



DRAFT EJ 2020 ACTION AGENDA FRAMEWORK

COMPILATION OF PUBLIC COMMENTS

September 2015

Please note that this compilation of public comments only contains comments relevant to EJ 2020. Emails that were sent in to ejstrategy@epa.gov that did not pertain to the EJ 2020 framework were not included in this document. Due to size considerations, this document does not include background information or other attachments that were attached to the original submissions. It does not contain each individual submission when multiple comments were submitted that contained the same language from different people or organizations. Personal information has been redacted from submissions that are from individuals not representing larger organizations.

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About this Document

EPA is pleased to release the public comments we received on the draft EJ 2020 Action Agenda framework. This draft framework is intended to be EPA's next overarching strategic plan for environmental justice. The work that will be done under this Action Agenda will help EPA advance environmental justice through our programs, policies and activities, and will support our cross-agency strategy on making a visible difference in environmentally overburdened, underserved, and economically distressed communities.

EPA received over 600 comments that addressed a wide range of important issues in communities. We are reviewing the comments and working with colleagues from across our programs and regional offices to evaluate and consider them as we develop the detailed action plan.

We will be developing a specific and detailed EJ 2020 Action Agenda based on the public comments and other input. Two clarifying points about our next steps:

1. The draft EJ 2020 framework is an outline of the topics that we plan to include in the Action Agenda, comparable to a table of contents. The details and specifics of these topics within the framework will be developed in the coming months. Several commenters noted that the action agenda itself will need to include details and specifics; we agree. The draft framework was intended to seek comment on the outline, understanding that much more work will be done to focus attention and assure that we can be held accountable for progress. The EJ 2020 Action Agenda will include this important information.
2. The EJ 2020 Action Agenda will set priorities and focus high level attention on a limited number of important work areas that are vital to the communities we serve. The EJ 2020 Action Agenda is not a comprehensive list of all of EPA's environmental justice activities. The agency will continue to address environmental justice implementation in all of EPA's national programs, regional work, and other efforts, in addition to the priority areas for attention under EJ 2020 Action Agenda.

Engaging the public is a critical way EPA uses its limited public resources to tackle the issues that matter most to communities. Through the comments, we're learning about important areas that require our additional attention in the EJ 2020 Action Agenda, and others that need to be strengthened. The robust public comments we received will help inform EPA's work in environmental justice in the coming months and years.

We look forward to a continued dialogue with the public to ensure that the EJ 2020 Action Agenda results in meaningful and measurable improvements in American communities.

Draft EJ 2020 Action Agenda Framework

U.S. Environmental Protection Agency
June 15, 2015

Introduction

EPA is seeking input on the draft framework for the EJ 2020 Action Agenda (EJ 2020). EJ 2020 will help EPA advance environmental justice through its programs, policies and activities, and will support our cross-agency strategy on making a visible difference in environmentally overburdened, underserved, and economically distressed communities. Strengthening our collaborations with the communities we serve, our governmental partners and all other interested stakeholders will be key to achieving meaningful outcomes in these communities.

EJ 2020 will build on the foundation established by EPA's Plan EJ 2014, as well as decades of robust environmental justice practice by the agency, communities and our partners, and expand that work through commitments that will continue over the next five years. As we work to get input and finalize EJ 2020, we will continue to implement environmental justice priorities across our programs. Our priorities for 2015 are also described in this document.

Under Plan EJ 2014, EPA laid a foundation for integrating environmental justice in all its programs, including rulewriting, permitting, enforcement, science and law. Over the last four years, we have passed many significant milestones of building environmental justice into the agency's regulatory practice, including guidance for rulewriters, enhanced public participation for EPA-issued permits, building environmental justice into our enforcement targeting and resolution of enforcement cases, EJSCREEN, *EJ Legal Tools*, and many others. We have also revitalized environmental justice across the federal family, assembled promising practices from our rich history of working with communities, and initiated the development of a cross-cutting Environmental Justice Research Roadmap. For more details, see: www.epa.gov/environmentaljustice/plan-ej/.

We have made progress on environmental justice, but there is much more to do. Having completed much of the foundational work that we committed to in Plan EJ 2014, we need to define a new set of ambitious goals for environmental justice for the coming years. This draft framework for EJ 2020 delineates our thinking about the current efforts that require continued and focused attention, and what additional challenges we should undertake. We hope to have a robust dialogue with the communities we serve, our governmental partners and all other interested stakeholders on whether this framework addresses the most important work. This is just a draft; all comments and suggestions to inform and shape EPA's environmental justice action agenda are invited and encouraged.

The EJ 2020 Open Public Comment Period began on April 15, 2015 and has been extended to July 14, 2015. We will be reaching out to many groups and communities for input during that time. If you wish more information about or desire to participate in information and dialogue sessions with EPA, please contact Charles Lee, Deputy Associate Assistant Administrator for Environmental Justice, lee.charles@epa.gov (202-564-2597), or your Regional or Program Point of Contact (see list on Page 5). For more information, please see: www.epa.gov/environmentaljustice/ej2020/. Written comments are welcome. Please submit them electronically to: ejstrategy@epa.gov, or hard copy to:

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Draft EJ 2020 Framework

EPA's environmental justice efforts seek to protect the health and environment of overburdened communities, support them to take action to improve their own health and environment, and build partnerships to achieve community health and sustainability.

Through EJ 2020, we will emphasize, over the next five years, making a visible difference in overburdened communities. Our goals are to:

- I. Deepen environmental justice practice within EPA programs to improve the health and environment of overburdened communities;
- II. Collaborate with partners to expand our impact within overburdened communities; and
- III. Demonstrate progress on outcomes that matter to overburdened communities.

I. Deepen environmental justice practice within EPA programs to improve the health and environment of overburdened communities

- A. Incorporate environmental justice in rulemaking
 - Finalize guidance on considering environmental justice in rulemaking
 - Promote EPA's effective use of guidance, through robust implementation, outreach and tracking
- B. Consider environmental justice in EPA permitting
 - Continue to implement regional plans for enhanced public participation
 - Test and evaluate framework and analytic tools for building environmental justice into EPA permitting, and make this part of our engagement with states and other co-regulators
- C. Advance environmental justice through compliance and enforcement
 - Continue to advance environmental justice goals comprehensively through targeting, case development, and resolution of compliance and enforcement actions in overburdened communities
 - Consider impacts on overburdened communities in developing injunctive relief, mitigation, and Supplemental Environmental Project options in enforcement settlements
 - Enhance communication and transparency with affected communities and the public regarding environmental justice concerns related to compliance and enforcement actions
- D. Enhance science tools for considering environmental justice in decision-making
 - Develop and implement cross-cutting Environmental Justice Research Roadmap, engaging communities, states and other stakeholders in the process
 - Advance research on cumulative risks and impacts
 - Foster Next Generation environmental monitoring, community-based participatory research and citizen science

EPA will incorporate *EJ Legal Tools*, EJSCREEN, promising community-based practices and other environmental justice tools as part of new and ongoing program work.

II. Collaborate with partners to expand our impact within overburdened communities

- A. Collaborate with states, tribes, local governments and other co-regulators to share and develop environmental justice tools and practices
 - Collaborate on tools and mechanisms, such as EJSCREEN and E-Enterprise, we can use together to advance environmental justice

- Mutually identify opportunities for public participation, training and collaborative problem-solving
 - Engage in joint learning and sharing with states, tribes and stakeholders on environmental justice and permitting tools and approaches, including work with permit applicants
 - Foster sharing of promising practices among states, tribes and local governments
 - Work with states, tribes, local governments and other co-regulators to promote consideration of environmental justice in our collective decision-making
- B. Work with other federal agencies to advance environmental justice through the Interagency Working Group on Environmental Justice
- Promote collaboration across federal agencies to support community-based efforts
 - Foster use of tools such as EJSCREEN and continued progress in areas such as the National Environmental Policy Act
 - Leverage federal resources to support community-based efforts, in collaboration with community organizations and other partners such as local business and industry
- C. Support transformative efforts in communities to advance environmental justice through EPA's Community Resources Network
- Support community-driven efforts to identify and address environmental challenges with comprehensive roadmap approaches for development and capacity-building
 - Promote holistic strategies that meet communities where they are and help them to achieve health, sustainability, economic opportunity, revitalization and resilience
 - Foster multi-stakeholder, community-based, public-private partnerships (including local government, business and industry, academia, faith groups, youth, and others) for general and location specific engagement
 - Utilize community-based efforts to engage business and industry to promote sustainable practices beneficial to both business and communities

III. Demonstrate progress on outcomes that matter to overburdened communities

- A. Continue to use measures that ensure EPA accountability and demonstrate outcomes in communities as a central part of EJ 2020, and incorporate such measures throughout the action plan
- B. Show positive impacts of our work through community-level results, such as revitalization and sustainability, partnerships and collaborative problem-solving, and grassroots capacity-building
- C. In addition to measuring outcomes in particular communities, invite comment on whether there are a few critical nationwide program areas that matter to overburdened communities on which we should focus national attention (e.g., drinking water, lead paint)
- D. Develop indicators of progress through collaborative processes with communities, states, tribes and other stakeholder partners

IV. Related efforts

- A. Promoting climate adaptation and resilience and greenhouse gas reduction co-benefits will be an important part of the EJ 2020 Action Agenda
- B. EPA will advance its program relative to the implementation of Title VI of the Civil Rights Act through a comprehensive, long-term Office of Civil Rights (OCR) Strategic Plan, which OCR is currently developing

Plan EJ 2014 Commitments/Accomplishments (June 2015)

| <i>Element</i> | <i>Major Commitments/Accomplishments</i> | <i>Status</i> |
|--|---|----------------------|
| <i>Incorporate EJ in Rulemaking</i> | Finalize <i>Guidance on Considering EJ During the Development of a Regulatory Action</i> | Complete |
| | Issue <i>Draft EJ Technical Guidance for Assessing EJ in Regulatory Analysis</i> for Public Comment/Science Advisory Board Review | Complete |
| | Finalize <i>Technical Guidance for Assessing EJ in Regulatory Analysis</i> | 2015 |
| | Develop EJ and Rulemaking Cross-Agency Team work products | Complete |
| <i>Consider EJ in Permitting</i> | Institute Regional Implementation Plans for enhanced community engagement | Complete |
| | Implement Regional Implementation Plans | Ongoing |
| | Issue recommended practices on community engagement for EPA permit applicants | Complete |
| | Develop draft framework and tools for EJ analysis for EPA permits for internal review | Complete |
| | Test, finalize and implement guidelines for EJ analysis for EPA permits | 2015-17 |
| <i>Advance EJ through Compliance and Enforcement</i> | Issue multiple guidances and policies on considering EJ in enforcement life-cycle | Complete |
| | Issue guidance requiring EJ review for all initiated enforcement cases, tracking cases in ICIS database and transitioning to EJSCREEN | Complete |
| | Incorporate ACS measure for EJ in OECA FY 2014 NPM Guidance | Complete |
| | Achieve and communicate results benefiting overburdened communities | Ongoing |
| <i>Support Community-Based Programs</i> | Implement Community KPI; lessons inform current priority on communities | Complete |
| | Identify promising community-based practices | Complete |
| | Develop land use and equitable development resources | Complete |
| <i>Foster Administration-Wide Action</i> | Reconvene Interagency Working Group on EJ (IWG) at cabinet level | Complete |
| | Conduct White House Forum and community listening sessions | Complete |
| | Issue Memorandum of Understanding on EO 12898 and IWG codifying structured and focus areas, signed by IWG secretaries | Complete |
| | Develop draft NEPA analytic methodologies | Complete |
| <i>Science Tools</i> | Develop assessment and mapping tools, including C-FERST/T-FERST | 2015 |
| | Implement community cumulative assessment grants and Centers of Excellence in Health Disparities | Complete |
| | Convene NEJAC research workgroup; respond to recommendations by initiating development of cross-cutting EJ Research Roadmap | Complete/ Ongoing |
| <i>Legal Tools</i> | Issue <i>EJ Legal Tools</i> document | Complete |
| <i>Information Tools</i> | Develop EJSCREEN V1.0 for internal use | Complete |
| | Issue public version of EJSCREEN | Complete |
| <i>Resources Tools</i> | Establish one-stop “Resources for Communities” web portal | Complete |
| | Develop technical assistance contract (TASC) and training enhancements | Complete |
| <i>Tribal Policy</i> | Issue EPA Policy on EJ for Working with Federally Recognized Tribes and Indigenous Peoples | Complete |
| <i>Training</i> | Complete mandatory EJ training for all employees | Complete |

Priorities in 2015

- Continue to implement environmental justice in rulemaking – finalize guidance and continue to implement
- Continue to advance environmental justice in permitting
- Continue to implement environmental justice in enforcement – consider environmental justice in all our cases, including consideration of impacts on communities in developing injunctive relief, mitigation and Supplemental Environmental Project options in enforcement settlements
- Robustly advance environmental justice through the Agency’s priority on Making a Visible Difference in Communities
- Complete public release of EJSCREEN and begin stakeholder engagement around potential uses and future development
- Implement Environmental Justice Small Grants and Environmental Justice Collaborative Problem-Solving Cooperative Agreement programs
- Continue to lead the Interagency Working Group on Environmental Justice; hold cabinet-level meeting
- Implement Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples
- Further efforts to make equitable development an integral part of EPA’s Smart Growth, Brownfields, and climate adaption and resilience efforts
- Conduct community resources and training workshop
- Include measurable activities to advance environmental justice in National Program Managers guidance being developed for the next two years

EPA Points of Contact for EJ 2020

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Re: Draft EJ 2020 Action Agenda Framework, Comments by Air Alliance Houston

Dear Mr. Lee:

Thank you for this opportunity to submit comments on the Draft EJ 2020 Action Agenda Framework and for EPA's engagement with Air Alliance Houston and others over the last few months. We appreciate the effort and the opportunity.

In addition to these comments, Air Alliance Houston endorses comments made by Earthjustice and assented to by many of our peer organizations across the nation. These comments are the result of superior work by our colleagues and are deserving of significant weight and attention.

- I. Deepening environmental justice practice within EPA
 - A. Rulemaking

There are several barriers to community participation in rulemaking. These include:

- Inadequate notice
- Limited opportunities and routes for public participation
- Lack of technical knowledge
- Limited access to experts
- Cost of travel, lost work time, etc.

Public participation in the recent Refinery Rule, with its thousands of comments and hearings in Galena Park, TX and Wilmington, CA, is the EPA's best and most recent example of strong public participation in rulemaking.

The public hearings in particular were very useful. They were held in prominent EJ communities and garnered significant attention from the public, the media, and EPA rule writers. Face to face communication with fence-line community residents provides the best and most immediate opportunity

for public participation. This is particularly true of citizens who do not have the luxury of participating for months or years in every step of a protracted rulemaking process.

Success in public participation should be measured not by number of comments, written or oral, but by changes made to a proposed rule in response to public comment. Although the Refinery Rule was the subject of a robust public participation process, we will wait to see the final rule to decide whether it was an effective process.

EPA should endeavor to engage communities in every step of the rulemaking process. Public participation should begin even before a draft rule is proposed. In the Refinery Rule, the proposed rule was taken as a starting point for public participation, and success will be measured on changes—positive or negative—to the proposed rule. If public involvement had begun sooner, we might have started with a proposal that was more responsive to community concerns.

It should be said that one of the reasons the refinery rule hearings were a success was that the rule is a major one that will have a big impact on air pollution and public health. National organizations such as Earthjustice were deeply involved in the public participation process, assisting local organizations like Air Alliance Houston and Texas Environmental Justice Advocacy Services by organizing planning calls, producing fact sheets, and arranging travel. We were fortunate to have the assistance of these groups for this rule, but not every rulemaking will be as significant and garner as much national attention.

B. Permitting

Texas likely presents EPA's biggest challenge in ensuring compliance with federal permitting requirements. Texas has more permitted facilities than almost any other state. Texas has also openly defied EPA on many rules, from the greenhouse gas permitting to the Mercury and Air Toxics Rule.

The sheer number of facilities in Texas means that EPA is likely missing many facilities that are skirting federal law. Flexible permits are also being used in Texas to conduct major modifications without federal permit review. One way for EPA to promote environmental justice in Texas is to ensure that all facilities are obtaining federally required permits and conducting appropriate Title V reviews before undertaking modifications.

The Contested Case Hearing (CCH) process in Texas has historically provided citizens with a useful mechanism to challenge state permits. The few permits that go through a CCH each year are improved and receive more public support. But this process is being systematically weakened by state lawmakers. As Texas erodes opportunities for public participation in permitting, EPA must compensate.

As with rulemaking, lack of public notice and limited resources limit opportunities for meaningful public participation in the permitting process. EPA should provide resources to aid EJ communities in participation, by for example providing free access to experts such as lawyers, modelers, and toxicologists. Finally, EPA has an incredible resource in the National Environmental Justice Advisory Council (NEJAC). EPA should give strong consideration to the NEJAC's recommendations on incorporating EJ in permitting.¹ We concur with their recommendations, particularly as follows:

¹ Available at <http://www.epa.gov/environmentaljustice/resources/publications/nejac/2013-ej-in-permitting.pdf>

- EPA should provide guidance to permit applicants as to what the applicant should do to support full community engagement in review procedures.
- EPA needs to educate community members and organization leaders on the effect of EPA policy on local decisions, and help community members develop the capacity to engage the federal environmental policy effort.
- EPA regions should take the initiative to schedule public meetings with the community to enhance their knowledge of the proposed activity.
- EPA should clarify specific roles for states and tribes relative to EPA's permitting.
- EPA, in collaboration with the permit applicant, should actively listen to and learn from the community about past pollution, rather than insisting past pollution is out of the new permit's scope.
- EPA should provide inducements and/or incentives to states to adopt any program which enhances the ability of communities to be involved with permit actions in their communities.

C. Compliance and Enforcement

Again, because of the sheer size of Texas and its industry, compliance and enforcement presents a greater challenge to EPA here than perhaps any other state.

Very few polluting facilities in Texas receive any penalty for their violations. State enforcement actions often resolve years of violations with "sweetheart deals" that provide no incentive for future compliance. In a recent example, the Sierra Club and Environment Texas calculated a potential penalty of \$641 million for eight years of Clean Air Act violations at the ExxonMobil facility in Baytown. The district court judge in that case found that TCEQ penalties of only a few tens of thousands of dollars had resolved these violations. When billion dollar companies receive fines in the tens or hundreds of thousands of dollars for years of violations, there is no economic incentive not to pollute. Enforcement should be used to create that incentive.

Texas has a sophisticated system of electronic reporting of violations known as STEERS, the State of Texas Environmental Electronic Reporting System.² Anyone can search STEERS and find unenforced violations from just about any facility in the state. This is a powerful tool that enables such things as Clean Air Act citizen suits. Other states should follow Texas' model to make emissions information publicly accessible in a timely manner.

In Texas, STEERS serves as a stark reminder of how often violations of the law go unenforced. No one wants the federal government to step in and become the chief regulatory authority in Texas, but it is hard to see how local authorities are ever going to provide enforcement that is adequate to deter companies from making an economic decision to pollute. These decisions are easier to make in environmental justice communities that put up little to no resistance to illegal activity by industry.

D. Enhance science tools

² Available at <http://www11.tceq.texas.gov/oce/eer/index.cfm>.

For years EPA has vocally promoted community based participatory research (CBPR) and citizen science. But EPA has not provided a clear path for consideration of citizen-gathered data. Quite the opposite: EPA has ignored citizen data on many occasions.

Air Alliance Houston has conducted a number of citizen science projects in the last few years. We completed a two-year CBPR project in Galena Park, Texas that included collection of 29 samples of fine particulate matter (PM2.5) using a MiniVol Tactical Air Sampler. One aim of the project was to determine whether the Clinton Drive PM2.5 regulatory monitoring site was representative of PM2.5 levels throughout the community. Data collected showed an average PM2.5 concentration over 15 $\mu\text{g}/\text{m}^3$, well over the design value of 12.0 $\mu\text{g}/\text{m}^3$.³ In comments to the PM2.5 designation request, we objected to the use to exceptional events to keep Clinton Drive below the design value and raised a serious question whether the Clinton Drive monitor was representative of community exposure, using our CBPR data as evidence.⁴ The response from EPA was as curt as it was dismissive:

With regard to whether the data collected by Air Alliance Houston indicates a violation, Region 6 evaluated the monitoring data submitted by the commenter. Approximately 29 discrete samples were collected in the Galena Park community over a 16-month period from May 2012 through September 2013, thus the data is limited in scope compared to the data collected by regulatory monitors over a 3-year period and subject to data completion criteria. Additionally, these data were also not monitored and collected according to the requirements of the federal reference method for PM2.5 found in 40 CFR part 50, Appendix L. Our designations must be based on valid 3-year design values, and even if the monitoring data submitted by the commenters fully complied with the siting and data quality criteria, there are not sufficient data on which to derive a valid, 3-year design value.

Therefore, these data do not affect our decision to designate the area as Unclassifiable/Attainment.⁵

This comment suggests that only federal reference method data will be considered by EPA in the designation process. However, there are many steps EPA could have taken short of designating the area based on Air Alliance Houston data. EPA could have added a regulatory monitor in Galena Park, or moved the Clinton Drive monitor to a new location. EPA's failure to react to this data at all is truly discouraging for an organization committed to community based participatory research.

Air Alliance Houston is also exploring technologies such as new data visualizations,⁶ personal air monitors, and next generation monitoring technology. These technologies are moving quickly, and regulators are not keeping pace. There is no clear route to submit data to federal regulators. A tiered system of data submission should be created to accept all data and give it the weight it deserves. This tiered system would align with the EPA's goal of integrating EJ into the EPA's Research Enterprise and potentially the EPA Office of Research and Development's Health Disparity investigation.

At the most recent Clean Air Act Advisory Committee (CAAAC) meeting, we were told that EPA would essentially like to rate all of the available monitoring equipment and create a library of techniques that

³ See <http://airalliancehouston.org/wp-content/uploads/Galena-Park-Monitoring-Report-FINAL.pdf>, pdf p. 17.

⁴ Comments by Air Alliance Houston, et al., EPA-HQ-OAR-2012-0918-0295 (Sept. 29, 2014), p. 4.

⁵ Response to Comments, EPA-HQ-OAR-2012-0918-0337 (Dec. 17, 2014), p. 56-57.

⁶ See houstoncleanairnetwork.com.

citizens can use. This will be a good step, but a rating system or library created through a formal process will always lag behind the technology by several years. From our perspective, we need a standardized submission process that accepts data of any kind, evaluates it, and affords it the weight it deserves. The CBPR process would be more empowering for communities if there were a clear endpoint such as a formal submission to and response from EPA.

The data we collect with tedlar bags and AirBeams will never be given equal footing with FRM data, nor should it. Most communities would be satisfied if their research was considered as a factor in decisions about where resources are needed. Data could influence decisions about which facilities to monitor for enforcement and compliance, where to give community grants, and where to apply federal monitoring resources. There are already examples of this happening organically. In Louisiana, for example, the iWitness pollution map⁷ is reviewed weekly by state regulatory officials. Pollution reports made by citizens via the iWitness map are factored into decisions about compliance and enforcement efforts.

There is a great deal of anxiety from the regulated community about how citizens will make use of better tools and more data. The discussion about EJSCREEN at the most recent CAAAC meeting was an example of this. CAAAC representatives from industry were very concerned that citizens would misuse data from EJSCREEN. Other examples come from Texas. Our state agency the Texas Commission on Environmental Quality does not agree that citizens deserve unfettered access to information about air pollution. This is why the TCEQ refused to participate in the Village Green monitoring program, and it is why they have refused to publicly acknowledge the existence of houstoncleanairnetwork.com.

We simply cannot understand this fear. The idea that citizens would deliberately misuse data is, frankly, offensive to us. There is an absurd asymmetry of resource and data access between industry and citizens. In Houston, the industry group Houston Regional Monitoring maintains its own robust private monitoring network that is not accessible to the public. Citizens who complain about lack of access to information are brushed aside. Citizens who present data they have gathered themselves are dismissed or derided for their efforts. That data exists and is not accessible to the public is a huge environmental injustice. This is the information age, and every attempt should be made to provide as much information as possible to anyone who can make use of it. This is the direction the world is moving, and it is important that regulators move with it.

II. Collaborate with Partners

A. Collaborate with states, tribes, local governments

Texas has sued the EPA 21 times since President Obama took office. This adversarial relationship is likely to continue, and the best example we have of the state/federal relationship bearing fruit in Texas comes from the recent spat over greenhouse gas permitting.

After our previous governor declared that Texas would never issue greenhouse gas permits, EPA implemented a FIP and started issuing the permits itself. Neither EPA nor Texas wanted to promulgate a FIP, but EPA was forced by Texas' inaction. Once EPA started issuing GHG permits, state lawmakers passed a law compelling the TCEQ to create a GHG permitting process. This shows that Texas will step forward if the alternative is regulation by EPA. Although we would prefer that Texas not act only under the threat of EPA action, if that threat is effective, it should be used when necessary.

⁷ Available at <http://map.labucketbrigade.org/>.

Most states do not have dedicated environmental justice staff people. TCEQ dedicates one quarter of one full time employee to environmental justice (which it calls “environmental equity”). Personally, we have not seen that employee at any environmental justice event hosted by EPA. Our research indicates that many states do not have a dedicated EJ representative or staff, including Arkansas, Kansas, Louisiana, and Oklahoma. Some other states including California, Illinois, New Jersey, New Mexico, and New York do have EJ staff and offices. EPA should encourage states that do not have EJ offices and staff to create them.

In Region 6, the EJ training sessions held in each state have proven incredibly valuable. Air Alliance Houston staff has attended all of the Region 6 EJ training sessions held under Regional Administrator Ron Curry, including in Albuquerque, NM; New Orleans, LA; Houston, TX; and Little Rock, AR. The impact of these trainings cannot be overstated. They provide EJ activists and EJ community members with the opportunity to engage EPA officials in person. (Most trainings have not included state-level representatives, with the exception of Arkansas DEQ, likely for the reason cited above—lack of EJ staff.) These sessions allow the EJ community to better understand the agency’s inner processes, requirements, and limitations. In addition, grassroots organizations and EJ community leaders from all over the region are able to share insights, resources, and collaborate on a greater scale and scope. This adds substantial leverage to the Region 6 EPA office when addressing region-wide priorities. Air Alliance Houston strongly recommends that these EJ trainings continue and that the other Regions have them as well.

It is our understanding that Region 6 intends to develop a state EJ plan for each state. We support this goal and urge EPA to engage community members early in the process.

B. Work with other federal agencies

It is important that the principles of environmental justice are followed by all federal agencies, not just the EPA. Last year, we experienced a successful interagency action in the Chemical Safety and Security Working Group. That group held listening sessions in Texas City, TX and Houston that included representatives from EPA, the Department of Homeland Security, the Occupational Safety and Health Administration, the Coast Guard, and others.

Chemical safety and security, like EJ, is an issue whose breadth and depth demand cross-agency cooperation. Although we have not seen the recommendations of the working group or any follow up action, we are eager to see what the group produces. Other agencies that we would expect to be involved in EJ work include the Department of Justice, the Department of Transportation, the Federal Railroad Administration, the Department of Housing and Urban Development, the Pipeline and Hazardous Materials Safety Administration, and the Department of Homeland Security.

EJ communities also need assistance with finding and taking advantage of federal resources. We are aware of a few programs within EPA, including the EJ Small Grant, the Collaborative Problem Solving grant, and the Building Blocks for Sustainable Communities program. Most EJ community members probably do not know about these opportunities or have any idea where to begin to take advantage of them. There are also probably many other potential resources within other federal agencies that we do not know about. EPA should create a single resource for communities to learn about all available opportunities and provide assistance with application and administration.

There is a perception on the Texas Gulf Coast that our communities are underrepresented in federal resource allocation. Whether or not this is true, it is a perception that discourages communities on the third coast from pursuing federal funding. In Region 6, regional conferences or calls always include participants who know little or nothing about EPA or other federal grants or assistance programs. Federal authorities and EJ leaders should work together to apply federal resources where they are needed and provide equal opportunity for all communities. If EJ leaders know about these opportunities and bring them to their communities, then regional EJ discussions would be more productive.

III. Outcomes that matter to overburdened communities

Similar to rulemaking and permitting, there are barriers to enlisting overburdened communities in identifying “outcomes that matter.” Communities lack the resources and expertise to evaluate all potential risks and prioritize certain outcomes. EPA should not decide for communities what “matters,” but EPA should equip citizens with the tools that they need to adequately assess various outcomes and make an informed decision about which ones really matter. Our hope is that tools like EJSCREEN will take us in this direction.

Public involvement early and often in this process will be important. Once certain priority outcomes are identified, measuring impacts and holding EPA accountable to its commitments will go a long way toward legitimizing EPA’s role in EJ communities. But again, the years that such commitments take to see through will limit the involvement of many community members.

The goal of identifying “a few critical nationwide program areas that matter to overburdened communities” may be problematic if it is taken as an invitation to score only a few high-profile victories. There certainly are a few issues that are shared concerns across the nation, including chemical safety and security, hazardous chemicals used in industrial processes and found in consumer products, and goods movement. Issues like these are clearly of nationwide importance, as they are all already the subject of ongoing nationwide advocacy campaigns

IV. Related efforts

Environmental justice is a civil rights issue and should be addressed as such. There have been attempts by citizens to address environmental justice through lawsuits brought under Title VI of the Civil Rights Act. They have not been successful to date. We would like to see EPA further the goal of addressing environmental justice as the civil rights issue that it is.

V. Conclusion

As is typical for Air Alliance Houston, we encourage EPA to think about the impact, or lack thereof, of these policies and proposals in Texas. The EPA’s proposed EJ framework is ambitious, but we have serious concerns about how much of it will proceed in Texas. Texas is “Open for business” and the TCEQ, the Texas legislature, and the governor consistently place business interests above public health. Our state has bought in to the false choice between environment and the economy and has enthusiastically chosen the economy.

We believe the viability, sustainability, and ultimate success of the proposed framework must clarify the roles of EPA national leadership, EPA regional offices, and state environmental agencies. The sooner the

EPA establishes the guidance, tools, and executive-level support, the sooner states will be able to observe, learn, support, coordinate, follow, and integrate EJ in their daily activities.

Thank you again for the opportunity to submit comments. If you have questions or wish to discuss anything further, please don't hesitate to contact Adrian Shelley at 713-528-3779 x2, adrian@airalliancehouston.org or Brian Butler at 713-528-3779 x1, brian@airalliancehouston.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Adrian Shelley". The signature is fluid and cursive, with the first name "Adrian" and last name "Shelley" clearly distinguishable.

Adrian Shelley
Executive Director
Air Alliance Houston

From: Alexander Kidd (RIT Student) <[REDACTED]>
Sent: Tuesday, April 21, 2015 4:26 PM
To: ejstrategy
Cc: [REDACTED]
Subject: EJ 2020 Comments

Dear EPA,

I am glad to hear that a new action framework for implementation by 2020 is being drafted. There are a few suggestions I'd like to offer for consideration.

I noticed that in researching distressed environmental communities a significant problem is contaminated and barren landscapes. Part of the initiative could serve to plant more greenery, especially trees, in areas that may have been destroyed under construction projects. This would prove helpful in replacing old infrastructure with restored woodlands or at least planting on unused land (I am thinking of the quarries and dirty streams in the background of Cynthia Giles' video).

As for contaminated land and water, either direct funding of cleanup or an incentive for the community to help clean them would allow the ecosystem to revive itself and it would benefit everyone there. I am from Syracuse, where I would often run on the Onondaga Lakefront for sports training. While the lake is not completely clean, Superfund cleanup of over \$1 billion, with the help of Syracuse University and ESF technologies, has brought fishing and possibly swimming back to "America's Most Polluted Lake". So either another round of Superfund treatments could help the most distressed ecosystems, or perhaps finding ways for local industry to owe up to their dumping and help restore the local environment would also provide financial backing of the most overburdened toxic sites.

As environmental history dating back as far as the 1970s shows, local environmental policy can make just as big an impact on the community as Federal oversight. I would encourage you to bring to justice perhaps on a regional level those industries, especially non-renewable energy, if they have in any way disrupted the surrounding ecosystem. The citizens of America will help by being educated on the effects of such development as natural gas on the environment (fortunately, New York has a moratorium placed on this practice so far). If they can stand unwavering with your help, then prevention of further environmental damage may be possible and can become a standard for generations to come. As for local phenomenon like the Californian drought, alternative solutions must be assessed quickly. William Shatner has proposed funding for piping water from elsewhere, and while desalinization plants are expensive, perhaps a new contest to find the most creative ways of supplying water to the parched valleys will help. Not even the most creative, but *any* new developments could be considered in a world that has an iota of precious fresh water. Google and IEEE has hosted over the past few years a contest to design a smaller electrical inverter for homes. Crowdfunding and crowdsourcing may be the answer to some dire problems with climate change.

To prevent going on forever in detail about environmental policy, I will conclude that EJ Tools and EJSCREEN should be continued, as well as perhaps a mobile app or online service to better feed environmental issue updates to the public. *Relevant* environmental information for current hot topics (such as the California drought, Keystone Pipeline XL, etc.) will help keep the public informed on topics that they may be directly influenced by. I would hope technology can serve the country, and even the globe, to be a more cohesive community in sustainability and preservation. Keeping science away from political bias may be a constant fight, but the EPA has faced this adversity before and can be a major player in environmental balance, environmental justice.

Thank you for taking the time to get public feedback about EJ 2020: it truly makes a government by the people, for the people.

Sincerely,

Alexander C. Kidd
Software Engineering '18 @ RIT

To: Charles Lee, Deputy Associate Assistant Administrator for Environmental Justice
Environmental Protection Agency

From: Joan Vanhala, Coalition Organizer
Alliance for Metropolitan Stability

Re: AMS comments on EPA Draft EJ 2020 Action Agenda Framework

July 14, 2015

The Alliance for Metropolitan Stability (AMS) is a coalition of grassroots organizations that advances racial, economic and environmental justice in growth and development patterns in the Twin Cities region. Our 31 member groups represent communities of color, low-income communities, housing advocates, faith-based organizations, research and policy organizations, economic developers and environmental, transit and land-use policy advocates. See http://www.metrostability.org/about_us/member_list.php

Thank you for your efforts to strengthen enforcement of Environmental Justice policies and practices at the federal level. We are seeing the results within our local jurisdictions and your efforts have provided our local environmental justice communities with additional leverage to protect their community members from further harm and begin to address the unjust overburden their communities bear for the sake of our economy and industry.

Here are our comments on the EPA Draft EJ 2020 Action Agenda Framework:

1. Referencing page 2: II. Collaborate with partners to expand our impact within overburdened communities.
 1. Collaborate with states, tribes, local governments and other co-regulators to share and develop environmental justice tools and practices:
 - A. EPA funded local state agencies should be required to report on the information gathered on their identified overburdened communities (such as EJ community assessments) to the public via their websites and in addition send these reports to local planning jurisdictions such as metropolitan planning organizations, counties, and cities to be used as land use planning tools to ensure that land use planning does not contribute to additional environmental burdens.
 - B. In addition EPA funded local state agencies should be required to submit any reports generated on their identified overburdened communities (such as EJ community assessments) to their state Department of Health and other health departments at county and city levels to ensure a comprehensive approach to reducing Environmental Justice health disparities.
 2. Referencing page 3: C. Support transformative efforts in communities to advance environmental justice through EPA's Community Resources Network:
 - A. Promote EPA locally funded jurisdictions to contract directly with Environmental Justice grassroots communities for engagement and outreach to increase their capacity to apply their expertise on community engagement practices on addressing environmental challenges. Example: Metropolitan Council Corridors of Opportunity Sustainable Communities Planning Grant
<http://www.corridorsofopportunity.org/partners/community-engagement-team> and
<http://engagetc.org/grants/>

- B. Require each EPA funded local state agency to form Environmental Justice Advisory Committees to oversee local state agency environmental justice outreach and engagement; priority setting; regulatory programs; monitoring, assessment and consideration of cumulative impacts; equity in rulemaking, policy development, and program implementation; and environmental justice assessments.
3. Referencing page 3: III. Demonstrate progress on outcomes that matter to overburdened communities. C. In addition to measuring outcomes in particular communities, invite comment on whether there are a few critical nationwide program areas that matter to overburdened communities on which we should focus national attention (e.g., drinking water, lead paint):
- A. Consider assessment of environmental justice communities within land use planning as a nationwide program area.
4. Final Comment: Successful outcomes of a healthy and prosperous community require effective and authentic community engagement. EJ communities have a long history of disregard, disrespect, and disinvestment by government that has resulted in harmful and destructive public practices. The unfortunate outcome of these public practices are the health disparities within all EJ communities. Another unfortunate result is the lasting distrust EJ communities hold for their local government.

To overcome this distrust will take time and will require successful outcomes for EJ communities. Here in the Twin Cities, EJ communities partnered with the Metropolitan Council to establish regional standards in community engagement. The result was this draft document: Metropolitan Council Public Engagement Plan [http://metrocity.org/efiles/PEP-DraftforOutreach_\(3\).pdf](http://metrocity.org/efiles/PEP-DraftforOutreach_(3).pdf). This document is an excellent example of how community principles can be integrated into a public policy document.

It is our best hope that during this time of political receptivity to EJ communities, we can embed best practices into public agencies' culture and policies that will sustain through time and provide an open door to future generations to come.

From: AJ St.Martin <[REDACTED]>
Sent: Monday, June 15, 2015 7:06 PM
To: ejstrategy
Subject: Prisoners and EJ 2020

Mr.Lee,

My name is Amanda. I am a concerned citizen and a residential counselor for adjudicated youth. I agree with the Human Rights Defense Center position that prisoner populations should be seriously considered in the EJ 2020 process. It is time to stop treating prisoners like second-class citizens.

As I see every day in my work, those most likely to be imprisoned are people of color and people from low-income families. The environmental injustice in working class neighborhoods that already exists is inexcusable. In order to truly examine potential impacts, you must consider who the people in prison are and what risks they have already faced.

Hurricane Katrina and other natural disasters have clearly shown the prison system's lack of preparedness for such emergencies. Any and all proposed projects involving or in the vicinity of prisons should have contemporary and dynamic safety and evacuation plans.

Prisoner populations should be seriously considered in the EJ 2020 process. Inmates are human beings that deserve a healthy environment.

Thank you for reading. Please do what is right.

Amanda St.Martin
[REDACTED]

July 14, 2015

Mr. Charles Lee
Deputy Associate Assistant Administrator for Environmental Justice
USEPA, Office of Environmental Justice (2201-A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460
lee.charles@epa.gov

Dear Mr. Lee,

On behalf of American Rivers' 200,000 members and supporters across the nation, I am writing to express our support and gratitude for EPA's leadership in pursuing and implementing a strong environmental justice agenda as described in both your EJ2014 and EJ2020 plans. We agree with EPA's strategy of addressing environmental justice through both national policies and local practices within overburdened communities.

Historically, economically disadvantaged communities, particularly those with minority populations (referred to hereafter as environmental justice communities), have shouldered a disproportionate amount of society's environmental liabilities such as highways, power plants, and combined sewer overflows. The concentration of these burdens in these environmental justice communities negatively impacts residents and their quality of life. These same environmental threats degrade communities' rivers and streams, often transforming them from community assets - fishing and swimming destinations - into dangerous, polluted hazards.

Climate change is already dramatically impacting our nation's freshwater resources. Projections forecast more extremes in weather, both floods and droughts, which are predicted to have a disproportionate impact on environmental justice communities. American Rivers works in these communities which already are experiencing more frequent and extreme weather, resulting in combined sewer overflows, localized flooding, and associated quality of life impacts. These communities would benefit from more resources to support restoration of natural, more resilient hydrology.

In the EJ2020 framework, green infrastructure should be included as a tool not only to improve the quality of rivers by reducing stormwater runoff, sewer overflows, and local flooding but also to improve the overall quality of life in the community. Green infrastructure adds green space to otherwise gray, impervious areas, beautifies neighborhoods, reduces noise pollution, reduces the urban heat island effect, provides space for recreation, and helps bring the

community together. The plants in the greenspace are able to uptake nitrogen dioxide, ozone, sulfur dioxide, and particulate matter, which improves the surrounding air quality. The implementation and maintenance of green infrastructure in communities can also improve the local economy by providing jobs for residents (as opposed to big infrastructure projects that usually go to specialized companies and workers outside of the community).

The EJ2020 framework should allocate funding for clean water infrastructure in order to reduce sewer overflows and local flooding, particularly in environmental justice communities. Additionally, funding for this work should be provided in a way that does not cause water rates to rise significantly in communities that can least afford it.

We encourage EPA to consider actively engaging in furthering work to restore and protect environmental justice communities as part of climate change adaptation efforts. We also encourage EPA to provide resources to environmental justice community groups to support the work of restoring and protecting neighborhood waterways.

Please contact me if you have any questions regarding the above comments. I thank you in advance for EPA's consideration of these important matters.

Sincerely,

A handwritten signature in blue ink, appearing to read "Wm. Robert Irvin". The signature is fluid and cursive, with a long horizontal stroke at the end.

Wm. Robert Irvin
President and CEO

Cc: Mike Shapiro, Principal Deputy Assistant Administrator, EPA Office of Water

From: Arnold P. Wendroff, PhD <mercurywendroff@mindspring.com>
Sent: Tuesday, June 02, 2015 4:49 PM
To: ejstrategy
Cc: Lee, Charles; Ash, Christine; Poliwka, Annette; Giles-AA, Cynthia; mercurywendroff@mindspring.com
Subject: SUGGESTIONS FOR ADDRESSING RITUALISTIC MERCURY VAPOR EXPOSURES WITHIN EPA's Draft EJ 2020 Action Agenda Framework
Attachments: ATSDR TOX PROFILE EXCERPTS + APW COMMENTS.docx; EPA RARE GRANT PROPOSAL 2010.pdf; LUMEX MERCURY VAPOR FILTER.docx; WENDROFF LETTER TO JEM RE GEER ET AL 06 12.pdf; JSI LAWRENCE EAG EPA REPORT 03 15 07.doc

From: Arnold P. Wendroff, PhD. **Mercury Poisoning Project** www.mercurypoisoningproject.org 718 499 8336 mercurywendroff@mindspring.com Key Words < **mercury Santeria** >

To: **EPA Environmental Justice**

cc: Charles Lee, Christine Ash, Annette Poliwka, Cynthia Giles, **EPA EJ**

Input to: **EPA's Draft EJ 2020 Action Agenda Framework**

A LONG-STANDING ENVIRONMENTAL INJUSTICE: MAGICO-RELIGIOUS MERCURY CONTAMINATION OF CARIBBEAN & LATINO HOUSING AND THE FAILURE OF EPA TO *SUBSTANTIVELY ASSESS AND ADDRESS* IT:

SOME RECOMMENDATIONS TO ENABLE EPA TO PROTECT VULNERABLE MINORITY COMMUNITIES.

