of the approval, Mr. Johnson publicly attacked citizen groups and plant opponents. (*The Advocate*, Sept. 14, 1998)

The approval of the unsecured loan was pushed by Kevin Reilly, Governor Foster’s liaison on Shintech, **over the objections of the LEDC staff.** At the request of Reilly, Mr. Johnson’s group was given an extra \$500,000.00 that Mr. Johnson’s group did not request. (*The Advocate*, Sept. 14, 1998)

To obtain this loan, Mr. Johnson’s group had to obtain matching funds of \$250,000.00. A **large part of these matching funds were from a contribution by Entergy Corporation**, the owner of the property on which Shintech proposes to build its PVC complex, and which stands to sell Shintech up to \$70 million per year in electricity. (*The Advocate*, Sept. 14, 1998; *Times-Picayune*, Jan. 16, 1998).

Actions and Statements by DEQ Secretary Givens:

Secretary Givens complained that **“they [the Clinic] sue first and ask questions later.”**(*Times-Picayune*, Aug. 3, 1997)

In a August 29, 1997 meeting at the Governor’s mansion with the president of Tulane University and the dean of Tulane Law School, Secretary Givens criticized the efforts of the Clinic to assist citizens and compared the legal representation of the Clinic to **ambulance chasing lawyers.**

Secretary Givens said during a phone call with an attorney of the Clinic that the local citizen groups only represented thirteen people. (Telephone call with Lisa Lavie, Dec. 1997). Secretary Givens has **ignored over 1,000 signatures of surrounding area residents** that were given to him in opposition to the Shintech facility. Secretary Givens also has **ignored letters from the “Founding Families” of Convent’s Freetown/Romeville area**, the Young, Felton and Dumas families, and teachers and employees from Romeville Elementary school (the school nearest to the proposed facility) that were proposed to him in opposition to the Shintech facility. (Copies of signatures; letter written by Young, Felton, and Dumas families; letter from teachers)

Givens has **misrepresented the degree of support** for the Shintech facility by stating that a May 1997 list of signatures demonstrates widespread support for issuing air permits to Shintech, when, in fact, the petition actually states: **“I am interested in Employment and Business Opportunities.”** (May 1997 list)

Actions and Statements of DEQ Secretary Givens’ and Deputy Secretary Bohlinger’s Staff:

Despite evidence of widespread contamination in Shintech’s May 1996 and August 1996 reports, the DEQ issued two groundwater certifications **allowing Shintech to obtain air permits without first removing the contamination.** (*Times - Picayune*, Feb. 19, 1998) The DEQ did not provide the public notice or opportunity to comment, failed to require Shintech to submit a plan for cleaning up the contamination, allowed pilings to be driven in areas of possible contamination, failed to sample all priority pollutants, and failed to assess all areas of suspected contamination, all of which violate its own **“Construction Variances in Areas with Potential for Ground Water Pollution”** policy. (May 1996 Shintech report; letter from Shintech’s representatives, Aug. 12, 1996)

The DEQ and Shintech **hid the groundwater contamination evidence**, which violated state law that expressly prohibits keeping this information confidential, because it might harm Shintech’s public relations with the community. (May 1996 Shintech report; letter from Shintech representatives, Aug. 12, 1996)

Janice Dickerson, the Community Industry Relations Group coordinator within the Office of the DEQ Secretary, **helped organize a pro-Shintech group** as a “counterbalance” to the St. James Citizens for Jobs and the Environment and the other citizen groups. The pro-Shintech group was created subsequent to the close of the air permit’s public comment period and after the EPA raised concerns over the DEQ’s failure to address environmental justice issues. (*Times-Picayune*, Dec. 9, 1997)

the Citizen Groups. Ms. Dickerson attended or helped to arrange private meetings between Shintech and local supporters of the plant. (*Times-Picayune*, Dec. 9, 1997)

Ms. Dickerson, in her capacity as a DEQ employee and **while using state funds for phone calls and travel**, assisted in drafting the “Gladys Maddie” letter titled “Where is the Environmental Justice?”