Introduction

The EPA (as well as manifold local, state and federal agencies) has been aware of the environmental health hazard posed by magico-religious uses of elemental mercury in some Caribbean and Latino communities in the US mainland and in Puerto Rico for well over two decades, yet EPA has done nothing of a *substantive* nature to assess these exposures, and hence has failed to protect mercury-impacted communities from ongoing exposure to developmentally neurotoxic levels of mercury vapor in their homes.

The vast majority of these exposures are from mercury vapor emanating from prior ritualistic mercury spills on floors, spills which continue to evolve developmentally neurotoxic levels of mercury vapor for several decades; hence most exposures to ritualistic mercury vapor are at second-hand. The occupants of mercury-contaminated dwellings are unaware of their exposure, as are their health care providers.

Unlike 'classical' EJ exposures, the source of this extremely neurotoxic contaminant is not some commercial or governmental entity exogenous to the impacted communities, but rather from members of the minority communities themselves. These tend to be relatively poor communities, with no ability to pay for mandated decontamination, and in any event, there is no way to legally identify the person or persons who ritualistically contaminated the dwelling/s, and hence no way to make the polluter pay.

As stated in 'my' two successful EPA R2 Environmental Justice-Pollution Prevention grant applications of 1996 and 1998, the environmental injustice was (and remains) the failure of government agencies with oversight of such contamination, and specifically the EPA, to **assess, address, and prevent** these environmental exposures to mercury vapor in housing, resulting from its magico-religious use.

Proposed steps to address the problem

The key to addressing the issue is to demonstrate (or disprove) that housing in Caribbean-Latino communities is contaminated with mercury as a result of its magico-religious use.

(Please see attached [March 1999 ATSDR](#) excerpts.) This is simple and cheap to do using a portable mercury-vapor analyzer to non-invasively measure mercury levels in the public hallways of a representative sample of heavily Caribbean-Latino apartment buildings (especially public housing) in communities (Bronx, NY; Union City, & West New York, NJ; Lawrence, MA) where ritualistic mercury was known to have been sold and used. Occupants of apartments emitting high levels of vapor would be notified, and requested to allow measurements of the vapor levels inside their homes. Occupants of contaminated apartments would be tested for elevated mercury levels and diagnosed for symptoms and signs of mercury poisoning. EPA has a mandate to perform such research, but to date has refrained from doing so. (Please see the attached [2010 letter and associated RARE FY 2011 Grant Proposal from EPA R2](#).) It has long been apparent to all familiar with the problem, that should this research be carried out, it would almost certainly result in demonstrating that very large numbers of homes are contaminated, and so would require their evacuation and decontamination, as well as demonstrating the failure of the environmental health system.

The utility of mercury vapor filters needs to be assessed, which if placed in mercury-contaminated homes, would allow their occupants to remain in them until the dwellings could be decontaminated. (Please see attached [mercury vapor filter prospectus](#).)

Health education programs must be implemented, and based on informing the mercury-exposed communities of the reality of their mercury exposure and of its effects. The majority are exposed at second-hand, and are not ritualistic mercury users, and in many cases not of Caribbean or Latino ethnicity. (Please see attached [2012 JEM Letter](#).)

Health care providers serving mercury-contaminated communities need to be informed of these exposures and their clinical picture. This will raise their clinical suspicion and enable them to diagnose exposures which they are currently missing. Two examples of such attempts are www.state.nj.us:80/health/eoh/cehsweb/hcp_culturalmercury.html from New Jersey, and www.mercurypoisoningproject.org/pdf/metallic99.pdf ; www.mercurypoisoningproject.org/pdf/booklet99.pdf from New York City. EPA should issue requests for proposals from the environmental medical community to work collaboratively with community organizations to collect data on mercury vapor levels in housing, mercury levels in occupants of mercury-contaminated housing, and health effects of these domestic mercury vapor exposures. (Please see attached [2007 JSI EPA report](#).)

Association of State Drinking Water Administrators

**Comments on Draft EJ 2020 Action Agenda Framework
June 12, 2015**

We believe the general principles described in the Framework are laudable. Further, we agree with the three overarching goals. Most of the bulleted items below the three goals are either directly applicable, or by extension applicable, to the national drinking water program. However, there are some important distinctions that we believe need to be drawn between EJ considerations as they apply to drinking water programs as contrasted with their applicability to other environmental/public health programs. Our overarching and specific comments are as follows:

Overarching Comments:

National Drinking Water Program Ethic: We believe that drinking water programs with their "serve and protect everyone" ethic are quite different from other environmental/public health programs that may have much more localized issues to address, such as RCRA clean-ups, wastewater or air pollution emissions, etc. We collectively (EPA, states, and local water systems) strive to achieve the goal of ensuring that all citizens using public water systems have access to safe drinking water that meets all health-based requirements all of the time – regardless of where they work or live. That entails ensuring that public water systems maintain high compliance rates with National Primary Drinking Water Regulations and any more stringent state regulations. While some Americans live in areas that are more remote and not yet served by public water, the vast majority of our citizens drink water from public water systems; and, even those served by private wells often drink water from public systems at school or at work. We would suggest that there be some acknowledgement in the Framework of these differences.

Specific Comments:

- **Please Qualify “Rulemaking” and “Permitting”** (as used in Section I. A & B): We believe that, when the Framework uses the term “rulemaking”, it’s actually referring to rules regarding wastewater, hazardous waste, and air pollutant discharges, not public health protection rules. We suggest that the Framework draw that distinction clearly.
- **Aggregate Weight of Environmental & Public Health Costs/Balancing Compliance Costs of Environmental/Public Health Requirements:** It may be useful for the Framework to acknowledge that certain communities may be overburdened by the combined weight of environmental and public health regulations. In some instances, costs imposed by environmental regulations to resolve one environmental issue (such as CSOs) may well leave a community without sufficient resources to address other issues such as drinking water infrastructure. Perhaps the 2nd bullet under Section II. A could be broadened to encompass this point. Many rural communities with aging, low-income populations have tremendous challenges maintaining existing infrastructure, much less taking actions needed to address new regulatory mandates. Many states have

implemented state initiatives to try to address this quandary (e.g., no interest loans or grants for aging infrastructure, targeted technical assistance/training, etc.) – and, states welcome federal partnerships in addressing these challenges. However, state drinking water programs do not believe that the protection “bar” should be lowered for disadvantaged communities – i.e., subjected to less stringent, less protective requirements.

- **Collaborative Work Among Federal, State, and Local Government.** The last bullet in Section II.A indicates that the Agency will: "Work with states, tribes, local governments and other co-regulators to promote consideration of environmental justice in our collective decision-making." We agree with the thrust of this bullet. However, we wonder whether, under this approach, there would be an expectation for EPA Regions to have a metric/goal for this interaction and, in turn, an expectation placed back on states to report back to EPA. If so, we would be concerned about the possible burden of such a metric on state programs.
- **Priorities in 2015 -- Lead in Drinking Water:** The ongoing existence of lead service lines and partial lead service lines and issues related to poor maintenance in extensive distribution systems could be considered a drinking water EJ issue that collectively needs to be addressed – in 2015 and beyond -- by a combination of Federal, state, and local efforts.
- **Priorities in 2015 -- Available Funds:** We wish to learn more about the context for the 6th bullet on page 5: “Implement Environmental Justice Small Grants and Environmental Justice Collaborative Problem-Solving Cooperative Agreement programs.” If there are funds available for disadvantaged communities beyond what we typically provide through the Drinking Water State Revolving Loan Funds, we’d like to know about and share that information.

From: Patrick Barnes <pbarnes@bfaenvironmental.com>
Sent: Tuesday, July 14, 2015 1:27 PM
To: Smith, Karen; ejstrategy
Cc: Peurifoy, Cynthia; Tennessee, Denise; Lee, Charles; Ali, Mustafa
Subject: Re: Last Chance to Provide Comments on EPA's Draft EJ 2020 Action Agenda Framework

Karen,

Thanks for reminding me. The Draft 2020 Action Agenda Framework looks great. I'm particularly jazzed about the Items I.D.- Enhancing Science tools...and II.C – Support transformative efforts... These are very much needed and has come up in the NAS GRP AB meetings. Because EJ crosses, so many technical areas and increasingly there is a body of information that goes untapped regarding potential best practices, I would considering adding the following as a bullet:

- Develop methods targeted at capturing and synthesizing existing environmental, health and community impact data

Under item II.C., the last three bullets are very comprehensive, which is great. It does leave me wondering how? Will this be achieved through internal policy or external grant funding opportunities to local NGOs and the like? I would considering adding more prescriptive language, if possible, to those bullets. For example the second bullet could begin with "Develop and implement new funding opportunities to promote holistic strategies that meet communities"... Also, if possible it would be great if a bullet similar to this was added:

- Establish a direct linkage through Request for Proposal language between existing EPA funded workforce development and job training programs and the various contracting opportunities, which fall under the purview of EPA.

From my perspective we won't have environmental justice, until we have economic justice, which means more jobs opportunities in effected communities.

Thanks again for reminding me to provide comments.

Regards,
Pat

Patrick A. Barnes, P.G.
President/CEO
BFA Environmental
(Barnes, Ferland and Associates, Inc)
1230 Hillcrest St
Orlando, Florida 32803
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www.bfaenvironmental.com
www.limitlessvistas.org

"The greatest opportunity coincides with the greatest need"

From: Bob Wenzlau <bob@terradex.com>
Sent: Thursday, May 14, 2015 7:47 PM
To: ejstrategy
Subject: Comments on 2020 EJ Strategy

To whom it may concern,

This provides commentary to the EJ 2020 Action Framework.

- The framework does not appear to **engage state government** to coordinate with their EJ efforts if any. For example, collaborative processes with ITRC, ECOS or ASTSWMO should be contemplated.
- The framework does not coordinate with **corporate responsibility**. Corporations are often potentially responsible parties, and many hold a common ethic. The agency should seek to build common purpose in EJ matters with the business community.
- An area of focus that I participate in is **long term stewardship of contaminated land**. This would affect RCRA and Superfund facilities. We implement an objective to be "*protective*" presuming the remediation is complete. The ingredients we work with are **institutional and engineering controls**. There is an EJ interest that these controls be just in their selection, effective in use, and maintain their integrity. Often there are groundwater plumes that are left after remedies are complete that are unprotected by institutional or engineering controls. The ability to discover and apply information about institutional and engineering controls adversely impacts overburdened communities. Legal descriptions used are not accessible, the restrictions on use are hidden in complex legal language or orders. EJ efforts should encourage making IC and EC information understandable and discoverable.
- Often impacted communities do the construction jobs that would cause them to contact residuals, or perhaps have occupancies that are unsafe. EJ efforts should embrace technologies that can monitor land activity and use in impacted communities, and provide active notice when a construction worker or tenant is going to contact residuals. For example, the excavation clearance systems can provide notice to an excavator of contact with residuals in multiple languages. Or, daycare licensing can be tracked against areas of known contamination. The embedded theory is to "push" information to members of overburdened communities, rather than to expect the community member to "pull" information from an agency website. The strategy does not appear to **embrace "push" information flow**, and this can provide a extra safety net in these communities. The fees and scales of these technologies are very reasonable, and they generate metrics that can provide information for effectiveness of EJ efforts.
- The strategy should embrace the **role of the private sector to develop communication tools**. The USEPA should carry a focus on quality of data, enhancing the metadata, and allow the private sector to make innovative tools to serve the EJ mission. Too often the agency inadvertently hinders innovation by making portals that make access to information difficult for the application community or preempt the role of the innovator.
- The agency has **multiple initiatives**, and from the outside it is difficult to see if there is any connection or master plan. For example, how does EJ 2020 connect to Next Generation compliance or Corrective Action 2020.

Thank you for allowing the chance to provide input. Please allow me to clarify any remarks if they seem unclear. I also apologize for any grammar errors in these remarks.

As background, I am a civil engineer with 35 years practice. I was chair person of ASTM Continuing Obligations standard. I have generated several environmental applications including [LandWatch](#), [WhatsDown](#) and [DigClean](#). Now I am generating a standard for depiction of groundwater plume maps to facilitate local

government and others to be able to see the breadth of groundwater quality impact. I serve on an ITRC task group for long term stewardship, generated data standards for IC XML.

May I receive confirmation of receipt?

Yours,

Bob Wenzlau

--

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[Terradex](#) | [WhatsDown](#) | [Blog](#) | [YouTube](#) | [Shop](#)



Ross E. Eisenberg

Vice President

Energy & Resources Policy

July 14, 2015

Submitted Via E-Mail to: ejstrategy@epa.gov

Re: BNEJ Comments on EPA's Draft EJ 2020 Action Agenda Framework

The Business Network for Environmental Justice (“BNEJ”) appreciates the opportunity to submit these comments on EPA’s April 15, 2015 Draft EJ 2020 Action Agenda Framework (the “Draft Framework”), which also includes a list of the Environmental Protection Agency’s (“EPA’s”) environmental justice (“EJ”) priorities for 2015. We provide these comments from the perspective of a broad cross-section of industry with a vital interest in the Agency’s effective pursuit of EJ.

Background on the BNEJ

The BNEJ, based at the National Association of Manufacturers, was formed in 1995. It is a voluntary organization of businesses, corporations, industry trade associations, industry service providers and business groups interested in environmental justice issues. The BNEJ believes that all people should be treated fairly under all laws, including environmental laws, without discrimination based on race, color or national origin.

The BNEJ supports open and informed dialogue with citizens about environmental decisions that affect local communities. The BNEJ also supports continued systematic, objective scientific research into factors affecting human health and the environment, and the use of scientifically sound risk assessments in evaluating and prioritizing health and environmental risks.

Overview

Overall, the BNEJ views the Draft Framework as a useful exercise in priority-setting. In particular, the BNEJ shares the Agency’s goal of making “a visible difference in environmentally overburdened, underserved, and economically distressed communities.” The BNEJ suggests below, in the body of these comments, several ways in which EPA can strengthen the Draft Framework and enhance its implementation. These comments discuss the Draft Framework section-by-section, addressing issues in the order in which they appear.

I. “Deepen environmental justice practice within EPA programs”

With regard to Section I of the Draft Framework, the BNEJ’s comments focus primarily on EPA’s stated goal of “[f]inaliz[ing] guidance on considering environmental justice in

rulemaking.” The BNEJ shares EPA’s goal of taking EJ issues into account when analyzing potential regulatory actions.

However, BNEJ believes that the specific “guidance” document that EPA is referring to here – the May 2013 Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis (the “Draft EJTG”) – is not yet ready for issuance in final form. In fact, the Draft EJTG is unlikely to help achieve EPA’s goal.

A similar conclusion on the Draft EJTG was made by the Science Advisory Board (SAB) panel charged with reviewing the document. On April 30, the SAB review panel released its own lengthy and detailed critique of the Draft EJTG, urging a major overhaul and extensive rewriting. That review is available online.¹

In recommending EPA rewrite the Draft EJTG, SAB made the following comment:

The SAB recommends that further guidance be included in the Draft EJTG to assist analysts with understanding how to conduct an EJ analysis. By doing so, the SAB does not mean to make the Draft EJTG an all-encompassing document; rather by limiting its scope and not repeating existing guidance, the Draft EJTG can reduce redundancy and the risk of providing conflicting instructions. To increase the guidance document’s clarity, the Draft EJTG needs to include better definitions for the terms that are used (e.g., cumulative risk, co-factors, susceptibility, vulnerability, EJ populations and communities). In addition, the SAB strongly recommends the use of detailed examples to guide the analyst through conducting the EJ analysis for regulatory action. The Draft EJTG should provide specific, clear options and examples of best practices for consideration by analysts. The Draft EJTG should emphasize the role of the analyst while devoting only a minimum amount of text to explaining the role of the decision/policy-makers in the same context. The SAB also notes that guidance for EJ methodologies should encourage the use of state, local, and community level data and assistance that are essential for an accurate national EJ analysis.

Without repeating each of the issues raised by the SAB review panel, the section below summarizes what the BNEJ views as the four major recommendations that should be addressed prior to “finalizing” the Draft EJTG:

1. The final EJTG should acknowledge the protective and conservative regulatory framework that is already in place. The Draft EJTG does not adequately account for EPA’s work and regulations issued over the last 40 years. Specifically, most of the risks being addressed have already been the subject of EPA regulation for several decades. Most of those regulations were established based on conservative assumptions and safety factors. Thus, these prior EPA rules were designed to protect not only typical individuals, but also sensitive sub-groups within the larger populations. EJ analysts will need to evaluate whether modifications are warranted to an existing EPA regulatory framework that is already highly protective. The Draft EJTG does not recognize this key fact.
2. The final EJTG should be clear regarding what EJ requires in the context of environmental benefits. The Draft EJTG asserts that EJ must consider “not only the

¹ [http://yosemite.epa.gov/sab/sabproduct.nsf/2D0917AD730593CF85257E3100505062/\\$File/EPA-SAB-15-008%20unsigned.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/2D0917AD730593CF85257E3100505062/$File/EPA-SAB-15-008%20unsigned.pdf)

distribution of burdens across all populations, but also the distribution of reductions in risk from EPA actions.” But the Draft EJTG does not explain what “distribution” of risk reduction EJ actually requires. It seems reasonable to expect that the benefits of regulatory action will accrue primarily to the same persons – whatever their demographics might be – who are currently most affected by the environmental hazard(s) that EPA is reducing. Because the Draft EJTG provides no clear statement of the EJ goal in the context of environmental benefits, it will be very difficult for EJ analysts to provide useful information to EPA program officers and decision makers.

3. The final EJTG should tailor the EJ analysis to the scope of the EJ issue. The Draft EJTG calls for a “blue sky” EJ analysis that incorporates many new and different factors and mechanisms, but it provides no benchmarks, prioritization or indication of the relative importance of any of them. The Draft EJTG lacks proportionality between the scope of the potential EJ issue that might arise in a particular context and the scope of the analysis of that potential EJ issue. Instead, every potential EJ issue gets the “full treatment.” In practical terms, this means that virtually any proposed EPA regulatory action could be stymied for years because the EJ analysis is deemed incomplete. It also means that there will be little or no consistency from one regulatory analysis to the next, because the list of factors is virtually endless and the range of parameters for each of them is unlimited. This level of uncertainty will also deprive the regulated community of the predictability it needs in order to plan its compliance activities and expenditures.
4. The final EJTG should address how the impracticably large workload burdens it creates will be shouldered. The Draft EJTG calls for in-depth analysis of all future regulatory actions using innovative tools and methods. The Draft EJTG is silent as to who would perform all this work. It may be that the individual EPA program offices would each conduct these EJ analyses for their own rules. If so, the BNEJ is concerned that there would be a lack of consistency in final results, as each program office could interpret the EJTG differently. Or it may be that the work would be handled by separate staff within the Office of Environmental Justice (“OEJ”). If so, it is unclear as to how OEJ would become familiar with the extensive rulemaking records, compiled over many years, that typically underlie EPA’s existing regulatory framework.

Because of the BNEJ’s deep concern over the Draft EJTG, the BNEJ filed extensive written comments with EPA in the summer of 2013. The BNEJ also presented oral testimony before the SAB review panel on January 30, 2014. Although the BNEJ has not received a response from the EPA on the technical and policy points raised, it is still anticipate that it would take EPA at least another 18 months – until late-2016 – to address all the shortcomings in the Draft EJTG before issuing it in final form. Issuance of an incomplete or flawed document would fail to achieve the objectives of EJ.

II. “Collaborate with partners to expand our impact within overburdened communities.”

With regard to Section II of the Draft Framework, the BNEJ offers two comments. First, equal enforcement of environmental laws is an important and highly visible indicator of a commitment to environmental justice. Regulations and permits are only as good as the public’s level of confidence that they will be complied with and requirements will be met. The enforcement and compliance assurance measures that EPA describes in the Draft Framework help to underscore that commitment by confirming that industrial, commercial, and governmental facilities are complying with the law, including the terms and conditions of their environmental permits.

Secondly, EPA sometimes makes its own job more difficult by focusing heavily on disparate impacts. This may not be the most useful approach, because the law requires equal treatment, not equal results. BNEJ emphatically supports the proposition that environmental standard-setting, environmental permitting, and environmental enforcement should be neutral and non-discriminatory.

III. “Demonstrate progress on outcomes that matter to overburdened communities.”

The BNEJ shares this goal as stated by EPA. One specific item listed under this heading is: “develop indicators of progress through collaborative processes with communities, states, tribes, and other stakeholder partners.” The BNEJ urges EPA to include business and industry among the “other stakeholder partners” with whom it will seek to develop indicators of progress. Agreement on what constitutes progress helps foster agreement over what steps should be taken, and when. If EPA follows an open and collaborative process in developing these indicators, then we can look forward to successful outcomes from the perspective of all stakeholders.

IV. “Related efforts.”

One of the two items listed as a “related effort” would actually benefit from greater transparency and outreach. The entry states: “EPA will advance its program relative to the implementation of Title VI of the Civil Rights Act through a comprehensive, long-term Office of Civil Rights (OCR) strategic plan, which OCR is currently developing.”

Over the past 15 years, a significant obstacle to progress in the realm of EJ has been EPA’s overreaching interpretation of Title VI. A good example of this problem is the highly controversial draft guidance regarding OCR’s investigation of Title VI complaints, 65 Fed. Reg. 39,650 (June 27, 2000), which Congress eventually de-funded. See Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Pub. L. No. 105-276 (1998) and Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000, Pub. L. No. 106-74 (1999).

More fundamentally, even though the Supreme Court squarely ruled in *Alexander v. Sandoval*, 532 U.S. 275 (2001), that Title VI prohibits only *intentional* discrimination, EPA continues to administer Title VI as if it also prohibits *disparate impacts* in programs run by federal funding recipients. See 40 C.F.R. § 7.35(b) (2013). This legal overreach continues to create uncertainty for all stakeholders and needless confrontation often results.

Given this background, EPA should specify what it means by its “program relative to the implementation of Title VI.” This Title VI “program” should take account of the Supreme Court’s ruling, and focus appropriately on intentional discrimination. EPA should not continue to assert authority over disparate impacts in environmental programs run by state agencies that receive federal funds.

EPA also refers to a “comprehensive, long-term” plan being devised by OCR. No mention of that plan appears on OCR’s web site. EPA should solicit input before the OCR plan is developed and finalized. The BNEJ strongly urges OCR to seek public and stakeholder input on its planning, especially as it relates to the important goal of environmental justice.

V. Priorities for 2015

Without repeating the points made above in Part I of these comments, the BNEJ is very concerned to see “finaliz[ing]” the Draft EJTG listed as a priority for 2015. Given the many corrections needed to the draft document, and the comprehensive critique issued in April by the SAB review panel, the BNEJ urges EPA to take time to address these issues rather than prioritize finalizing the document this calendar year. Although EPA may wish to treat this guidance document as a priority, it would be more productive to issue it in mid- or late 2016, by which time EPA will have had more time to address the various concerns identified with that document.

Conclusion

Overall, the BNEJ finds the Draft Framework to be a useful exercise in priority-setting. The BNEJ has suggested several ways in which EPA can strengthen the Draft Framework and enhance its implementation. The BNEJ appreciates the opportunity to provide these comments on the Draft Framework.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ross Eisenberg", is placed over a light green rectangular background.

Ross Eisenberg
Vice President, Energy and Resources Policy, National Association of Manufacturers
On behalf of the Business Network for Environmental Justice (BNEJ)

c: Charles Lee, EPA Deputy Associate Assistant Administrator for Environmental Justice

From: Carlton, Ginny [REDACTED] >
Sent: Tuesday, May 26, 2015 2:19 PM
To: ejstrategy
Subject: Environmental Justice 2020

How, specifically, do you define an “overburdened community”? What burden(s) is/are the community bearing? Are you using the word community in the geographic sense, social sense or both? For example air pollution doesn’t stay in one place, so are all communities that are located downwind (as the wind typically blows) considered “overburdened”? Are “overburdened communities” those that have higher contamination than other communities? Are “overburdened communities” those that have higher reported instances of negative health consequences? Both? Some other criteria? Top X% of all the communities displaying that particular criteria nationwide or within a particular EPA region, or any and all communities that meet particular threshold criteria? Is it possible to apply to have a community designated as an “overburdened community” so that it might receive assistance from the EPA? Based on what was available in the draft framework it is very unclear as to what an “overburdened community” is and thus who will be the beneficiaries of this initiative.

The outcomes seem superficial. Writing reports, networking with other government agencies and stakeholder groups, creating reporting and decision-making tools don’t necessarily remove the burden of the environmental injustice. This statement “Promote holistic strategies that meet communities where they are and help them to achieve health, sustainability, economic opportunity, revitalization and resilience” is a prime example of meaningless babble. It doesn’t provide enough detail that someone could measure success. Be more specific about what exactly success will look like—it should be measurable.

For example this statement:

Foster multi-stakeholder, community-based, public-private partnerships (including local government, business and industry, academia, faith groups, youth, and others) for general and location specific engagement

What does “fostering” look like? Hosting a single meeting where these groups meet each other face-to-face? Creating a specific project that improves environmental quality by having members of each and every one of the groups listed above participating for a year or more? Why are those specific groups called out? Why not include non-governmental organizations, senior citizens, K-12 education? Granted, you do say “other” Are the groups that are called out considered to be “overburdened communities” and that is why they are listed?

You say complete mandatory EJ training for all employees (page 4) and indicate it is already complete. Who do you mean when you say employee? All employees of EPA including all employees in each of the regions and offices listed on page 5? Only employees of the Office of Environmental Justice? All federal employees? All employees of each of the partner groups you work with on environmental justice projects?

In my opinion this draft is too big picture to be helpful. Yes it is a framework....but it needs more timbers and less open space between the timbers.



June 12, 2015

Charles Lee [ejstrategy@epa.gov]
Deputy Associate Assistant Administrator for Environmental Justice
U.S. Environmental Protection Agency
Office of Environmental Justice (2201-A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Mr. Lee:

The Baltimore City Department of Public Works (DPW) appreciates this opportunity to provide comments to the Office of Environmental Justice (OEJ) regarding development of the U.S. Environmental Protection Agency's (EPA) Draft Environmental Justice 2020 Action Agenda Framework (EJ 2020 Framework). DPW provides water to 1.8 million people in the Baltimore Metropolitan Area and is one of the largest clean water utilities in the State of Maryland. DPW's experience as a large, municipal entity offers an important perspective in the environmental justice (EJ) discussion.

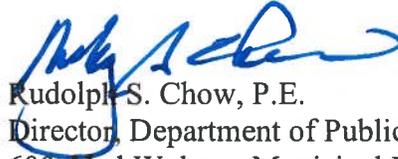
DPW is committed to improving water quality and to ensuring that environmental benefits are shared equitably. Sustainable progress towards improved water quality cannot be achieved without special consideration for the plight of EJ communities. However, DPW believes that meaningful implementation of environmental justice cannot be fulfilled without recognition of the affordability challenge facing EJ communities.

In the coming years, DPW will spend billions of dollars to address sanitary sewer overflows, upgrade wastewater treatment plants, protect drinking water reservoirs, and reduce stormwater pollution. In addition, DPW continues to invest in existing water, wastewater, and stormwater infrastructure, much of which is over half a century old. DPW is committed to meeting these challenges. However, DPW often finds itself caught between its duty to provide essential public services, and the duty to ensure that EJ communities can afford to pay their utility bills.

Like most clean water utilities, DPW is required by law to be financially self-sufficient. As federal and State funding has diminished relative to the cost of new and existing legal requirements, the expense of compliance falls directly on local citizens. This financial burden is particularly acute for EJ communities, many of whom already face significant economic distress. DPW urges EPA to recognize the importance of affordability under the EJ 2020 Framework because EPA's decisions build the structure for public financial decisionmaking. Recognizing affordability as an EJ issue is crucial to inform decisions whose financial consequences reverberate loudly within EJ communities.

DPW respectfully requests that EPA's OEJ examine affordability concerns in developing the EJ 2020 Framework. DPW believes that recognition of affordability as an EJ challenge will ensure that the interests of the most vulnerable citizens are given due consideration. Again, DPW appreciates the opportunity to provide input into this effort by EPA. Please contact me at Rudy.Chow@baltimorecity.gov or (410) 396-3310 if you have any questions.

Sincerely,



Rudolph S. Chow, P.E.
Director, Department of Public Works
600 Abel Wolman Municipal Building
200 Holliday Street
Baltimore, Maryland 21202



1200 Main Street
 Grandview, Missouri 64030-2498
 (816) 316-4856

July 3, 2015

Charles Lee
 Deputy Associate Assistant Administrator for Environmental Justice
 USEPA, Office of Environmental Justice (2201-A)
 1200 Pennsylvania Avenue, NW
 Washington, DC 20460

Re: Comments
 Draft EJ 2020 Action Agenda Framework, April 15, 2015

Dear Mr. Lee:

Following are our comments on the Draft EJ 2020 Action Agenda Framework, dated April 15, 2015. We appreciate the opportunity to comment on the Framework and extending the comment period has allowed us to respond. In considering our response, we feel it is important you know something about the City of Grandview, so you can understand the context of our comments.

We are a City of over 25,000 people, the boyhood home of a President of the United States, and over 100 years old. The City of Kansas City surrounds us on three sides so we are often overlooked because of this geographic coincidence. The Mid American Region Council (MARC), the Kansas City Metropolitan Planning Organization has identified Grandview as an Environmental Justice (EJ) community as 100 percent of our census tracts are classified as EJ. We are also identified as a Majority-Minority community. We are the only community in the MARC region with both these designations.

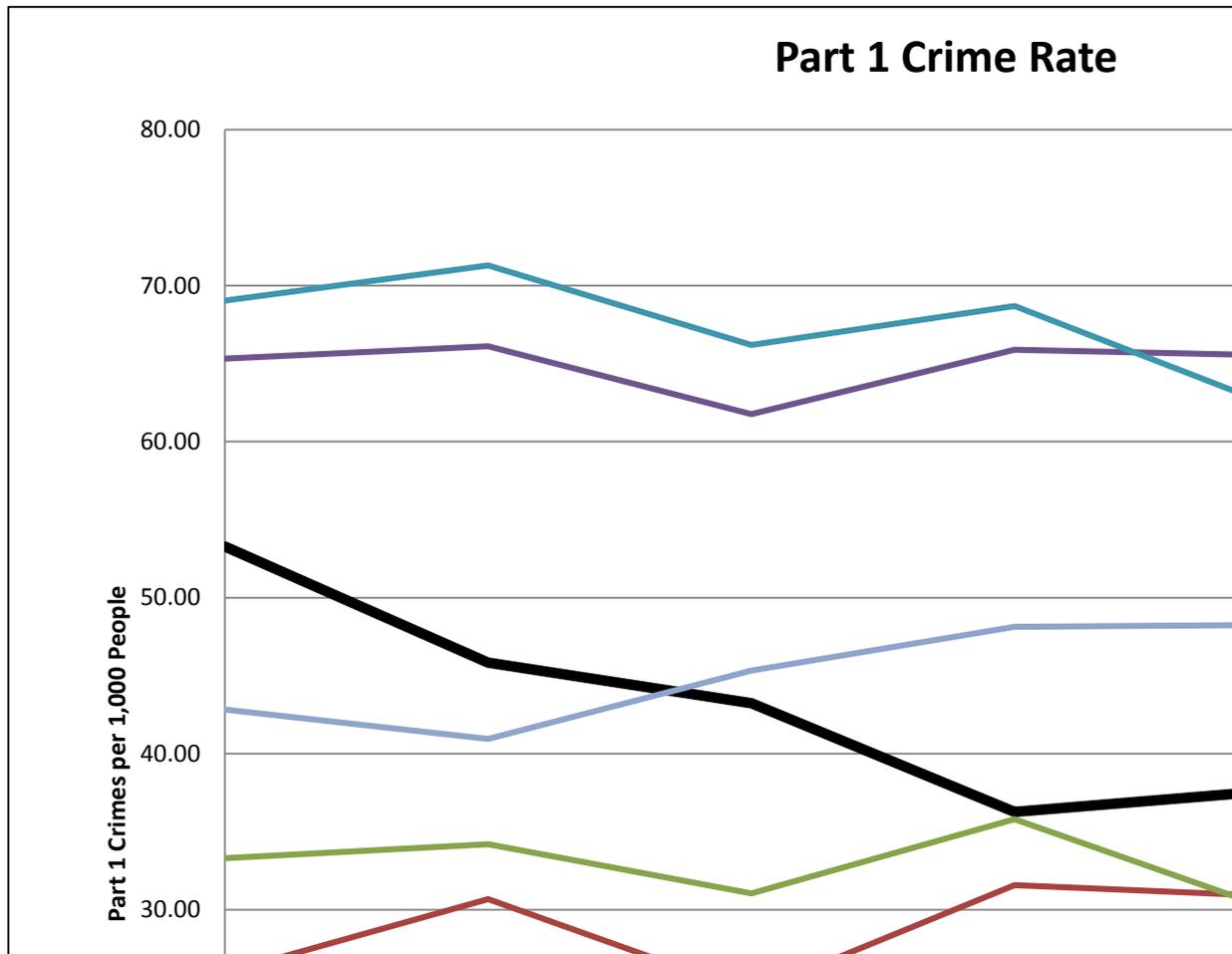
During the recent recession Grandview, because of good financial management practices was one of the few cities in the MARC area that did not need to lay off employees and do drastic budget cutting. Despite their relatively low income level our Citizens have regularly approved and renewed millages for infrastructure and parks improvements. We have been recognized many times for the work done on projects by organizations such as the American Public Works Association and the Missouri Parks and Recreation Association

Our City's crime rate has been steadily decreasing since 2010 and we are currently about 7.1 percent down through April of 2015 compared with 2014.

Crime Statistics

| Year | Total Part I Indexed Crimes | Total All Part I Crimes |
|------|-----------------------------|-------------------------|
| 2009 | 1302 | 1761 |

| Year | Total Part I Indexed Crimes | Total All Part I Crimes |
|------|-----------------------------|-------------------------|
| 2010 | 1122 | 1547 |
| 2011 | 1051 | 1499 |
| 2012 | 889 | 1235 |
| 2013 | 923 | 1335 |
| 2014 | 936 | 1282 |



In 1980 the City was hit with three events that proved to be nearly catastrophic; shutdown of the Richards-Gebaur Air Force base, opening of a new shopping center in nearby Kansas City, and two-waying of the frontage roads along the future I-49 freeway, which bi-sects our community. Together, these events, carried out by parties outside the control of the City, resulted in a tax base stagnant for nearly 35-years, loss of a significant portion of our population, and devastation of local businesses and retailers. As a result, in 2008, FORBES magazine declared us as one of the top-ten, fastest dying communities in the United States.

Fortunately, the last 5 years have seen the beginning of a turnaround for Grandview. We recently started renovating Truman’s Corners, our main shopping center, originally built 60-years ago by President Harry S. Truman. Grandview Plaza, the City’s other major 50’s style retail complex has undergone a seven-million dollar renovation. After being nearly abandoned, it is now home to a private, religious based educational facility with nearly 1,000 students. Construction is currently underway in our City on a NOAA (National

Oceanic and Atmospheric Administration) office/repair complex next to the NNSA (National Nuclear Security Administration) facility built in Kansas City recently. The future also looks brighter as this spring an announcement was made by developers of a new soccer/sports complex to be developed in Grandview, which includes 15 soccer fields as well as retail and hotel components.

For the past several years Grandview's population has been growing at the fastest percentage rate of any community in the MARC region and recently climbed over the 25,000 mark for the first time in 30-years. Our local schools have improved significantly and have been some of the fastest growing (student population-wise) in the region.

Through the City's and our citizen's efforts we have rejuvenated our downtown – Main Street corridor, and gained funds to dismantle the one-way frontage road system that has hampered our redevelopment efforts and nearly destroyed our retail base for the past 30-years. Citizen approved millages have resulted in the renovation of all our parks and construction of a new amphitheatre and a new water park. Yet despite these efforts we find we are off the radar as far as EPA and its agent the Missouri Department of Natural Resources are concerned when it comes to the health and welfare of our citizens. Similarly, we find FHWA and the Missouri Department of Transportation continue to make significant highway modifications without even minimal contact and coordination with the City. Our designation as an EJ community seemingly has no meaning to these agencies when spending federal funds in our city.

As a result we have been engaged in a single-handed legal effort to have MoDNR issue air quality permits that comply with the current provisions of the Clean Air Act. We have been engaged in another effort to determine how a road cutting our community in two can be designated as an Interstate route without, we believe, any consideration or thought being given to the fact we are an EJ community and people have trouble walking from one side of the road to the other. We have seen no EIS or environmental study even though it is well known that air, noise, and social impacts from such facilities cause harm to EJ communities.

Having experienced, what we feel is a lack of thought or consideration about the impact of significant public actions in our City that can negatively impact environmental health as well as its social fabric, we feel EPA's proposed framework should provide a basis for guiding regulators and EPA's public agents to insure they not only fully, but thoughtfully and meaningfully consider EJ communities in their regulatory deliberations. We feel the Framework should insure regulators actively contact and involve EJ communities in their assessments especially when federal dollars are involved. To this end, we have the following comments on the Draft EJ 2020 Action Agenda Framework:

1. Above all it is important the Framework make it clear EPA and its agents must actively undertake, and carry out real, meaningful and sincere contacts and coordination with EJ communities. Further, that EJ communities of all size and make-up be involved in regulatory actions for activities not only in their community, but those in nearby areas, that result in surface or groundwater run-off, dispersion of air emissions, or introduce noise emissions into or over an EJ community. To this end, it should be clear each EJ community has a place at every regulatory worktable, and without explicit prior approval EPA or its agents cannot assume they speak for any EJ community.

While the Framework specifically calls-out the idea of overburdened communities, the Framework should make it clear the term overburdened refers not only to environmental degradation, but to the fact that staff and resources to deal with such problems are very limited in EJ communities. The Framework should make it clear EPA staff understands small communities lack staff and resources, and most important staff that does exist is capable of understanding EJ topics.

The Framework should specifically define local communities as a partner to EPA in their regulatory work and should define a path that makes it clear to regulatory staff their partner local government EJ communities are not a burden on them or their work. Rather the Framework should

insure regulatory staffs recognize local EJ communities and their protection is in fact the entire objective of the EJ process and program.

2. **Section I: Deepen environmental justice practice within EPA programs to improve the health and environment of overburdened communities.** It is critical EPA's regulators and co-regulators understand the need to seek out and make meaningful contact with EJ communities during any regulatory activity, and no regulatory action be taken until all affected EJ communities have been engaged in review and discussion. It is simply not enough EPA, its regulators and co-regulators feel they know or "understand" the situation of any particular EJ community, because frankly they do not. Documented comments should be obtained well before any draft or final regulatory action is taken.

Our particular situation is a case in point. While we have 100 percent EJ designated census tracts and are a Majority-Minority community, we are seemingly ignored time after time and our neighbor Kansas City, with neither a majority of its tracts classified as EJ nor a Majority-Minority population, is deemed by regulatory bodies at EPA and MoDNR to speak for us.

The Framework must make it clear each EJ Community must have and indeed has the right to speak for itself, and it is essential EPA insure its regulatory staff not only not make these assumptions, but actively seek out comments from each EJ community that might be impacted by an action.

As it stands, in recent actions involving the implementation of federal regulatory actions involving Grandview, there has been no consideration given to the health and welfare of Grandview's citizens. In our opinion recent actions that have been ignored have resulted in potential health problems related to air quality, surface water quality, and noise pollution. As a result we feel that the existing framework clearly is deficient in that it does not provide guidance to EPA or other federal staff that requires them to consider potential problems in EJ communities.

3. **Section II: Collaborate with partners to expand our impact within overburdened communities.** We have not, and are not aware of any contacts with EPA seeking to work with us on any issues that might impact our Community. One reason for this may be EPA lacks knowledge of which communities are or have EJ designated tracts, the portion of a community that may have EJ designated tracts, or even which communities might have demographics that would, for example, cause it to be determined a Majority-Minority community. The Framework should support the development of a database that would contain this information and allow regulators to identify EJ communities at the beginning of any regulatory action, so they could contact the community and thus be able to engage in meaningful dialog with them.

4. **Section III: Demonstrate progress on outcomes that matter to overburdened communities.** As we indicated earlier, communities are different. Just because they may be adjacent to each other does not mean they share points of view, or have common problems. That communities are separate entities clearly suggests two adjacent communities should not be assumed to be able to speak for each other; if they could then they would probably not be separate in the first place.

Cities and local government communities are as different as people, so when engaging in regulatory actions EPA and its agents must recognize there is a difference. Grandview has, historically been an independent community that has taken care of itself. It seeks only the recognition it is a distressed community, and as an EJ community, it should be protected from actions that can increase existing burdens on its Citizens and most ideally, prevent any new burdens from being imposed.

Our concerns are different from, for example, the City of Kansas City Missouri's, because we are smaller, we are 100 percent EJ, and we are Majority-Minority and Kansas City is not. Our relative smallness means we are much closer to our citizens and businesses. Thus we are concerned with

responsiveness. Therefore we feel the Framework should emphasize that regulators also be responsive. In particular, in going through the regulatory process EPA regulator should not set deadlines for local input or responses shorter than the amount of time those same regulators have to respond back. That is, if EPA demands we must respond to their inquiry in 30-days, then EPA must be required to respond back to us within 30-days. The Framework, must set the standard for a fair and equitable discourse that respects each party's time, and recognizes its partners in any determination must be treated with respect.

We are concerned with protecting what resources we have from deterioration, thus we expect the Framework direct and emphasize to regulators how they must not be dismissive of a community's concerns just because they are small in area or population. As we have emphasized so far, the Framework must make it clear regulators actively engage in real communications with EJ communities of all size, and this engagement must be more than a web posting.

The fact is after 45-years in government it is clear to this writer that all government employees are and should be busy, that is exactly what we are paid for. If employees are so "busy" they cannot allocate time or prioritize work to contact the very communities this Framework is intended to help, then they simply should be dismissed.

What is important to EJ communities like Grandview is that EPA actually contact us. The reason for this is simple. Again, after many years of local government work, it has always been made abundantly clear to this writer and the organizations I have represented that cities and counties must not contact federal agencies directly, especially when there is a state agency that has been delegated the regulatory authority to handle an item of interest. It has always been made abundantly clear attempting to go around a state regulatory agency can result in an immediate and long-term regulatory disaster for a local government.

For an EJ community regulatory disasters are real, and simply compound (or add insult to injury) problems a community overburdened with environmental and related health and social problems already has. Again, a case in point is the quandary Grandview finds itself in when we question the Missouri Department of Natural Resources regarding their administration of the Clean Air Act. After two-years and with no end in sight, we find we have been burdened with over \$200,000 of legal fees because state regulators simple do not care about the health and welfare of an EJ community, and choose instead to protect an artificial administrative procedure. That the state has totally ignored the fact Grandview is an EJ community, and does in-fact share the environmental burdens implicit in the EJ designation, should be of interest and concern to the EPA. An EJ community should not need to risk retaliation to have regulators do the right thing. Nor should it be necessary for an EJ community to take the extreme step of going to elected officials or EPA's Inspector General to force regulators to comply with the Clean Air Act.

If for no other reason than wanting to make regulators actually recognize they must fully consider and account for EJ community concerns. EPA should want its Framework to provide guidance to regulators, and establish a protocol that would incorporate documentation of compliance.

In terms of outcome, EJ communities want to be able to see how EPA has actually helped protect EJ communities, with a count of contacts, and instances where EPA has clearly stepped in and caused its regulators to fully account for and deal with potential problems for our communities.

We expect EPA recognize the difference between an EJ community that actually has worked hard to pull itself up by its "bootstraps" as opposed to communities simply looking for a hand-out or a way to finance unsustainable programs with other people's money. There are not that many "Grandviews" around, it should be simple for EPA to keep track of and account for how their regulators have actually helped or worked with us to protect ourselves from the actions of others.

In any case, EPA's Framework should document and account for situations where poor regulatory behavior has harmed an EJ community. Again, in the case of Grandview, it should not have cost the City over \$200,000 in its quest to simply make the Missouri Department of Natural

Resources comply with the provisions of the Clean Air Act. EPA should be doing this fight, and the Framework should provide guidance so it does, and then reports its actions in a clear, concise and transparent way.

5. Section IV: Related efforts.

Promoting climate adaptation and resilience and greenhouse gas reduction co-benefits will be an important part of the EJ 2020 Action Agenda: Over the past several years EPA/State regulators charged with enforcing the Clean Air Act have dismissed local concerns by a simple finding a proposed action was de minimis in nature. While there are times when such a finding may be proper, especially in areas away from population centers, and involving temporary, low-source emitters, we strongly recommend the Framework make it clear that as far as EJ communities are concerned, a simple de minimis declaration by a regulatory body is never right or correct.

As an alternative, in the case where a meaningful dialog with the local EJ community is entered into, a joint declaration of a de minimis action agreed to by both the EJ community and the designated regulatory agency might be acceptable. In any case, use of terms such as “de minimis” by regulators in a dismissive way should be strongly discouraged by the Framework.

While a primary focus of the Administration in greenhouse gas reduction efforts has been the use of coal in large stationary emitters, we are concerned several small (otherwise known as de minimis) emitters can cumulatively add up to high-levels of emissions. Again a case in point is in our City. We question how it is ever appropriate in an EJ community to have an action deemed to be de minimis. More to the point we cannot understand when, there is a network of air monitors in place, and a nearby monitor clearly shows there are high levels of regulated pollutants, and the prevailing winds are into an EJ community, and a new, smaller emitter is proposed to be placed in the path of this flow of air, a declaration an action is de minimis can result. The Framework should be such that regulators cannot engage in or use such bad science, especially when it involves the interests and especially the health of an EJ community.

An effective Framework invokes a change in mindset that includes regulators understanding what the actual purpose of a regulation is. For example, on one hand the Clean Air Act is intended to protect the environment, but most important it is intended to protect living beings, now and in the future. The Framework should insure there is enough guidance for regulators so they understand their job is to protect all people and be especially careful to protect those least able to protect themselves.

EPA will advance its program relative to the implementation of Title VI of the Civil Rights Act through a comprehensive, long-term Office of Civil Rights (OCR) Strategic Plan, which OCR is currently developing: It is important, we feel, when organizations such as EPA or FHWA do work that impacts a community like as ours, and especially when that work involves federal funds, that communities be fully engaged in developing those projects. More importantly, this engagement must be positive and take the form of a true two-way dialog. While distressed communities often have difficulty maintaining large staffs that can engage in pro-active activities, we do have staffs capable of engaging and contributing to meaningful dialogs relating to a wide range of technical and social matters.

However, because of the general lack of staff, we need to know EPA regulators will seek to contact us, or at a minimum provide a “heads-up” before any regulatory or design action affecting our community takes place. Again, if projects using federal funds are affecting our community, then user agencies and regulators must be required to contact communities like ours and engage in meaningful dialog, and if they do not then they must be considered to not be in compliance with Title VI.

The Framework should stress the use of federal funds be interpreted very broadly. For example if a facility, in the course of manufacturing a construction material creates emissions

exceeding limits imposed by the Clean Air Act, then the use of that material on any federally funded project should be prohibited. Again, if in the course of creating such materials, the excess emissions enter or involve an EJ community, then the facility should be considered to not be in compliance.

In closing, we feel it is important to emphasize we feel the EPA Framework can be a positive mechanism to insure EJ communities are protected from further damage. However, it has not been our experience any group or organization, including the EPA and its regulatory agents, cares or even understands what being an EJ community really means. In fact we see it is a designation that is often ignored and our concerns are ridiculed and demeaned.

The EJ 2020 Action Agenda Framework can provide positive guidance to regulators and other government officials, but there must be a significant shift in how regulators view EJ communities. Even more important, regulators must see and understand who and where EJ communities are.

Thank you for the opportunity to comment on the Framework. If you have any questions please contact me at (816) 316-4855 or at drandolph@grandview.org.

Sincerely,

A handwritten signature in cursive script that reads "Dennis A. Randolph".

Dennis A. Randolph, P.E.
Director of Public Works



City of Phoenix

OFFICE OF ENVIRONMENTAL PROGRAMS

June 15, 2015

Mr. Charles Lee
Deputy Associate Assistant Administrator for Environmental Justice
USEPA, Office of Environmental Justice (2201-A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: City of Phoenix Support for the Environmental Justice 2020 Action Agenda Framework (EJ 2020)

Dear Mr. Lee:

The city of Phoenix (hereinafter, the "COP") would like to express support of the U.S. Environmental Protection Agency's (EPA) draft framework for EJ 2020 which will continue to integrate environmental justice practices and define a new set of ambitious goals over the next five years.

As the sixth largest city in the United States, Phoenix is expected to grow by nearly 30 percent by 2025. This population growth projection presents opportunities for our future but also increased challenges that will have an effect on programs designed to improve the health and quality of life for our residents, especially those in overburdened communities. Additionally, as we assess, set targets and measure our community's sustainability, including ensuring equity and access to community services for all residents, environmental justice issues become an important, integral component to consider.

We look forward to strengthening our work in the area of environmental justice and view the EJ 2020 Framework as a mechanism to deepen our practice. We are pleased with the defined goals and elements of the framework. The overall theme of fostering partnerships that include "local government" for location specific engagement is of utmost importance and demonstrates your commitment to expanding these efforts from this level of government. Providing local communities the opportunity to connect EJ 2020 with related efforts and promote co-benefits (e.g. greenhouse gas reduction, brownfields redevelopment, green infrastructure, etc.) further demonstrates a spirit of collaboration and willingness to address our most important work in conjunction with your goals.

Thank you for accepting our comments and providing an opportunity for input. We eagerly anticipate the final release. Should you have any questions, feel free to contact me at (602) 256-5654.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Giudice".

Joe Giudice, Manager
Office of Environmental Programs

July 14, 2015

The Honorable Gina McCarthy
Administrator, U.S. Environmental Protection Agency
Mustafa Santiago Ali, Senior Advisor to Administrator Gina McCarthy on Environmental Justice
Washington, D.C.
Via e-mail ejstrategy@epa.gov

Re: Public Comments on EJ 2020 Strategic Plan on Environmental Justice and Health; Ensure Compliance with Title VI and Executive Order 12898; Address Parks as an Environmental Justice, Health, and Civil Rights Concern; Pope Francis the Poor and the Earth Are Crying

I. Overview

We submit these comments as part of a diverse and growing alliance regarding the U.S. Environmental Protection Agency's proposed strategic plan on environmental justice and health, which will be called EJ 2020. The stated goals of EJ 2020 are to:

- Deepen environmental justice practice within EPA programs to improve the health and environment of overburdened communities;
- Collaborate with partners to expand our impact within communities; and
- Demonstrate progress on outcomes that matter to communities.

We submit these comments to highlight leadership and best practice examples to ensure compliance with civil rights, and environmental justice and health, laws and principles. These laws and principles include Title VI of the Civil Rights Act of 1964 and its implementing regulations, and the President's Executive Order 12898 on environmental justice and health. These laws and principles apply to EPA, and to recipients of funding from EPA.¹ **We request that EPA implement Title VI, the Title VI implementing regulations, and Executive Order 12898 in EPA's own work, and in ensuring compliance with these laws by recipients of funding from EPA.**

Title VI and its regulations prohibit intentional discrimination, as well as unjustified discriminatory impacts, on the basis of race, color, or national origin in programs and activities by recipients of federal funding. Title VI and its regulations covers recipients of funding from EPA, including state and local agencies and private recipients.² The discriminatory impact standard plays an important role in uncovering discriminatory intent: it counteracts disguised animus, unconscious prejudices, and implicit bias that escape easy classification as intentional discrimination. *See Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, 576 U. S. – (2015) (*upholding discriminatory impact standard under the Fair Housing Act*). Executive Order 12898 requires each federal agency including EPA to achieve environmental justice as part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.³ **We request that EPA**

¹ See generally Comments Of Environmental And Community Groups (July 14, 2015).

² Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.* EPA, like other federal agencies, enacted regulations pursuant to Title VI. 40 C.F.R. Part 7.

³ See Exec. Order No. 12898, 59 Fed. Reg. 32 (February 16, 1994), Section 1-101 (“...each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income

provide leadership and best practices and integrate its enforcement responsibilities under Title VI and its implementing regulations, Executive Order 12898, and EPA’s other environmental justice and health strategies throughout all its programs and activities, including EJ 2020.

In Pope Francis’s encyclical on caring about our common home, the Pope counsels us to care about climate, care for creation, and care for the poor and underprivileged. EPA’s work and EJ 2020 should reflect the Pope’s encyclical. Indeed, Administrator McCarthy recognizes that climate justice is not just an environmental issue, but a public health threat, and a chance for economic opportunity. "I think the most important thing that we can do, working with the Pope, is to try to remind ourselves that this is really about protecting natural resources that human beings rely on, and that those folks that are most vulnerable — that the church has always been focused on, those in poverty and low income — are the first that are going to be hit and impacted by a changing climate."⁴

These comments focus on access to parks and green space for people of color and low income people for several reasons. First, President Barack Obama and other federal authorities – as well as Pope Francis – recognize parks and green space as issues of social justice, and environmental justice and health. Second, federal authorities provide EPA with leadership and best practice examples for addressing parks and green space under civil rights, and environmental justice and health, laws and principles. Third, EPA itself must address access to parks and green space as an environmental, health, and justice issue. Instead, EPA generally marginalizes or ignores these concerns. Finally, the examples below are not limited to the context of parks and green space. The legal framework and best practices cut across other environmental programs and activities.⁵

According to President Barack Obama:

We heard from the community . . . Too many children . . . especially children of color, don’t have access to parks where they can run free, breathe fresh air, experience nature and learn about their environment. This is an issue of social justice. . . . Because it’s not enough to have this awesome natural wonder within your sight – you have to be able to access it. My commitment to conservation isn’t about locking away our natural treasures; it’s about working with communities to open up our glorious heritage to everybody — young and old, black, white, Latino, Asian, Native American — to make sure everybody can experience these incredible gifts.⁶

While President Obama was referring to Los Angeles County when he dedicated the San Gabriel Mountains National Monument in 2014, his remarks are true in communities of color and low income

populations...”). See DOJ guidance Concerning Environmental Justice, at 2 (Dec. 3, 2014), available at www.justice.gov/sites/default/files/ej/pages/attachments/2014/12/19/doj_guidance_concerning_ej.pdf.

⁴ AP, EPA Administrator Gina McCarthy Meets With Vatican Officials About Climate Change (Jan. 30, 2015), www.huffingtonpost.com/2015/01/30/epa-vatican-climate-change_n_6580098.html.

⁵ See generally Robert García and Seth Strongin, *Healthy Parks, Schools and Communities: Mapping Green Access and Equity for Southern California* (The City Project Policy Report 2011), goo.gl/pAi7v; Robert García and Ariel Collins, *Celebrate The Civil Rights Revolution: The Struggle Continues* (The City Project Policy Report 2014), goo.gl/HUijxo; Michael Rodriguez, MD, MPH; Marc Brenman; Marianne Engelman Lado, JD; and Robert García, JD, *Using Civil Rights Tools to Address Health Disparities* (The City Project Policy Report 2014), goo.gl/mYvhOm; James Salzman, Craig Anthony (Tony) Arnold, Robert García, Keith Hirokawa, Kay Jowers, Jeffrey LeJava, Margaret Pelosa, and Lydia Olander, *The Most Important Current Research Questions in Urban Ecosystem Services*, 25 *Duke Environmental Law & Policy Forum* 1-47 (2014), goo.gl/OGezR4.

⁶ The President’s remarks are available at www.whitehouse.gov/the-press-office/2014/10/10/remarks-president-designation-san-gabriel-mountains-national-monument. See Robert García and Michelle Kao, The San Gabriel Mountains: A National Monument for All, *NPRA Parks & Recreation Magazine* (Dec 2014), www.cityprojectca.org/blog/archives/34698.

communities across the nation that suffer from disparities in access to resources for parks and healthy living.⁷

We do not seek Blue parks, or Red parks, based on ideology or party affiliations. We seek green parks for all.

II. The Values at Stake

The diverse values at stake in access to parks and green space are properly the concern of EPA. According to the National Park Service (NPS), these values include the following:

- *Fun, health, and human development:* Children who are physically fit tend to do better academically, and parks can create community and drive out vandalism and crime.
- *Conservation values:* This includes climate justice, complete green streets with transit, biking, hiking, and safe routes to schools, clean air, water, and land, and habitat protection.
- *Economic values:* This includes jobs and apprenticeships for youth, diversification of government contracts to include small, minority, women, and veteran owned enterprises and people of color NGOs, and avoiding gentrification and displacement as communities become greener, more expensive, and more desirable.
- *Art, culture, and spiritual values.* This includes the Pope's encyclical on caring about our common home. This also includes Native American values.
- *Equal justice, democracy, and livability for all.* "Ultimately, we can appeal to the values that we strive to achieve as a community and democracy and emphasize the inherent democratic nature of public spaces."⁸

Human health includes a state of complete physical, mental and social wellbeing, and not merely alleviating chronic diseases including obesity and diabetes, according to the World Health Organization and NPS.⁹

III. Best Practice Framework for EPA to Ensure Compliance with Civil Rights, and Environmental Justice and Health, Laws and Principles

In addition to President Obama, the following federal authorities provide leadership and best practice examples for EPA to implement compliance with civil rights, and environmental justice and health, laws and principles. These examples include National Park Service, US Army Corps of Engineers, US Department of Housing and Urban Development, Under Secretary of Agriculture Robert Bonnie, Representative Judy Chu, and Representative Raúl Grijalva, who is the Ranking Member of the U.S. House Committee on Natural Resources.

⁷ See, e.g., Penny Gordon-Larsen et al., Inequality in the Built Environment Underlies Key Health Disparities in Physical Activity and Obesity, 117 *Pediatrics* 417 (2006); Lisa M. Powell et al., Availability of Physical Activity-Related Facilities and Neighborhood Demographic and Socioeconomic Characteristics: A National Study, 96 *Am. J. Pub. Health* 1676 (2006); Lisa M. Powell et al., The Relationship between Community Physical Activity Settings and Race, Ethnicity, and Socioeconomic Status, 1 *Evidence-Based Preventive Medicine* 135 (2004); Robert García, The George Butler Lecture: Social Justice and Leisure, 45 *J. Leisure Research* 7 (2013); Robert García and Seth Strongin, Healthy Parks, Schools and Communities: Mapping Green Access and Equity for Southern California (2011); Chona Sister et al., Got Green? Addressing Environmental Justice in Park Provision, 75 *GeoJournal* 229 (2010); Jennifer Wolch et al., Parks and Park Funding in Los Angeles: An Equity-based Analysis 26 *Urban Geography* 4 (2005); Anastasia Loukaitou-Sideris & Orit Stieglitz, Children in Los Angeles Parks: A Study of Equity, Quality and Children's Satisfaction with Neighbourhood Parks, 73 *Town Plan. Rev.* 467 (2002).

⁸ See NPS Healthy Parks Healthy People Community Engagement eGuide, page 15, available at www.nps.gov/public_health/hp/hphp/press/HealthyParksHealthyPeople_eGuide.pdf.

⁹ See NPS Healthy Parks Healthy People Science Plan July 2013, available at http://www.nps.gov/public_health/hp/hphp/press/HPHP_Science%20Plan_accessible%20version.final.23.july.2013.pdf.

NPS and the US Army Corps of Engineers (USACE) agree on the framework for environmental justice and health to address parks and healthy active living. According to the NPS draft study to expand the Santa Monica Mountains National Recreation Area (“Rim of the Valley” or ROTV),¹⁰ the NPS draft study for the San Gabriel Mountains National Recreation Area,¹¹ and the USACE draft study to restore the Los Angeles River:¹²

- (1) There are disparities in park and green access based on race, color, or national origin;
- (2) This contributes to health disparities based on those factors; and
- (3) Environmental justice laws and principles require agencies to address these disparities.

Attached are maps on green access and health, and the relevant, highlighted portions of the three NPS and USACE studies.

Robert Bonnie, who is the Under Secretary for Natural Resources and Environment at the US Department of Agriculture, agrees. Under Secretary Bonnie provides leadership and commitment on environmental justice and health on behalf of the United State Forest Service when he writes as follows regarding the proposed management plan for the San Gabriel Mountains:

Environmental justice is a very important issue for the US Department of Agriculture (USDA) and the US Forest Service. Executive Order 12898 requires each Federal agency to address environmental justice as part of its mission. Pursuant to this Executive Order, USDA has an Environmental Justice Strategic Plan which was updated in 2012 and signed by Secretary Vilsack. . . . In keeping with this direction from the strategic plan as well as the requirements for stakeholder input in the 2012 Forest Service planning rule, the Forest Service will pursue an inclusive, open and transparent process in developing the San Gabriel Mountains National Monument plan that will meet with the requirements of the Executive Order as well as USDA’s environmental justice policies. Beyond that, the Forest Service is deeply committed to strengthening relationships with all communities and citizens. This planning process will afford an opportunity to build on that commitment.

Email message from Under Secretary Bonnie to The City Project, June 19, 2015 (on file with The City Project).

Representative Raúl Grijalva and the US House Committee on Natural Resources held a forum in Los Angeles in April 2015 attended by seven members of Congress. The forum explicitly addressed the need to implement Title VI and Executive Order 12898 in the context of parks and green access.¹³

¹⁰ NPS, *Rim of the Valley Corridor: Draft Special Resource Study and Environmental Assessment* (April 2015). Highlighted excerpts of the study are available at goo.gl/86fMwS. The full report is available at: parkplanning.nps.gov/rimofthevalley_draftreport. See NPS Rim of the Valley Draft Study Best Practice for Expanding Green Access, Health, and Environmental Justice for All (The City Project Blog 2015), www.cityprojectca.org/blog/archives/36966.

¹¹ NPS, *Draft San Gabriel Watershed and Mountains Special Resource Study & Environmental Assessment*, p. 231 (Sept 2011). Highlighted excerpts of the study are available at goo.gl/nXGbom. See San Gabriel Mountains Best Practice Environmental Justice Framework for Parks, Health, and Conservation Values (The City Project Blog 2014), www.cityprojectca.org/blog/archives/32899. See also NPS, *Healthy Parks, Healthy People Community Engagement eGuide*, available at www.nps.gov/public_health/hp/hphp/press/HealthyParksHealthyPeople_eGuide.pdf.

¹² USACE, *Los Angeles River Ecosystem Restoration Integrated Feasibility Report*. Relevant excerpts of the study are highlighted at goo.gl/jraRdw. The complete draft study is available at www.spl.usace.army.mil/Portals/17/docs/publicnotices/DraftIntegratedReport.pdf. See US Army Corps of Engineers Study Best Practice Framework for Revitalizing L.A. River (The City Project Blog 2014), www.cityprojectca.org/blog/archives/33093.

¹³ See www.sgvtribune.com/environment-and-nature/20150408/local-democrats-wield-environmental-justice-to-fight-republican-bills.

Rep. Judy Chu spoke on environmental justice and parks at the April House forum in Los Angeles.

Well thank you Ranking Member Grijalva and the Natural Resources Committee for holding this very important forum on the state of environmental justice . . . I'd like to talk about environmental justice as it relates to parks. Los Angeles is one of the most park poor places in the country. Just 15% of the region's population has pedestrian access to green spaces, leaving more than 85% of residents without easy access to public parks or green spaces, particularly affecting minorities and those from low-income communities. And there's a color divide. Did you know that in L.A., white neighborhoods enjoy 32 acres of parks per 1,000 people, but for African American neighborhoods it's 1.7, and for Latino neighborhoods it's .6.

The transcript and video of these remarks are available on The City Project blog.¹⁴ Representative Judy Chu also cites environmental justice and health as two of the main justifications for her proposed legislation to create the San Gabriel Mountains National Recreation Area.¹⁵

Andrew Cuomo, who was then the Secretary of the US Department of Housing and Urban Development, provides a best practice to address the values at stake under Title VI and Executive Order 12898. Secretary Cuomo withheld federal subsidies for proposed warehouses at what is now Los Angeles State Historic Park unless there was a full environmental review that considered the park alternative and the impact on people of color and low-income people. Secretary Cuomo cited Title VI of the Civil Rights Act of 1964 and the President's Executive Order 12898 on environmental justice and health. Secretary Cuomo acted in response to an administrative complaint based on these civil rights and other housing laws filed by diverse community allies, including The City Project. Secretary Cuomo's leadership and actions, and this community victory, are a seminal moment for people, planning, and parks in the green justice movement.¹⁶ They provide best practices for EPA to conduct compliance analyses under Title VI and 12898.

The following planning process applies to federal agencies, and to recipients of federal funding including state and local agencies and private recipients, to help ensure compliance and equity under Title VI and Executive Order 12898.

1. *Describe what you plan to do* – for example, revitalize the Los Angeles River.
2. *Analyze the benefits and burdens on all people, including people of color and low-income people.* Who benefits, and who gets left behind? Analyze the values at stake. The analysis should address any numerical disparities, statistical studies, and anecdotal evidence; impacts based on race, color or national origin; inequalities based on income and wealth; and the use of GIS mapping and census data. Follow the money.
3. *Include people of color and low-income people in the decision making process.*
4. *Analyze the alternatives.*
5. *Develop an implementation and monitoring plan to distribute benefits and burdens fairly, avoid unjustified discriminatory impacts and intentional discrimination, and comply with civil rights, environmental justice and health, and environmental laws and principles.*¹⁷

¹⁴ Rep. Judy Chu's remarks are available at www.cityprojectca.org/blog/archives/36870.

¹⁵ See Rep. Judy Chu, San Gabriel National Recreation Area Proposal Frequently Asked Questions, <http://chu.house.gov/content/san-gabriel-national-recreation-area-proposal-faq>.

¹⁶ See Best Practice HUD Los Angeles State Historic Park Healthy Green Land Use for All (The City Project Blog 2014), www.cityprojectca.org/blog/archives/32984.

¹⁷ In addition to the studies above examples, see Federal Transit Administration, *Environmental justice policy guidance for Federal Transit Administration recipients, Circular (FTA C 4703.1)* (Washington, DC: Department of Transportation, Aug. 15, 2012); FTA, *Title VI Requirements and Guidelines for Federal Transit Administration Recipients, Circular (FTA C 4702.1B)* (Washington, DC: Oct. 1, 2012); Letters from FTA to Metropolitan Transportation Commission and San Francisco Bay

EPA can implement compliance with Title VI and 12898 through various means. This includes planning, regulations, data collection and analyses, review of federal funding applications, contractual assurances of compliance by recipients of federal financial assistance, compulsory self-evaluations by recipients, compliance reviews after funding, investigation of administrative complaints, full and fair public participation in the compliance and enforcement process, and termination and deferral of funding. The Department of Justice has civil rights coordinating responsibility with federal agencies and can enforce civil rights laws in court.¹⁸

IV. EPA Must Recognize that Access to Parks and Healthy Green Space Is a Civil Rights and Environmental Justice Issue

EPA must recognize that access to parks and healthy green space is a civil rights and environmental justice issue. Among other things, this entails that EPA revise its environmental justice mapping and screening tool called EJScreen to include parks and green space.¹⁹

EPA needs to include park and green space data in its EJ Screen in part so that public officials can develop standards to measure compliance, equity, and progress, and to hold public officials accountable. Park funds in California have been prioritized based on need in communities that are defined under state law as “park poor” and “income poor.” Park poor is defined as less than three acres of parks per thousand residents, and income poor is below \$48,706 in median household income. These communities are disproportionately of color. The park poor, income poor standards are a best practice to define standards to promote compliance, measure equity and progress, and hold public officials accountable.²⁰

The attached two maps of California illustrate that the same communities that are disproportionately of color and low income are also the most burdened for pollution, and are the most vulnerable to its effects. The same communities also have the worst access to green space.

Area Rapid Transit District (Jan. 15, 2010 and Feb. 12, 2010), *available at* www.cityprojectca.org/blog/archives/4468. The FTA table comparing 12898 and Title VI is also attached below.

California and other states provide similar protections. California Attorney General Kamala Harris, for example, has published a fact sheet on civil rights and environmental justice protections under California law for projects that are funded or administered by the state. The Attorney General’s fact statement is available on the web at oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej_fact_sheet.pdf.

¹⁸ Michael Rodriguez, MD, MPH; Marc Brenman; Marianne Engelman Lado, JD; and Robert García, JD, *Using Civil Rights Tools to Address Health Disparities* (The City Project Policy Report 2014), goo.gl/mYvhOm.

¹⁹ See California Communities Environmental Health Screening Tool: CalEnviroScreen Version 2.0 (CalEnviroScreen 2.0), <http://oehha.ca.gov/ej/ces2.html>.

²⁰ See Park funds for park poor and income poor communities – Prop 84 and AB 31 standards are working! (The City Project Blog 2014), www.cityprojectca.org/blog/archives/32075.



Park Poor, Income Poor and People of Color



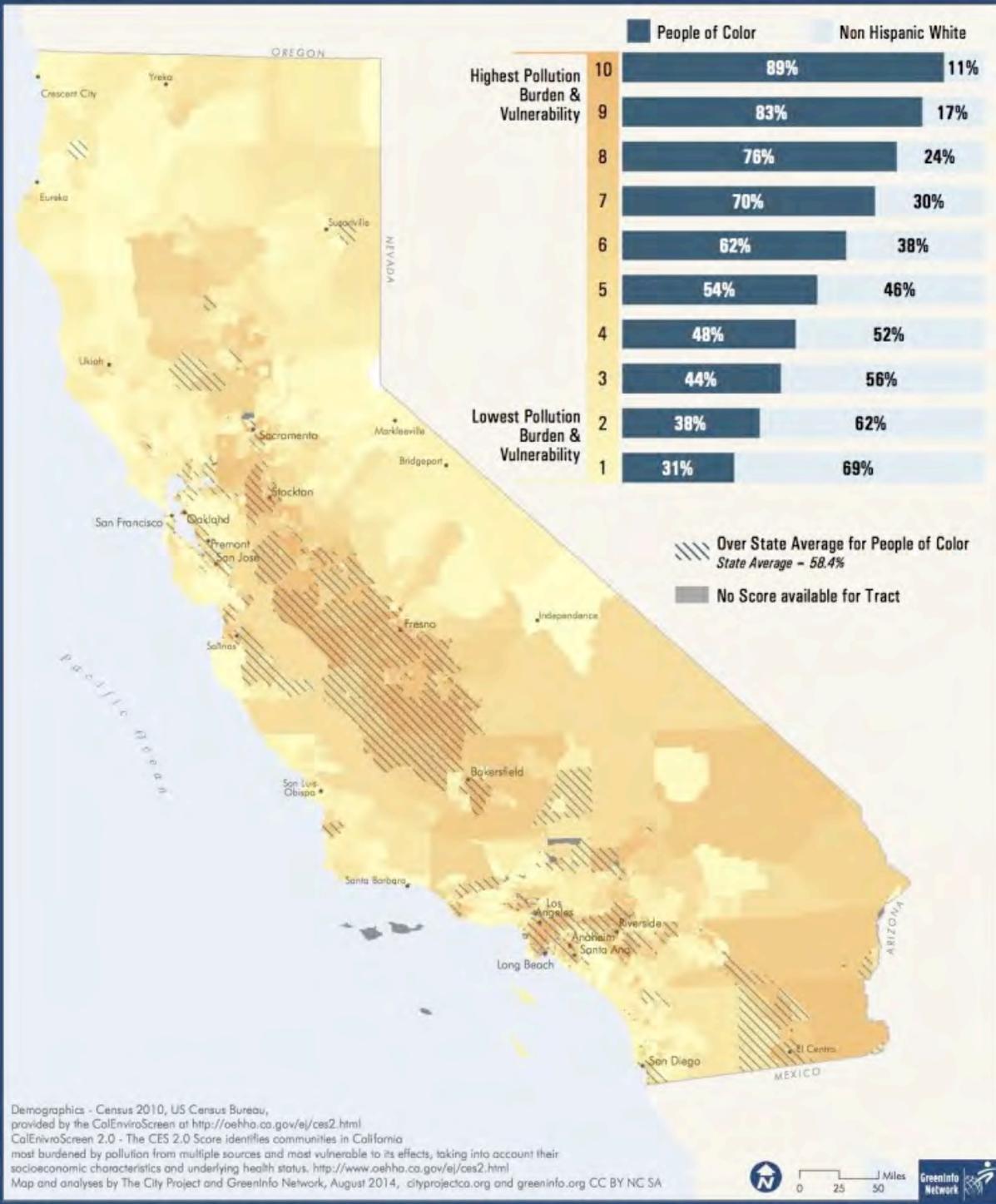
The same communities that are disproportionately of color and low income are also the most burdened for pollution, and are the most vulnerable to its effects. Thus:

- In the communities that are the most burdened for pollution and vulnerability (the 10 percent worst score under California's CalEnviroScreen (CES), fully 89 percent of the people are of color and only 11 percent are non-Hispanic white people. Statewide, the population average is 58 percent people of color.
- In the communities that are the least burdened for pollution and vulnerability (the 10 percent best CES scores), only 31 percent of the people are of color and fully 69 percent are non-Hispanic white people.
- Sixty-four percent of people of color live in the most-burdened communities for pollution and vulnerability (the 50 percent worst CES scores) — only 31 percent of non-Hispanic white people live in those areas.
- Only 36 percent of people of color live in the least-burdened communities for pollution and vulnerability (the 50 percent best CES scores) and fully 69 percent of non-Hispanic white people live in those areas.

The measures of pollution and vulnerability are from CES. The City Project and GreenInfo Network provide the analysis on race, color, national origin, and green access, because CES inappropriately excludes these factors. EPA should require California to include race, color, and national origin in CES in order to facilitate compliance with Title VI and its regulations.



Pollution Burden, Vulnerability, and People of Color



V. Reflect in EPA's Work including EJ 2020 Pope Francis's Encyclical on Caring about Climate, Caring for Creation, and Caring for the Poor and Disadvantaged

Pope Francis in his encyclical on caring for our common home calls for all of humanity to care about climate, care about creation, and care about the poor and underprivileged. The Pope intricately weaves moral and spiritual teachings with science, economics, and politics, addressing environmental values as well as human dignity and human rights. *See* Pope Francis, Encyclical Letter *Laudato Si'* of the Holy Father Francis on Care for our Common Home.²¹ We request that EPA reflect the Pope's encyclical in its work including EJ 2020.

A. Park Access and the Disposable of Society

Pope Francis, President Barack Obama, USFS, NPS, and HUD emphasize similar values in park access.

Pope Francis writes that we find beautiful green space in safe areas, but not where the disposable of society live. This is true in communities of color and low income communities across the nation, as discussed above. This can lead to brutality and exploitation. The Pope emphasizes the need to include those who are most affected in the planning process. Thus the Pope writes:

Many cities are huge, inefficient structures, excessively wasteful of energy and water. Neighborhoods, even those recently built, are congested, chaotic and lacking in sufficient green space. We were not meant to be inundated by cement, asphalt, glass and metal, and deprived of physical contact with nature.

In some places, rural and urban alike, the privatization of certain spaces has restricted people's access to places of particular beauty. In others, "ecological" neighborhoods have been created which are closed to outsiders in order to ensure an artificial tranquility. Frequently, we find beautiful and carefully manicured green spaces in so-called "safer" areas of cities, but not in the more hidden areas where the disposable of society live.

The extreme poverty experienced in areas lacking harmony, open spaces or potential for integration, can lead to incidents of brutality and to exploitation . . . Here too, we see how important it is that urban planning always take into consideration the views of those who will live in these areas.

There is . . . a need to protect those common areas, visual landmarks and urban landscapes which increase our sense of belonging, of rootedness, of "feeling at home" within a city which includes us and brings us together. It is important that the different parts of a city be well integrated and that those who live there have a sense of the whole, rather than being confined to one neighborhood and failing

²¹ *See* The City Project's blog posts on Pope Francis's encyclical: *Pope Francis Care about Climate Justice, Care for Creation, Care for the Poor Encyclical in English, Español, etc.* (www.cityprojectca.org/blog/archives/38050); *Pope Francis "The poor and the earth are crying out." Who are the poor in the US and CA?* (www.cityprojectca.org/blog/archives/38317); *Pope Francis on housing, equal dignity, and displacement. Fair housing is a right US Supreme Court.* (www.cityprojectca.org/blog/archives/38352); *Pope Francis Parks make us feel at home, bring us together, and are needed where the disposable of society live* (www.cityprojectca.org/blog/archives/38366). Prof. Michael Gerrard writes: "The remarkable Encyclical Letter issued last week by Pope Francis could be read as a primer on the importance and idealized operation of many of our environmental laws." Prof. Gerrard identifies as examples the National Environmental Protection Act, Clean Air Act, Clean Water Act and Safe Drinking Water Act, and Endangered Species Act. Prof. Gerrard also cites the Encyclical's discussion of Zoning, the UN Framework Convention on Climate Change, Yet-to-be written laws on energy transition, and the Importance of Environmental Laws. *See* Pope Francis on Environmental Law, *available at* blogs.law.columbia.edu/climatechange/2015/06/22/pope-francis-on-environmental-law/#sthash.PIdVnf6W.dpuf.

to see the larger city as space which they share with others. For this same reason, in both urban and rural settings, it is helpful to set aside some places which can be preserved and protected from constant changes brought by human intervention.

Anyone who grew up in the hills, or sat by the spring to drink as a child, or played outdoors in the neighborhood park, feels one is being called to recover one's true self when one goes back to those places.

Encyclical, ¶¶ 44-45, 84, 149-51.

B. Climate Justice

Pope Francis recognizes that climate justice and environmental degradation cannot be solved without solving the problems of poverty and inequality. Thus the Pope writes:

Climate change is a global problem with grave implications: environmental, social, economic, political and for the distribution of goods. . . . Its worst impact will probably be felt by developing countries in coming decades. Many of the poor live in areas particularly affected by phenomena related to warming ¶ 25.

We are faced not with two separate crises, one environmental and the other social, but rather with one complex crisis which is both social and environmental. Strategies for a solution demand an integrated approach to combating poverty, restoring dignity to the excluded, and at the same time protecting nature. ¶ 131.

We agree. Climate worsens a range of health problems, especially for communities of color and low income communities. Latinos and other people of color disproportionately believe climate science, and are willing to support climate action. Responding to the climate challenge can create jobs, improve people's health, reduce heating and cooling bills, and reduce the damage caused by the production of fossil fuels. We can grow the economy and promote human health, the environment, and equal justice at the same time. *See* Robert García and Ariel Collins, *Climate is a civil rights and moral issue as well as a health, economic, and environmental issue* (2015), www.cityprojectca.org/blog/archives/35499.

C. Environmental, Equity, and Health Impact Assessments

The assessment the Pope describes is consistent with a compliance and equity assessment under civil rights laws, including Title VI and Executive Order 12898. Health impact assessments are consistent with both the Pope's and the civil rights assessments.

The Pope writes: "In any discussion about a proposed venture, a number of questions need to be asked in order to discern whether or not it will contribute to genuine integral development. **What will it accomplish? Why? Where? When? How? For whom? What are the risks? What are the costs? Who will pay those costs and how?"** Thus the purpose of an environmental impact assessment includes equity and health:

Environmental impact assessment should not come after the drawing up of a business proposition or the proposal of a particular policy, plan or programme. It should be part of the process from the beginning, and be carried out in a way which is interdisciplinary, transparent and free of all economic or political pressure. It should be linked to a study of working conditions and possible effects on people's physical and mental health, on the local economy and on public safety.

Economic returns can thus be forecast more realistically, taking into account potential scenarios and the eventual need for further investment to correct possible undesired effects. A consensus should always be reached between the different stakeholders, who can offer a variety of approaches, solutions and alternatives. The local population should have a special place at the table; they are concerned about their own future and that of their children, and can consider goals transcending immediate economic interest. . . . The participation of the latter also entails being fully informed about such projects and their different risks and possibilities; this includes not just preliminary decisions but also various follow-up activities and continued monitoring. Honesty and truth are needed in scientific and political discussions; these should not be limited to the issue of whether or not a particular project is permitted by law.

In the face of possible risks to the environment which may affect the common good now and in the future, decisions must be made “based on a comparison of the risks and benefits foreseen for the various possible alternatives”. This is especially the case when a project may lead to a greater use of natural resources, higher levels of emission or discharge, an increase of refuse, or significant changes to the landscape, the habitats of protected species or public spaces. Some projects, if insufficiently studied, can profoundly affect the quality of life of an area due to very different factors such as unforeseen noise pollution, the shrinking of visual horizons, the loss of cultural values, or the effects of nuclear energy use. The culture of consumerism, which prioritizes short-term gain and private interest, can make it easy to rubber-stamp authorizations or to conceal information. ¶¶ 183-85 (citations omitted).

VI. Diversity, Funding and Compliance

Transformational change is necessary to attain the world we seek and to modernize the environmental, climate, and health movement. Diversifying the boards and staff of white mainstream NGOs is only part of the solution. EPA and other agencies, mainstream environmental organizations, and foundations need to fund diverse organizations whose core values are to serve communities of color and low income communities, including grass roots, environmental justice, and civil rights organizations. EPA and other agencies, organizations, and foundations need to ensure compliance with civil rights and environmental justice laws in principles.²²

VII. EPA Must Create a Culture of Compliance with Civil Rights, and Environmental Justice and Health, Laws and Principles

EPA must create a culture of leadership and best practices for compliance with Title VI and Executive Order 12898, following the examples cited above and going beyond them.

There is instead a culture at EPA that marginalizes and ignores compliance with the law, including Title VI and Executive Order 12898. This culture of non-compliance is manifested in a range of ways. EPA has a “record of poor performance” on civil rights.²³ EPA commonly uses euphemisms to avoid controlling legal standards. Thus, for example, EPA states that it seeks to make “a visible difference in environmentally overburdened, underserved, and economically-distressed communities.”²⁴ While people

²² See Dorceta E. Taylor, *The State of Diversity in Environmental Organizations: Mainstream NGOs, Foundations & Government Agencies*, available at <http://diversegreen.org/report/>; Environmental Justice Leaders Call for Diversifying Funding of People of Color NGOs, Civil Rights Compliance (The City Project Blog 2015), www.cityprojectca.org/blog/archives/36235.

²³ See, e.g., Deloitte Consulting LLP, “Final Report: Evaluation of the EPA Office of Civil Rights,” (March 21, 2011) (citing a “record of poor performance”) at 2.

²⁴ Broadcast email message from Environmental Justice EPA re: [epa-ej] EPA Extends Public Comment Period on Draft EJ 2020 Action Agenda Framework to July 14, 2015 (June 8, 2015).

of color and low income people are commonly “overburdened, underserved, and economically-distressed,” the legal standards are written in the stated legal terms, not in the latter amorphous terms. EPA must enforce the laws.

That is why we submit the present comments. “[L]ack of respect for the law is becoming more common. Laws may be well framed yet remain a dead letter. . . . Because the enforcement of laws is at times inadequate . . . , public pressure has to be exerted in order to bring about decisive political action. Society, through non-governmental organizations and intermediate groups, must put pressure on governments to develop more rigorous regulations, procedures and controls. Unless citizens control political power – national, regional and municipal – it will not be possible to control damage to the environment.” Encyclical ¶ 179.

Conclusion

We look forward to working with EPA to ensure compliance with civil rights, and environmental justice and health, laws and principles, now and through EJ 2020.

Sincerely,

Claire Robinson
Amigos de los Rios

Scott Chan
Asian and Pacific Islander Obesity Prevention Alliance (APIOPA)

Robert García
The City Project

Camilla Simon
Hispanics Enjoying Camping, Hunting, and the Outdoors (HECHO)

Ruben D. Arvizu
Jean-Michel Cousteau’s Ocean Futures Society

Xavier Morales
Latino Coalition for a Healthy California (LCHC)

Chelsea Griffie
Los Angeles Wilderness Training

Douglas Meiklejohn
New Mexico Environmental Law Center

Marc Brenman
Social Justice Consultancy

Judy Baca, Debra J.T. Padilla
Social and Public Art Resource Center (SPARC)



Corporate Environmental Enforcement Council, Inc.

July 13, 2015

Submitted Electronically and *via* Hard Copy

ejstrategy@epa.gov

Mr. Charles Lee

Deputy Associate Assistant Administrator for Environmental Justice

U.S. Environmental Protection Agency

Office of Environmental Justice (2201-A)

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Re: Comments on EPA's Draft EJ 2020 Action Agenda Framework

Dear Mr. Lee:

The Corporate Environmental Enforcement Council (CEEC) welcomes this opportunity to comment on EPA's *Draft EJ 2020 Action Agenda Framework*, which was released to the public on April 15, 2015. CEEC is encouraged by EPA's commitment to making a visible difference in communities across America, including, without limitation, those that are environmentally overburdened, underserved or economically distressed. CEEC also appreciates the many long-standing policies and commitments EPA has made to advance the meaningful consideration of environmental justice (EJ) factors in the Agency's decision-making. CEEC recognizes that the *Framework* marks the beginning of an ambitious new environmental justice agenda, but we are concerned that it does not provide sufficient details about the Agency's plans to allow for meaningful public review and comment. CEEC is also concerned that the *Framework* wholly overlooks one of the core elements of EJ – disproportionate impact.

Founded in 1995, CEEC is the only cross-industry business coalition that brings together the diverse perspectives of legal, technical and governmental affairs professionals on environmental health and safety issues in the context of enforcement policy and practice. For many years, CEEC and its 29 member companies have maintained an active and constructive dialogue with EPA on its enforcement policies and initiatives. Indeed, at our March 12, 2015 member meeting, Matt Tejada joined us to discuss EJ developments within the Agency,

including the *Framework*, EJSCREEN and the recently released EPA guide on incorporating EJ into the rulemaking process. CEEC welcomed Mr. Tejada's willingness to engage with us and his commitment to involving business and industry in EPA's EJ-related community outreach efforts.