Ms. Dickerson criticized Shintech opponents at a speech at Southern University and referred to plant opponents as **“little Hitlers”** and **“little dictators.”** (*Counter Punch*, July 16-31, 1997)

Ms. Dickerson criticized the assistance given to local residents by the citizen groups and the Clinic and criticized them as **“outside” organizations**. Ms. Dickerson made allegations asserting that the presence of some of the citizen groups was a detriment to the environmental movement. (Statement signed by Ms. Dickerson, June 5, 1997)

Ms. Dickerson stated that the Clinic’s action in representing Covenant-area residents is “an environmentalist racist act.” She also **attacks the Clinic’s director and falsely states**, among other things, that the director had refused to meet with the residents closest to the facility to hear their views and that her office had offered its assistance to the citizen groups several times. (Memo to Herman Robinson, Aug. 18, 1997)

Ms. Dickerson and Mr. Friloux **distributed one-sided and biased information that has been favorable to Shintech** and plant supporters and critical of plant opponents to members of the media. No effort has been made to ensure the information supplied by the DEQ to the media is balanced and fair. (*Vibe*, Apr., 1998)

Ms. Dickerson, with Mr. Friloux present, made comments criticizing Shintech opponents, **insinuated that members of these organizations were Ku Klux Klan and David Duke supporters and said that she would challenge these groups based on these allegations.** (*Vibe*, Apr., 1998)

Mr. Friloux called Louisiana Environmental Action Network, and the Clinic **“outside agitators”** that are using locals to wave a banner of environmental justice. (Environmental Justice Conference, May 13, 1997)

Mr. Friloux made threatening comments to Professor Kuehn, the director of the Tulane Environmental Law Clinic. While Mr. Kuehn was exiting the Secretary’s office at the DEQ, Mr. Friloux commented to Mr. Kuehn that he was **“surprised you’re still standing.”** (Sept. 12, 1997 encounter)

Actions and Statements of Assistant Secretary Von Bodungen and Staff:

Assistant Secretary Von Bodungen **did not place** all of Shintech’s technical information on which the permits are based **in the administrative record** during the public comment period, and **failed to notify the public** that significant technical changes had been made to the proposed air permits only one week prior to the close of the public comment period. (Comment Period, Dec., 1997 - Feb., 1998)

Hilry Lantz, the DEQ’s supervising air permit writer, referred to the objections, filed by the Tulane Environmental Law Clinic on behalf of citizen groups, in regards to air pollution control devices and safety features of the plant as **“ridiculous comments written by law students.”** (*American Lawyer*, Jan./Feb., 1998)

Officials and staff within the office of Air Quality at the DEQ have **refused to speak or meet with non-legal representatives of community groups opposing Shintech**; however, no such restriction on communications or meetings have been placed on contact between the DEQ and Shintech or its supporters. (Letter to DEQ, Herman Robinson, from Tulane Environmental Law Clinic, Jan. 16, 1998)

Mr. Lantz, while there was at least one additional month open to public comment, informed Mr. Chapman of the Department of Economic Development, that the hearing on the air permits conducted in 1996 **“went well in favor of Shintech. . . nothing presented last night would cost the permit.”** (Copy of fax message to Don Hays, Dec. 10, 1996)

Mr. Lantz expressed his concern that the undue delay of the Shintech project by actions of citizen groups would cost money, emphasizing that the Shintech facility “is a 700 million dollar project” and that **“there is a lot of money that can be lost. The interest rates can go up.”** (EPA meeting, Ap., 16, 1997)

Assistant Secretary Von Bodungen instructed his staff not to meet with the citizen groups and to **regard the citizens’ position as adversarial to that of the DEQ.** (Ruling by Judge Bates, La. 19th Judicial District Court, August, 1998)