Scope of Framework

EJ is based on two core elements: a disadvantaged community and a disproportionate impact to that community. Noticeably absent from the *Framework* is any reference to, or acknowledgement of, the second element. CEEC believes that this is a fundamental oversight that must be corrected before the *Framework* is finalized. Indeed, much more needs to be done to bring clarity to the agency's EJ efforts in terms of what constitutes a disproportionate impact and how such an impact is measured. CEEC is concerned that the agency sometimes focuses only on the existence of a disadvantaged community and the fact that a facility (or facilities) may "impact" that community, without enough attention on the issue of whether the facility/facilities at issue have a "disproportionate" impact. Doing so could run afoul of the Agency's long-standing EJ policies.

Any effort to address EJ in permitting, rulemaking or enforcement should be based on valid, real time monitoring data that show disproportionately high and adverse human health or environmental effects on the disadvantaged community in which a particular facility is located. If there are such valid scientific findings based on those data, EPA's next step must be to assess the reasons for the disproportionate impact. CEEC notes that "reasons" for an impact are very different than "sources" of an impact. The purpose of EPA's assessment must be to evaluate whether there are other "reasons" for the impact that could and should be handled using a mechanism other than, for example, automatically targeting a particular facility with a pending permit. CEEC believes that the assessment should include a review of whether there are other environmental indicators, such as traffic, that are causing the impact, or other facilities that are also impacting the community while operating completely outside of the regulatory system (e.g., no permits whatsoever). If either is the case, then CEEC submits it would be more appropriate, in the first instance, to look to address whatever disproportionate impact is occurring by bringing those facilities or activities into the regulatory system and enforcing compliance with applicable regulatory and permitting requirements. This approach needs to be captured in the *Framework*.

Using EJ in Enforcement

The *Framework* calls for EJ to be used for targeting, case development and resolution of compliance and enforcement actions in overburdened communities. However, CEEC suggests that use of EJ as a "targeting" tool (both in civil and criminal enforcement) needs to be carefully considered to the extent it is used as a proxy for determining whether individual cases merit enforcement. CEEC has emphasized previously that as a legal and policy matter, enforcement is appropriately focused on non-compliance with existing legal requirements – regardless of whether EJ is a factor or not. CEEC believes it is important that EJ not be used to redefine what constitutes compliance or non-compliance.

CEEC is concerned that EJ will be used to pressure regulated entities into accepting new compliance requirements through adjudicated settlements (and permits) that have not been established through normal APA procedures. This approach could undermine the very thing the Agency seeks for EJ purposes, *i.e.*, robust public engagement.

Using NextGen Tools to Further EJ Goals

The *Framework* also encourages more NextGen monitoring, community-based participatory research and citizen science. As noted in CEEC's written comments on EPA's *Notice and Request for Comment on Improving EPA Regulations*, 80 Fed. Reg. 12,372 (March 9, 2015), CEEC supports EPA's NextGen Compliance Initiative. We are particularly interested in opportunities for EPA to use NextGen to shift from a retroactive compliance approach (*i.e.*, one that measures and enforces what went wrong) to one that is more proactive (*i.e.*, encouraging and rewarding programs that prevent things from going wrong in the first place). CEEC views these opportunities as particularly valuable in the EJ context, especially as EPA seeks to foster more local community collaborations. CEEC also believes that for NextGen to be both useful and defensible, EPA must provide clear and objective standards for data quality, authentication and veracity (particularly as they relate to new and emerging mobile apps that lack – and indeed may fail – such standards). CEEC encourages EPA to address these NextGen considerations and concerns in the final *Framework*.

Collaborating with EJ Partners

Consistent with the Agency's call for greater collaboration, CEEC encourages EPA to identify ways to reduce environmental impacts to overburdened communities, including improving economic opportunity and revitalization. Many cases of disparate impacts, particularly in urban settings, are the result of many years of benign economic neglect from local political decision-making that must be resolved over time with greater capacity building and sustainable development. We believe this type of collaboration needs to be explicitly identified and encouraged in the *Framework*.

Demonstrating Progress on EJ Outcomes

As part of the *Framework*, EPA has asked for public input on whether there are particular program areas of such consequence to overburdened communities that should be the focus of attention nationally, including, for example, drinking water and lead paint. CEEC believes that these are both worthy examples, and further, that any EJ priorities should coincide with the agency's overarching priorities for protecting the environment and public. Nothing is more critical than safe, healthy and sustainable water resources, yet the Nation's crumbling water infrastructure is having enormous adverse impacts on small and rural communities – many of them minority and poor – without the financial and technical resources to fix the problem. These are complex issues that cannot be resolved by EJ initiatives alone, but should include Congress, the States, mayors, businesses, industries, NGOs and community leaders, more reinvestment in failing infrastructure, improvements in local governance, and increased enforcement against those entities operating outside of the law.

Mr. Charles Lee
July 13, 2015
Page 4 of 4

In closing, we want to thank you for this opportunity to provide input on the *Framework*. CEEC is committed to continuing its engagement with the Agency on this important topic and believes that the collective experience and perspective of our members would greatly improve the direction and ultimate success of EPA's EJ agenda.

Sincerely,

A handwritten signature in blue ink, appearing to read 'S. Hellem', with a long horizontal flourish extending to the right.

Steven B. Hellem
Executive Director

From: Drew Walker <[REDACTED]>
Sent: Monday, June 15, 2015 3:24 PM
To: ejstrategy
Cc: Rhonda Anderson
Subject: EPA EJ 2020 Comments
Attachments: State_of_Detroit_s_Environment.pdf

Hello,

Below are some comments we have in regards to your EJ 2020 Action Framework.

- A great number of overburdened communities that we serve are immigrant communities, meaning that a large portion of the population cannot speak English well or at all. I suggest providing more information in other languages or in simple English so that people living in EJ communities can be well informed.
- We desire to see more tangible results in regards to issues in EJ communities. In our area, that includes shutting down or reducing the emissions of the biggest polluters which contribute to Detroit having among the highest asthma rates in the country and Detroit's 48217 being the most polluted zip code in the state of Michigan.
- Finally, we would like to see harsher consequences for polluters that violate EPA standards, especially those that pollute in already overburdened communities.

Attached is a publication by the Sierra Club Detroit Chapter entitled *The State of Detroit's Environment*, which describes Detroit's most prevalent environmental issues and facts and figures from recent studies. I hope that this publication and email can help you understand the urgency of environmental justice issues in Detroit.

Thank you for your time.

Best wishes,

--

Rhonda Anderson, Senior Organizer, Beyond Coal Campaign-Sierra Club
rhonda.anderson@sierraclub.org

Drew Walker
University of Michigan, Residential College, 2016

Intern, Sierra Club

[REDACTED]

MEMORANDUM

TO: Charles Lee, Deputy Associate Assistant Administrator for Environmental Justice, EPA Office of Environmental Justice
FROM: David Konisky, Georgetown University
Christopher Reenock, Florida State University*
SUBJECT: Comments on EPA's *Draft EJ 2020 Action Agenda Framework*
DATE: May 27, 2015

The EPA has taken important steps in recent years to better integrate environmental justice into its decision-making. The documents produced as part of EPA's *EJ Plan 2014* in particular have directed significant attention to how the agency will use regulatory enforcement to achieve improved outcomes in overburdened communities. And, there is some preliminary indication in a recent EPA Office of Inspector General report that EPA regional offices have begun to actively consider environmental justice in their enforcement programs.

Despite these advances, we believe the EPA needs to take additional actions to ensure that these activities extend to **state** regulatory enforcement efforts. EPA's report, "Advancing Environmental Justice through Compliance and Enforcement, Implementation Plan" notes that the EPA will work with state governments to achieve compliance and enforcement goals, but the steps to be taken are vague, and do not specify how the EPA will use its significant capacity to assure that state governments fulfill the agency's enforcement goals in the federal programs they implement.

This is an important area that we believe the *Draft EJ 2020 Action Agenda Framework* does not satisfactorily address. The Environmental Council of the States has estimated that more than 90% of the actions taken to enforce major federal pollution control laws are carried out by state administrative agencies, and states have considerable discretion in determining their enforcement strategies. For this reason, we believe it is imperative that the EPA work directly with states to be sure that the EPA's environmental justice related enforcement goals are carried out by state agencies.

We have completed a number of studies (listed at the end of this memorandum) of state enforcement of laws such as the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act that have found significant disparities in enforcement. Specifically, we have consistently found that state regulators tend to direct fewer compliance monitoring inspections and fewer enforcement actions in response to violations when facilities are located in communities with large proportions of poor and minority communities. Moreover, our research indicates that these disparities have not diminished in the years since the issuance of Executive Order 12898.

* These comments reflect our opinions, and do not represent the views of Georgetown University or Florida State University.

For these reasons, we believe it is critical that the EPA broaden the *Draft EJ 2020 Action Agenda Framework* in the area of enforcement to emphasize the important role of states. Specifically, we strongly recommend that a fourth priority be added to the “Advance environmental justice through compliance and enforcement” section of the framework: “Work with state, tribal, local governments and other co-regulators to develop robust enforcement programs in overburdened communities.”

Further, we recommend that the EPA take the following actions in support of this additional priority:

- EPA regional offices should closely oversee states' enforcement programs to be sure they are targeting facilities in overburdened communities.
- EPA should direct states to use EPA tools such as EJScreen to identify enforcement targets.
- States should regularly report to the EPA on their compliance and enforcement efforts in overburdened communities.
- EPA should monitor administrative procedures within state agencies given their influence over facility targeting.
- EPA should integrate environmental justice priorities in performance partnership agreements and other federal-state cooperative arrangements.

In sum, we believe that the EPA needs to vigorously engage with state agencies and other relevant government authorities to assure that the compliance and enforcement initiatives that the agency is pursuing as part of the Draft EJ 2020 Action Agenda Framework are effective.

List of relevant studies we have authored:

David M. Konisky and Christopher Reenock. 2015. “Evaluating Fairness in Environmental Regulatory Enforcement,” In: *Failed Promises: Evaluating the Federal Government’s Response to Environmental Justice*, Konisky, D.M., ed., Cambridge, MA: MIT Press, 173-203.

David M. Konisky and Christopher Reenock. 2013. “Compliance Bias and Environmental (In)Justice,” *The Journal of Politics* 75(2): 506-519.

David M. Konisky and Tyler S. Schario. 2010. “Examining Environmental Justice in Facility-Level Regulatory Enforcement,” *Social Science Quarterly* 91(3): 835-855.

David M. Konisky. 2009. “The Limited Effects of Federal Environmental Justice Policy on State Enforcement.” *Policy Studies Journal* 37(3): 475-496.

David M. Konisky. 2009. “Inequities in Enforcement? Environmental Justice and Government Performance,” *Journal of Policy Analysis and Management* 28(1): 102-121.

Contact information:

David Konisky, Associate Professor



Christopher Reenock, Associate Professor



GOVERNMENT OF THE DISTRICT OF COLUMBIA

District Department of the Environment

Office of the Director



July 8, 2015

Charles Lee
Deputy Associate Assistant Administrator for Environmental Justice
USEPA, Office of Environmental Justice (2201-A)
1200 Pennsylvania Avenue, NW
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Mr. Lee,

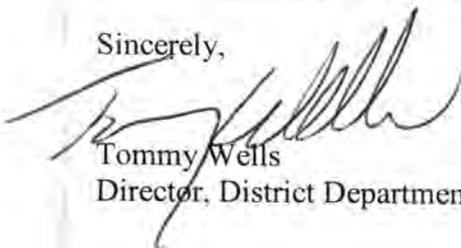
Thank you for the opportunity to review and provide input on U.S. Environmental Protection Agency's (EPA's) Draft EJ 2020 Action Agenda Framework (EJ 2020). We are pleased to learn that EPA remains committed to environmental justice, and that it plans to strengthen the foundation established by Plan EJ 2014. Below you will find our comments and questions on the draft framework. We look forward to informing the EJ 2020 process further if need be, and to continuing our collaboration with the Office of Environmental Justice.

- We are looking forward to the National Program Managers guidance which, according to the draft framework, will be developed in the next two years under EJ 2020. Under the section "Priorities in 2015," it reads that "measurable activities to advance environmental justice" will be included in the National Program Managers guidance. Will the goals delineated in EJ 2020 have measurements associated with them? What will be the quantifiable indicators of progress for the EJ 2020 goals?
- We believe that every plan needs to be followed up with a pulse check or progress report of some kind. Does EPA intend on providing a progress report a few years after goal implementation is underway?
- It is our hope that EJ 2020, and any derivative guidance, will prioritize cross-jurisdictional partnerships (i.e., partnerships between geographically adjacent local governments). Environmental issues often cross boundaries and are diffuse in nature. Therefore, when enacting policy, we request that future EPA directives local governments should work with their neighbors that are located both upwind and downwind of them.



- We're pleased to see public-private partnerships (P3) mentioned under Goal II.C of EJ 2020. We would like to see more of an emphasis on P3 in EJ 2020 moving forward. P3 is an approach that has been proven to be successful in certain community revitalization projects (i.e., ReGenesis in South Carolina, and Prince Georges County, MD). Private entities are often pointed out as being the cause of environmental injustices; however, they can also be part of the solution if they are involved early on in the planning process. We hope EJ 2020 will encourage stakeholders to leverage the strengths of P3s so that businesses can be brought into the fold as active stewards of social responsibility.
- Under Goal II.A, EJ 2020 lists stakeholder engagement as a goal. There are two types of public dialogue or engagement – reactive and proactive. Reactive engagement occurs when communities react to environmental policy decisions *after* they have been made. Proactive engagement occurs when policy makers use public participation to inform their goals *prior* to decision-making. More often than not, reactive engagement is the predominant or only form of public feedback. We hope EJ 2020 encourages stakeholders to elevate the use of proactive civil engagement over reactive engagement.
- We recommend including green infrastructure as one of the climate justice considerations in EJ 2020. EJ 2020 should elevate the importance of building and maintaining reliable infrastructure in low-income and minority communities. This includes all types of infrastructure – critical infrastructure (e.g., evacuation routes for climate change-related disasters), urban/municipal infrastructure (e.g., sewer systems), and green infrastructure (e.g., greenroofs, rain gardens). Typically, resilient infrastructure is most lacking in vulnerable communities. EPA might consider including this as one of EJ 2020's climate justice goals: strengthen infrastructure programs in neighborhoods that traditionally don't receive resources to do so.
- We were pleased to see an emphasis placed on the role of local government in executing EJ 2020. Local government should play a lead role in connecting vulnerable communities to available resources. The challenges that communities face are often not about resource scarcity, but rather about identifying and tapping into available resources. Often, these communities aren't aware of existing resources (funding, grants, green rebate programs, toolkits) or they don't know the right channels to access them. We hope the finalized plan will include this consideration.
- Local government should also play a facilitator role in helping the environmental justice actors and community leaders collaborate with one another. Communities sometimes lack the nuts and bolts resources (e.g., meeting rooms, conference lines, etc.) to exchange information about environmental and health issues with one another. We hope the finalized plan will include this consideration.

Sincerely,



Tommy Wells
Director, District Department of the Environment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Draft EJ 2020 Action Agenda Framework
(June 15, 2015)

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)
)

Submitted via e-mail - July 14, 2015
to ejstrategy@epa.gov

COMMENTS OF ENVIRONMENTAL AND COMMUNITY GROUPS

AIR ALLIANCE HOUSTON; ALASKA’S BIG VILLAGE NETWORK; APOSTOLIC FAITH CENTER; CALIFORNIA COMMUNITIES AGAINST TOXICS; CALIFORNIA KIDS IAQ; CALIFORNIA SAFE SCHOOLS; CATA – THE FARMWORKERS SUPPORT COMMITTEE; CENTER FOR EFFECTIVE GOVERNMENT; CITIZENS AGAINST RUINING THE ENVIRONMENT; CITIZENS’ ENVIRONMENTAL COALITION; CITIZENS FOR CLEAN AIR; CLEAN AIR COUNCIL; CLEAN AND HEALTHY NEW YORK; CLEAN WATER AND AIR MATTER; COALITION FOR A SAFE ENVIRONMENT; COMITE CIVICO DEL VALLE; COMITÉ DIÁLOGO AMBIENTAL, INC.; COMMUNITY DREAMS; COMMUNITY IN-POWER AND DEVELOPMENT ASSOCIATION; COMMUNITY SCIENCE CENTER; CONSERVATION LAW FOUNDATION MASSACHUSETTS; DEL AMO ACTION COMMITTEE; DESERT CITIZENS AGAINST POLLUTION; DIESEL HEALTH PROJECT; DOWNWINDERS AT RISK; EAST YARD COMMUNITIES FOR ENVIRONMENTAL JUSTICE; 48217 COMMUNITY AND ENVIRONMENTAL HEALTH ORGANIZATION; FARMWORKER ASSOCIATION OF FLORIDA; INSTITUTE OF NEUROTOXICOLOGY & NEUROLOGICAL DISORDERS; JESUS PEOPLE AGAINST POLLUTION; KENTUCKY ENVIRONMENTAL FOUNDATION; LABADIE ENVIRONMENTAL ORGANIZATION; MARTINEZ ENVIRONMENTAL GROUP; MIDWEST COALITION FOR RESPONSIBLE INVESTMENT; MOSSVILLE ENVIRONMENTAL ACTION NOW; NATURAL RESOURCES DEFENSE COUNCIL; NEIGHBORS FOR CLEAN AIR; NEW MEXICO ENVIRONMENTAL LAW CENTER; NORTH CAROLINA COASTAL FEDERATION; OHIO VALLEY ENVIRONMENTAL COALITION; PENDERWATCH & CONSERVANCY; PESTICIDE ACTION NETWORK NORTH AMERICA; SIERRA CLUB; SOUTHEASTERN NORTH CAROLINA ENVIRONMENTAL JUSTICE COALITION; SOUTHERN APPALACHIAN MOUNTAIN STEWARDS; STEPS COALITION; TEXAS ENVIRONMENTAL JUSTICE ADVOCACY SERVICES; THE CITY PROJECT; THE ORIGINAL UNITED CITIZENS OF SOUTHWEST DETROIT; TRI-VALLEY CARES; WEST END REVITALIZATION ASSOCIATION; AND EARTHJUSTICE

The U.S. Environmental Protection Agency is currently taking public comment on its proposed action agenda for a new strategic plan on environmental justice, to be called Plan EJ2020.¹ EPA has stated specific objectives it is considering including as areas of focus for this new plan. The undersigned commenters recommend that EPA put the bulk of its attention, authority, commitments, and resources into two of these areas: demonstrating progress on outcomes that matter to overburdened communities; and creating specific tools and initiatives that will assist with achieving this progress.

Many community members and organizations are submitting additional comments. This set of comments aims to supplement and emphasize cross-cutting actions that would advance environmental justice across the broad spectrum of the important issues that affect communities.

¹ This version, filed on July 23, 2015, adds five organizations who have since joined these comments.

These comments focus on the following components that EPA should commit to include as top priorities in Plan EJ2020, as described below.

| | | |
|-----|---|----|
| I. | DEMONSTRATE PROGRESS ON OUTCOMES THAT MATTER TO OVERBURDENED COMMUNITIES: MAKE MEANINGFUL PROGRESS FOR COMMUNITIES WITH ENVIRONMENTAL JUSTICE CONCERNS..... | 4 |
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I. DEMONSTRATE PROGRESS ON OUTCOMES THAT MATTER TO OVERBURDENED COMMUNITIES: MAKE MEANINGFUL PROGRESS FOR COMMUNITIES WITH ENVIRONMENTAL JUSTICE CONCERNS.

To demonstrate that EPA is achieving progress, EPA must make commitments and take *substantive* action to reduce environmental health disparities, not merely create more commitments on *process* as its prior guidance documents have done.

EPA must look at, assess, and set goals to achieve improved outcomes for the health and protection of the environment for communities of color, low-income, and indigenous people. A long history of discrimination and neglect has produced socioeconomic inequality and has made people of color and low-income people more vulnerable to the harms of pollution, and with the least access to safe and healthy environments and natural areas.

The objective of Executive Order 12898 is not just to increase protection for all and leave disparities in place – it is to “make achieving environmental justice part of [each Federal agency’s] mission.”²

To achieve this objective, EPA needs to set metrics that assure:

- (1) The agency is targeting its resources to ensure that people of color and low-income people are experiencing the outcomes of its work as measurable, direct benefits and protections;
- (2) The agency is achieving the best possible, and greatest achievable results on the ground, in terms of such health and environmental outcomes; and
- (3) EPA is targeting and taking particular actions that aim to reduce the greater rate of environmental threats and impacts that are occurring for particular communities, correlated with and connected to their race and socioeconomic status, not just strengthen protections in some way and call its work done.

A. Increase Agency Resources and Action Focused on Hot Spots: Vulnerable Communities with Disproportionate Need

To achieve objective one, EPA must ensure that it expands resources and prioritizes its existing resources to reach the communities that are overburdened by pollution or other toxic exposures and have disproportionate representation of vulnerable communities of color and low-income people.

For example, for fiscal year 2015, EPA has created a “Making A Visible Difference In Communities” project, where it has selected 50 communities nationwide for particular attention and resources.³ To achieve its environmental justice objectives, in Plan EJ2020 EPA must do more than just choose these 50 communities to make a “visible difference.” And, EPA must do more than just consider issues related to “smart growth.”

² Exec. Order No. 12,898 § 1-101, 59 Fed. Reg. 7,629, 7,629 (Feb. 11, 1994).

³ EPA, *Making a Visible Difference in Communities*, <http://www2.epa.gov/smart-growth/making-visible-difference-communities> (last updated May 26, 2015).

First, EPA should commit to direct resources and apply its authorities to all overburdened communities meeting key criteria, not just select a limited number.

Second, EPA should use environmental justice factors to choose communities that will receive additional attention, action, and resources. For the 2015 project, it is unclear whether or how environmental justice factors were included in EPA's determination of which communities would be part of this project. It is unclear whether all of the communities EPA has chosen are the communities with the greatest need for environmental and health protection, that they are hot spots, or that they are communities with particular environmental justice concerns. EPA should provide transparency and an opportunity for further input, and should extend such opportunities to communities who may not have had a prior opportunity to provide input, and who seek to receive the additional protection and attention that this project will provide.

In particular, as part of Plan EJ2020, EPA should develop an expansive list of all known hot spot communities or areas that have environmental justice concerns, and that need further review, agency action, and attention, after taking public notice and comment. EPA should create this list using factors such as the following:

(1) the factors contained in EJSCREEN;

(2) additional health status and health disparity factors included in CalEnviroScreen,⁴ and any other valuable state tools;

(3) additional indicators that are also linked with environmental justice, public health, and EPA's statutory authorities, such as:

- whether an area is in nonattainment for a criteria pollutant;
- whether an area has elevated cancer risks, as identified in EPA's Second Integrated Urban Air Toxics Report⁵;
- whether an area has elevated levels of drinking water or soil contamination, including from legacy pollution or ghost industrial sites⁶;
- whether a community has Superfund and/or brownfield sites;
- whether a community includes facilities with a high number of violations of environmental laws;
- whether a community includes major sources regulated under EPA's air toxics and other permitting programs;

⁴ Cal. EPA Ofc. Of Envtl. Health Hazard Assessment ("OEHHA"), *CalEnviroScreen Version 2.0*, <http://oehha.ca.gov/ej/ces2.html> (last updated Nov. 10, 2014).

⁵ EPA, *The Second Integrated Urban Air Toxics Report to Congress* (Aug. 21, 2014), available at <http://www2.epa.gov/sites/production/files/2014-08/documents/082114-urban-air-toxics-report-congress.pdf>.

⁶ See, e.g., USA Today, *Ghost Factories*, <http://www.usatoday.com/topic/B68DCD3E-7E3F-424A-BDA4-41077D772EA1/ghostfactories/>.

- whether a history of segregation, racial zoning, redlining, and similar forms of discrimination played any role in the proximity between majority-minority neighborhoods and industrial sources, highways, and other pollution sources;
- whether a community includes a port or goods movement/transportation hub, and/or is located along or in close proximity to an international border or point of entry including both the U.S.-Mexico, and the U.S.-Canada borders;
- whether an area contains mining and/or oil and gas resources or extraction activities;
- whether a community is located in a geographical region or area that is particularly susceptible to extreme drought impacts, sea level rise, or other impacts from natural and climate-change related disasters;
- whether a community is located on tribal land, or may otherwise be linguistically or geographically isolated;
- whether a community is in proximity to one or more facilities that store or use hazardous chemicals⁷;
- whether a community relies on subsistence farming, fishing, or hunting;
- whether an area is largely agricultural, resulting in community members being exposed to pesticides;
- whether a community has been the site of repeated environmental health or safety emergencies;
- whether an area is identified by other state or federal agencies (including HUD, USDA or DOT) or initiatives such as Partnership for Sustainable Communities, Sustainable Communities/Strong Communities (“SC2”); and
- whether a community has equal and meaningful access to parks, green space, and the ability to enjoy natural areas.

Third, for all identified hot spot communities, EPA should commit to target its resources and authorities, and create an “all hands on deck” approach for environmental justice.

For EPA’s existing communities list in the “Making a Visible Difference” project, it is unclear whether community-specific plans have been or are being developed to protect these communities, or who is involved in this process other than the regional staff. For the full Plan EJ2020 list, EPA should direct all offices, departments, and relevant staff at the national and regional level to create a plan that assesses and uses specific authorities, resources, and actions to make progress to protect these hot spot communities, after taking public comment, and publish these plans. As part of these action plans for hot spot communities, EPA should commit to: (1) increase enforcement and compliance of all existing requirements applicable; (2) reduce air, water, and waste pollution and toxic exposure, including through use of EPA’s rulemaking, permitting, and chemical and product control authorities; (3) increase environment-related health protections and reduce environment-related health problems such as asthma, early mortality

⁷ See, e.g., Envntl. Justice and Health Alliance for Chem. Policy Reform, *Who’s In Danger?* (May 2014), available at <http://comingcleaninc.org/assets/media/images/Reports/Who's%20in%20Danger%20Report%20FINAL.pdf>.

including infant mortality, cardiovascular problems, cancer, lost school and work days, high blood-lead levels, mercury and other toxin-burdens measured, and other health factors of importance; and (4) improve monitoring, pollution and health information, technical assistance, and other tools available to help communities protect their own health and environment.⁸

During the course of Plan EJ2020, EPA should regularly audit and include achievement of pollution reductions, health protections, and compliance progress in hot spot communities as part of all relevant EPA staff's performance reviews and staff reports. EPA should include community groups within the hot spot communities or areas of environmental justice concern as part of the progress audit process. EPA should publish regular reports on all actions taken to provide relief in hot spot communities, and a final report on progress achieved or in process as of 2020.

Notably, each regional office has a shortage of staff capacity to address the state-specific and local environmental justice issues facing some of their most vulnerable and overburdened communities, as well as to enforce regulations intended to protect vulnerable communities such as farmworkers. Indeed, some, if not many, regional offices have fully disbanded their environmental justice staffs, and are entirely dependent on the volunteer hours of committed program staff to address pressing environmental justice issues and impacts. When program staff who have full-time commitments to other areas of work are expected to devote extra, unpaid hours to address cumulative health and pollution issues facing environmental justice communities, there can be no realistic expectation that such issues are actually being adequately addressed. It is imperative that EPA back its commitments to achieving tangible environmental justice outcomes with full time staff and programmatic commitments beyond the agency's Washington, D.C. office, and throughout the reach of the regional offices. In order to make environmental justice outcomes a reality for many the nation's most impacted and overburdened communities, EPA must back its commitments with real human, financial, and programmatic resources in each of its regional offices, as well as action plans that staff must implement there.

As further examples of communities that greatly need attention, see the community impact reports previously submitted to EPA in connection with the agency's request for information on cumulative risk and impact assessment, and on the refineries rule.⁹

B. Achieve Health and Environmental Outcomes and Reduce Injustice

In response to EPA's request for comment on example metrics to use in assessing success on environmental justice concerns and in communities where people of color and low-income

⁸ Further information on these issues is discussed later in these comments. As one example, EPA needs to require that safety information on pesticide labels appear in Spanish as well as English so that farmworkers, who are overwhelmingly Latino, know how to protect themselves.

⁹ See, e.g., Comments of Environmental and Community Groups: Addendum A – Community Impact Report (Oct. 28, 2014), EPA-HQ-OAR-2010-0682-0568; Comments of Air Alliance Houston, *et al.*: Appendix E – Stories From Communities Overburdened by Pollution (June 28, 2013), EPA-HQ-ORD-2013-0292-0133.

people are disproportionately affected by pollution, toxic exposures, and EPA’s program actions, here is a list of some example metrics that EPA should be considering. The important points are: (1) focus on actual on-the-ground health impacts and not just EPA’s abstract environmental metrics (which may show progress but not anywhere near the progress communities need and want); and (2) assess whether EPA is actually addressing and working toward justice and equity, *i.e.*, not merely whether EPA has strengthened protection, but whether or not EPA has actually achieved any progress to reduce the disproportionate and unjust nature of the exposures and other impacts or made a meaningful difference to a particularly affected community. As EPA did not provide any real guidance on this question in the action framework document, we encourage EPA to publish a list of potential metrics for substantive objectives, including and in addition to the below, that it is actually considering and take further comment on this question, before determining the metrics it will use to assess success.

| Progress Objective | Essential Metrics | Key Additional Metrics To Prevent Ongoing Injustice |
|---------------------------|--|---|
| Pollution | <p>Reduce air emissions, water contamination discharges, waste – for the most exposed and most vulnerable populations. Fine-scale studies may be needed where census tract- or even neighborhood-level may be too coarse.</p> <p>Using EJSCREEN and other relevant factors, track pollution burdens by race, income, and other socioeconomic factors, and report on whether they are both being reduced and becoming less disproportionately distributed in communities with environmental justice concerns.</p> | <p>Assess whether the amounts reduced are comparable to what has been achieved using the best available pollution controls and practices in other communities that have achieved the greatest reductions in similar pollution; and whether the amounts reduced reflect the maximum achievable levels of pollution reductions.</p> <p>In determining whether ambient pollution levels and toxic exposures have declined, EPA must base its assessment on reductions to the most exposed and most vulnerable populations.</p> |
| Health | <p>Increase health protection, particularly from environmentally-associated illnesses including pediatric and adult asthma, chronic obstructive pulmonary disease (“COPD”) and other respiratory problems,</p> | <p>Compare results to communities with least pollution and highest health scores; set disparity reduction goals and reduce disparities; assess whether the best available protection is achieved for children, in utero</p> |

| Progress Objective | Essential Metrics | Key Additional Metrics To Prevent Ongoing Injustice |
|--|--|--|
| | cardiovascular disease, cancer, birth defects and reproductive harm, diabetes – particularly for the most vulnerable community members, including children and the elderly. | and early life exposure, and for communities with socioeconomic stressors that increase vulnerability. |
| Enforcement and Compliance | Achieve compliance and create disincentives to violate environmental laws. Assess cases brought; success achieved; and environmental and health results achieved from these cases. | Show direct compliance results in targeted communities, compared with communities with the best compliance records, and include community input on the results of enforcement cases, to benefit immediate communities affected. |
| Clean Up Contaminated Sites including Superfund, and Expand Access to Healthy Green Space and Natural Areas | <p>Identify more sites in priority areas and assure effective clean up progress, results, and success.</p> <p>Prioritize protecting and expanding free access to parks, healthy green space, and natural areas for communities of color and low-income communities.</p> | Apply best practices and achieve best results in speed, amount and rate of clean up, public information and participation, access to clean and healthy natural areas, and community satisfaction in the results, as have occurred in communities without EJ concerns. |
| Products, Chemicals, and Pesticides | <p>Reduce the number of chemicals that have not been assessed for toxicity, or have not been updated to reflect that they are particularly harmful early in life; that are persistent or bioaccumulative, or have only been assessed for one type of toxicity.</p> <p>Reduce unhealthy chemicals and product use in targeted</p> | Assess results by comparison with best practices and outcomes achieved in some communities; focus on chemicals most known to be present in communities with environmental justice concerns, and on pesticides that are disproportionately associated with farmworker poisonings. |

| Progress Objective | Essential Metrics | Key Additional Metrics To Prevent Ongoing Injustice |
|--------------------|---|---|
| | <p>communities, from pesticides to toys, home cleaning, and other consumer products.</p> <p>Cancel the most toxic agricultural pesticides handled by farmworkers and to which they and other community members are exposed.</p> | |

C. Set Action Commitments and Evaluate Progress in Achieving Each of the EJ Metrics Outlined to the Agency in Prior Reports and Comments that Focus at the Regional and Local Level, As Well As the National Level.

EPA should (1) create the above-described cross-cutting projects and metrics to achieve progress across a number of issues; and (2) direct its staff to assess progress in resolving environmental justice concerns raised on many different issues nationally, regionally, and locally.

On the latter, we direct EPA’s attention, for example, to the 2010 Lawyers’ Committee for Civil Rights Under Law report.¹⁰ That report provides a list of important issues that EPA should seek a status report from its staff on to determine if any EJ progress is being made in program areas, and to commit to do so, where progress is not being made. Those policy recommendations cover the following areas, among others:

- Title VI of the Civil Rights Act of 1964, p. 68
- EPA Office of Civil Rights (“OCR”), p. 68
- Environmental Enforcement, p. 68
- Toxic Air Pollution, p. 71
- Coal Mining, p. 71
- Power Generation from Coal, p. 71
- Cessation of Mountaintop Removal Mining, p. 72
- Regulation of Coal Combustion Waste, p. 72
- Healthy Schools, p. 73
- Climate Change, p. 74
- Green Jobs, p. 75
- Transportation, p. 76

¹⁰ Lawyers’ Committee for Civil Rights Under Law, *Now Is The Time: Environmental Injustice in the U.S. and Recommendations for Eliminating Disparities* (June 2010), available at <http://www.lawyerscommittee.org/admin/site/documents/files/Final-Environmental-Justice-Report-6-9-10.pdf>.

- Housing and Urban Development, p. 76
- Public and Environmental Health, p. 77
- Homeland Security and Emergency Response, p. 78
- Federal Facilities, p. 78
- Gulf Coast Restoration and Hurricane Impacts, p. 79
- Semi-Urban and Rural Areas, p. 79
- Industrial Animal Production, p. 79
- Sewer and Water Infrastructure, p. 79
- Land Loss, p. 79
- Food Security and Federal Agriculture Policy, p. 79
- Indian Country, p. 80
- Canadian Border, p. 81
- Mexican Border, p. 81.¹¹

In addition, EPA should consider all comments received as part of prior rulemakings, and as part of this planning process, on other important issues with an environmental justice dimension, including but not limited to: issues involving goods movement (*see, e.g.*, Comments of Moving Forward Network (submitted on Plan EJ2020)¹²; chemical facility safety and security, including the need to protect public health and safety from refineries (*see, e.g.*, Petition of United Steelworkers *et al.* to EPA to Exercise Its Authority Under Section 112(r) of the Clean Air Act to Prevent Chemical Disasters (July 25, 2012); *Who's In Danger?*, *supra* n.7¹³; Comments of Environmental and Community Groups on EPA's Refineries Rule Proposal (Oct. 28, 2014)¹⁴; and the Letter from the National Environmental Justice Advisory Council to EPA on the Refineries Rule (May 21, 2015)); the need for stronger national ozone and other air and air toxics standards from power plants and other sources, as submitted to EPA previously in various rule dockets; toxic air and land use permitting programs and enforcement (Comments of the California Environmental Justice Alliance (submitted on Plan EJ2020)); the need for meaningful public participation in issues surrounding failing sewage systems, conversion of land to landfills, remediating groundwater contamination from historic hazardous waste dumping, and ameliorating harmful effects of massive industrial hog and poultry operations (*see, e.g.*, Comments of North Carolina Community Groups (submitted on Plan EJ2020)), the need for improved worker protection standards for farmworkers and the prevalence of unsafe and unhealthy products and practices like dangerous pesticide spraying in communities of color and

¹¹ *Id.* at 68-81.

¹² *See also* Nat'l Env'tl. Justice Advisory Council ("NEJAC"), *Reducing Air Emissions Associated With Goods Movement: Working Towards Environmental Justice* (Nov. 2009), available at <http://www.epa.gov/environmentaljustice/resources/publications/nejac/2009-goods-movement.pdf>.

¹³ *See also* Improving Chemical Facility Safety and Security, Exec. Order No. 13,650, 78 Fed. Reg. 48,029 (Aug. 1, 2013); Ctr. For Effective Gov't, *Kids in Danger Zones* (Sept. 2014), available at <http://www.foreffectivegov.org/files/kids-in-danger-zones-report.pdf> (One in three U.S. schoolchildren goes to school within the vulnerability zone of a hazardous chemical facility.).

¹⁴ EPA-HQ-OAR-2010-0682-0568 ("Refineries Comments"); *see also* Coalition to Prevent Chemical Disasters, *Home*, <http://preventchemicaldisasters.org>.

low-income communities (*see, e.g.,* Comments of Farmworker Justice and Earthjustice, *et al.* (Aug. 18, 2014)¹⁵).

We highlight in particular that noxious air pollution from large industrial and transportation-related sources has presented a serious health crisis in underserved communities across the country. That is partly why these Comments emphasize the need for cross-cutting tools and projects that would particularly help translate into stronger air monitoring, standards, and enforcement, if EPA prioritized these issues in Plan EJ2020. Recent reports on the harm caused by soot, and the link between asthma and weak national air standards for ozone and other pollutants, provide helpful information on this issue and the disparities of air pollution exposures and impacts.¹⁶

For example, a 2013 study by the Massachusetts Institute of Technology reported that Baltimore, Maryland – a city that is predominately black and home to many highly concentrated socio-economically distressed neighborhoods – had the highest emissions-related mortality rate of over 5,600 U.S. cities studied.¹⁷ Fueling this problem are the exceedingly high levels of fine particulate matter- and ozone-producing volatile organic compounds (“VOCs”) and nitrogen oxides (“NOx”) emissions from cars, trucks, and buses that occupy the Baltimore-area’s congested highways and narrow streets, as well as local coal-fired power plants. The deleterious impact of air pollution on public health in Baltimore is reflected by the fact that an alarming 20% of children in Baltimore City have asthma (more than double the national average), and the city’s pediatric asthma hospitalization rate is among the highest in the nation.¹⁸ In addition, across the state, black Marylanders are nearly 2.5 times more likely to die from asthma than white Marylanders. Air pollution and resulting harm to environmentally burdened communities in the City and surrounding areas are likely to increase significantly if the Port of Baltimore expands and brings in fleets of large diesel trucks and rail cars to move goods and other cargo in and out of the Baltimore.

¹⁵ EPA-HQ-OPP-2011-0184-2434.

¹⁶ *See, e.g.,* Am. Lung Ass’n, *State of the Air 2015* (2015), available at <http://www.stateoftheair.org>; Am. Lung Ass’n, *et al., Sick of Soot: How the EPA Can Save Lives by Cleaning Up Fine Particle Pollution* (Nov. 2011), available at <http://www.catf.us/resources/publications/files/SickOfSoot.pdf>; M. Ash, *et al., Justice in the Air: Tracking Toxic Pollution from America’s Industries and Companies to Our States, Cities, and Neighborhoods* (Apr. 2009); Black Leadership Forum, *et al., Air of Injustice: African Americans and Power Plant Pollution* (Oct. 2002); Am. Lung Ass’n, *Too Many Cases, Too Many Deaths: Lung Cancer in African Americans* (2010), available at <http://www.lung.org/associations/states/california/assets/pdfs/too-many-cases-too-many.pdf>; Am. Lung Ass’n, *State of Lung Disease in Diverse Communities: 2010* (2010), available at http://www.lung.org/assets/documents/publications/lung-disease-data/solddc_2010.pdf; NAACP *et al., Coal Blooded: Putting Profits Before People*, <http://www.naacp.org/pages/coal-blooded1>.

¹⁷ F. Caiazoo, *et al., Air pollution and early deaths in the United States*, 77 *Atmospheric Env’t* 198, 205 (2013), available at <http://lae.mit.edu/wordpress2/wp-content/uploads/2013/08/US-air-pollution-paper.pdf>.

¹⁸ Baltimore City Health Dep’t, *Asthma*, <http://health.baltimorecity.gov/node/454>.

Low-income communities and communities of color in and near many other major cities, from Houston to Los Angeles to Chicago to New York and Newark, are facing similar problems that require immediate attention from EPA at the national and local levels. EPA's own Second Integrated Urban Air Toxics Report and the American Lung Association's State of The Air provide strong illustrations of key work that EPA must do to recognize the strong link between national air standards, health, and the disproportionate impacts felt by environmental justice communities. In order to address these impacts, EPA must take active and immediate steps to protect communities from harmful air pollution.¹⁹ As discussed in comments and reconsideration petitions submitted by community groups into the dockets of these rules, EPA's air standards for power plants, refineries, and other sources causing disproportionate harm to communities of color and low-income communities provide an important opportunity and duty for EPA to take meaningful action to protect communities by setting health-protective standards, and standards that assure the maximum achievable degree of pollution protection, and by requiring the best available fence-line monitoring and enforceability measures.²⁰

There is a great need also for EPA and each regional office, specifically, to seek community input on important regional issues and hot spots, and national issues of particular regional concern. EPA should require all regions to create action plans, with input and help from states, local governments, and community members, and include concrete action and progress metrics in each plan that will help ensure every region sees on-the-ground benefits from Plan EJ2020 that are tailored to the communities' needs in that region. Commenters encourage EPA to require regions to seek input more broadly and increase transparency in how they are implementing EPA's environmental justice objectives, including through creating updated concrete action plans of their own with direct and significant input from local community groups.

Commenters note that Region 2 has provided an environmental justice action plan on its website that includes some significant objectives and concrete projects.²¹ But, formal planning is not translating into sufficient change on the ground. For example, although there are identified liaisons between Region 2 and affected Tribes, these liaisons are not conferred with sufficient authority and are not always included in relevant meetings. Ultimately, metrics of performance are critical to determine impact on the ground and with input from community stakeholders. EPA should evaluate changes that would ensure that action items produce outcomes that matter to overburdened communities.

¹⁹ See *supra* nn.5, 16 (*State of the Air 2015*).

²⁰ See, e.g., EPA, *Rules and Implementation*, <http://www.epa.gov/ttn/atw/eparules.html> (last updated May 22, 2015) (listing rules).

²¹ See EPA Region 2, *Environmental Justice Action Plan* (2014), available at http://www.epa.gov/region2/ej/region_2_environmental_justice_action_plan.pdf. We note, however, that although there are large farmworker communities in Region 2, the Action Plan does not mention the EJ community of farmworkers.

Many, if not most, other EPA Regions do not even have such plans in place, or have only permitting-specific plans.²² These are important efforts, but it is unclear to Commenters how those plans were created, whether community input was received in designing them, and what kinds of reports and updates will be provided to assure ongoing community input in assessing progress in achieving the objectives these reports include. EPA must provide educational opportunities, information, and training so that communities *can* participate in comment periods for draft permits and in public hearings. The permitting plan discusses working with other offices, but often, community groups do not feel that their voices are heard by the actual decision-makers. One suggestion would be a permit ombudsperson, with whom a community group could talk, to find out information and express its concerns in situations where the regional office and HQ rule-writer staff are not responsive to or actively engaging community members. EPA staff must be directed to listen to and weigh seriously the concerns raised by community members and this ombudsperson.

Furthermore, these documents state that EPA is planning to use EJSCREEN to identify affected communities. This is important as a starting point, but it is not enough not only because the tool is incomplete and needs to be strengthened as part of the input process EPA has created, but also because EPA needs to reach out to community groups actively. For example, EPA should create lists of past community group commenters and engage them early, actively, and directly on similar matters affecting their communities. EPA must develop a method that allows a community group to identify itself or register or utilize some way to make their presence known. Gathering demographic information is important, but this alone does not assure identification and involvement of the community groups and leaders who can help inform EPA action. The permitting plans also call for encouraging activities by the permit applicant – but this assumes that there is a positive relationship between the permittee and the community – and often that is not the case. Once again, this illustrates the importance of early community identification and engagement, which involves outreach activities, not just data analysis (which is important, but not enough).

Many of the regions also cover vast and dramatically diverse geographic areas – with Region 9 as one good example of this. The states encompassed in the region are home to a wide array of industries ranging from pervasive and often extreme oil, mineral, and other natural resource extraction and refining, to widespread commercial agricultural production, and from heavy ship, truck, and railroad traffic facilitating the movement of goods and labor from the region's ports and other points of entry along the U.S.-Mexico border, to some of the nation's most robust and concentrated technology and computer science development. As a result of these all-too-often highly polluting and toxic activities, communities of color, including many immigrant and linguistically isolated communities, low-income communities, and tribal communities experience a range of substantial environmental justice impacts. As such, the region is also home to a robust network of groups and organizations that engage in rigorous advocacy to address local, state-wide, and national environmental justice concerns. As an example, Commenters attach comments submitted by the People's Senate, including a one-year roadmap, urging reforms of California's Department of Toxic Substances Control to strengthen

²² EPA, *Considering Environmental Justice in Permitting: Regional Implementation Plans and Contacts*, <http://www.epa.gov/environmentaljustice/plan-ej/permitting.html#regions> (last updated Apr. 2, 2014).

community protections and address environmental justice problems.²³ Many, if not all, of these recommendations would also be valuable for EPA to use in strengthening other states' programs, as discussed elsewhere in these comments.

Due to the vast expanse of this region, and other similar regions, we strongly urge EPA to integrate each regional office in a state-by-state evaluation of how state-level agencies are engaged in incorporating environmental justice principles into their own permitting and enforcement practices. This will not only help EPA to adequately assess the environmental justice issues facing these large regions, but it will also enable EPA to better evaluate the region's progress towards achieving environmental justice objectives. State-level communication, cooperation, and oversight are also key to ensuring, rather than merely considering, environmentally just permitting and enforcement decisions. As a starting point, all regions could follow the lead of a region that has first assigned an environmental justice coordinator to be a liaison for one (or more) dedicated states, allowing them to aim to become an expert on environmental justice concerns in that state, and work closely with community group representatives from the assigned state.

As a part of this particular effort, we further recommend that EPA exercise its oversight authority to set specific, standardized permitting and enforcement criteria that must be followed by state agencies issuing and/or enforcing hazardous waste, air, and water permits to operate; permits to construct; closure or post-closure clean-up and remediation permits under the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act; as well as enforcing Worker Protection Standards for agricultural workers under the Federal Insecticide, Fungicide, and Rodenticide Act, among others. Such standards should plainly incorporate strong metrics to account for existing cumulative health and environmental burdens in the areas in which new polluting facilities are proposed, or have already been sited and are operating, and should ensure that adequate financial assurances are obtained and safeguarded prior to issuing permit modifications, new permits, or post-closure permits. These standards should also include metrics for ensuring that safeguards for workers and members of the community are rigorously enforced.

Beyond engaging with each state-level agency in the region, we further recommend that EPA reach out to and engage with local and municipal agencies and governments, as well as tribal governments, who have decision-making power over land use and permitting decisions that detrimentally and disproportionately impact communities of color and low-income communities in all of each region's states. Engaging with such agencies would directly assist EPA in ensuring meaningful inter-agency co-operation to achieve environmental justice goals, as contemplated in both its 2014 and 2020 EJ plans. For example, EPA's Enhanced Public Participation during permit review is a document EPA should promote with state and local governments to increase community engagement and input. At the same time, EPA needs to work with states to assist

²³ Letter to Barbara Lee, Dir., Cal. Dep't of Toxic Substances Control, from The People's Senate (Mar. 27, 2015); Ctr. on Race, Poverty & the Env't, *The People's Senate: Building a New Vision for DTSC* (Aug. 2014), available at http://www.crpe-ej.org/crpe/images/stories/pdf/FINAL_PeoplesSenateReport.pdf.

and require them to do more than just expand process steps or public participation, but also to set and achieve substantive environmental justice objectives, as discussed above for EPA itself.²⁴

We also strongly recommend that EPA exercise its authority to support the existing and future efforts of the regional offices to engage in program development aimed at addressing climate change impacts, adaptation, and mitigation on environmental justice communities. Across many regions, environmental justice groups are at the forefront of resiliency planning, conducting research, and identifying innovative strategies,²⁵ and must be involved as leaders in EPA's national and regional actions on global warming.

Many of the regional efforts should ensure that EPA also commit to outreach, education, and communication to better understand the needs of native and tribal communities which may face non-traditional EPA environmental justice issues. For example, Region 8 has unique issues EPA should consider in a regional environmental justice strategy alongside urban issues, such as mitigating acid mine drainage; abandoned mine cleanup; health impacts due to oil and gas development, agricultural runoff, nitrogen deposition in mountain areas; and energy-related permitting and siting issues. The region is also home to some of the most impoverished tribal communities in the country who have fundamental infrastructure needs and lack environmental enforcement assistance and resources. The Tribes also need EPA trainings to strengthen their governmental programs and EPA educational meetings to strengthen tribal community awareness. EPA should consider participating in tribal college environmental programs too. EPA received good advice on implementing its environmental justice goals in Indian Country through the National Environmental Justice Advisory Council recommendations.²⁶ As another example, for many or most federal projects in Alaska, only "foreign" languages, such as Hmong and Filipino, are included to translate and protect the interests and needs of limited English proficient ("LEP") persons. But, as shown in recent cases in Alaska, with both Yup'ik and Gwich'in LEP for voting under the Voting Rights Act, it is important for EPA to prioritize the inclusion of native and indigenous languages.²⁷ These recommendations should be implemented when EPA interacts with Tribes in various regions.

²⁴ As a survey of environmental justice policies showed, many states have procedural steps or requirements in place, but those are insufficient alone, without additional substantive limits, measures, targets, and requirements, to actually reduce the amount of pollution, toxic exposures, and environmental injustices that communities face. See J. Owley, *et al.*, *Symbolic Politics for Disempowered Communities: State Environmental Justice Policies*, Buffalo Legal Studies Research Paper Series, Paper No. 2014-036, Brigham Young Univ. J. of Pub. L. (2014), <http://ssrn.com/abstract=2425833>.

²⁵ See, e.g., New York Environmental Justice Alliance, *Waterfront Justice Project*, http://www.nyc-eja.org/?page_id=311.

²⁶ NEJAC, *Proposed Advice and Recommendations on Implementation of the EPA Policy on Environmental Justice for Tribes and Indigenous Peoples*, (Sept. 2014), available at <http://www.epa.gov/environmentaljustice/resources/publications/nejac/recommendations-tribal-policy-2014.pdf>.

²⁷ See, e.g., Legal Language Services, *Election Translation 2014* (Oct. 6, 2014), <https://www.legallanguage.com/legal-articles/election-translation-2014-yupik-and-gwichin>.

II. TO DEEPEN ENVIRONMENTAL JUSTICE PRACTICE, CREATE NEW CROSS-CUTTING INITIATIVES AND TOOLS THAT WOULD IMPROVE THE HEALTH AND ENVIRONMENT OF OVERBURDENED AND VULNERABLE COMMUNITIES WITH PARTICULAR ENVIRONMENTAL JUSTICE CONCERNS.

In addition to creating the metrics and actions described above, EPA should create the following national initiatives and tools to advance environmental justice.

A. Enforcement Initiatives

- 1. EPA should expand enforcement resources and direct its resources to the most vulnerable communities with greatest need and past and current compliance problems.**

As part of setting EPA's next national enforcement initiatives, EPA should increase enforcement resources and ensure broad community input and outreach, not just seek comment on its website or through the Federal Register. EPA should use EJSCREEN and other environmental justice metrics, as described in these and other comments EPA has received, to ensure targeting of initiatives and enforcement resources to achieve environmental justice objectives.

- 2. Require EPA enforcement staff to ensure that the outcomes of cases, including any supplemental environmental projects, provide the best available benefits and pollution and health protections for affected local communities.**

To strengthen the demonstrated outcomes of enforcement cases for communities, EPA should take at least the following three key steps:

- Community Input During Enforcement.** EPA has previously made commitments to include community input in enforcement, but in many instances that input has not been sought or has not been utilized in a way that allows community members to affect the result of a consent decree or a supplemental environmental project ("SEP") chosen by EPA/DOJ. As part of Plan EJ2020, EPA should do an audit of prior cases; report on where there was community input and which groups were contacted; report on the results; and provide a report on best practices and specific actions that should be used across the board. Where possible, EPA should modify prior enforcement results to better protect communities. For new cases: EPA should require enforcement staff to identify community groups and contact them as early as possible during an action to seek input on the case objectives and results, including any supplemental environmental projects under consideration. EPA should ensure that there is a sufficient public comment period for consent decrees and settlements to allow for meaningful community input, and that this is publicized through direct communication and in other ways in the affected community, not just in the Federal Register and on-line.

- **Achieve Community Protections As Part of Case Results and Implementation.** EPA should require each proposed consent decree or settlement to include a clear method and role for community input as well as a community-focused benefit and protection objective. EPA should assess the results of enforcement cases based on community outcomes achieved, including metrics described earlier in these comments. EPA should provide information to community members on requirements, monitoring, and other components of successful enforcement cases so they can help track and receive the full benefit of these results over time as enforcement decrees, settlements, and court orders are implemented. EPA should create an ongoing Community Advisory Board or host regular meetings with the community and representatives during enforcement and throughout implementation to have continual meaningful engagement and input. EPA should require that copies of annual reports go to local community or civic groups to help keep the community informed.
 - **Publish and Disseminate Lists of Best Practices to Increase Community Protections.** EPA should perform an audit, with input from pollution control and monitoring companies, and create a list of best practices and technologies available for particular industries, pollutants, and pollution controls and monitoring methods. EPA should update this list and publish it annually so that it is available to community members evaluating permits, regulations, and bringing their own enforcement actions. Before proposing a component of a consent decree or settlement, EPA should assess whether it is the best available method already in use in another settlement, decree, or a state or local jurisdiction by the same or a similar industry or company at a different facility. EPA should set up a clear method of information-sharing to assist in this process, including through required communications within the agency and with state and local agencies.
3. **EPA should track and regularly evaluate and publish detailed success metrics and results of enforcement cases in achieving objectives, environmental justice, and provide this information to the public and affected communities.**

EPA often issues a press release when it achieves success in an enforcement case, listing the objectives that will be achieved. But, as the Office of the Inspector General (“OIG”) found after evaluating EPA’s refinery enforcement initiative, EPA needs to better assess the success of meeting requirements of consent decrees and settlements, and publish that information on a regular, at least annual, basis (or more often, depending on the consent decree and settlement).²⁸ EPA should also assure that this is provided to communities in an understandable way, so communities can help assess ongoing results and progress achieved.

²⁸ EPA, OIG Report, *EPA Needs to Demonstrate Whether It Has Achieved the Goals It Set Under the National Petroleum Refinery Initiative*, Report No. 14-P-0184, (Apr. 15, 2014), available at <http://www.epa.gov/oig/reports/2014/20140415-14-P-0184.pdf>.

4. EPA should create and publicize an anonymous community and worker hotline for concerns, tips, and complaints about potential violations of environmental laws and regulations.

Currently, EPA has a website that is not known to most community members and not useable without computer access.²⁹ This website directs people who wish to phone in a complaint to another site that says it is necessary to find the correct EPA Region. The website also states that it may be better to call a state or local agency, rather than EPA. This system is not workable or useful for many, if not most, community members with environmental and health concerns in vulnerable communities.

There should be a clear and easy to use, well-publicized method to phone in anonymous complaints. EPA should provide a public log of complaints received; the office or department, including contact information, to which the complaint was directed; and ultimate follow-up action (if any) or other outcome. EPA, on the regional websites, could also easily post contact information for regional state emergency or hotline numbers.

It is important that EPA publicize a complaint mechanism to ensure it particularly reaches workers and community members in overburdened communities with environmental justice concerns. EPA should use EJSCREEN and other metrics to ensure that community members whose primary language is not English have the necessary information and access to submit complaints, and receive follow-up information.

Anonymous reporting is especially important for workers who may have inside information about a problem that needs to be fixed, maintenance that could avoid a disaster, or other issue that is important to correct to prevent both additional pollution and immediate injury or loss of life.

In addition, EPA should update its tips and complaints website to keep up with the times, and allow for easy submission of photos, video, GPS data, air monitoring data collected remotely, *etc.*, to accompany a complaint. The public needs to be able to submit information that will be meaningful and useable for enforcement if they have this type of information. In addition, as discussed later, EPA needs to strengthen the availability of public information that community members can consult to assess compliance.

For example, EPA should review the best practices in use in some states or local areas, such as the Fresno Environmental Reporting Network (“FERN”) in Fresno County, CA,³⁰ and the Kern Environmental Enforcement Network (“KEEN”), in Kern County, CA.³¹ FERN provides information on how to submit complaints through multiple methods, and allows multilingual reporting. It even allows people to receive email alerts of problems reported in the area, so that other community members can receive the immediate benefit of knowing if there is

²⁹ See EPA, *Report Environmental Violations*, <http://www2.epa.gov/enforcement/report-environmental-violations> (last updated June 1, 2015).

³⁰ FERN, *Welcome*, <http://www.fresnoreport.org/>.

³¹ KEEN, *Home*, <http://www.kernreport.org/>.

an immediate potential health or safety concern they should be aware of. As stated on its website: “FERN is modeled after a successful project, the Imperial Visions Action Network. In the first two years IVAN generated violations leading to \$90,000 in penalties.”³² IVAN has since been expanded to other communities as well, as an “Environmental Monitoring System that connects the community with real people that can help solve local environmental problems.”³³

5. For each EPA Region, hold an annual enforcement symposium with communities and state and local enforcement agencies.

For each region, EPA should hold an annual meeting that brings together affected communities, EPA, state, and local environmental enforcement agencies to increase EPA’s enforcement impact and share information. There should be a community complaint and comment mechanism as part of this meeting. This meeting should also include a transparent discussion of identified compliance problems in the region; strategies to address those; and ways in which communities can have input, gain additional information, or in some instances assist in addressing such problems. This meeting should also include technical assistance and other information for community members. Some states – such as California – and regions previously have held these kinds of events, and EPA should contact staff there to seek information on best practices in how to organize and implement this kind of event.

6. Create a formal project for EPA-DOJ community-directed enforcement technical assistance, trainings, and amicus briefs.

EPA should create a work-group of EPA and DOJ enforcement staff who are available to provide technical assistance and enforcement trainings for community members who seek to evaluate potential problems arising from pollution or other toxic exposures, and decide whether to bring cases themselves that EPA/DOJ does not have the resources to bring directly. This group should be part of trainings and publicized widely to affected communities.

As part of this work-group, EPA and DOJ should track enforcement cases and actively consider submitting an amicus brief in federal courts, especially courts of appeals, where such a brief could make a difference to: strengthen applicable precedent on enforcement; ensure an incentive for facilities to comply rather than violate environmental laws; and assist in achieving a positive result for communities where EPA-DOJ did not have sufficient resources to bring a full enforcement case. EPA should actively seek out cases for potential amicus briefs.

7. Create community trainings and information on pollution, compliance, permitting, and enforcement.

EPA has made it a priority to create “Next Generation” monitoring and compliance tools in individual enforcement cases, even while it is going backward in rules and monitoring

³² See *supra* n.30.

³³ Identifying Violations Affecting Neighborhoods, *Home*, <http://www.ivanonline.org/>.

networks – which are important issues for Plan EJ2020 to address, as discussed later.³⁴ It is important that EPA provide training and information to communities so that they can understand how to interpret and use this information, and receive the full benefits that this project is intended to provide. EPA should hold regular community trainings and provide information on pollution, toxic exposures due to drift, monitoring data, compliance and enforcement to assist community members in understanding all of the ways in which they can help assure compliance and strengthen environmental enforcement. EPA provides some of these kinds of resources online, but they are difficult for community members to find, and not all are publicly available. EPA should create a single place where community members can find and access available information, publicize this widely for community members, and also hold additional trainings in the regions for more in-depth dissemination of information that communities need to engage actively in permitting and enforcement matters.

As a good example, EPA Region 4 has scheduled their 14th Community Involvement Training Conference on August 4-6, 2015 in Atlanta, Georgia. Events such as this are very important. EPA also must provide a mechanism by which poor and underserved communities can participate in this and other similar events. EPA has arranged for participation via telephone for those who cannot attend in person, but the phone is no substitute for the value of training or other informal and personal connections and discussions that can occur in person.

8. Provide input opportunities, information, and protections for communities living near contaminated and Superfund sites.

There is a strong need to reform and address environmental justice issues in all aspects of the Superfund program, including in terms of site prioritization, clean-up, and oversight. Experience at the General Motors Superfund Site in Massena, New York, a massive PCB dump directly adjacent to the St. Regis Mohawk Tribe, illustrates this. EPA has long recognized the need to take the cultural and historical concerns of Tribes into account when conducting Superfund remediations, and EPA recognized that because “the people of the St. Regis Mohawk Tribe ... have a cultural and spiritual link to the St. Lawrence Environment[.]” which they call Akwesasne, “[s]pecial consideration must be given to Native American concerns in evaluating and remediating the site.”³⁵ Yet EPA has persistently failed to incorporate the suggestions of the Tribe in its oversight of remedial actions, and the site is not expected to be cleaned up until 2017

³⁴ Mem. from Cynthia Giles, Asst. Administrator, EPA (Jan. 7, 2015), available at <http://www2.epa.gov/sites/production/files/2015-01/documents/memo-nextgen-useinenfsettlements.pdf> (“Giles Memo”); EPA, *Next Generation Compliance*, <http://www2.epa.gov/compliance/next-generation-compliance> (last updated June 15, 2015); see also EPA Ofc. of Enforcement & Compliance Assurance, *Next Generation Compliance: Delivering the Benefits of Environmental Laws*, EPA (Oct. 9, 2014), <http://www2.epa.gov/compliance/next-generation-compliance-delivering-benefits-environmental-laws>; EPA Office of Enforcement & Compliance Assurance, *Next Generation Compliance: Strategic Plan 2014-17* (Oct. 2014), available at <http://www2.epa.gov/sites/production/files/2014-09/documents/next-gen-compliance-strategic-plan-2014-2017.pdf>.

³⁵ EPA Superfund, Record of Decision: General Motors (Central Foundry Division), EPA/ROD/R02-92/170 at 29 (Mar. 1992), available at <http://www.epa.gov/superfund/sites/rods/fulltext/r0292170.pdf>.

– over thirty years after the site was first listed on the National Priorities List, even though there is significant PCB contamination.³⁶

As further examples of Superfund issues some supposedly “closed” Superfund sites are not closed at all – no fence, no posting, tanks labeled “permanently closed” but that are broken open, *etc.*, with nothing to warn or prevent children or adults from going onto the site. In addition to a hotline to report issues like this, as noted above, EPA should track and ensure protections to keep these sites closed and inform communities of the dangers of entering them. This information needs to be provided in languages used by all local community members.

In addition, a common concern expressed by community groups is the lack of meaningful, active EPA community engagement. Communities often feel that they are not considered to be important stakeholders in planned remediation activities in their communities. One example involves the Jacksonville Showcase community, where EPA has developed a strong relationship with the residential community group near a hazardous waste site. However, there is a former worker population that has not been included in EPA’s activities and, as such, this community has not received protections that should come from interaction with state, local, or federal environmental and health agencies. EPA must work actively to ensure the involvement of multiple community voices and groups in clean-up processes.

B. Regulatory Tools and Actions

1. Update EPA’s approach to assess cumulative risks and impacts based on current science and the need to protect vulnerable communities.

EPA must carry forward and follow through on its commitment from Plan EJ 2014 to address cumulative impacts, including cumulative risks.³⁷ EPA’s approach to assessing environmental health threats and impacts is woefully outdated and behind the science. This problem comes to a head in clean air, toxics, pesticides, civil rights enforcement, and other actions where EPA is required to assess health risks and impacts. But failing to follow the current science also harms the agency’s effort to account for and address vulnerabilities and environmental justice concerns across a broader range of its actions as well. EPA must take action to update its guidance. EJSCREEN is a screening tool that addresses only a few factors and is no substitute for the policies and protocols that EPA must use in actually deciding what action to take at the program level.

The dire reality is that environmental hazards affect some communities much more than others. Pollution and polluting sources are often concentrated together, overburdening and overwhelming communities and populations, and causing greater health effects and safety

³⁶ EPA, *G.M. Massena: St. Lawrence County, NY*, <http://www.epa.gov/r02earth/superfund/npl/gmassena/index.html> (last updated July 9, 2015).

³⁷ EPA, *Plan EJ 2014*, <http://www.epa.gov/compliance/ej/plan-ej/>.

threats.³⁸ Further, farmworker communities are often exposed to multiple pesticides in their workplaces, in their drinking water, and in their homes and communities as a result of drift and pesticides borne on clothes, shoes, and skin. Current risk assessment practices, which have failed to keep up with current science and do not account for real-world impacts, jeopardize the health of communities surrounded by sources of pollution – such as coal plants, refineries, cement kilns, chemical plants, metal smelters, incinerators, dry cleaners, highways, truck routes, landfills, Superfund, and other hazardous waste sites.

In order to fulfill the agency’s renewed commitment to environmental justice and the recommendations from the National Academy of Sciences, National Research Council, EPA must update its approach to account for the cumulative impacts and risks faced from early-in-life exposure (including childhood) and from exposure to multiple sources, as well as the increased vulnerability from socioeconomic stressors and multiple pollutant and pathway exposures. To this end, we urge EPA to commit to do the following as part of Plan EJ2020:

a) EPA must incorporate the real-world experience and perspective of people who live in communities that are overburdened by pollution and other environmental hazards.

Too many communities of color and lower income communities are exposed to a disproportionate share of air pollution and all of the resulting health risks and impacts. Communities have previously submitted statements that summarize the situation and provide narratives from various example communities around the United States that describe the on-the-ground impact of EPA’s scientific policy decisions and the urgency of reforms in risk assessment practices.³⁹

b) EPA must advance environmental justice and protect public health by establishing guidance that provides a means to reduce cumulative impacts in overburdened communities.

There is clear and mounting evidence that the concentration of environmental hazards in lower income communities and communities of color threatens public health and that current risk assessment practices contribute to environmental inequities and increase disparities. Experts have identified addressing cumulative impacts as a critical step to ensuring environmental justice and reducing disparities. At minimum, this must include:

³⁸ OEHHA, *Cumulative Impacts: Building a Scientific Foundation* at 5-16 (Dec. 2010), available at <http://oehha.ca.gov/ej/pdf/CIREport123110.pdf> (citing numerous research studies showing that exposure to pollution-emitting facilities, hazardous waste facilities and disposal, toxic releases, non-attainment air areas, high motor vehicle air pollution areas, and other types of pollution is more likely to be concentrated in communities with higher minority and lower income populations); R. Morello-Frosch, *et al.*, *Understanding The Cumulative Impacts of Inequalities in Environmental Health: Implications for Policy*, 30(5) *Health Affairs* 879, (2011); R. Morello-Frosch, *et al.*, *Separate and Unequal: Residential Segregation and Estimated Cancer Risks Associated with Ambient Air Toxics in U.S. Metropolitan Areas*, *Envtl. Health Perspectives*, 114(3) *Envtl. Health Perspectives* 386 (2006)..

³⁹ *See supra* n.9.

- (1) Immediately updating existing guidelines for conducting risk-based assessments to incorporate mechanisms for accounting for the cumulative impacts of multiple exposures and underlying vulnerabilities; and
- (2) Moving beyond current risk frameworks and incorporating alternate methods to assess health threats from environmental exposures in a way that will better capture the impacts faced by overburdened communities and support policies to reduce them.

Regarding item (1) above, most urgently, where its authorities direct it to assess risk, EPA must use the best available current science to do so. EPA can and must vastly improve its approach by updating existing risk assessment guidelines to incorporate the science on cumulative risk and impacts, including by implementing the following:

- Account for individual-level vulnerability in risk assessments by better incorporating the vulnerability of children, early-life exposures, and the developing fetus into risk assessment methods:
 - Account for increased susceptibility by using age-dependent adjustment factors for all carcinogens, not just known mutagens.
 - Pre-natal susceptibility: Account for increased susceptibility by using a pre-natal adjustment factor for all carcinogens of *at least 10X*.
 - For chronic non-cancer risk, consult and apply child-specific reference values (such as those created by California EPA scientists), where available.
 - If child-specific reference values are unavailable, consult science on early exposure impacts, and use an additional default factor of *at least 10X*.
- Account for community level vulnerability by including factors to account for increased vulnerability based on demographic differences, as part of the risk assessment. EPA also must fully integrate the findings of its environmental justice analyses into its risk assessments and rulemakings, and set stronger pollution limits to provide environmental justice.
- Assess the cumulative burden of exposures to multiple pollutants and sources via multiple pathways:
 - Assess and aggregate exposure from multiple pathways – including by adding inhalation and non-inhalation-based cancer risks.
 - Include the interaction of multiple pollutants.
 - Account for exposure to multiple sources. Until EPA has a specific mechanism for estimating total exposures, a default or uncertainty factor of *at least 10X* should be used to provide overburdened communities with the protection they need now.

- Account for cumulative impacts of multiple exposures and vulnerabilities by shifting the level of risk which triggers policy action.
 - Reduce EPA’s benchmark of what it considers acceptable lifetime cancer risk, instead of relying on the outdated upper limit of 100-in-a-million. This benchmark is way too high, and is completely unacceptable to affected communities who are bombarded by high levels of pollution from many different sources, emitting many pollutants that can cause both additive and synergistic harm, and experience exposure through multiple pathways.
 - Use a Margin of Exposure (“MOE”) framework for non-cancer impacts and adjust the target MOE according to known vulnerability factors.
- In the face of increasing evidence calling into question the assumption of a safe or acceptable level of exposure, EPA should also consider reforming risk assessments to support reducing risks to the lowest possible level to protect public health, rather than suggest that there is a safe or acceptable level.

Prior comments submitted to EPA providing more detail on these issues are available in the dockets of the Office of Science Advisor and air office, among others.⁴⁰

Commenters also wish to highlight that EPA should be requiring and using a full Health Impact Assessment (“HIA”) wherever possible, in addition to looking at health risks where directed by law. An HIA is a more detailed and comprehensive tool to understand the impacts of pollution on a community that already includes significant health burdens and legacy pollution. The Port of Los Angeles HIA provides an example of the type of impact assessment that should be used more often.⁴¹

In addition, continued development of EJSCREEN and similar tools is also recommended to support communities in learning more about the environmental justice threats that surround them, so that communities know which pollutants to track and which monitoring tools will be most useful. EJSCREEN is a screening tool, and is no substitute for the long-overdue updates to EPA’s policy and protocol to assess cumulative risks and impacts, but these tools can work together to strengthen information available to communities, EPA, and state and local agencies, as well as other stakeholders.

⁴⁰ See, e.g., Comments of Air Alliance Houston, Earthjustice, *et al.* (June 28, 2013), EPA-HQ-ORD-2013-0292-0133; see also EPA, *Cumulative Risk Webinar Series: What We Learned*, EPA/600/R-14/212 (July 2014), available at <http://epa.gov/ncsr/cra/webinars/cra-webinar-summary.pdf>; NEJAC, *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts* (Dec. 2004), available at <http://www.epa.gov/environmentaljustice/resources/publications/nejac/nejac-cum-risk-rpt-122104.pdf>.

⁴¹ EPA, *Los Angeles and Long Beach Maritime Port HIA Scope* (May 17, 2010), available at <http://www.epa.gov/Region9/nepa/PortsHIA/pdfs/DraftHIAScope4PortsOfLALB.pdf>. EPA should also ensure that this HIA is actually finalized so it can be fully used to strengthen local environmental and health protection.

2. EPA should perform a review of permits and strengthen the requirements applicable to all permits, including Title V permits, through state oversight and direction by providing best practices.

As some commenters, such as the Coalition For A Safe Environment, have previously proposed, EPA should create a permit taskforce – including one specific to Clean Air Act Title V, as well as for CWA permits – that updates EPA’s prior assessments with meaningful action steps. Each permit-focused taskforce should be charged with an independent review and evaluation of the quality of permits, including specific areas that need strengthening including: monitoring, reporting, public information, and other key components needed to assure compliance, including through public review and enforcement. EPA should provide a report and use this in oversight of states, and provide it for public commenters, along with a clear direction to lift all permits up to a higher level of essential enforcement requirements. The objective of this project would be to strengthen environmental justice protections for communities with a significant number of permitted facilities.

3. Revise the minimum public notice requirements for Clean Air Act and other permits, for both major and minor sources, to allow for adequate public review and participation.

To give more community members a chance to learn about permits that govern facilities in their area (including Clean Air Act Title V, PSD, NSR, Clean Water Act, and other types of permits), EPA should require facilities and/or state agencies to post permit applications and the proposed draft permit online on a publicly available website at the start of the public notice period. EPA should also ensure that notification occurs in relevant languages for the affected nearby communities.

It is a serious problem that some sources apply for and receive minor source permits without adequate review, often without submitting proper data showing that they are minor rather than major. A minor source often escapes the most protective requirements under the Clean Air Act, which can lead to communities facing even higher, unfair, and unlawful levels of pollution. EPA must revise its minor source permit rules to ensure public notice of all minor source permitting decisions.

In addition, EPA should require states to maintain a mailing list to notify interested persons of draft permits and final permits via email and telephone (for people without email access), for major and minor sources.

4. Create a National Clean Air Monitoring Rule to assure strong monitoring and reporting in Clean Air Act Title V permits.

In addition to the taskforce and to complement its work, as part of Plan EJ2020, EPA should create a national clean air monitoring rule that will include specific requirements for monitoring, reporting, and public disclosure of emissions data for all air permits.

Years ago, EPA acknowledged the need to implement the Act’s enhanced monitoring requirements by setting regulatory requirements, but it has not promulgated a national rule and

instead has proposed to do so rule-by-rule and permit-by-permit.⁴² EPA has often failed to follow through on these proposals. Many rules for specific source categories and many permits continue to lack monitoring requirements sufficient to ensure compliance with emission standards and to provide contemporaneous information on emissions to people exposed to those emissions in the community. In many cases, rules and permits require only a single stack test, once a year (or even less often) that does not reflect ongoing emission levels and does not assure continuous compliance. EPA has previously even taken action to prevent states from implementing supplementary, stronger monitoring requirements, which was struck down in court.⁴³ A national rule is needed to require all permits to include monitoring necessary to assure compliance.

The Clean Air Act requires EPA to set monitoring provisions to assure continuous compliance with emission standards.⁴⁴ The Act also requires emission standards to be continuous and apply at all times.⁴⁵ Many air sources, such as refineries, have a long history of violations, malfunctions, and other exceedances of the standards.⁴⁶ EPA is in the process of removing the unlawful SSM exemption that is included in some current standards, but in view of

⁴² Revisions To Clarify the Scope of Certain Monitoring Requirements for Federal and State Operating Permits Programs, 69 Fed. Reg. 3202 (Jan. 22, 2004) (vacated in *Envtl. Integrity Proj. v. EPA*, 425 F.3d 992, 998 (D.C. Cir. 2005)); *see also* Enhanced Monitoring Program; Proposed Rule, 58 Fed. Reg. 54,648, 54,661 (Oct. 22, 1993) (“EPA intends to address the enhanced monitoring requirements pursuant to section 114(a)(3) in the requirements developed for such pollutants”; “EPA intends that the general provisions of part 63, MACT standards promulgated by rulemaking in individual subparts of part 63 ... will include, pursuant to the authority in section 114(a)(3) of the Act, appropriate enhanced monitoring provisions.”); *see also* Compliance Assurance Monitoring; Final Rule, 62 Fed. Reg. 54,900, 54,902 (Oct. 22, 1997) (“One method is to establish monitoring as a method for directly determining continuous compliance with applicable requirements. The Agency has adopted this approach in some rulemakings and, as discussed below, is committed to following this approach whenever appropriate in future rulemakings.”).

⁴³ *See, e.g., Sierra Club v. EPA*, 536 F.3d 673, 680 (D.C. Cir. 2008) (vacating EPA’s prohibition on states from enhancing monitoring requirements, 71 Fed. Reg. 75,422 (Dec. 15, 2006)).

⁴⁴ *See, e.g.,* 42 U.S.C. § 7414(a)(3) (directing that EPA “shall in the case of ... a major stationary source ... require enhanced monitoring and submission of compliance certifications”). In addition, Title V requires permits to contain “conditions as are necessary to assure compliance with applicable requirements of [the Act];” and to include “monitoring ... requirements to assure compliance with the permit terms and conditions.” 42 U.S.C. § 7661c(a), (c). As the Senate Report accompanying the Act summarized: “EPA must require reasonable monitoring ... requirements that are adequate to assure compliance.” S. Rep. No. 101-228, at 350 (1989), *reprinted in* 1990 U.S.C.C.A.N. 3385, 3733. Pursuant to its rulemaking authority and duty under Title V, 42 U.S.C. § 7661a(b)(2) and § 7661c(b), EPA has issued regulations in 40 C.F.R. Part 70 that affirm these requirements. 40 C.F.R. § 70.6(a)(3)(i)(B) requires “monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance.” Section 70.6(c)(1) requires all Part 70 permits to contain “testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.”

⁴⁵ 42 U.S.C. § 7602(k); *Sierra Club v. EPA*, 551 F.3d 1019, 1028 (D.C. Cir. 2008).

⁴⁶ *See, e.g.,* Refineries Comments at 26-27, *supra* n.14 (citing sources).

the record of the industry's reliance on that exemption, effective monitoring is required to assure compliance with the standards at all times. EPA needs to require truly "enhanced monitoring" in a national rule that will assure compliance with all air standards in permits, without further delay. The agency's compliance assurance monitoring rule is outdated and woefully inadequate for this purpose, and does not even purport to cover all sources covered by EPA rules and Title V permits.

EPA's own Enforcement Division is also implementing enhanced monitoring requirements to assure compliance in its refinery enforcement initiative, and EPA must require, at least, what its division is requiring as part of its "next generation compliance" policy.⁴⁷ EPA as a whole should follow this policy and implement the Act's enhanced monitoring requirements in this rulemaking.

In addition, significant advancements in monitoring have occurred in recent years. There are newly available technologies and monitoring techniques to assure compliance with air emission standards. In particular, more time-resolved, higher data-quality-producing fence-line monitoring protocols have been implemented at specific refineries through enforcement suits brought by EPA and negotiations with community groups. As examples, Commenters highlight the EPA consent decrees at Shell Deer Park and BP Whiting, and the community monitoring protocol set up at Chevron Richmond, and attach a summary of some of these monitoring protocols.⁴⁸

To date, EPA has not followed up to create a national monitoring rule addressing the monitoring needs outlined above, or to ensure that permits include such requirements. This is the kind of national program action that would help communities overburdened with air pollution, who are disproportionately communities of color and low-income communities. It is also extremely important for EPA to strengthen and require fence-line monitoring on a case-by-case basis in industry-specific rules and facility-specific enforcement actions. In addition, though, EPA must set national requirements to ensure stronger monitoring reaches more communities faster and in a more efficient way than a rule-by-rule approach allows.

5. Strengthen Monitoring and Reporting Requirements in Rules.

EPA needs to ensure that its rules provide for the best available monitoring, reporting, and public transparency requirements for the purposes of assessing and enforcing compliance. Its rules need to facilitate both government and affected community enforcement, such as through citizen actions, where necessary. Enforcement staff involved in review of permitting programs should be directed to ensure that states are issuing enforceable permits.

To achieve this objective, EPA should perform a systematic review of monitoring and reporting requirements in national standards and issue a publicly available report on the results. With input from the enforcement division and the public, EPA should assess the best available

⁴⁷ See *supra* n.34.

⁴⁸ Earthjustice, EIP *et al.* Letter to NEJAC summarizing fenceline monitoring in place (Apr. 2015); see also Refineries Comments, *supra* n.14.

monitoring requirements, such as: continuous emissions monitoring (“CEMS”) and digital camera and video monitoring; or continuous parametric monitoring and frequent stack testing for any pollutants/points where CEMS is not yet available; the best available reporting and transparency requirements: *e.g.*, where electronic reports of data collected go directly to state agencies and EPA, and are made publicly available in or near real time on-line, in a format that the public can review and understand. As part of this review, EPA should also consult the states to see the best practices in use for monitoring, testing, and reporting, as well as air pollution and monitoring control companies and trade associations, such as the Institute of Clean Air Companies (“ICAC”).

To achieve environmental justice objectives, EPA must recognize that community members have a basic right to know what is going into their environment so that they can use this information to better protect their own health and advocate for stronger protection, and so that they can know whether or not a source is in compliance or needs action to bring it into compliance.

To date, EPA has been moving in the opposite direction. For example, as detailed in comments filed in November 2014, EPA has proposed to weaken or forego public participation requirements for various monitoring programs that are particularly critical to people living in disadvantaged communities.⁴⁹ In addition, many rules include, at most, an initial, one-time stack emission test, or very delayed (*i.e.*, 5-year periodic one-time tests). Many rules include only on-site recordkeeping for agency inspection, without the ability for public review or transparency. And in some instances, EPA has eliminated the use of special purpose monitors to assess compliance with the National Ambient Air Quality Standards. EPA has also created biased defaults that assume “no pollution” whenever there is a concern about the quality of data, rather than using that data to trigger the need for areas/sources to prove that data was incorrect. This bias means that areas with poor resources are more likely to be assumed “clean” and there is actually an incentive not to invest in quality assurance/control. These are all serious problems that particularly affect communities with large numbers of sources, including many communities of color and low-income communities. Similar issues plague farmworker and other low-income worker communities, who have little reliable information about the number of acute pesticide and other types of chemical poisonings in the workplace; workers fear retaliation if they voluntarily report and there is no national pesticide incident reporting system or effective chemical safety risk reporting system that could be utilized by clinicians and others who work with farmworkers, chemical plant, refinery, or other workers.

6. Strengthen Air Monitoring Networks, Requirements, and Data.

EPA should invest in additional ambient air monitors. EPA should prioritize siting those monitors in communities identified as hot spots for environmental justice.

To create strong monitoring networks across the country, EPA should incorporate environmental justice principles when reviewing and approving air monitoring network plans. Consistent with the Clean Air Act’s requirements that states assure air quality for all people,

⁴⁹ Comments of Earthjustice & Am. Lung Ass’n at 1-4 (Nov. 10, 2014), EPA-HQ-OAR-2013-0619-0034.

EPA's review of these plans should assess whether a given air monitoring network is producing data that represents what people are breathing in overburdened communities.⁵⁰

In addition to the ambient air monitoring network, EPA should identify low-income communities and communities of color and target continuous, real-time fence-line monitoring at facilities in those communities, in line with Executive Order 12,898.⁵¹ Other "advanced monitoring" practices should be required in environmental justice communities as well, including lower-cost monitors that can be installed in many locations, monitors that produce data in real time, and monitors that present data in ways that a layperson can understand.⁵² Infrequent periodic stack tests are completely insufficient to assess and assure compliance. Further, all monitoring data must be reported to the public in or near real time, in a useable and understandable form, and not just collected for agencies to look at, if they so choose. EPA should also include indoor air quality monitoring under the umbrella of advanced monitoring, so that community members have a fuller understanding of the air quality they experience within their communities.

7. Create a policy to use citizen-collected science and monitoring data within EPA programs, to the greatest extent possible.

Community air monitoring must play an important role in creating strong air quality monitoring networks for low-income communities and communities of color. EPA should prioritize the acceptance of monitoring data that communities produce for themselves, and act as a partner and a resource for communities working to address air quality threats.

To this end, EPA has begun creating projects and grants to provide training and technology to encourage and assist community members to help assess air quality and other environmental problems. Yet, frequently when community members have brought data showing an air pollution problem or air standard exceedance to EPA, EPA has ignored and refused to use these data. As one recent example, community members in Galena Park in Houston, TX provided community monitoring data showing PM_{2.5} exceedances.⁵³ Yet, EPA neither recognized these data as showing a violation that required the area to be found to be in nonattainment for PM_{2.5}, nor performed any independent monitoring or verification to assess whether, with some additional work or data collection on EPA's part, the data could be used to

⁵⁰ See generally 42 U.S.C. § 7407(a).

⁵¹ See Exec. Order No. 12,898 § 1-101, 59 Fed. Reg. at 7,629 ("... each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations ...").

⁵² Giles Memo at 1-2, *supra* n.34.

⁵³ Comments of Sierra Club, *et al.* at 4 (Sept. 29, 2014), EPA-HQ-OAR-2012-0918-0295 (submitting data showing that "particulate matter levels are often well above the NAAQS standard in this area," including at a monitor near the Early Head Start building (a childhood development center serving children between 0-3 years of age), reporting recorded particulate matter daily average levels ranging from 7.8 to 44.7 micrograms per cubic meter, with an average value of 20.7).

address the clear problem they showed.⁵⁴ Thus, even though there is clearly a particulate matter problem in the air in this Houston neighborhood, and even though the community spent time and resources to gather air monitoring data to supplement the data EPA already had, the community was not designated as nonattainment and will not receive the health protections that would come from such a designation.

Rather than allow examples like this to continue to occur, EPA must set clear guidelines and a clear policy to recognize citizen science and monitoring, especially when citizen-provided data show environmental problems, toxic exposures, or violations, with input from regions and community groups. EPA should work with the states and local agencies to encourage them to do the same, following best practices. These guidelines should be predicated on an acceptance of the principles of community-based monitoring. As part of these:

- First, EPA should provide clear instruction to community members who will be collecting data on what quality assurance and quality control protocols or steps must be taken for the data to be considered as equally reliable as federally monitored data.
- Second, if citizens provide data that EPA believes do not meet these criteria for any reason, then EPA should presume such data are at least relevant, rather than just ignoring the data as though they were never collected and show nothing. In particular, EPA should direct its staff to ensure that when citizens submit data suggesting there is an environmental problem, then rather than reject or ignore these data, staff must take additional action to attempt to verify those data, show the verification process used, use independent monitoring to see if the data can be replicated using EPA methods, and/or to require a facility to show that the data do not demonstrate a violation or illustrate another environmental problem.

8. Integrate enforcement staff and enforcement expertise into the rulemaking process.

As part of each significant rulemaking in its air, water, waste, pesticides, and other programs, EPA should make it a requirement for rulewriters to request and receive an independent review and report on recommendations from its enforcement division to assess and strengthen monitoring, reporting, and other enforcement-related requirements in the rule. This report should be made available in the rulemaking docket as part of the public comment process. This review and report should both focus on what is needed to strengthen government enforcement and ensure that the rule is also enforceable by affected community members.

In addition, OECA staff should take a bigger role, and rulewriters themselves should be required to consider and address how to assure enforceability and compliance, as discussed above, by looking at: (1) the data that will be collected to assess compliance, if it includes enough detail and will be sufficiently understandable to assess compliance; (2) how it will be made available to the public as well as government agencies; (3) how timely will the data be

⁵⁴ Response to Comments at 56-57 (Dec. 17, 2014), EPA-HQ-OAR-2012-0918-0337.

available, so that corrective action can be taken and there are no concerns that the lag will prevent effective enforcement; and (4) if the rule will assure that a third party reviewing information can actually assess and determine compliance or a violation?

9. Assess and provide EJ outcomes in rulemakings and permitting, not just process.

In some recent public statements, EPA has referred to particular rules as examples of how EPA is implementing environmental justice objectives in rulemaking and other actions. For example, EPA pointed to the pending Refineries air toxics rule under Clean Air Act § 7412.⁵⁵ Commenters do not believe that holding public workshops or hearings, alone, illustrates success for environmental justice objectives. There must be both truly meaningful public participation and input throughout the process, and a commitment to achieving strong substantive outcomes to benefit affected communities.⁵⁶ Most importantly, EPA must consider and evaluate the results of the final rule, according to metrics of actual environmental health protections achieved, pollution reduced, monitoring and enforceability mechanisms strengthened, and must do so by comparison with the best available metrics, as discussed above, to determine whether or not it has actually achieved environmental justice objectives in a rulemaking. For the refineries rule, those are the metrics community members will be using, to assess whether indeed EPA has fulfilled its objective to provide environmental justice, not the number of public hearings or workshops held.

Regarding regulations and permitting, EPA should direct each regulatory and permitting program office or division to provide an audit and a report on the top ways in which the program office or division could strengthen the substantive outcomes for vulnerable communities in the work that it does, and publish those reports. Commenters highlight especially the concerns about how a history of problems with zoning or lack thereof have caused particularly disproportionate siting and pollution burdens for communities of color and low-income communities; the permitting process must reduce these disparities, not make them worse or ignore them.⁵⁷

10. OEJ should be given authority to set performance measures and evaluate EJ progress annually, as well as give advice and feedback to program staff.

On the metrics and objectives EPA chooses to establish for Plan EJ 2020, EPA should create a clear ongoing role for the Office of Environmental Justice to provide the particular expertise they have on EPA's program work and give input on ways that EPA's actions must be strengthened substantively to assure environmental justice. This role must include not only

⁵⁵ EPA, *Guidance on Considering Env'tl. Justice During the Development of Regulatory Actions* at E-2 (May 2015), available at <http://www.epa.gov/environmentaljustice/resources/policy/considering-ej-in-rulemaking-guide-final.pdf>.

⁵⁶ See, e.g., Owley, *supra* n.24.

⁵⁷ NEJAC, *Recommendations Regarding EPA Activities to Promote Environmental Justice in the Permit Application Process* (May 2013), available at <http://www.epa.gov/environmentaljustice/resources/publications/nejac/2013-ej-in-permitting.pdf>.

helping to connect community stakeholders into EPA's work in terms of the process, but also evaluating and providing feedback to program staff on substance and concrete results in achieving environmental justice objectives. In addition, OEJ, in consultation with the National Environmental Justice Advisory Council, should have authority for reviewing, auditing, and providing a public progress report that is independent from EPA program staff's self-evaluations, and is included in EPA's regular reports. OEJ should directly seek affected community members' input on results achieved as part of evaluating progress on EPA's environmental justice responsibilities and objectives from community groups. Such audits and reports are no substitute for action, but action is unlikely to happen unless EPA commits to and also has an independent evaluation of whether it is indeed following through, and has accomplished real results for communities, that the communities themselves realize as progress on environmental health and environmental justice.

In addition, Commenters also urge EPA to implement NEJAC's recommendations on permitting and a long list of other issues – including recommendations submitted as part of Plan EJ2014 that have not been implemented.⁵⁸

11. Identify additional mobile source regulatory measures to protect disproportionately impacted communities.

Evidence suggests low-income and minority populations disproportionately reside near heavily trafficked roadways, and thus face greater exposure to traffic-related air pollution.⁵⁹ These concerns can be even more pronounced in communities adjacent to freight hubs (*e.g.*, railyards, distribution centers, ports). While some pollution issues can be addressed through better zoning, it is imperative to do more to protect communities currently facing the health threats from transportation-related pollution. Thus, we recommend that EPA explore additional regulations and guidance to ensure transportation-related pollution is cleaned up in communities, including measures to clean up freight equipment.

III. INTERAGENCY WORK

States: EPA must strengthen oversight of state and local agencies administering federal environmental laws and using delegated authority to issue permits, lead enforcement, and take other actions. Many permitting and enforcement decisions are made at the state and local levels. Without stronger EPA oversight, communities have not been afforded the full protection that national standards and federal regulations are supposed to provide. As part of Plan EJ2020, EPA should prioritize state and local oversight to lift up the best practices in some states and local areas in permitting, rulemaking, and enforcement, and to end the worst practices in areas where communities feel completely alone in handling serious environmental and health concerns. EPA

⁵⁸ See NEJAC, *Advice and Recommendations*, <http://www.epa.gov/environmentaljustice/nejac/recommendations.html> (last updated May 19, 2015); see also NEJAC, NEJAC Comments to EPA Plan EJ 2014 (Apr. 2011), available at <http://www.epa.gov/environmentaljustice/resources/publications/nejac/plan-ej-2014-comments-0511.pdf>.

⁵⁹ See D. Brugge, *et al.*, Developing Community-Level Policy and Practice to Reduce Traffic-Related Air Pollution Exposure, 8 *Env'tl. Justice* 95, 96-97 (June 15, 2015), available at <http://online.liebertpub.com/doi/full/10.1089/env.2015.0007>.

must use its full authority, including disapproving state programs or withdrawing delegation, whenever necessary to ensure that communities do not lose the basic protections federal environmental laws are supposed to provide. In addition, EPA should help make up the gap where state and local government agencies and laws, such as a lack of appropriate zoning or a history of discriminatory zoning, create particular concerns for communities of color and low-income communities.

Under the Clean Water Act, for years communities in Appalachia have faced state refusals to implement basic requirements to assure water quality, including the mandate to translate narrative water quality standards into permit effluent limitations. EPA has documented many of these problems and the fact that the impacts of these inadequate and unlawful permits fall disproportionately on low-income communities in multiple documents, including reports and guidance.⁶⁰ Yet, EPA still has not exercised the full oversight and authority needed to end this problem – while communities which are disproportionately low-income continue to suffer from the years of devastation to waters, wildlife, and public health associated with mountaintop removal mining.⁶¹

Longstanding problems with Texas’s air permitting programs provide well-known examples that EPA must address there and in other states, and on which EPA has received comments in recent years.⁶²

As another example, many parts of the country are currently facing potential increases in use of oil and gas transportation and infrastructure developments located in close proximity to communities with significant environmental justice concerns. For example, in Albany, New York, Global Companies offloads crude oil from rail cars into storage tanks and then transfers the oil to ships and barges on the Hudson River. Recent permitting actions by the New York

⁶⁰ See, e.g., EPA, *Review of Clean Water Act § 402 Permitting for Surface Coal Mines by Appalachian States: Findings & Recommendations* (July 13, 2010), available at http://water.epa.gov/polwaste/npdes/upload/Final_Appalachian_Mining_PQR_07-13-10.pdf; EPA, *Improving EPA Review of Appalachian Surface Coal Mining Operations Under the Clean Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order* at 4 (July 21, 2011) (“The environmental legacy of mining operations in the Appalachian region is far-reaching.”) (discussing deforestation and adverse impacts on aquatic ecosystems) (“July 2011 Guidance”); EPA Office of Research & Development Final Report: *The Effects of Mountaintop Mines and Valley Fills on Aquatic Ecosystems of the Central Appalachian Coalfields* (May 27, 2011), available at http://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=501593; EPA, *Final Determination of the U.S. Environmental Protection Agency Pursuant to § 404(c) of the Clean Water Act Concerning the Spruce No. 1 Mine, Logan County, West Virginia* at 94-97 (Jan. 13, 2011) (“Spruce Determination”), <http://water.epa.gov/lawsregs/guidance/cwa/dredgdis/spruce.cfm>.

⁶¹ See, e.g., Environmental Justice Petition for EPA Action Under Executive Order 12898 And All Other Legal Authorities, filed by Coal River Mountain Watch *et al.* (2009); Petition of 19 Local, Regional and National Organizations to EPA for Rulemaking to Set Water Quality Standards to Protect Appalachian Waters from Mining Waste and Harmful Levels of Conductivity (May 6, 2013), available at <http://earthjustice.org/documents/legal-document/pdf/community-petition-to-epa-for-rulemaking-on-mountaintop-removal-pollution-water-quality-standard-6>.

⁶² See, e.g., Comments of Air Alliance Houston, *et al.* (submitted on Plan EJ2020).

State Department of Environmental Conservation (“DEC”) have significantly increased rail and barge traffic and increased air emissions at the terminal, placing residents of the Ezra Prentice Homes at risk, yet DEC initially failed to conduct an appropriate environmental review of the project and failed to follow the required procedures for projects that could impact environmental justice communities. This is also a serious problem in other parts of the country, and we also highlight as an example the report from California on “blast zone” crude transport issues impacting communities of color.⁶³

Another example is North Carolina’s failure to address the impacts of industrial animal product in eastern North Carolina, where the density of hog and, more recently, poultry operations in low-income African American, Latino, and Native American communities has affected quality of life, waterways, and a range of health indicators. For years, community members in eastern North Carolina complained to EPA and the state Department of Environment and Natural Resources about the adverse effects of the industry on their health and environment and implored the agencies to provide greater protection to no avail. In 2014 community groups filed a civil rights complaint with EPA pursuant to Title VI of the Civil Rights Act of 1964, which might have been avoided had the state and EPA taken action to resolve the problem.

Federal: Under the Federal Interagency Working group, EPA should continue to work with other agencies and White House Offices to advance environmental justice, including through achieving results for the identified hot spot communities and areas with environmental justice concerns, as discussed earlier. Federal agencies, especially HHS, including the CDC, NIEHS, should work to assure better data is collected and available on health status and health concerns at the census tract level. These data are important for communities and EPA staff to have to direct and assess the success of resources applied to promote environmental justice. In addition, commenters are aware that some agencies (*e.g.*, U.S. Army Corps of Engineers) appear to have no environmental justice office or clear objectives of any kind. EPA should assist all agencies in implementing the Executive Order. For example, EPA should provide guidance to HUD and other agencies to consider when spending public funds, such as on low-income housing, which should be built in healthy and environmentally accessible areas – and not next to refineries, power plants, or other industrial sources of air and water pollution. As another example, EPA should ensure other federal agencies are vigilant in monitoring transportation projects, including freight expansion projects, which can exact a large toll on communities.

IV. EPA SHOULD BUILD TITLE VI COMPLIANCE AND ENFORCEMENT INTO ALL ASPECTS OF AGENCY OPERATIONS AND INCLUDE TITLE VI ACTION ITEMS IN PLAN EJ2020.

EPA has separated Title VI enforcement from its Plan EJ2020 process. Commenters urge EPA to set Title VI commitments as part of Plan EJ2020 for the following reasons.

⁶³ Communities for a Better Environment, *Crude Injustice on the Rails: Race and the Disparate Risk from Oil Trains in California* (June 2015), available at <http://www.foresthethics.org/sites/foresthethics.huang.radicaldesigns.org/files/Crude-Injustice-on-the-Rails.pdf>.

Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d – 2000d-7, prohibits recipients of federal financial assistance from discriminating on the basis of race, color or national origin in any of their programs or activities. EPA, like other federal agencies, enacted regulations pursuant to Title VI. 40 C.F.R. Part 7. Title VI and its regulations prohibit intentional forms of discrimination as well as actions, policies, and practices with unjustified discriminatory impacts, regardless of intent. In 2001, the Supreme Court ruled in *Alexander v. Sandoval* that aggrieved persons have no private right of action to enforce Title VI unless they can demonstrate intent.⁶⁴ As a result, people living in environmental justice communities that are environmentally overburdened with toxic releases rely on EPA to require compliance and enforce the law. Without an effective Title VI compliance and enforcement program at EPA, the law is an empty vessel. Unfortunately, EPA’s Title VI program has been notoriously inadequate.⁶⁵

The Plan EJ2020 Action Agenda Framework again relegates EPA’s external civil rights compliance and enforcement program to consideration on another day. Although we support the development of a long-term OCR Strategic Plan, Plan EJ2020 should recognize that Title VI of the Civil Rights of 1964 is one of the cornerstone legal tools for addressing issues of environmental justice⁶⁶ and build specific action items for Title VI compliance and enforcement into all aspects of EPA’s operations, especially as they relate to permits, delegation of authority, enforcement, and program approvals.⁶⁷

Relegating Title VI compliance and enforcement to later and separate treatment replicates the mistake made when Plan EJ 2014 failed to provide detail on actions to improve its civil rights program and ultimately released “Draft Supplement: Advancing Environmental Justice Through Title VI of the Civil Rights Act.” If, indeed, EPA is committed to improving its civil rights program and recognizing that enforcement of Title VI of the Civil Rights Act of 1964 is an important tool in EPA’s efforts to address discrimination and advance environmental justice, the Plan EJ2020 Action Agenda must include a strong and coordinated approach that identifies goals, actions, and metrics to assess performance and to send a clear message to EPA staff and stakeholders. Specifically, the Plan EJ2020 Action Agenda should address the following issues:

⁶⁴ 532 U.S. 275, 279-86 (2001).

⁶⁵ See, e.g., Deloitte Consulting LLP, *Final Report: Evaluation of the EPA Office of Civil Rights at 2* (Mar. 21, 2011), available at http://epa.gov/epahome/ocr-statement/epa-ocr_20110321_finalreport.pdf (citing a “record of poor performance”).

⁶⁶ See Dept. of Justice, *Dept. of Justice Guidance Concerning Environmental Justice at 2* (Dec. 3, 2014), available at http://www.justice.gov/sites/default/files/ej/pages/attachments/2014/12/19/doj_guidance_concerning_ej.pdf.

⁶⁷ Notably, the audit conducted by Deloitte to assess EPA’s Office of Civil Rights (“OCR”) specifically criticized EPA for operating OCR in “an insular fashion” that limited its effectiveness and for failing to provide clarity regarding internally or externally regarding expectations. Deloitte, *Evaluation of the EPA Office of Civil Rights at 2*, *supra* n.65. Failing again to address these issues in the Plan EJ2020 Action Agenda misses yet another opportunity to address these concerns.

- **Process:** EPA must review and modify policies and practices governing communications with complainants and community-based stakeholders in the Title VI enforcement process, both to ensure a more active role for complainants and community-based stakeholders in the enforcement process and to bring Title VI enforcement into line with environmental justice principles and EPA efforts to encourage “meaningful engagement” of overburdened communities in permitting and other decision-making. Although completion of the policy paper “Roles of Complainants and Recipients in the Title VI Complaints and Resolution Process” is a step forward, the Plan EJ2020 Action Agenda should include specific goals, activities, and metrics to ensure changes in practice, including, for example, training for EPA staff and reform of policies that limit interactions of staff with stakeholders.
- **Transparency:** EPA still fails to make up-to-date information about Title VI enforcement readily available, including, for example, a docket with links to complaints, resolution agreements, and other official documents on EPA’s website. Although this project is underway, the EJ2020 Action Plan should include goals, activities and metrics to ensure that this project crosses the finish line and then is maintained, reviewed, and improved over time.
- **Strengthen Compliance:** EPA should strengthen its pre-award and post-award compliance review programs, including the collection and review of relevant information. EPA has recently modified Form 4700-4, Preaward Compliance Review Report For All Applicants and Recipients Requesting Federal Financial Assistance, to determine whether applicants for federal financial assistance are developing programs and activities on a non-discriminatory basis. Form 4700-4 is a start, but is insufficient to ensure compliance with Title VI. EPA should require recipients of federal financial assistance to submit a detailed analysis of how it complies with Title VI and EPA’s implementing regulations. State environmental agencies that receive funding from EPA, for example, should provide detailed information on how the agency’s permitting, enforcement, and rulemaking requirements comply. Such documents should be made publicly available for input, and should be reviewed by EPA as part of pre-award and post-award compliance reviews.
- **Legal Standards:** EPA’s second policy paper, “Adversity and Compliance with Environmental Health Based Thresholds,”⁶⁸ is languishing. Providing clarity on the standard for determining adversity in a disparate impact case is a necessary though insufficient step toward revision and finalization of guidance on legal standards. The EJ2020 Action Plan should provide a clear and measurable path forward to removing the “rebuttable presumption” that compliance with health standards is a sufficient defense against a civil rights claim and resolving other

⁶⁸ EPA, *Title VI of the Civil Rights Act of 1964: Adversity and Compliance with Environmental Health Based Thresholds*, (Jan. 24, 2013), available at http://www.epa.gov/civilrights/docs/pdf/t6.adversity_paper1.24.13.pdf.

uncertainties around the applicable standards by finalizing improved guidance documents.

- **The Backlog:** The EJ 2020 Action Plan should establish activities and a timeline by which EPA will resolve all pending Title VI civil rights complaints in a timely way – with the involvement of complainants and their attorneys and with creative and careful attention to the underlying issues. It is unconscionable that complaints have been languishing with the Office of Civil Rights, in some cases for more than a decade, reinforcing concerns about the integrity of the process. Given EPA’s breach of responsibility and the delay experienced by complainants seeking justice, the agency has a duty not just to complete the investigations, but to address claims raised in the complaints.
- **Capacity & Infrastructure:** The EJ 2020 Action Plan should ensure that the organizational dynamics and challenges outlined in the Deloitte report are fully addressed and contain clear goals, activities and metrics to ensure that scarce agency resources are preserved at all stages of civil rights compliance and enforcement work.
- **Coordination:** The EJ 2020 Action Plan must set forth goals, activities and metrics for EPA’s role in coordinating Title VI compliance and enforcement with delegated programs, EPA’s regional programs, and other federal agencies. Among other things, EPA must ensure that states submit Title VI plans on an annual basis and should require that funding recipients submit Title VI plans for review.
- **Resolution and Remedies:** The EJ 2020 Action Plan must include specific goals, activities and metrics for reform of its practice to ensure that (a) the alternative dispute resolution program provides sufficient technical assistance to level the playing field for complainants, and (b) when EPA enters a voluntary compliance agreement, remedial measures protect communities and secure Title VI compliance.

Finally, the EJ2020 Action Plan must ensure compliance and enforcement of the prohibition against national origin discrimination affecting LEP persons. Among other things, to comply with the Department of Justice’s Title VI requirements pursuant to Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” EPA must finalize its internal LEP plan, and ensure the inclusion of native and indigenous languages as discussed above.⁶⁹

⁶⁹ See LEP.gov, *Executive Order 13166*, <http://www.lep.gov/13166/eo13166.html> (“The Executive Order requires Federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. It is expected that agency plans will provide for such meaningful access consistent with, and without unduly burdening, the fundamental mission of the agency.”)

V. CONCLUSION

Commenters appreciate EPA's time considering these comments and would be glad to provide further information if helpful.

Sincerely,

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The Executive Order also requires that the Federal agencies work to ensure that recipients of Federal financial assistance provide meaningful access to their LEP applicants and beneficiaries.”).

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From: Jim Myers <[REDACTED]>
Sent: Tuesday, July 14, 2015 10:59 PM
To: ejstrategy
Cc: [REDACTED]
Subject: Comment on EJ 2020 Action Agenda Framework

To whom it may concern,

I am making a last minute comment on the EJ Action Agenda to say that our Community of Kenmore, Washington, which is on the north end of Lake Washington, has experienced and is still experiencing environmental INJUSTICE because I can not figure out how to stop the injustice. We are overrun with toxins that are not being tested and yet we know they are there. We visited the EPA in DC in July 2014 and we met with our lawmakers. We were vindicated by Army Corps tests which confirmed that the toxins are too high for open water disposal, and yet the transportation needs of the state and polluters' businesses trump the concerns of citizens hoping for environmental justice.

I do not know the answer, but we need somebody who has enough intelligence and enough willingness to fight the agencies and the rich companies that build bridges, the SR 520 Floating Bridge, for example. We didn't have lobbyists, but the concrete company did/does.

Really what we need is money to right the wrong. We shouldn't have had our environment harmed, but I assume the powers that be assessed the population and decided we were fractionated, and not quite rich enough to fight for environmental health and scrutiny. We didn't even have the proper laws respected in 2011 when our politicians decided to industrialize our north end of Lake Washington. The rich worked with the agencies and city in some way that circumvented the laws meant to protect. The people complained to no avail.

I don't know what to tell you, except that I would welcome you to make part of your plan the STORY OF KENMORE, our GOVERNOR, our CITY STAFF, our Citizens, our Leaders (or lack thereof, as I feel, as President of our nonprofit, that I have failed the ecology of Lake Washington). I needed the media and support. I got dabbles of it, but it is too scary to fight the city and do it as a volunteer. We have tried, we still are trying. If EPA had a way to tell this story, maybe we'd have the heart to write it down, because you could make an example of kenmore and the floating bridge, and the politics that caused this. Down the road by 2020 or a bit further, we'll probably see what diseases, if any, are caused by the dioxins. I hope I'm wrong, but I fear there will be illnesses, unless we are successful and finally figure out a way to have this area be a superfund site.

It would help if you could tell our stories and help us achieve the health of our environment. Have a fund to visit our site and meet the people and help us negotiate with the Cemex and Calportland and city and state and WSDOT so that this never happens again to a suburb of Seattle where there are ESA listed species but the transportation giants planned to use the ecology to build bridges, game the system, and pull the wool over the eyes of a disorganized community.

I still hope for success, but I see money is what guides the success.

That is unfortunate.

I think you'd have to fund a lobbyist to help the nonprofits, like ours, People for an Environmentally Responsible Kenmore. That might help. Maybe I should have learned to write grants, but to be honest, the grant writing just doesn't work. It takes too long.

What we need is a citizen led third party right to test comprehensively in the lake, to find the source of the toxins and stop the barges which are causing our area to be full of asphalt and concrete. We are not supposed to be an underprivileged community. We are a suburb, the "drive by city" that links the best and the brightest of places like

Redmond where Microsoft is with the City of Seattle. Basically, the sad thing is that a bedroom community was taken advantage of. Its ecology was used to make a bridge. It shouldn't have happened. We reached out to EPA, but we haven't had success. Why? I don't know. I wish I did. I will listen if you write or call.

For your agency to do its work, you need to help us write this story of Kenmore, on the shores of Lake Washington, where the system error included a shovel ready, barge-ready project to build a bridge in an area where there were and are dioxins, but they did it anyway, they barged and moved around the toxins without regard to the public health and safety and they are still doing the barging and still wanting to ignore the fact that the source of the dioxins should be found before more work continues.

That is what should happen for Environmental Justice, but we grow weary having asked and fought since 2011.

Add what we need to your plan, please.

Thank you.

Elizabeth Mooney





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July 14, 2015

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Via email to: ejstrategy@epa.gov

**Re: Draft Environmental Justice (EJ) 2020 Action Agenda
Framework**

Dear Dr. Lee:

The Environmental Council of the States (ECOS) is pleased to submit this letter to the U.S. Environmental Protection Agency (EPA or Agency) on the Draft EJ 2020 Action Agenda Framework (draft Framework) released on April 15, 2015. ECOS is the national, non-profit, non-partisan association of state and territorial environmental agency leaders. The meaningful and substantial involvement of the state environmental agencies is critical to the successful development and implementation of federal environmental programs. ECOS appreciates the opportunity to provide suggestions which we believe will improve EPA's final Framework.

ECOS shares EPA's commitment to have a robust dialogue around EJ issues and has been collaborating in various ways with the Agency in its EJ work since before the signature of Executive Order 12898 on EJ. States also are serious about engaging with all affected communities and people in environmental decision-making, making decisions transparent, and finding solutions that promote healthy and economically vibrant outcomes.

ECOS supports the draft Framework's structure, which establishes general EJ goals for EPA for the coming years. Since the final Framework will cover several years, we urge the Agency to continue its practice of providing regular reports on its efforts. EPA's statement regarding the draft Framework that "EJ 2020 is a strategy for advancing environmental justice ... It is not a rule"¹ is important. This statement should be incorporated in the final Framework.

¹ <http://www.epa.gov/environmentaljustice/ej2020/>

We also recommend that the final Framework reflect a commitment to continuous improvement. The Agency and many states have made commitments to evaluate key processes and approaches to identify ways to make them more effective and efficient. EPA's final Framework to advance environmental justice should integrate continuous improvement principles.

Please note, ECOS' input does not supersede or alter the comments or opinions of any individual state, as state perspectives and approaches may vary on different aspects of the draft Framework.

Specific Input on the draft Framework

I. Deepen environmental justice practice within EPA programs to improve the health and environment of overburdened communities

A. Incorporate environmental justice in rulemaking

The Agency has developed a guidance document on how to incorporate EJ into its own rulemaking efforts, which should be referenced here unless another guidance is contemplated.² The final Framework must make clear that this goal refers to *EPA* rulemaking, as states have their own processes for considering environmental justice issues in their own rule development and related activities.

B. Consider environmental justice in EPA permitting

Here, the draft Framework makes clear that the Agency is referring to its *own* permitting processes. ECOS members are already serving as resources to EPA on how states have found ways to meaningfully incorporate EJ issues into the permitting process. These processes have been documented in a number of ways.³ States are supportive of EPA's commitment and efforts to incorporate EJ into its permitting activities and appreciate EPA's intention to enable overburdened communities to have full and meaningful access to the permitting process and to develop permits that address EJ issues to the greatest extent practicable.

Public participation is one of the cornerstones of EJ and many states have made public participation a priority for their Agencies and/or implemented their own approaches to consider EJ in permitting through policy, guidance or statutes. Some states have made significant progress in meaningful involvement of overburdened communities and continue to focus on communicating, collaborating and addressing issues presented by these communities.

States value public interests and concerns, and are working directly with stakeholders in communities to provide public involvement. We support the current efforts made to develop and implement regional plans that describe how and when regional offices will engage in enhanced outreach to overburdened communities for EPA-issued permits.

² <http://www.epa.gov/environmentaljustice/resources/policy/considering-ej-in-rulemaking-guide-final.pdf>

³ <http://gov.uchastings.edu/public-law/docs/ejreport-fourthedition.pdf>; see also Dunn & Weiss, *Environmental Justice in Permitting: State Innovations to Advance Accountability*, 81 Miss. L.J. 747 (2012).

C. Advance environmental justice through compliance and enforcement

Since states bring a significant portion (figures range to near 90 percent) of compliance and enforcement actions, this portion of the draft Framework must also specify that EPA is referring only to its compliance and enforcement efforts, and not those of state environmental agencies. There can be much overlap between EPA's chosen compliance and enforcement cases and state activities. Thus, in this part of the final Framework, we encourage EPA to specify that it will work closely with states in the compliance and enforcement area on opportunities to leverage limited resources through coordinated efforts in identified communities. EPA also should note that it will consult with state environmental agencies and other stakeholders to identify overburdened communities, as states and community organizations may in many cases already have done the groundwork to make such identifications.

D. Enhance science tools for considering environmental justice in decision-making

ECOS recommends that in the final Framework this provision refer to “science *and other*” tools for considering EJ in decision-making. We recommend that EPA add language to refer to “decision-making and other analyses.” EPA has developed a number of resources, some of which are science-based tools, some of which are decisional tools, and some of which are screening tools (e.g., EJSCREEN).

We also urge the final Framework to discuss in this section how EPA will coordinate with states on setting research priorities and on training on the various tools, so that states can obtain the most benefit from them and consider how the tools interact with one another. States request that they be a part of the development process of new EJ tools so that the learning and knowledge curve is less steep and tool development may leverage state experiences. EPA's final Framework must make clear that states' use of EJSCREEN and any other EJ tools is optional. EPA also should note that not all tools are appropriate for all settings (e.g., not all tools work in urban and rural areas).

ECOS suggests that the final Framework state that EPA's Office of Research and Development (ORD) will continue its collaboration with the Environmental Research Institute of the States (ERIS) to obtain input on the types of new tools that would be helpful with states, and to obtain state input on science-based tools.

II. Collaborate with partners to expand our impact within overburdened communities

As noted above, states are already working closely with communities facing a variety of environmental, socioeconomic, and health challenges. Addressing the needs of these communities is often not the exclusive purview of the environmental regulator. Accordingly, we recommend that in the final Framework, EPA acknowledge that the definition of an “overburdened community” will vary from place to place, and that the Agency will work with states, other federal agencies (see next point), and local partners to identify these communities.

The federal definition of “overburdened community” articulated in *Plan EJ 2014* is broad and provides good guidance for states,⁴ but in some states overburdened communities may fall outside this definition.⁵

- A. Collaborate with states, tribes, local governments and other co-regulators to share and develop environmental justice tools and practices

ECOS supports this draft Framework goal. It is well-drafted to put a focus on the joint nature of training, sharing, and tool development. ECOS appreciates the reference in the draft Framework to E-Enterprise for the Environment, which embodies a joint governance approach to decision-making so frequently referenced herein. States are pleased to see the reference to local governments, as some decisions of concern to communities are the result of local government authority and choices, and not within EPA or state agency jurisdiction.

- B. Work with other federal agencies to advance environmental justice through the Interagency Working Group on Environmental Justice

ECOS supports this element of the draft Framework as it encourages important cross-federal agency coordination on EJ issues. Environmental regulators are unlikely to be the sole source of support for overburdened communities. Coordination with education, housing, energy, disaster response and emergency preparedness, and other federal agencies will be critical to developing the most effective approaches to directing resources to communities in need.

Notably, this portion of the draft Framework mentions for the first time collaboration with the business and industrial sectors. ECOS encourages other portions of the final Framework also to reference the important, proactive role of business and industry to reduce impacts on overburdened communities and to help EPA and states achieve EJ goals.

III. Demonstrate progress on outcomes that matter to overburdened communities

This portion of the draft Framework discusses measurement and metrics, and also calls for the possible identification of national programmatic efforts. ECOS appreciates that EPA plans to work with states and others to develop these measures and programs, and urges that such language be retained and emphasized in the final Framework.

⁴ “Overburdened community” is used to describe the minority, low-income, tribal and indigenous populations or communities in the United States that potentially experience disproportionate environmental harms and risks due to exposures or cumulative impacts or greater vulnerability to environmental hazards. This increased vulnerability may be attributable to an accumulation of negative and lack of positive environmental, health, economic, or social conditions within these populations or communities. (<http://epa.gov/environmentaljustice/resources/policy/plan-ej-2014/plan-ej-progress-report-2014.pdf>)

⁵ <http://compliance.supportportal.com/link/portal/23002/23009/Article/34316/What-is-the-definition-of-overburdened-community-that-is-relevant-for-EPA-Actions-and-Promising-Practices>

IV. Related efforts: Climate and Title VI

The two “related efforts” listed in the draft Framework - climate and Title VI – appear out of place at the end of the document. There are many related efforts that address the needs of overburdened communities beyond these culled out, including those in the areas of drinking water protection, sewer overflow reduction, toxics and pesticide control, and waste management – just to name a few.

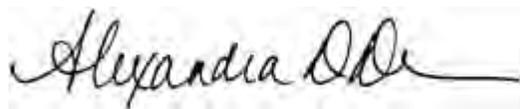
The two short points also do not provide any context for the extensive activity ongoing in these areas. For example, ECOS has been working on Title VI issues for many years, from submitting comments to the state-EPA Title VI Compliance Workgroup, and has provided input to the Office of Civil Rights on the strategic plan it is developing. ECOS is working on resilience and adaptation efforts with other parts of the Agency.

ECOS recommends EPA delete the “related efforts” from the final Framework.

Conclusion

ECOS appreciates the opportunity to provide input to the Agency on the draft Framework. Please do not hesitate to contact me to follow up on any of our points at adunn@ecos.org or 202-266-4929. We look forward to further conversation with you and to seeing the final Framework.

Sincerely,



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Cc: ECOS Officers & Executive Committee
Bill Ehm (IA), Chair, ECOS Planning Committee
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BY EMAIL

July 10, 2015

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Attention: Draft EJ 2020 Action Agenda Framework

Re: Comments on EPA's Draft Framework for the EJ 2020 Action Agenda (EJ 2020)

I. INTRODUCTION

Environmental Defense Fund (“EDF”) appreciates the opportunity to comment on EPA’s draft framework for the EJ 2020 Action Agenda (April 15, 2015) (“EJ 2020”). EDF is a non-partisan environmental organization with more than 750,000 members nationwide. EDF is dedicated to working toward innovative, cost-effective solutions to environmental problems, building on a foundation of rigorous science, economics, and law. We comment on EJ 2020 as an environmental justice stakeholder whose work impacts overburdened communities and who partners with environmental justice organizations on overlapping issues. Environmental justice is at the core of EPA’s mission to protect human health and the environment. Many communities that face high risk of exposure to harmful pollutants are disadvantaged and underserved. These communities look to EPA for protection through information on environmental risks, enforcement of environmental laws, cooperation with state and federal agencies, rulemakings and permitting sensitive to environmental justice concerns, and the development of programs to address pollution. EPA has made progress in ensuring that families across the country have access to clean water, clean air, and a healthy environment. However, many communities are still overburdened and much remains to be done.

EDF welcomes EJ 2020 as a starting point for the agency in advancing EPA goals of driving visible differences in communities. The framework includes important elements such as promoting collaboration across federal agencies and enhancing scientific tools for considering environmental justice in decision-making. Given the urgent need for full protection of human health and environment across the country, we respectfully urge EPA to strengthen the framework. In particular, we ask the agency to better incorporate environmental justice in federal advisory committees, elevate port and goods movement issues as a national priority, consider environmental justice in voluntary programs administered by the agency, advance science related to environmental justice priorities, and set clear benchmarks and goals for measuring progress on environmental justice issues. We offer the following specific comments on EJ 2020.

II. INCORPORATE ENVIRONMENTAL JUSTICE IN FEDERAL ADVISORY COMMITTEES, SUBCOMMITTEES, AND WORKGROUPS

Federal advisory committees and their subcommittees/workgroups play an integral role in advising and guiding EPA on critical matters in science and policy. A diverse array of experts lend their time and knowledge to advancing EPA's mission and while some have deep expertise in environmental justice, there is no institutional mechanism to ensure representation of environmental justice perspectives in federal advisory committees. We propose developing a stronger linkage between federal advisory committees and environmental justice participation. Examples of federal advisory committee subcommittees and workgroups that do address key environmental justice issues without a formalized mechanism for incorporating environmental justice include:

- The Ports Workgroup under the Mobile Source Technical Review Subcommittee (MSTRS). Ports and goods movement issues are a key environmental justice issue and this workgroup is charged with providing recommendations to MSTRS on how EPA can develop and implement a voluntary initiative to improve port environmental performance and air quality for port communities.
- The Air Toxics Workgroup under the Clean Air Act Advisory Council (CAAAC). Environmental justice communities often face high levels of air toxics and this workgroup is charged with providing guidance to CAAAC on strategies to reduce air toxic emissions and reduce risk in communities.
- The Science Advisory Board's review of EPA's Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis.

Many federal advisory committees and their subcommittees/workgroups address issues with environmental justice implications, but may not have explicit mechanisms for incorporating environmental justice concerns. In order to fully address environmental justice challenges associated with these issues, however, these workgroups may benefit from EPA guidance on how to better incorporate environmental justice perspectives.

We propose a stronger and more direct linkage between federal advisory committees and environmental justice issues and EDF urges EPA to include a federal advisory committee element under Section 1 of EJ 2020. We believe that EPA is best suited to determine the exact mechanism for incorporating environmental justice in the federal advisory committee process.

III. ELEVATE PORT AND GOODS MOVEMENT ISSUES AS A NATIONAL ENVIRONMENTAL JUSTICE PRIORITY

Communities at the fenceline of ports and goods movement corridors face a multitude of mobile and stationary emissions sources. They also often face challenges with noise, congestion, land use, and water quality and are typically underserved. EPA has estimated that at least 13

million people live close to marine ports and rail yards and are exposed to diesel pollution. This includes a disproportionate number of low-income households, African-Americans, and Hispanics¹. Diesel pollution is linked to a number of diseases including asthma and lung cancer. EDF agrees with EPA that ports are a serious environmental justice concern and that much more needs to be done to protect the health and environment of port communities.

Although EPA regulates individual sectors of mobile sources, heavy-duty truck engine tiers for example, the regulatory authority over port areas is limited compared to stationary sources. EPA has advanced a National Ports Initiative that seeks to identify how EPA can reduce emissions at ports through a voluntary public-private program. Given the environmental justice characteristics of many communities near port areas, the complexity of the sector, and the known health implications of diesel pollution, port and goods movement issues should be considered by EPA to be a national environmental justice priority.

IV. CONSIDER ENVIRONMENTAL JUSTICE IN VOLUNTARY EPA PROGRAMS

EJ 2020 strengthens environmental justice as part of EPA's regulatory capacity, including rulemaking and permitting, but lacks emphasizing environmental justice in the context of EPA's voluntary programs. Non-regulatory efforts are an important part of EPA's work as they leverage industry partners, state agencies, and non-traditional stakeholders in sectors where EPA may otherwise have limited engagement. Including a more formal mechanism by which environmental justice is considered in voluntary programs will help ensure that environmental justice isn't limited to EPA's regulatory authority, but carried through to the numerous voluntary programs that have been successful in improving environmental outcomes.

Ports and goods movement is an example of a sector that has strong connections to environmental justice priorities and is being addressed from a voluntary framework through the National Ports Initiative. This effort could serve as a model on how to strengthen the consideration of environmental justice issues in the development of voluntary programs.

As an example of an opportunity, environmental justice considerations could be more robust within the SmartWay Program, which is a successful public-private program to improve the environmental performance of the goods movement supply chain. Communities near the fenceline of goods movement corridors often face environmental justice challenges and the SmartWay Program could include environmental justice considerations that result in benefits for communities, EPA, and industry. One idea is to add a community leadership award component for program partners that go above and beyond the traditional SmartWay requirements. This emphasizes the voluntary nature of the program while promoting community partnerships.

Voluntary programs are an important tool for EPA and represent an opportunity to deepen the agency's environmental justice practice. EDF urges EPA to include a voluntary program element under Section 1 of EJ 2020. Strengthening environmental justice elements in voluntary programs may include communicating environmental justice results, considering environmental justice issues in program design, or developing advisory mechanisms with environmental justice leaders.

¹ U.S. EPA, Office of the Inspector General. "EPA Needs to Improve Its Efforts to Reduce Air Emissions at U.S. Ports." 4, 2009.

V. SET BENCHMARKS FOR MEASURING PROGRESS ON ENVIRONMENTAL JUSTICE

EDF appreciates the inclusion of Plan EJ 2014 Commitments/Accomplishments in the EJ 2020 framework. The public assessment of EPA's progress on Plan EJ 2014 promotes transparency, accountability, and confidence in the agency and demonstrates that some progress has been made. This model should be expanded for EJ 2020 and EDF encourages EPA to set measurable benchmarks on environmental justice issues. Benchmarks will help drive commitments within and outside the agency and help define which areas are making progress and which areas may need additional support.

Benchmarking is common among private and public sectors and is increasingly seen as a necessary tool in establishing actionable goals, assessing progress toward those goals, and communicating results. EPA's current method of tracking commitments and listing accomplishments is a first step and EJ 2020 is an opportunity to develop more robust benchmarks that fully demonstrate EPA's commitment and leadership on environmental justice. This includes identifying specific actions and strengthening overall accountability.

VI. ADVANCING SCIENCE FOR ENVIRONMENTAL JUSTICE PRIORITIES

Cumulative impact research and citizen science are two tools that have been growing in importance and relevance for environmental justice. EPA has made efforts to more fully develop these two areas and EDF welcomes this work². Improving the understanding of cumulative impacts is critical for a more complete assessment of the health impacts facing communities. EPA can play a lead role in utilizing cumulative impact research when it is available and in helping to advance the viability of this research.

Citizen science can empower community members and contribute valuable data in areas where data collection may otherwise be difficult. EPA can help foster citizen science by providing additional guidance on how it can be used to pursue environmental justice tactics, such as intervening in permitting, and by showcasing best-practice models of effective citizen science.

VII. CONCLUSION

EDF appreciates EPA's efforts in developing a draft framework for the EJ 2020 Action Agenda. The framework will enable EPA to further address deep-rooted environmental justice challenges. However, we believe that more must be done to ensure that overburdened and underserved communities are fully protected. EDF recommends strengthening EJ 2020 by incorporating environmental justice in federal advisory committees, prioritizing port environmental justice issues, including environmental justice concerns in EPA's voluntary programs, better utilizing scientific tools for environmental justice priorities, and setting measurable benchmarks to assess EPA's performance on environmental justice issues. These five actions will ultimately contribute to EPA's goals of more fully integrating environmental justice across the agency and making a visible difference in overburdened communities.

² U.S. EPA webinar on "Community Air Monitoring Training." (July 9, 2015.)

From: Kim Foreman <Kim.Foreman@ehw.org>
Sent: Friday, April 24, 2015 12:19 PM
To: ejstrategy
Subject: EHW Region 5- Comments on EJ2020 Plan

Hello,

I have spoken to some of the leadership and presented my suggestions summarized below:

- The leadership should coordinate more conversations with state and local governments regarding what EJ is and looks like on the ground, help to develop capacity and integrate EJ principles within policy.
- I would like to see a push for inter-departmental collaborations within local government infusing EJ in policies, the way work is done using the federal government model
- Highlight successful local programs to leverage more local support
- EPA can engage small businesses with compliance assistance as a separate activity and lay the foundation for local organizations to work with small businesses in community
- Work closely with local cities regarding permitting notifications and how we work with communities to extend the process

Thank You,
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July 14, 2015

Dear Mr. Charles Lee:

Thank you for the opportunity to comment on the Draft EJ 2020 Action Agenda Framework proposed by the Environmental Protection Agency (the Agency) on April 15, 2015. The **Environmental Justice Leadership Forum on Climate Change (EJ Forum)**ⁱ is a national coalition of over 42 community based environmental justice organizations representing 23 different states. The EJ Forum was formed in 2008 to *mobilize and facilitate a national working group of environmental justice leaders to catalyze and inform state and federal policy, help grassroots campaigns, provide a unified, strong voice, and support political and legislative action that will result in the development of just policies and mechanisms that equitably reduce carbon emissions in all communities.*

Our Members have always and continue to be heavily engaged in permitting and rulemaking actions initiated by the Agency to provide an environmental justice perspective that is often not sought or included in Agency actions. We engage by offering public comments and testimony, serving on multiple federal advisory committees and providing our “on-the-ground” expertise at various Agency sponsored workshops and meetings. Consequently, our recommendations represent the concerns of a diverse set of communities across the country.

We appreciate your efforts to work into the proposed framework some of the specific comments offered by our individual members that were raised in one-on-one meetings prior to the release of this document. In addition to those comments, we have some additional thoughts about goals 1 & 3 outlined in the framework, and a diverse set of general recommendations.

MAIN GOAL 1: DEEPEN ENVIRONMENTAL JUSTICE PRACTICE WITHIN EPA PROGRAMS TO IMPROVE THE HEALTH AND ENVIRONMENT OF OVERBURDENED COMMUNITIES

- EJ in rulemaking:
 - **Require states, as a part of their planning process, to conduct an EJ analysis to ensure that equity considerations are used to inform planning and make sure the path forward to compliance is beneficial to all Peoples.** This should not be an option, and states should be required to provide additional engagement opportunities – beyond the **one** required meeting – with interested stakeholder and community groups. While guidance from the Agency can be useful to State Agencies, having a mandate in the final rule that requires an analysis be conducted can provide an impetus to move in that direction. If states refuse, than EPA must complete the analysis. We have the right as Americans to life, liberty and the pursuit of happiness. Without an environmental justice analysis and corresponding corrective rulings, regulations and practices the right to life is seriously compromised and too often cut short. Statistics from both the EPA, other federal agencies, and academia show that certain communities in proximity to emission emitting facilities have greater health risks and higher incidences of death related to

environmental factors. We are talking about both a systemic change in policy making, as well as addressing our constitutional and human rights.

- **Enhance regional EJ coordinator engagement and accountability with state environmental agencies, particularly in the rule-making and other Agency action processes.** Regional coordinators should be the connective tissue between community stakeholders and the state environmental process to ensure the proper public participation activities are happening. The Agency should strongly consider increasing the required amount of public engagement for rulemakings. While this might be seen as an extra burden, in most cases, 1 meeting at the State level to accommodate all stakeholders is insufficient, especially if true engagement is what the Agency desires.
- **Guidance generated with various rulemakings – both EJ and general guidance – should be promoted as a tool and integrated into the standard operating procedures, as well as Performance Partnership Agreements used by state and local environmental Agencies.** Regional coordinators could help facilitate some of this knowledge transfer through meetings, conferences, webinars, etc. with local and state environmental partners.
- Enhance science tools for considering EJ in decision-making
 - **Develop guidance on how citizen science and spiritual knowledge/expertise will be integrated and used by state environmental agencies to help implement policy, provide additional data for enforcement and compliance proceedings and to help create protective standards.** The use of hand-held monitors and NextGen monitoring and other devices are improving and being used more frequently by stakeholders. The value of citizen data should not be overlooked or underestimated. Providing state agencies with direction as to how to use this additional data source is needed. Along these same lines, understanding how to incorporate the spiritual value of the earth and its resources and most prominently the knowledge of Indigenous Peoples and Native American Peoples, and how to incorporate that into the decision making process as an ‘added value’ to the scientific decision making process is critical as well.
 - **Advancing cumulative impacts research into action is critical.** While it is hard to reach the ‘perfect model’ or ‘perfect scientific methodology’ to quantify/qualify cumulative risk. To move us out of “we can’t do”, the Agency should start to utilize the frameworks/tools developed thus far, to create a process by which decision making (i.e. permitting) intentionally considers all major/minor, permitted, mobile, etc. sources of pollution. This goal needs to be more specific, and have an OWNER attached to it. (Possibly the Office of Research and Development) with specific tasks as a part of a workplan. The webinar series created by EPA staff is a great starting point in terms of documenting the progress.ⁱⁱ Now is the time to put some traction and move forward with ‘what we know’ versus focusing using on what we do not know.
 - **In the Agency’s most recent 2014 Climate Change Indicators Reportⁱⁱⁱ, it would be helpful to infuse EJ indicators into this next analysis.** Possible ‘indicators’ from an EJ perspective could include utilizing the EJ Index from EJ SCREEN and looking at national trends (depending on how often the data is updated in this analytical tool), looking at emissions of GHG to air and how that has changed over time, compliance and enforcement related to emissions of climate forcers, as well as developing a measure of ‘climate resilience/readiness’ that could incorporate multiple media. It would be a great opportunity for the EJ Forum to provide some guidance as to what ‘indicators’ could be useful for the internal process.

MAIN GOAL 3: DEMONSTRATE PROGRESS ON OUTCOMES THAT MATTER TO OVERBURDENED COMMUNITIES

- **An evaluation of the effectiveness of Agency programming needs to be undertaken.** This type of evaluation can be useful in determining which programs have been impactful, should re-purposed or defunded. This evaluation should be internal and external. The internal process would include creating a mechanism by which the EPA and other Agencies in the federal family track/document – on an annual basis – how they have taken steps to integrate EJ into their practices, as well as monies that have been used to provide staff, assistance, etc., by program. This evaluation would be posted for public review, utilizing current reporting mechanisms (e.g., White House Council on

Environmental Quality or Agency accountability reports related to finance and planning. The external process could garner feedback from external stakeholders - from community organizations, NGOs, small businesses - as to the impact of certain Agency programs. Periodic evaluation can help inform how the Agency moves forward with program priorities. For example, the Urban Air Toxics Program and the CARE program that was independently evaluated and found to be a successful program that should be sustained^{iv}. Currently, the CARE program is defunded. Creating an evaluation mechanism using indicators of progress, jointly developed between Agency personnel and community members. This mechanism should be transparent and updated on an annual basis, possibly coupled with the Agency Sustainability Scorecard that is submitted to the White House in February.

- **Delineating the responsible party and actions to track progress on the proposed framework is crucial.** The Action Framework should have a specific effort attached to each statement. Will each of the statements have specific actions/tasks associated with it? For example, Under Goal 1, Section D, where it says “Advance research on cumulative risks and impacts”, it would be helpful to denote at least one specific action associated with advancing this work. It would also help to know who (which department, individual, etc.) will be responsible for moving forward with the identified efforts. Accountability and a point of contact is needed for community engagement.
- **Evaluate previous recommendations and implement them.** There are numerous reports that have been generated by many of the advisory committees and boards to the EPA as it relates to environmental justice. Undergoing a structured scan and status of the recommendations related to environmental justice that have been proposed would be a useful piece of information. For example, we support many of the recommendations that have not been addressed in the recommendations submitted to the Agency from the National Environmental Justice Advisory Council on April 29, 2011 in response to EJ Plan 2014^v. It is very important that we do not create too many new goals without addressed the goals that were already set forth.

GENERAL RECOMMENDATIONS

- **Expanding the definition of environmental justice communities.** The issue has been raised regarding how prisoners – defined as people held in prisons, jails, detention facilities, civil commitment centers and other facilities that hold people against their will as punishment or while awaiting court-related proceedings, i.e. trial, sentencing, deportation, etc. – are a community of concern that is being ignored. In some accounts, prisoners are confined to places that are not meeting environmental, health and safety standards, and, in some cases, environmental conditions that are within the facility and outside the facility, with some prisons being sited on former waste sites, flood plains and hazards. We encourage the Agency to start a dialogue on the EJ implications on prisoner populations and facilities.^{vi}
- **Accountability and Structure.**
 - There appears to be an obvious difference in the amount of time and effort spent to address and engage on environmental justice within the various Offices of the EPA. While the capacity of EJ organizations is limited to focusing federal advocacy on generally one media (i.e. air, water, waste), that should not preclude the Agency Offices from investing time and effort to insure that EJ is a high priority within that Office. We are charging the OEJ, and/or other higher ranking officials that report to the Administrator to develop a transparent method of oversight to insure that ALL offices are working to integrate EJ into the programming and planning. At the least, developing a system – or integrating into an existing system – efforts, outcomes for each Office – is critical.
 - Where feasible, every Federal Advisory Committee should be required to have an Environmental Subgroup as a part of structure to ensure that the recommendations from these bodies do not explicitly address EJ issues which cross various departments, sectors, and media.
- **Addressing Human Rights and Civil Rights.**
 - Develop a strategy and workplan to address the backlog of complains relative to the Office of Civil Rights. A conversation, webinar, convening that includes community members to understand the challenges of this process, where it stands, how it can be used would be useful.

- Develop a strategy/workplan about how to operationalize how a human rights framework - the human rights to life, health, and freedom from racial discrimination, self-determination, and meaningful participation in governmental decisions – into Agency priorities. A recent report discusses specific actions that are needed to address human rights, environmental justice and climate justice.^{vii}
- **Building capacity for communities.** Enhance the funding that is available for technical assistance for communities for research, permitting and compliance assistance/research, etc.
- **The monetization of costs and benefits on health and environmental factors needs to be integrated into the environmental justice discussion.** A set of guidelines to address how the costs of inaction will impact environmental justice communities does not seem to be addressed anyway in the Plan. Looking specifically at the EPA's Office of Policy – Guidelines for Preparing Economic Analysis^{viii} there is a section that addresses distributional costs and benefits for Environmental Justice. However, we would like to suggest that the cost of ‘inaction’ be included. Using health data and health cost data, based on specific actual and projected health outcomes, putting dollars and cents to substantiate the need for certain permitting and other decisions to be made is critical.

We trust that you will strongly consider our suggestions and recommendations and we are willing to clarify our comments or work with you to flesh out some of the ideas presented. Again, thank you for the opportunity and we look forward to the EPA being the lead Agency to building sustainable communities and eliminating structures and processes that contribute to environmental racism. If you have any specific questions regarding these comments, please contact Dr. Jalonne L. White-Newsome, National Coordinator for the Environmental Justice Leadership Forum on Climate Change at (202)495-3036 or jalonne@weact.org.

With kind regards,

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ⁱ Website for the Environmental Justice Leadership Forum on Climate Change, www.ejleadershipforum.org

ⁱⁱ Cumulative Risk Webinar Series: What we learned, EPA/600/R-14/212, July 2014, <http://www.epa.gov/ncer/cra/webinars/cra-webinar-summary.pdf>

ⁱⁱⁱ Climate Change Indicators in the United States, 2014, Third Edition, <http://www.epa.gov/climatechange/pdfs/climateindicators-full-2014.pdf>

^{iv} Putting Community First: A Promising Approach to Federal Collaboration for Environmental Improvement: An Evaluation of the Community Action for a Renewed Environment (CARE) Demonstration Program, May 1, 2009: http://www.issuelab.org/resource/putting_community_first_a_promising_approach_to_federal_collaboration_for_environmental_improvement_an_evaluation_of_the_community_action_for_a_renewed_environment_care_demonstration_program

^v NEJAC Comments to the EPA Plan EJ 2014, April 2011, <http://www.epa.gov/environmentaljustice/resources/publications/nejac/plan-ej-2014-comments-0511.pdf>

^{vi} See EJ 2020 comments submitted from the Human Rights Defense Center, <https://www.humanrightsdefensecenter.org/>

^{vii} The Need for Human Rights Advocacy to Overcome Injustice: Lessons from the Environmental Justice and Climate Justice Movement, US Human Rights Network, 2013, www.ushrnetwork.org

^{viii} Guidelines for Performing an Economic Analysis, May 2014: [http://yosemite.epa.gov/ee/epa/erm.nsf/vwAN/EE-0568-50.pdf/\\$file/EE-0568-50.pdf](http://yosemite.epa.gov/ee/epa/erm.nsf/vwAN/EE-0568-50.pdf/$file/EE-0568-50.pdf)



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June 15, 2015

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USEPA Office of Environmental Justice (2201-A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Public Comment re: Draft EJ 2020 Action Agenda Framework

Dear Mr. Lee:

Thank you for the opportunity to comment on the Draft EJ 2020 Action Agenda Framework. The Environmental Law & Policy Clinic is a joint project of Duke University's Law School and the Nicholas School of the Environment. On behalf of the Clinic, we would like to thank and congratulate the US EPA for the agency's enthusiastic commitment to the principles of Environmental Justice. Your dedication and years of hard work are evident in Plan EJ 2014, its associated work products and status reports. As a law clinic serving community organizations that are often facing environmental injustices, our faculty, students, law fellows and clients have had several opportunities to make use of the tools developed pursuant to Plan EJ 2014, including EJSCREEN and *EJ Legal Tools*. We are grateful for this opportunity to comment on the draft framework for EJ 2020.

We address several points in these comments:

1. Measurable results in overburdened communities should be the unifying goal of EJ 2020. We recommend that EPA use EJ 2020 as an opportunity to focus on implementation and results, rather than further planning, evaluation or tools development;

2. EPA can use a number of strategies to better engage states and other co-regulators in environmental justice, particularly with regards to permitting. In particular, we urge EPA to use the pending NC Division of Air Quality permit for Carolinas Cement Company as a test case; and
3. EPA could dramatically improve accessibility of federal resources to support community-based efforts for organizations representing overburdened populations.

Implementation and Results

Throughout the EJ 2020 framework and associated materials, EPA repeatedly underscores Administrator Gina McCarthy's emphasis on making a "visible difference" in overburdened communities, and rightly so. "Demonstrate progress on outcomes that matter to overburdened communities" is the third goal listed under the EJ 2020 Draft Framework. Rather than a goal third in line, **measurable results in overburdened communities should be the single, unifying goal of EJ 2020.**

We strongly urge EPA to view EJ 2020 not as an aspirational strategy or a decision-making framework, but as a work plan. Under Plan EJ 2014, the Agency has clearly defined Environmental Justice and produced an impressive number of tools to assist agency staff in better considering EJ in their actions. EJ 2020 is the Agency's opportunity to actually put those tools to good use, to ensure that in every EPA action environmental justice is not just being considered, but put into action. Hallmarks of action would include timely investigation of citizen complaints and requests for assistance.

The most important metric for evaluating the success of EPA's efforts under EJ 2014 and EJ 2020 should be quantitative decreases in health-harming pollution in overburdened communities, and ultimately falling rates of associated health endpoints in those communities. **The evidence of a "visible difference" where Americans are experiencing environmental injustice should be measurably reduced pollution and associated illness.**

Engaging states and other co-regulators in environmental justice

Perhaps the most promising area for EPA to start making a visible difference falls under Goal I, "Deepen environmental justice practice within EPA programs to improve the health and environment of overburdened communities." Nearly every environmental permit issued is an opportunity to do just that. EPA's focus on considering environmental justice in EPA permitting decisions is well-placed; however, only a tiny fraction of permits are actually issued by EPA. Most permits are issued by state agencies or tribal governments. Many of these permitting staffs issued the very permits that created current Environmental Justice hotspots. It is not realistic to

expect to correct problems at the same level of thinking that created the problems EPA now seeks to solve. Environmental Justice will not be considered in most environmental permitting decisions unless EPA strongly supports - or even compels - states to do so. **We recommend four strategies to advance the engagement of states in considering and implementing environmental justice:**

- **Use peer-to-peer engagement to promote enhanced public participation**

We strongly support EPA's plans to continue to implement regional plans for enhanced public participation. EPA's *Promising Practices* is a useful tool for states and permit-seekers, and should be actively promoted for state permitting decisions. We would like to see EPA partner with businesses that have successfully used the strategies enumerated in *Promising Practices* for peer-to-peer outreach and education with permit-seekers, targeting those seeking to site or expand facilities in overburdened communities.

- **Require Environmental Justice training for state agency staff members and leaders under cooperative agreements**

EPA has completed mandatory training on Environmental Justice for all employees, according to the Plan EJ 2020 Draft Action Agenda Framework. This is an excellent achievement! Many state agency staff are in dire need of training on environmental justice as well. State agency representatives in North Carolina, and presumably in many other states, are unclear about what environmental justice is, why it is important, and how to consider or implement it in their jobs. North Carolina serves as a key example here, as it no longer even has a coordinator for Environmental Justice within the Department of Environment and Natural Resources. We suggest that EPA require all state agency staff involved in permitting and enforcement to receive mandatory environmental justice training under the terms of their cooperative agreements with EPA. States like PA, CT and IL, which have shown leadership in implementing environmental justice principles, could be tapped to help provide these trainings, so that the message is peer-to-peer and thus more likely to be well-received by states. Such an approach would also help meet EPA's goal to "Collaborate with states, tribes, local governments and other co-regulators to share and develop environmental justice tools and practices" (EJ 2020 Draft Framework).

- **Guide states to consider Environmental Justice and develop hooks that compel them to do so**

There are likely multiple barriers that prevent states from considering and implementing Environmental Justice in their permitting and regulatory functions. These barriers may include a lack of understanding of the principles of environmental justice (see previous bullet point), a

perceived lack of resources or specialized knowledge to implement environmental justice, pressure from regulated entities to speed up regulatory processes in ways that could preclude full consideration of environmental justice, or others. EPA should identify and address these barriers through education and training, guidance materials, and by compelling states to consider Environmental Justice in permitting and enforcement whenever possible, such as under cooperative agreements or other funding mechanisms. For example, EPA could adapt the Agency's guidance "Considering Environmental Justice in Permitting" for state use, and provide direct assistance in using such a tool. EPA could require states to make use of the guidance as a condition of specific funding / cooperative agreements.

- **Use the Carolinas Cement Company air permit as a test case under EJ 2020 to move a state to thoroughly consider and implement environmental justice principles in a state permitting decision.**

EPA has an excellent opportunity to help a state make considerable progress by learning hands-on how to use the principles of Environmental Justice in permitting. In issuing a recent air permit to Carolinas Cement Company, an endeavor that would build one of the world's largest cement plants in an over-burdened community on the Northeast Cape Fear River, North Carolina regulators rejected the community's many requests to consider environmental justice factors in its permit (the Clinic served as legal counsel to one of many concerned community organizations, PenderWatch and Conservancy, in submitting comments on the proposed permit and making this request. Please see Appendix I for background information about this proposed cement plant and our associated environmental justice concerns).

The NC DENR Division of Air Quality held a public hearing on the revised permit in 2013, at which PenderWatch and several other community representatives urged the state to consider the special vulnerabilities of a community on well water, already overburdened by legacy contamination from present and historical polluters on the Northeast Cape Fear River. Despite our specific requests to do so, the Division of Air Quality **flatly refused** to consider any secondary impacts of the permit, from air deposition of mercury and heavy metals into an impaired waterway, to the tremendous increases heavy truck traffic that would accompany the opening of a massive cement plant. The hearing officer publicly belittled community members for urging the Division of Air Quality to consider environmental justice in their permitting decision. From the hearing officer's written report:

"Commenters appear to allege that the federal Environmental Justice policy applies to NC DAQ's issuance of this permit. The federal policy, set forth in Federal Executive Order No. 12898, addresses the federal government's responsibilities only, not the State's. Therefore it is not applicable here." - NC

DENR Recommendation for Issuance of Air Quality Permit, Carolinas Cement Company, August 29, 2013 (see Appendix II).

The Carolinas Cement Company air permit was written by Donald Van der Vaart, who has since been appointed Secretary of the North Carolina Department of Environment and Natural Resources.

We strongly urge EPA to conduct a thorough review of this permit and use your authority under the Clean Air Act and other federal laws to give Environmental Justice its due consideration in this matter. **We would like to meet with you, Mr. Lee, as well as Mr. Mustafa Ali, to discuss this proposal. We will contact you separately with a meeting request.**

Improve accessibility of federal resources to support community-based efforts for organizations representing overburdened populations

Several past and current clients of the Clinic have been EPA grantees under the Environmental Justice Small Grants Program. We applaud EPA's efforts to make federal resources available to overburdened communities through grassroots organizations, and we have seen good outcomes from the use of these resources on the ground here in North Carolina throughout the life of this successful grant program. We also recognize that EPA has already made significant efforts to make the EJ Small Grants Program in particular more navigable for community organizations, and we sincerely appreciate those efforts.

However, this grants program still suffers from structural problems that can actually exacerbate and promote the over-burdening of EJ communities, such as:

- Undue burden of paperwork disproportionate to the small amount of funding. The EJ Small Grants Program, capped at \$30,000 per award, forces minimally-staffed community groups to use the same federal grant application and reporting system that a university with a professional grants management staff would use to apply for a grant worth millions;
- The Indirect Cost Rate forces an impossible choice between a too-low flat-rate overhead (10%) that fails to cover organizational costs, and a massive paperwork burden;
- The grant requires after-the-fact reimbursement for expenses, forcing perpetually under-funded organizations into cash flow crises. We have heard of staff at grantee organizations actually having to float grant expenses on their personal credit cards for months at a time - taking on interest charges personally - because of this system;
- Excessive reporting requirements out-of-proportion to the level of funding.

Thus far, the approach that EPA has taken to improve the accessibility of these federal resources has been to provide better training and support to prospective and current grantees in using the federal grants system. EPA has also adopted a simplified Indirect Cost Rate option (the 10% flat rate option). These are positive steps and we appreciate EPA's consideration and work in creating them. However, we were disappointed to read in the 2014 Plan EJ 2014 Progress Report that work in this area is considered to be completed.

EPA's approach has sought to prepare grassroots organizations to navigate a burdensome and unfair federal grants system, rather than making real changes in the system that would simplify the process and remove inequities for organizations representing overburdened communities. The grant system itself can be a barrier to grassroots access to grants and information. We believe that simplifying the grants process would harmonize with the spirit of the 1980 Regulatory Flexibility Act, which is intended to prevent federal regulations from creating undue economic burdens on small businesses, small governmental jurisdictions, and non-profit organizations, and to provide for recourse when such burdens arise.

In order for EPA to meet its goal to "Leverage federal resources to support community-based efforts," as stated in the Draft EJ 2020 Framework, EPA must think creatively about right-sizing the grant process for smaller-dollar grants aimed at community organizations and small businesses. One straightforward way to do that is to delegate grant management to a third party, or *pass-through entity*.

In effect, EPA could transform the EPA Small Grants Program from its current form into one single award to a pass-through entity, to be disbursed by that entity to multiple Environmental Justice organizations via subawards under a competitive process in compliance with 2 CFR §200.201. The pass-through entity should be an institution with a successful track record of grants administration, and demonstrated expertise in Environmental Justice. Such a third party would be subject to the complex requirements of the federal grants system that are so out-of-scale for small grantees (the requirements for pass-through entities are clearly spelled out in 2 CFR §200.331). EPA could provide one single award to the pass-through entity, whose duties would be to create an RFP, collaborate with EPA to select subaward recipients, disburse funds and collect reports from subawardees. The pass-through entity's role would be to create a grant-making process that is scaled down to a size and administrative burden that is actually appropriate for the grant's intended recipients. Feedback from past grantees could be used to help develop a more streamlined process.

Such a process would transfer the bulk of the administrative burden of managing EPA grants away from the grant recipients, and onto the pass-through entity serving as a professional manager. Environmental Justice grantees would then be able to actually use the funds disbursed

for program activities rather than for grants management. EPA would achieve greater efficiency in the use of its grant funds by concentrating administrative costs associated with those grants into one entity with the proven capacity to manage them effectively.

We hope that you will seriously consider re-working the Environmental Justice Small Grants Program and other programs intended to bring federal resources into overburdened communities, whether or not EPA pursues the specific course of action we have suggested as a remedy. Such an endeavor would require creative thinking on EPA's part, but can be accomplished in a way that both satisfies the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR §200 and 40 CFR §30), and is scaled appropriately to serve overburdened communities, rather than adding to their burdens.

Thank you very much for your Agency's dedicated work to advance Environmental Justice, and for the opportunity to comment on the EJ 2020 Draft Framework. We sincerely hope that measurable results - reduced pollution and associated illness in overburdened communities - will become the single, unifying goal of EJ 2020. The Environmental Law & Policy Clinic stands ready to assist EPA in its goal to "demonstrate progress on outcomes that matter to overburdened communities." We hope to meet with you soon to do just that.

Respectfully yours,

/s/

Ryke Longest, Director

See attachments:

APPENDIX I (attached) 

Brief to EPA on EJ concerns at the proposed Titan facility, December 2014

APPENDIX II (attached) 

Recommendation for Issuance of Air Quality Permit, NC DENR DAQ, August 29, 2013



The Farmworker Association of Florida
La Asociación Campesina
Asosiyasyon Travayè Latè

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July 13, 2015

Charles Lee
Deputy Associate Assistant Administrator
For Environmental Justice
USEPA Office of Environmental Justice (2201-A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Draft EJ 2020 Action Agenda Framework

Dear Mr. Lee and EPA Office of Environmental Justice:

The Farmworker Association of Florida is writing to offer input on the draft framework for the EPA EJ2020 Action Agenda that was released on April 15, 2015 for public comment/input. We appreciate this opportunity to share our comments, suggestions, recommendations, and concerns with you.

Farmworkers are a special and often overlooked environmental justice community. Because farmworkers comprise a “community” that is identified by their occupation, and, in general, oftentimes, by their mobility and their rural demographics, they are often not included in the prevailing discussions around environmental justice. Farmworkers are a community that spans the entire country wherever they go to perform the important agricultural work that this country – and their livelihoods – depend upon. Yet, farmworkers *are* a community, because of their common experiences, interests, concerns and exposures, most notably, their exposures to pesticides in the workplace and, through drift and/or take home exposures, in their home environments. For this reason, we are writing to ensure that the draft EPA EJ2020 framework includes considerations of agricultural workers as an environmental justice community. The absence of any reference to farmworkers and to agricultural pesticide exposure as a distinct and important environmental justice concern compels us to write these comments, highlighting the voices of the farmworkers themselves.

Exposure to pesticides is one of the daily realities in the lives of the 2.5 million farmworkers in the U.S. today. Given their persistent exposure to harmful pesticides, it is not surprising that thousands experience acute pesticide illness or injury each year, and countless others suffer chronic health problems as a result of these toxic exposures.

Every year, approximately 1.1 billion pounds of pesticides are applied to agricultural crops in the United States. Pesticide exposure causes farmworkers to suffer more chemical-related injuries and illnesses, including cancers, reproductive and developmental health disorders, than any other workforce in the nation. EPA estimates that there are about 10,000-20,000 pesticide poisonings that occur each year among farmworkers. In addition to pesticide exposure, farmworkers often receive below poverty level wages, live in sub-standard housing, experience intimidation, threats and harassment, and risk their health by performing arduous and repetitive tasks in hazardous environments for extended periods of time.

It is critical that EPA seek input from, reach out to, and hear the voices of farmworkers and farmworker communities around the country in drafting and implementing its plan to address environmental justice communities. In addition, there needs to be an open and transparent process to reach out to farmworker communities and farmworker advocates in the U.S. to ensure that their environmental justice concerns are heard and included in the implementation of the EPA's environmental justice plan. A list of our comments is below, but we feel that hearing the voices of the farmworkers themselves is the most compelling, real, and direct way to recognize the importance of addressing the environmental justice problems facing this diverse and chronically marginalized community of workers.

In 2014, using a questionnaire, FWAFF surveyed over 60 farmworkers in Florida to capture some of their workplace experiences related to occupational pesticide health and safety. This included gathering written testimony from several of the workers and, in one case, from the daughter of farmworker parents. We feel that the firsthand accounts from farmworkers are the most compelling case for the importance of including special consideration of farmworkers as an environmental justice community in the EPA EJ2020 framework. Below are some of the comments excerpted from the surveys and written testimonies. The last names are not included to protect the identities of the workers.

Alicia (worked 10 months in agriculture and never received a pesticide training) – *“Los primeros días, me sentía mareada y me salieron ronchas en los brazos. Tuve que ir al hospital.”* The first days, I felt dizzy and I got rashes on my arms. I had to go to the hospital.

Alberto (worked for 25 years in agriculture in the fields, in ferneries and in nurseries; during that time, experienced rashes, dizziness, headaches, irritated throat, burning eyes, blurred vision) - *“Los trabajos donde se aplican químicos, los riesgos son muchos y la salud siempre está en peligro y la seguridad es muy poca. La preocupación es mucha, pues la exposición de pesticidas es un peligro muy grande y constante para los que trabajamos en los campos de labor, nursería o la hoja.”* The Jobs where they apply chemicals, the risks are many and your health is always in danger and there is little safety. There is much worry, since the exposure to pesticides is a grave and constant danger for the workers in the fields, the nurseries and the ferneries.

Augusta (worked two years harvesting tomatoes and in a nursery) – *“Cuando están esprayando aunque se lejos hace que el aire se contamine y llega hasta donde las personas estamos trabajando.”* When they are spraying, even when at a distance, the air is contaminated and it drifts to where we are working.

Gabriel (worked 20 years in ferneries and nurseries, during that time, he experienced rashes, headaches, dizziness, bloody/runny nose, burning eyes, blurred vision, and muscle cramps) – *“Casi siempre miraba a mis compañeros con ronchas o las manos inchads, especialmente en la hoja.”* Almost always I would see my co-workers with rashes or itching on the hands, especially in the ferneries.

Elvira (worked in ornamental plants and nurseries for 20 years during which time she experienced headaches, cramps, burning/watering eyes, and stomach pains and cramps) – *“Sí, cada que esprayaban que era cada 3 días; en algunas ocasiones era diario.”* Yes, they sprayed every 3 days, and on some occasions, every day.

Carme (worked in picking tomatoes, squash, watermelon, and melon) – *“Malestares, como asco o dolor de cabeza se presenta, cuando andas pizcando. Bueno, cuando han aplicado pesticida, nos retiran un poco lejos. Pero, al igual de rato nos mandan al mismo. Me gustaría que los patrones tuvieron más cuidado con los trabajadores que se preocupen a la salud y seguridad de uno.”* Feeling bad, such as feeling nauseous or with headache, when I am picking. Well, when they have applied pesticides, we go off a little ways. But, after a little while, they order us to go back to doing the same thing. I would like it if the bosses took better care of the workers and that they cared about one’s health and safety.

Blanca (worked 10 years harvesting citrus and 15 years in nurseries) – *“Voy a compartir que cuando trabajaba en la nursería, yo me ponía bien mal del asthma y terminaba en el hospital. Y ahora, que no me expongo, yo no es igual. Y antes cuando trabajaba en el campo, no había baños, ni agua para lavar la maños. Ahora, ya es diferente, mejor para nuestros compañeros de trabajo.”* I am going to share with you that when I was working in the nursery, I got a bad case of asthma and ended up in the hospital. And, now that I am not exposed, it is not the same. And before, when I was working in the fields, there were no bathrooms or water to wash your hands. Now it is different, it is better for our farmworkers.

Mario (worked for 10 years in the fields and in nurseries and he experienced symptoms of vomiting, dizziness, headache, excessive sweating, and blurred vision) – *“No sé los riesgos, pues no recibí ningún entrenamiento. Estaba esprayando cuando sentí estos síntomas. Yo estaba aplicando pesticidas y me sentí con muchos síntomas. Aprendí que los químicos son muy malos para nuestra salud. La seguridad nuestra sería mejor si no nos expusieron a pesticidas.”* I don’t know the risks because I never received a training. I was spraying when I felt those symptoms. I was applying pesticides and I felt many symptoms. I learned that the chemicals are very bad for our health. It would be better for our safety if we were not exposed to pesticides.

Lucas (worked in agriculture for 17 years during which time he experienced symptoms of rashes, dizziness, headache, excessive sweating, cramps, irritated/watery eyes, and stomach cramps) – *“Los pesticidas son muy peligrosos para nuestro cuerpo, pues afectan nuestro sistema imunológico.”* The pesticides are very dangerous for our bodies; they affect our immune system.

Lupita (worked harvesting oranges for 15 years and suffered symptoms of vomiting, dizziness, headache, and irritated/watery eyes) – *“Sí, que estaría bien que los patrones se preocuparon*

por la salud del trabajador y no que vean el asunto de salud y seguridad como un requisito del gobierno. Desafortunadamente, el trabajador es tomado en cuenta como una herramienta más en las fincas y no como un ser humano.” Yes, it would be good if the bosses were concerned about the health of the worker and not that they looked at the issue of health and safety as just a government regulation. Unfortunately, the worker is understood to be no more than a tool in the fields and not a human being.

Miguel – “El trabajo de la agricultura es muy peligroso. El peligro más grande es la exposición a químicos. Los que hemos trabajado en los campos de labor, nurserías o viveros sabemos de ese peligro. Pues, lo hemos sufrido personalmente y hemos visto a algunos de nuestros compañeros afectados. Yo, Miguel, soy un campesino con mucha experiencia de 28 años en todo este tipo de trabajos y quiero que mis compañeros no sufran de la exposición de pesticidas.” Agricultural work is very dangerous. The biggest danger is exposure to pesticides. Those that have worked in the fields, nurseries or greenhouses know this danger. I have personally suffered and I have seen some of my co-workers affected. I, Miguel, am a farmworker with 28 years of having done this type of work and I do not want my community to suffer from pesticide exposure.

Olivia – (experienced symptoms of rashes, dizziness, headaches, excessive sweating, vomiting, bloody nose, irritated/watery eyes, irritated throat and blurred vision) – “Sí, los trabajadores que están más al contacto con las plantas directamente. Dolor de cabeza y culpabilidad por no sabe qué hacer con mi familia por la ignorancia de pesticidas en los campos.” Yes, the workers are in direct contact with the plants. Headache and (I feel) guilty that my lack of knowledge about pesticides in the fields may have done something to my family.

Ramon (worked 17 years in oranges in Florida and in tobacco in North Carolina; he experienced symptoms of vomiting, dizziness, headache, burning/watery eyes) – “Sí, en los campos de tabaco es muy frecuente que los trabajadores tienen los mismos síntomas. Sí, cuando entramos a trabajar en unos campos de naranja y una avioneta estaba rociando cerca”. Yes, in the tobacco fields the workers frequently have the same symptoms. Yes, when we enter some of the oranges groves to work and a plane was spraying nearby.

Yolanda (worked for 25 years in the citrus industry and worked in other crops in various other states; she experienced symptoms of headache, bloody/runny nose, irritated throat and burning/watery eyes during her work experience) – “Sí, estaba al cuidado de unas fincas de naranja y nos pusieron a tirar un químico para matar la hierba que tapa los sistemas de riego y como una hora después de aplicar ese químico, yo y mi compañera experimentamos los síntomas.” Yes, I was working in one of the orange groves and they had us toss out a chemical to kill the weeds that were covering the irrigation system and about an hour after we applied the chemical, my co-worker and I experienced symptoms. “Sí, necesitamos regulaciones que estén enfocadas en la salud de los trabajadores, no en cumplimientos de requisitos. Los daños que los trabajadores tenemos, son a veces para el resto de la vida de ese trabajador. Necesitamos regulaciones e implementaciones que ayuden a proteger la vida de los campesinos.” Yes, we need regulations that are focused on the health of the workers, not just to comply with the requirements. The harm that the workers have are, at times, for the rest of the life of the worker. We need regulations and implementation (compliance) that help to protect the lives of the workers.

Selena (daughter of farmworker parents)

Dear Administrator McCarthy:

My name is Selena. I commend the efforts of the EPA on trying to update the current WPS after 20 years.

As a child of farm workers, this is very important, not only for my parents but for me as well. Seeing them suffer for many years, [due to] the lack of protections these standards currently have, has caused me to want to speak out. Many times, I saw them come home light headed or with blisters on their hands from the exposure to pesticides, and it was frustrating not being able to do anything. As a family, we have suffered firsthand the effects it [pesticides] has on future generations of these farm workers. As a result of my mother working in the fields while pregnant, my sister was born with asthma and learning disabilities. This was 20 years ago and little has changed, because these consequences of pesticide exposures are things we see every day in our communities. I want to urge that these proposed protections not be weakened in any manner but be strengthened even more.

The idea of setting a minimum age for pesticide handlers is great, but in my opinion 16 should not be the minimum age. The age should be set to 18.

As a teenager myself, I can say that at 16 there is no way I was mature enough to think about the consequences of my actions and how it could affect others. Now, we throw into that handling dangerous chemicals? A 16 year old will not be responsible to take care of themselves and others in the case of them handling pesticides. Even with knowledge of the dangers these pesticides can cause, teenagers have this notion of being invincible. The danger this minimum age would cause is tremendous. These kids are not fully developed physically and long term exposures to their already vulnerable body would be devastating to their health which would be a cost liability to them and the government.

Eliminating central posting would go against the 'right to know' of the workers. If they were exposed to these dangerous chemicals, they have the right to know what was spread on the fields and when the adequate time is for reentry. In case of a medical emergency, they should know what chemical was used so they can tell their doctor so their diagnosis isn't misled. Instead, there should be work to reinforce the central posting. Most of these farm workers are scared to ask someone directly for the information for fear of retaliations. And when the workers make a complaint, they should have the rights as any other workers to make this complaint in confidentiality. Many times we see the retaliations that follow a complaint. The workers are isolated and, in extreme cases, even let go because the name was revealed.

At times, we are very forgetful; sometimes I can't even recall things I did yesterday. How do we expect farm workers to remember things from a 15 minute video about pesticides, when this information is given every 5 years? I believe more frequent pesticides trainings should be given, and it should be given in a more effective manner. The rights of the workers should definitely be explained in these trainings, and they should have them done before they enter the fields or have contact with pesticides. What should be included as well should be the type of pesticides that are going to be used and the consequences in the specific crop, as we know a lot of farm workers migrate from state to state depending on crops.

Farmworkers bring food to our table. We owe it to them to protect them and have strong laws to ensure their well-being. The effects of what these proposed changes will have goes beyond that of just farmworkers. If we do not ensure a safe and healthy environment of the work place, the consequences will fall on the farm workers' children and even on the government. We want healthy farmworkers to help our economy and to satisfy our daily needs of food.

These are just some of the many comments from workers that demonstrate the need for stronger protections for farmworkers and for a framework that addresses the environmental justice issues affecting this diverse community. In Florida, the majority of farmworkers are of Hispanic origin – largely from Mexico and Central America, with Haitian farmworkers increasing in percentage, while an African American farm labor force still continues in various areas of the state. Farmworker families often live in rural, even remote, locations, and oftentimes adjacent to fields and farms, in

poor housing conditions, without easy access to services and assistance. I have seen farmworker homes immediately adjacent to greenhouses where pesticides applied and trailer homes surrounded on three sides by tomato fields where farmworker children play. With this in mind, and with the farmworkers themselves identifying the problems and concerns of the community, the Farmworker Association of Florida submits the following comments, recommendations, suggestions, and imperatives for addressing the environmental justice issues facing this community.

Reducing farmworkers' exposure to pesticides:

- **Enforcement and compliance** of the Worker Protection Standard have long been a significant problem in agricultural communities, with the result being that farmworkers and their families often experience hazardous levels of exposure to toxic agricultural pesticides, chemical fertilizers and growth hormones. For example, many workers tell us that they will be asked to sign a paper to say that they have been given a pesticide training. In some cases, there may have been a video available, but without anyone explaining the reason for or importance of the video and the importance to their health and safety of watching the video. In other cases, workers do not ever see the video training that is required by the current WPS. Any plan for the EPA EJ2020 and for the soon-to-be-released updated WPS needs to include a vigorous, effective, broad-based, and comprehensive plan to improve compliance in the workplace and timely and effective enforcement measures, including adequate penalties for violations that can serve as a deterrent to unsafe workplace practices that put farmworkers health and safety at risk.
- **Enforcement and compliance** must include field sanitation regulations. Reports from workers in the field indicate that all too often, workers do not have clean bathrooms (or no bathrooms at all), do not have access to clean drinking water, and do not have handwashing water and/or soap and disposable towels with which to wash their hands. If workers are not able to wash their hands before eating, they are likely ingesting pesticide residue which results in chronic daily exposure to agricultural chemicals. Employers must be cited and fined for non-compliance with field sanitation regulations.
- In order to accomplish greater enforcement and compliance measures, **increased levels of staffing** at the national and regional levels within EPA and at the state level through the partnering agencies, is a critical component for accomplishment of this goal. This includes the need for **greater oversight of state level programs** to ensure that proper procedures are in place and that adequate time, resources, and emphasis are allocated to ensuring a rigorous enforcement and compliance program.
- A major stumbling block to identifying areas of non-compliance is the fact that farmworkers are intimidated from speaking out when there are workplace violations. Job loss, fear of being reported to immigration authorities, threats by labor contractors and supervisors, lack of proficiency in English and other factors keep farmworkers from denouncing workplace abuses. EPA should **implement an anonymous hotline** (in English and Spanish) where farmworkers can feel free to call to report workplace pesticide problems without having to reveal their identities.
- The majority of the farmworkers, including pesticide handlers, in the U.S. today are Spanish-speaking immigrants from Mexico and Central America. Yet, agricultural pesticide labels are largely only in English. Retail stores that sell residential and commercial use pesticides generally require pesticide labels in English in Spanish to accommodate the large U.S. Hispanic population. The fact that farmworkers – low-income, minority workers in marginalized communities – do not have access to agricultural pesticide labels in English and Spanish is an

environmental justice issue that EPA EJ2020 should include as a priority to address. Considering the number of farmworkers in the U.S., **bilingual Spanish/English agricultural pesticide labels** have the potential to be a factor impacting hundreds of thousands of farmworkers across the country.

- Environmental justice concerns for farmworkers cannot be separated from other issues – such as substandard housing, wage theft, lack of proper field sanitation, sexual harassment, unsafe transportation vehicles and other issues. Hence, EPA should work collaboratively and holistically with the Inter-Agency Task Work Group to address the inter-locking issues that collectively effect farmworkers' environmental health. Therefore, **EPA needs to include farmworker issues within the Interagency Work Group and in all cabinet-level discussions.**
- Through intensive outreach efforts to farmworkers, farmworker organizations and farmworker advocacy organizations, EPA must **reach out to hear the farmworker voices** related to the effectiveness of statewide enforcement issues and during enforcement activities.

Farmworker Health and Safety

- A large body of scientific research exists that looks at the links between pesticide exposure and acute and chronic health effects. EPA must do **a comprehensive review of the independent scientific literature** for classes of pesticides and of specific pesticides to assess the impacts to farmworkers' health of daily exposure both in the agricultural workplace and in their rural homes settings and personal vehicles. Reliance on industry studies irresponsibly discounts the vast number of studies that have increasingly shown correlation between exposure and health outcomes
- The scientific literature review should be used to **develop more health protective measures** for farmworkers in the workplace and in their homes and communities.
- **Medical monitoring for farmworker pesticide handlers and applicators** should be implemented to determine baseline measures and any consequent levels of exposure. If medical monitoring were required nationwide, agricultural workers would have less concerns about job loss from outcomes from monitoring that identify exposure. This could serve to increase compliance with applicator and handler standards.
- Farmworkers are more than individuals. They are families and communities. As such, EJ protective measures should take into consideration the **reproductive health of farmworker families, childhood exposures to pesticides from residues in the home and surrounding environment, early-life exposures of infants and toddlers, including exposures from drift and deposits in soil around farmworker labor camps and community housing.** Hence, monitoring efforts should include soil, water and air testing around fields and residential areas adjacent to fields that house farmworker families.
- Farmworkers often work in a variety of crops on which various different pesticides are used at different times and/or in combination. Currently, there are insufficient scientific studies that study the additive, cumulative and synergistic effects on human health of chronic exposure to multiple pesticides and pesticide mixtures. These **additive, cumulative and synergistic effects of pesticide exposure** should be taken into consideration in studies of farmworker health and safety and in regulations to reduce the risks – such as via buffer zones – to farmworkers' health.
- The pathways of exposure for agricultural workers in the U.S. are dermal, respiratory and ingestion. Farmworkers often have nowhere to go to eat their meals, and often eat while **in the fields.** Considering they often also do not have hand washing water and soap, they

can be ingesting pesticide residue on their hands and clothes. Added to dermal contact with pesticides and inhalation of pesticide drift, the multiple routes of exposure put farmworkers especially at risk. These **multiple routes of exposure should** inform the EPA's plan to address the environmental justice concerns of this community.

- The **Office of Pesticide Programs must be included** in the list of EPA offices because OPP is the office under which the Worker Protection Standard for farmworkers is located and because other EPA policy decisions that affect environmental justice issues impacting farmworkers would be generated from this office.
- Under the list of priorities in 2015, there is an emphasis on permitting, however, for farmworkers the issue of significant importance is the registration of pesticides and the protections for workers included in those registration processes. EPA must do a better job of **thoroughly studying health effects of pesticides before registering any new agricultural chemicals**. In addition, the plethora of new scientific studies on currently registered pesticides must be taking in to consideration in the registration review process and in the re-registration of pesticides.
- The EJSCREEN should include **pesticides and other agricultural chemicals with which farmworkers** are likely to come into contact and that farmworkers and their community representatives be included in the stakeholder engagement.
- **Farmworkers should be included in discussion and planning related to climate adaptation and resilience efforts**, especially as expected continued increase in higher temperatures are projected to have an impact on agriculture, and, hence, on both the jobs and the health of farmworkers, including exacerbation of pesticide exposure related to heat stress and heat exposure.
- The priorities list should include 'measurable activities to advance environmental justice in the National Program Managers guidance.' Those measures should include living and working conditions for the nation's 1.5 million farmworkers.
- The asset and mapping science tools for Plan EJ2020 should include **mapping of agricultural areas, pesticide use and farmworker communities** and EJ training for all employees should include training related to health and safety protections and regulation enforcement for farmworkers.
- **Banning chlorpyrifos should be an environmental justice priority for EPA**. The chemical was banned for residential use years ago because of studies on the impact of the pesticide on toddlers and young children. The continued use of chlorpyrifos in agriculture, where the majority of farmworker children are at risk of direct and indirect exposure to pesticide residue in their homes, on their parents' clothes and bodies, in vehicles in which they are transported, in their rural schools, and on the ground where they play is an environmental injustice that impacts the next generation of youth and young adults in this country. When chlorpyrifos is seen as an environmental justice issue, there can be no justification for the continued use of this harmful pesticide.

Finally, the most effective role of the EJ2020 Plan related to promoting environmental justice for and protecting the health and safety of farmworkers is for the Office of Environmental Justice to promote the precautionary principle among other EPA offices and to include in intra-agency and inter-agency discussions and deliberations the importance of the development and registration of less toxic alternatives to pesticides and other environmental chemicals.

FWAF is a 32-year old, statewide, grassroots, community-based, farmworker membership organization with five offices in Florida and a membership of close to 7,000 farmworkers who work in the vegetable, citrus, mushroom, sod, fern and foliage industries. For 20 years, the organization has conducted pesticide health and safety trainings with farmworkers to inform them about the occupational risks of pesticide exposure. The trainings include information on how farmworkers can take measures to try to protect themselves and their families and reduce risks to their health and safety from exposure to agricultural chemicals. Farmworkers come to our offices with rashes and other symptoms of pesticide exposure and with stories of abuse in the workplace. FWAF files complaints on behalf of the workers, but in most cases, farmworkers are too afraid to speak to agency officials for fear of losing their jobs or because of their immigration status.

Over 50% of our staff and almost all of our Board of Directors are former farmworkers themselves and/or come from farmworker families and live in the rural and/or farmworker communities in which we work. Many of our staff members have firsthand experience of being exposed to pesticides in their work environments while they were agricultural workers. In addition, they have friends, neighbors, relatives and acquaintances who have experienced symptoms of occupational exposures, and they have received and filed complaints of workplace violations of Worker Protection Standard and Field Sanitation regulations. They work in and are based in the communities and regularly hear from community members about workplace conditions in the fields, greenhouses, ferneries and mushroom plants where the workers work. In the years since FWAF began the pesticide health and safety work, many scientific studies have been conducted that increasingly identify links between pesticide exposure and chronic health issues for those exposed and their offspring.

Thank you for your time and attention.

Sincerely,

A handwritten signature in cursive script that reads "Jeannie Economos".

Jeannie Economos
Pesticide Safety and
Environmental Health Project Coordinator



July 14, 2015

Mr. Charles Lee
Deputy Associate Assistant Administrator for Environmental Justice
U.S. Environmental Protection Agency
Office of Environmental Justice (2201-A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Draft EJ 2020 Action Agenda Framework

Dear Mr. Lee:

Farmworker Justice (FJ) and the organizations listed below submit these comments in response to the request of the U.S. Environmental Protection Agency (EPA) for public comment on the EPA's Draft EJ 2020 Action Agenda Framework. We support EPA's work to make a difference in environmentally overburdened, underserved, and economically distressed communities, and urge EPA to consider farmworkers in its environmental justice initiatives. Historically underrepresented in EPA decision making, they face many health and environmental burdens not only at their workplaces, but also in the rural communities where they live. Migrant and seasonal farmworkers who cultivate and harvest labor-intensive crops on farms are especially at risk of harm from pesticides. Protection of farmworkers and their families falls squarely within the Agency's stated priorities of environmental justice. However, EPA's Draft EJ 2020 Action Agenda Framework does not address pesticides, which is the single largest environmental pollutant in farmworker communities. EPA must act in a more concerted way to address the disproportionate impact of environmental policies on farmworker communities.

Farmworker Justice is a national, non-profit advocacy and education organization that works to improve working and living conditions for migrant and seasonal farmworkers and their families. Since its founding more than 30 years ago, FJ has advocated for agricultural workers in matters before the EPA, including issues relating to pesticides that pose unacceptable health and safety risks to farmworkers and their families and communities.

General comments

We support the Draft EJ 2020 Action Agenda Framework and the agency's commitment to environmental justice. We urge EPA to implement the plan throughout the entire

agency, including in pesticide regulation decision-making, and to foster consideration and involvement of farmworkers in the Agency's work.

However, we note that the draft framework and resources such as the EJSCREEN completely ignore pesticide policy. Pesticide policy must be a priority for EPA. The agency should approach its role in pesticide regulation from an environmental justice perspective, placing particular concern on the health hazards posed by pesticides for overburdened populations, including agricultural pesticide handlers, other farmworkers, and their families. Furthermore, though pesticide registration does not fit easily into any of the focus areas (rulemaking, permitting, and scientific tool development do not seem to specifically address registration), EPA must ensure that implementation of Plan EJ 2020 extends to its pesticide-related functions.

As perhaps the most important of EPA's pesticide-related functions, the registration process should be the first step in ensuring the safety of farmworkers and agricultural communities. Prohibiting the use of toxic chemicals is the most effective method for pesticide exposure reduction. Many studies show that farmworkers face significantly higher levels of pesticide exposure as compared with the national reference sample.¹ Despite wearing WPS-recommended clothing, wearing clean work clothes, and the combination of hand washing with soap and wearing gloves, workers have been found to have significantly high levels of exposure.² Pesticide exposure must be curbed at the source. The absence of specific mention of EPA's pesticide-related functions seems to suggest that the agency does not see environmental justice as relevant to its role as pesticide regulator. We hope this is not the case.

EJSCREEN

We support the use of EJSCREEN to screen geographic locations for overburdened populations who are disproportionately exposed to different types of pollution. The EJSCREEN uses 12 environmental justice indexes to measure environmental and demographic indicators. For the environmental indicators, the EPA uses the following EJ indexes: particulate matter, ozone, lead paint indicator, traffic proximity, proximity to national priority list sites, proximity to risk management plan facilities, proximity to treatment storage disposal facilities, and proximity to major direct water dischargers. For the demographic indicators, the EPA uses the following EJ indexes: low-income, minority, less than high school education, linguistic isolation, individuals under age 5, and individuals over age 64.

As discussed above, we are disappointed that pesticide exposure is not included as one of the environmental indicators that the EPA will measure in the EJSCREEN. Pesticides are

¹ See, e.g., Anita-Schwartz, Norah *et al.*, "Where they (live, work and) spray": Pesticide exposure, childhood asthma and environmental justice among Mexican-American farmworkers, *Health & Place* 32:83-92 (2015); Acury, Thomas A. *et al.*, Lifetime and Current Pesticide Exposure Among Latino Farmworkers in Comparison to Other Latino Immigrants, *Amer J Ind Med* 57:776-787 (2014)

² Salvatore AL *et al.*, Occupational behaviors and farmworkers' pesticide exposure: findings from a study in Monterey County, California, *Am J Ind Med*. 51(10):782-94 (2008)

heavily used in agricultural work and place farmworkers and their families in danger of acute poisoning and long-term health effects. We recommend that pesticide exposure be included as an environmental indicator. EPA should establish a national pesticide use reporting system to collect information on all agricultural pesticide applications. Such a system would allow EPA to thoroughly assess risks to human health and the environment from pesticide exposure. However, in the interim, surrogate data based on crop surveys should be used to include pesticide exposure as an environmental indicator in the EJSCREEN.

The farmworker community is a classic example of an overburdened population and satisfies many of the EJSCREEN's demographic indicators. There are approximately 2.4 million farmworkers employed on farms and ranches in the U.S. According to the most recent National Agricultural Workers Survey (NAWS), almost half of farmworkers are 34 years old or younger, with an average annual income of \$15,000 to \$17,499.³ The vast majority of farmworkers are immigrants and 70% of them speak Spanish as their dominant language. We recommend that EJSCREEN include the farmworker community as one of the target demographics for EPA's environmental justice work.

Section I(C): Deepen environmental justice practice within EPA programs to improve the health and environment of overburdened communities

EPA proposes to advance environmental justice through compliance and enforcement. We support this goal wholeheartedly, as vigorous and consistent enforcement of environmental regulations nationwide is a necessary aspect of environmental justice. In states where compliance monitoring and enforcement actions are inadequate, populations risk exposure to inequitable environmental and health hazards.

In December 2011, the Office of Inspector General (OIG) at EPA released a report contending that EPA does not administer a consistent national enforcement program and that state enforcement programs are underperforming, citing EPA data indicating a high rate of noncompliance coupled with a low level of enforcement.⁴ OIG concluded that the primary cause was EPA's failure to consistently "hold states accountable for meeting enforcement standards";⁵ "set clear and consistent national benchmarks";⁶ and effectively curtail weak and inconsistent enforcement by states."⁷ In response, EPA largely agreed with the overall findings that enforcement performance varied significantly nationwide.⁸

OIG recommended, and we agree, that EPA should establish clear national lines of authority for enforcement that include canceling outdated guidance and policies; consolidating and clarifying remaining enforcement policies; establishing clear

³ Farmworker Justice, Selected Statistics on Farmworkers (2014) available at,

<http://www.farmworkerjustice.org/sites/default/files/NAWS%20data%20factsht%201-13-15FINAL.pdf>

⁴ U.S. EPA, Office of Inspector General, EPA Must Improve Oversight of State Enforcement, Report No. 12-P-0113 (Dec. 9, 2011); <http://www.epa.gov/oig/reports/2012/20111209-12-P-0113.pdf>

⁵ Id. at 11.

⁶ Id.

⁷ Id. at 15.

⁸ Id. at 21.

benchmarks for state performance; and establishing a clear policy describing when and how EPA will intervene in state enforcement.

More recently, in May 2015, the OIG released a report which found that EPA's oversight of states' enforcement of the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) was insufficient due to “inadequate guidance and training.”⁹ OIG also criticized EPA for an “overall lack of records and transparency in how issues associated with state inspections are addressed.” For example, OIG noted that EPA project officers often failed to do basic tasks such as taking notes for inspection reports or including evidence for why they found states' enforcement actions to be appropriate.

OIG recommended that EPA develop guidance on how project officers should conduct their oversight of state pesticide inspections and that project officers are periodically trained on best practices. We believe that the project officer training should include an opportunity to hear directly from farmworkers and their advocates about common violations they experience of the Worker Protection Standard and other pesticide laws and obstacles to reporting and compliance.

Section II(B): Working with other federal agencies to advance environmental justice through the Interagency Working Group on Environmental Justice

The Draft proposes to facilitate the active involvement of all federal agencies in advancing federal environmental justice and community-based activities as part of the Federal Interagency Working Group on Environmental Justice (EJ IWG), which was established in 1994 under Executive Order 12898. We support this goal, particularly as it pertains to protecting farmworkers and agricultural communities from harmful pesticide exposure, and urge EPA to work with agencies such as the Occupational Safety & Health Administration (OSHA), the Department of Health & Human Services (HHS), the Centers for Disease Control and Prevention (CDC) and national research agencies to achieve this objective.

EPA should collaborate with research agencies, such as the National Institutes of Health and the National Institute for Occupational Safety and Health, to obtain targeted research data to ensure its decisions regarding pesticide registration, risk assessments and worker safety standards are based on sound science that is free of industry influence. When assessing risk associated with a given pesticide (or class of pesticides), one of the goals can be to identify the exposure level that represents an acceptable level of risk.¹⁰ This is done by comparing the expected or estimated exposure to the toxicity of the pesticide. While sources of toxicity data include voluntary submissions by the registrants, additional research is needed to fill the data gaps that are rampant in farmworker occupational health issues. Unless adequate and peer reviewed studies are conducted to

⁹ U.S. EPA, Office of Inspector General, EPA's Oversight of State Pesticide Inspections Needs Improvement to Better Ensure Safeguards for Workers, Public and Environment Are Enforced, Report No. 15-P-0156 (May 15, 2015); <http://www.epa.gov/oig/reports/2015/20150515-15-P-0156.pdf>

¹⁰ EPA, Risk Assessment Process for Tolerance Reassessment (October 8, 1999) available at <http://www.epa.gov/oppfead1/trac/paper44.pdf>

account for actual exposure experienced by farmworkers in real life circumstances, an accurate assessment of risk for pesticides cannot be achieved.

Similarly, there is a glaring gap in information pertaining to the number of annual pesticide poisonings nationwide, since there is no national reporting system for exposure-related injuries. A partnership between the Center for Disease Control (CDC) and EPA to track and monitor incidents of pesticide poisoning would provide much needed exposure data. The lack of reliable statistics on pesticide-related injuries and the dearth of research on pesticides' impact on farmworkers perpetuate EPA's refusal to limit their use due to lack of evidence of causation of injuries and toxicity when assessing risk to human health.

While EPA is the primary regulatory agency authorized to assess and reduce the risk of pesticide exposure and injuries among farmworkers, farmworkers would benefit greatly from a coordinated effort among federal agencies to implement the Worker Protection Standard (WPS) and provide workers with comprehensive information regarding pesticides and the associated health risks.

Section II(C): Support transformative efforts in communities to advance environmental justice through EPA's Community Resources Network

EPA also aims to empower communities to take action to improve their health and environment, through community engagement and responsiveness to community concerns. We fully support this goal and encourage EPA to work towards its full realization.

EPA should begin a concerted outreach initiative to engage farmworkers and rural communities in the policymaking process and consult them on the health impacts of pesticides. EPA can include more farmworker representatives on agency advisory committees and solicit their input on decisions that will impact farmworkers. EPA should make meetings and materials more accessible to the majority of farmworkers, for whom Spanish is their primary language.¹¹ Additionally, EPA should engage in outreach to the increasing number of farmworkers who come from indigenous communities of Mexico and Central America, and speak Mixteco, Triqui, or other indigenous languages. These workers experience particular hardships, including language and cultural barriers, racism, and extreme poverty, that may compound the disproportionate impact of environmental policies on their communities.

Because of language barriers and limited access to electronic communication, many farmworkers cannot participate in the processes that EPA has established to receive feedback on environmental policy decisions. Since farmworkers tend to have low-wage jobs, they often cannot afford to buy computers. They also tend to live in substandard housing with no internet access. However, most farmworkers use mobile technology to access the internet. A qualitative study on the use of mobile technology among

¹¹ Farmworker Justice, *supra* note 3.

farmworkers in California found high rates of mobile phone use.¹² Farmworkers ranked their mobile phone among their most important possessions and use them to talk, text, share photos, watch and record videos, listen to music, play games, and access the internet, among other uses. EPA should incorporate the use of mobile technology to communicate with farmworkers, and such communication should be both culturally and literacy appropriate for farmworkers and their family members.

Finally, it has come time for EPA to acknowledge the reality of many farmworkers' limited English proficiency and mandate that pesticide labels be published in both English and Spanish. Without access to information about the dangers of the chemicals they work with every day, farmworkers will continue to suffer thousands of pesticide-related poisonings and illnesses a year. Bilingual labels would also give mixers, applicators, and harvesters the information they need to monitor their health impacts from particular pesticides, and inform EPA of the dangers of particular chemicals. Farmworker Justice, along with other advocacy groups, has petitioned EPA to require bilingual labels.¹³ EPA should act quickly to implement this common-sense environmental justice and civil rights policy.

Section IV(b): EPA's implementation of Title VI of the Civil Rights Act through a comprehensive, long-term Office of Civil Rights (OCR) Strategic Plan

One of EPA's most important civil rights-related functions relates to ensuring a fair and comprehensive complaint resolution process. EPA plans to develop a comprehensive, long-term OCR Strategic Plan to implement Title VI of the Civil Rights Act. We support EPA's work to implement Title VI to prevent discrimination against farmworkers and other vulnerable communities. However, EPA has a long way to go to ensure that allegations of discrimination are promptly investigated to accurately determine whether the civil rights laws have been violated and to provide the complainant with appropriate relief.

For instance, in June 1999, a Title VI claim was filed, *Angelita C. v. California Department of Pesticide Regulation*, by the Center on Race, Poverty & the Environment, California Rural Legal Assistance, Inc., California Rural Legal Assistance Foundation, and Farmworker Justice on behalf of Latino parents and children at 6 schools in California, alleging that the state's Department of Pesticide Regulation (DPR) discriminated against Latino school children by allowing unhealthy levels of methyl bromide to be applied near schools populated by mostly Latino children. While EPA determined that DPR's actions were in fact discriminatory, the Agency's subsequent handling of case was wholly inadequate for the affected parties.

Once EPA found a violation, the Agency failed to inform the parents or their attorneys. Nor did EPA refer the civil rights violations to the U.S. Department of Justice for

¹² Simeonov, I. and Hamm, K., Use of Mobile Devices by Low-Income, Low-English Proficiency Hispanic Consumers, session at the American Public Health Association Annual Meeting (2012) available at <https://apha.confex.com/apha/140am/webprogram/Paper269521.html>

¹³ See 76 Fed. Reg. 17606. Petition is included in docket EPA-HQ-OPP-2011-0014.

enforcement. Instead, EPA entered into secret negotiations with DPR. The terms of that settlement provided no relief for the children or their parents and only required additional monitoring of methyl bromide near schools and “outreach” by DPR. In order to effectively implement a robust and just civil rights complaint and compliance review process, EPA must include aggrieved parties in both the investigation and settlement process, which was clearly not done in the *Angelita C* case.

Thank you for the opportunity to submit comments on the Draft EJ 2020 Action Agenda Framework. We support EPA’s efforts to advance environmental justice. However, as detailed above, there are additional policies that the Agency should adopt to carry out its responsibilities regarding environmental justice and civil rights for farmworkers and their families. We urge EPA to implement the plan throughout the entire Agency, including in pesticide regulation decision-making, and to foster consideration and involvement of farmworkers in the Agency’s work.

Farmworker Justice
California Rural Legal Assistance Foundation
Farmworker Association of Florida
Migrant Clinicians Network
Pesticide Action Network North America

From: Emily Harris <[REDACTED]>
Sent: Sunday, July 12, 2015 2:36 PM
To: ejstrategy
Cc: Anderson, Israel
Subject: public comment for the Draft EJ 2020 Action Agenda Framework

Dear EJ Strategy Representative;

Please accept my comments for the [draft EJ 2020 Action Agenda framework \(PDF\)](#). Environmental Justice is based upon the reality that there is an adverse burden for participation in policy making activities and decisions by community members that are stressed by environmental threats. In order for EJ to provide appropriate and meaningful assistance for community members, the basic necessities for participation must be addressed. Assistance in assessment, organization, planning, communication, legal interpretation, evaluation, analysis and submission of recommendations to policy makers capable of bringing about meaningful change must all be nurtured. I was not able to obtain answers to basic questions about the current EPA EJ program prior to the submission of this email. Availability and access to concrete resources are vitally important to survival of grass roots organizations. Although the EPA website is amazing and overflowing with information, it is still very difficult for community folks to even know where to begin. By establishing a commitment to a relationship with community groups (which I believe the both the 2014 and the 2020 plans do) constituent contact is vitally important. There are records of previous quarterly conference calls on the website, but no mention of current activities. The National, Arkansas and Texas EJ workshops were invaluable to me attend, but what are plans for follow up? The planning committee is a great foundation for a local stakeholder group, but to my knowledge there has been no request for ongoing participation. Ensuring ongoing communication at the state, region and national level with community groups, could very well be an opportunity to provide them with access to resources that are critically necessary for their survival. So many forces work against volunteer community group success, that whatever we can do to provide concrete accessible resources would be a very good thing.

These are examples of two organizations that provide free access to step-by-step guidance to improving community health. Maybe this type of resource is already available from the EPA and I just don't know about it.

County Health Rankings and Roadmaps- <http://www.countyhealthrankings.org/>

Community Tool Box <http://ctb.ku.edu/en>

Including step by step such as provided by the two resources above, could go a long way in improving stakeholder participation.

Additionally, participation expenses in EPA sponsored events should be prepaid by the hosting agency. Requiring community members to bear the burden of the expense is unreasonable. The reimbursement process now (in my experience of attending both the Texas and Arkansas EJ workshops) takes an excessive amount of time and numerous mistakes were made by EPA staff in processing the paperwork. Agency employees are not subjected to this treatment, neither should community members.

Additional funding should be made easily available and in a timely manner to support community based organizational activities to address significant environmental concerns. Increasing community member access to technical assistance and training resources would assist to both further the mission of EPA EJ and promote community health and wellbeing.

Sincerely-

Emily L. Harris, MPH

Faulkner County Citizens Advisory Group

From: Alessandra Jerolleman <[REDACTED]>
Sent: Wednesday, July 15, 2015 11:21 PM
To: ejstrategy
Subject: Environmental Justice Framework

Good Evening,

I'd like to submit the following comment on behalf of the [First Peoples Conservation Council of Louisiana](#).

"We are pleased to see EPA's continued commitment to furthering environmental justice through its programs, policies, and activities. We wish to provide the following input to the draft EJ 2020 Action Agenda Framework: In order to fully support environmentally overburdened, underserved, and economically distressed communities, EPA must specifically reach out to and engage with non-Federally Recognized Tribes. There current draft mentions the importance of coordination with Tribes multiple times, but the existing policy on consultation with Tribes is limited to those Tribes with Federal recognition. Although the current draft does specifically reference Indigenous Peoples, we feel that it is critical that non-federally recognized Tribes be explicitly mentioned as stakeholders as well."

Regards,

Alessandra Jerolleman, PhD, MPA, CFM
Senior Emergency Management and Hazard Mitigation Planner - JEO Consulting Group Inc. - www.jeo.com
VP Community Resilience and Hazard Mitigation - Water Works - <http://www.waterworksla.com/water-works>
Distinguished Affiliate Professor - Emergency Management Department - Jacksonville State University
[REDACTED]

From: Gage Blasi (RIT Student) <[REDACTED]>
Sent: Thursday, April 16, 2015 11:37 PM
To: ejstrategy
Cc: Hang Ryeol Na
Subject: Public Comment on EJ 2020

Follow Up Flag: Follow up
Flag Status: Flagged

Public Comment on EJ 2020

by: Gage Blasi

As a college student who has a strong interest in the Environment, I am glad to see there is a continuing process to try to improve upon already established plans and actions about the Environment. It is especially important to emphasize an overlooked part of the Environment, which is Environmental Justice.

To build upon the previously Plan, which was EJ 2014, is a smart idea in many ways. I like how a lot of the work in this new plan is based off of the old one. Having the old plan to reference and show, as proof of improvement will encourage a lot of people to change their ways. This could have a tremendous positive effect on overburdened communities who just need that little push to get things going in the right direction again. The only negative of basing the new plan on the old one is maybe the old plan did not have the same good result in all regions. There could have been a few scattered negative results that will see nothing good coming from the new plan.

Environmental Justice is such a sensitive topic because it involves races and prejudices. There must always be precautions in place to make sure a plan is focused to divert the negatives of what racism can bring. I believe with things mentioned in this plan like more collaboration with partners, communities will begin to see how they can progress. The good thing about collaboration is that if positive results are shown from one case, then others will follow suit, and a whole slew of positive integration will result.

I believe this plan is a great next step in the process of bettering Environmental Justice as a whole. Relying on the backbone of the old plan to reinstitute a new plan will prove to be worthwhile when it comes down to it.

From: Guillermo Leon (RIT Student) <[REDACTED]>
Sent: Monday, May 11, 2015 1:37 PM
To: ejstrategy
Cc: Hang Ryeol Na
Subject: Public comment on draft EJ 2020 Action Agenda Framework

To Whom It May Concern

As a young Mexican-American who grew up in The Bronx, NYC, the environmental justice work of the EJ 2020 Action Agenda makes me very proud. The amount of trash, non-recycled recyclables, and poorly maintained non-environmental infrastructure that I have witnessed and have experienced around my local city is enormous, which undoubtedly has led to environmental degradation in my community. Although we are proud people, we are not very environmentally aware of what is going on. This is why I think section II, subsection C is so important and should be focused on. Using community-based, public-private partnerships for general and location specific engagement. If the people know and are aware we can help. Inspire us!

I am very excited to see what is implemented in overburdened communities and the achievements made by the EPA. Hopefully my local community is reached too, but within a few years I would like to make an impact in my local governments decision making, which as of section II, subsection A, should be promoted with consideration of environmental justice, which would provide the greatest moral approach to reaching sustainability in our community.

After looking over the draft I come closer to realizing that my career path may lie in environmental policy, and would be honored to help further what the EJ 2020 Action Agenda is going to change in my local community.

Deep Regards,

Guillermo Leon, Rochester Institute of Technology, Environmental Science(B.S.)

From: Hilary E. Kramer <[REDACTED]>
Sent: Wednesday, July 15, 2015 1:00 AM
To: ejstrategy
Subject: EJ 2020 priority

One of the most pressing issues for EPA to address in EJ2020 Action Agenda is the issue of reducing near-roadway air pollution, and the associated health risks (dangers), for those who live, work and go to school or daycare within a mile of a major roadway.

The documented health risks span from documented increases in asthma, ER visits, higher rates of autism, even to childhood leukemia, and more. We also know that pregnant mothers have higher rates of preeclampsia when exposed to certain near roadway air pollutants. We want EPA, from the top down, to develop a tangible strategy to not only protect our citizens but to educate the most vulnerable. We need a clear strategy with clear environmental / health results identified. We need asthma and cancer rates to go down in children. We cannot tell people to merely go indoors when the air quality is bad outdoors because the ambient air issues can compound indoors and can be at elevated levels.

We can address this issue using the existing Clean Air Act, and associated regulations. In EJ areas, we can require and deploy additional near-roadway air monitoring (more than what is required by the Dioxide National Ambient Air Quality Standards, NAAQS), use existing NAAQS required State Implementation Plan development opportunities (require EJ involvement in the State Implementation Planning process to address near roadway concerns in counties areas of the U.S. that are not attaining the NAAQS), use tools with Transportation Conformity, require project level conformity hot-spot analyses and more.

Addressing this national children's health emergency is the right thing to do. If EPA ignores this crisis of delays action on an issue that disproportionately negatively impacts minorities, then this becomes another issue of environmental racism. We must do all that we can to make tangible difference to protect the health of the most vulnerable (pregnant mothers, infants and children) from the dangers of near-roadway air pollution.

Sent from my iPhone



June 4, 2015

By E-mail

Charles Lee
Deputy Associate Assistant Administrator for Environmental Justice
ejstrategy@epa.gov

Re: Comments on draft EJ 2020 Action Agenda framework

Dear Mr. Lee,

Housing Land Advocates (HLA) provides advocacy, education, technical assistance and legal representation on land use matters affecting affordable housing.

Since our founding in 2004, we have worked with local governments, interest groups, affordable housing providers, land use policy makers, and planners to ensure that state and local housing obligations are being met.

Throughout all that we do, collaboration with other organizations has been a key strategy. We know that the impacts of housing affordability reach far beyond the basic need for shelter: Housing is tied to public health, racial equity, and environmental issues. Our work has brought people together around common interests, creating a stronger voice for everyone.

HLA applauds the EPA's efforts to advance and integrate environmental justice from the federal to local level. Undoubtedly, these efforts will positively impact environmentally overburdened, underserved, and economically distressed communities.

Please consider the following comments to the draft EJ 2020 Action Agenda framework:

1. Include the private sector and non-profits in EPA's definition of partners.

As is, the EJ 2020 Action Agenda includes the private sector and non-profits as a resource group but not as a group to engage for purposes of establishing best practices and new strategies. HLA recognizes that the private sector and non-profits may already be represented and engaged in EPA's process. However, HLA would like to point out that formally including all stakeholders early in the process is a good way to ensure buy in to EPA's environmental justice programs and initiatives.

2. Include more substance and guidance in the EJ 2020 Action Agenda.

The nature of strategy documents requires broad, overarching goals. To the extent possible, HLA encourages the EPA to include more details, substance, and guidance in the EJ Action Agenda. For instance, for each of the broad goals, the EPA could include illustrative examples of actions that the EPA views as a means to accomplish the broader goal.

3. Improve communication regarding environmental justice to the community at large.

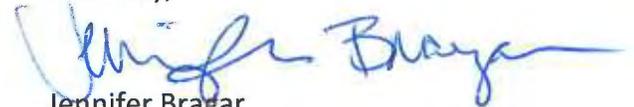
Regarding compliance and enforcement actions, the EPA plans to enhance communication and transparency with affected communities and the public regarding environmental justice concerns. HLA believes that this plan is very important. A communication strategy aimed at the community at large, to the affected communities will allow other members of the community to voice concerns on behalf of affected communities because oftentimes the affected communities are underrepresented at the leadership and decision-making table. Accordingly, expanding the communication target could bring more attention and support to an environmental issue that impacts an environmentally overburdened, underserved, and economically distressed community.

4. Include strategies that demonstrate community enhancement without displacement.

With regard to demonstrating progress on outcomes that matter to overburdened communities, the EPA plans to show positive impacts of the EPA's work through community-level results, such as revitalization and sustainability, partnerships and collaborative problem-solving, and grass roots capacity building. It is important to show the positive impact, and thereby the significance, of EPA's efforts to affected communities. HLA suggests that EPA also include strategies to demonstrate the positive impacts of EPA's programs in affected communities. The positive impacts should include overall enhancement or improvement without displacement of long-time residents or disruption of the affected community's existing social network.

We hope that these comments are helpful. Thank you for your efforts to advance environmental justice and for the opportunity to comment.

Sincerely,



Jennifer Bragar
President

GSB:7107772.1 [13046.00117]



Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

July 14, 2015

SENT VIA EMAIL ONLY

Charles Lee
Deputy Associate Assistant Administrator for Environmental Justice
USEPA, Office of Environmental Justice (2201-A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Comment on the inclusion of prisoner populations in EPA's Draft Framework for EJ 2020 Action Agenda

Dear Mr. Lee:

The Human Rights Defense Center's (HRDC) Prison Ecology Project and the undersigned organizations submit the following comment on the Environmental Protection Agency's EJ 2020 Action Agenda Framework.

While it is encouraging to see the EPA attempting to increase the effectiveness of Executive Order 12898 and Title VI of the Civil Rights Act in protecting communities that have been overburdened by industrial pollution, we also find that there is a significant piece missing to the dialogue thus far: recognition of the vast number of prisoners and their families as an extremely and uniquely overburdened population.¹

The need for EJ 2020 comes from the unfortunate reality that many of the environmental permit approvals that have taken place in recent decades, and continue today, fall into a category of poverty discrimination policies which almost exclusively impact poor communities, with a disproportionate impact on poor communities of color. Few industrial sectors exemplify this more clearly than the prison industry.²

¹ HRDC uses the term "prisoner" to refer to people held in prisons, jails, detention facilities, civil commitment centers and other facilities that hold people against their will as punishment or while awaiting court-related proceedings, i.e. trial, sentencing, deportation, etc.

² On July 9, 2015, Prison Policy Initiative released a new report on prisoner income: "Using an underutilized data set from the Bureau of Justice Statistics, this report provides hard numbers on the low incomes of incarcerated men and women from before they were locked up.... The American prison system is bursting at the seams with people who have been shut out of the economy and who had neither a quality education nor access to good jobs. We found that, in 2014 dollars, incarcerated people had a median annual income of \$19,185 prior to their incarceration, which is 41% less than non-incarcerated people of similar ages." Source: <http://www.prisonpolicy.org/reports/income.html>

P.O. Box 1151
Lake Worth, FL 33460

Phone: 561.360.2523 Fax: 866.735.7136

Paul Wright, Executive Director: pwright@prisonlegalnews.org

A recent report from the Prison Policy Initiative shows that, according to the U.S. Census, blacks are incarcerated at a rate five times that of whites, and Hispanics/Latinos are nearly twice as likely to be incarcerated as whites. It goes further to illustrate that white people are underrepresented in every one of the 50 states' prison populations, whereas Hispanic/Latino, black and Native Americans are consistently overrepresented in every state.³

There are over 2.3 million people incarcerated in prisons, jails, immigration detention centers and other correctional facilities in the United States; if all of those prisoners were housed in one location, it would constitute the fourth largest city in the nation with a population greater than that of Houston, Texas.⁴

If we can recognize the problem with forcing people to live in close proximity to toxic and hazardous environmental conditions, then why are we ignoring prisoners who are forced to live in detention facilities impacted by such conditions?

We realize that the federal government's responsibilities are divided up among multiple agencies, with the EPA dealing primarily in issues related to ambient pollution. As such, some of the issues addressed below may be outside the EPA's immediate jurisdiction, but we understand the EPA to be leading the Interagency Working Group on Environmental Justice and feel that you will be able to best discern which agencies are best positioned to address the unique circumstances of prisoner populations.⁵

While we cannot speak to the knowledge of all federal agencies, we do know that both the EPA and the Department of Justice (DOJ) are well informed about the environmental impact of mass incarceration on poor communities in general and poor communities of color in particular, and that this impact affects both those imprisoned in detention facilities and those who are employed in or live near them.⁶

The intention of this comment is to provide background on how prisoners are excluded from environmental justice protections, both in the permitting of prisons themselves and the permitting of other industrial facilities operating in proximity to prisons. We have also provided a dozen examples of how and where this has manifested in various regions throughout the country.

³ "Breaking Down Mass Incarceration in the 2010 Census: State-by-State Incarceration Rates by Race/Ethnicity" by Leah Sakala, May 28, 2014. Source: <http://www.prisonpolicy.org/reports/rates.html>

⁴ Source: <http://www.city-data.com/top1.html>

⁵ For example, EPA has a Memorandum of Understanding with OSHA: https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_id=238&p_table=mou

This presumably takes the Department of Labor's "Environmental Justice Strategy" into consideration: <http://www.dol.gov/asp/ej/>. We found no language addressing environmental safety for the prisoner workforce.

⁶ While prisons themselves are sources of outdoor pollution, e.g. particulates from outdated prison boilers, discharges of untreated or inadequately treated sewage, etc., which affect surrounding communities that also often fit the criteria of EJ communities, that matter is not what we are addressing in this particular comment.

Background on the EPA and Prisons

Since 1999, the Office of Enforcement, Compliance, and Environmental Justice (OECEJ) within EPA Region III office has conducted what they call a “prison initiative.” Although this initiative has not been very active in conducting inspections since about 2011, over the course of a decade, EPA Region III conducted multiple investigations of conditions in prisons which resulted in a broad spectrum of enforcement actions.⁷ This initiative is well-documented through articles and press releases published online and in printed publications such as the *National Environmental Enforcement Journal*.⁸

Over the past six months HRDC’s Prison Ecology Project has been conducting extensive research, public records requests, interviews and reviews of Environmental Impact Statements and Environmental Assessments to understand how environmental justice criteria has been applied to prisoner populations, given the overwhelming evidence that prisoners are disproportionately people of color and *almost entirely* low-income, regardless of race. We are disappointed to report that we have seen no information pointing to any intention of the EPA to recognize the population of people in prison, despite the fact that they constitute the most vulnerable and overburdened demographic of citizens in the country.

In an interview conducted by the Prison Ecology Project on February 5, 2015, EPA Region III representative Donna Heron explained explicitly that environmental justice guidelines have not been applied to prisoners because the EPA uses census data which does not take prisoners into account.

We find this reason to be insufficient. We believe that data exists or could be gathered to allow the EPA to effectively and accurately determine environmental impacts on incarcerated populations. If the EPA’s chosen data happens not to include these populations, the EPA should seek to supplement the data for these missing populations by conducting research on what other data sources should be included to provide the most accurate picture of the populations who will be subject to any environmental impacts.⁹

We also found that prison-related permitting has often attempted to claim a Finding of No Significant Impact (FONSI) in permitting, or worse, has alleged “categorical exclusions” that keep these plans off the radar of public input.¹⁰ We feel that when plans are being made that

⁷ Until very recently, the activity of Region III’s prison initiative was documented online, but it was removed for an unknown reason. Some of the information previously posted online can now only be found on the Prison Ecology Project’s website: <http://PrisonEcology.org>

⁸ In particular, an article written by EPA inspector Garth Conner titled “An Investigation and Analysis of the Environmental Problems at Prisons” was published in the May 2003 edition of the *NEE Journal*, addressing the overpopulation of prisons and the industrial facilities operated within them. The article highlighted six separate investigations which all resulted in a broad spectrum of enforcement activity at state, federal and local correctional facilities.

⁹ HRDC is requesting further dialogue with EPA staff on this matter, as the methods used by the EPA to gather population data, and the consistency of those methods, are currently unclear.

¹⁰ The following is a 2014 announcement of a FONSI on a 2,000-bed immigrant detention facility, before there was even a site selected. According to the notice, “A geographical restriction associated with the RFP required the facility to be located in one of the following states: Ohio, Michigan, Pennsylvania, Delaware, New Jersey, or New York. See: <http://www.gpo.gov/fdsys/pkg/FR-2014-09-26/html/2014-22616.htm>

involve the incarceration of hundreds or thousands of low-income people, for which there are alternatives to incarcerating in the first place, this must be viewed as a *significant environmental justice impact*.

The DOJ, BOP and Environmental Justice

“During the twenty years since Executive Order 12898 was issued, there have been significant accomplishments by community leaders, Federal, state, local and tribal governments, and others to advance this important work. Yet there is more work to be done. Low-income, minority, and tribal Americans are still disproportionately burdened with pollution, resulting in disproportionate health problems, greater obstacles to economic growth, and a lower quality of life. The Department will continue to play a vital role in making environmental justice a reality for all Americans. We welcome [] input on the Department’s environmental justice activities, strategy, and guidance as we move forward.”

— Stuart F. Delery, Acting Associate Attorney General, from the DOJ’s 2014 Implementation Progress Report on Environmental Justice¹¹

The DOJ’s updated guiding document on Environmental Justice Strategy contains much lip-service to viewing EJ as a priority. In section III.C.4, “Specific Component Obligations,” the Federal Bureau of Prisons (BOP) is “working to ensure that its activities are consistent with the President’s mandate [Executive Order 12898]. For example, the Bureau will include consideration of environmental justice in its environmental impact statements [EIS] under the National Environmental Policy Act [NEPA].”¹²

During the period that EPA conducted its prison initiative in Region III, reports also surfaced about rampant pollution and environmental health problems stemming from industrial facilities in federal prisons nationwide. According to a 2010 report, the Justice Department’s Office of the Inspector General pinpointed “numerous violations of health, safety and environmental laws, regulations and (Bureau of Prisons) policies” at certain prison industry programs.¹³

However, according to our research, the BOP has *never* taken its prisoner population into consideration under NEPA’s EJ guidance. This remained true as of the agency’s most recent example of a NEPA-required EIS, which was published for public comment earlier this year for a facility in Letcher County, Kentucky. HRDC prepared a comment which, among other issues, addressed insufficient efforts to address EJ-related concerns.¹⁴ The following is an excerpt from HRDC’s comment submitted to the BOP:

¹¹ Source: <http://www.justice.gov/sites/default/files/ej/pages/attachments/2015/02/11/2014-implementation-progress-report.pdf>

¹² Source: http://www.justice.gov/sites/default/files/ej/pages/attachments/2014/12/19/doj_ej_strategy.pdf

¹³ Source: <http://www.mcclatchydc.com/2010/11/09/103445/whistleblower-exposed-violations.html>

¹⁴ The full HRDC comment on BOP’s Letcher County proposal can be found here: <https://www.prisonlegalnews.org/news/publications/hrdc-comment-letcher-county-prison-siting-coal-mine-site-march-2015/>

Under the Environmental Justice guidelines of NEPA, and according to the EIS, the people most probable to be in BOP custody if this facility was built are very likely to meet the criteria for recognition as Environmental Justice communities. Inside the prison, the racial demographics and income of prisoners can be reasonably projected to populate the facility based on the demographics of other BOP facilities in the country.... The BOP reports 41% percent of its population to be of non-white "minority" status,¹⁵ whereas this racial demographic only makes up approximately 25% of the entire US population.¹⁶ The EIS also says nothing of prisoners' status as an almost entirely low-income population.

The EIS goes on to allege that, essentially, the only EJ impact to the local community (which is a low-income rural region of Appalachia) will be the positive economic benefits associated with the prison. The most obvious oversight here is that the region is known to have extreme water contamination problems due to decades of heavy coal mining operations. In fact, both proposed sites for the anticipated BOP facility are located on abandoned mines.¹⁷

In a review of a 2010 Environmental Assessment (EA) for a state prison being turned over to the BOP for use as a supermax prison in Thomson, Illinois, HRDC found a very similar approach to EJ matters with respect to permitting.¹⁸ This facility, which will be used for extreme isolation units (solitary confinement) when opened, included no mention in its permits of the anticipated demographics which would populate the prison. It also overlooked the need to review operating such a facility in a flood zone, less than half-a-mile from the Mississippi River, and what unique challenges this could pose to an extremely vulnerable population likely to fit the criteria of an EJ demographic.

Our position is that the DOJ, as a participating agency in the implementation of EJ strategy, should require prisoner populations to be explicitly included in the EJ 2020 process.

Below are some additional examples which illustrate the need for recognizing prisoners in environmental justice policy and implementation strategy:

- *New Orleans, Louisiana jail post-Katrina* – This facility became an example of how ill-prepared county-run prisons are to handle emergency situations, sparking a report by the ACLU on the terrible reality that unfolded for prisoners after the storm in 2005. "The prisoners inside the Orleans Parish Prison suffered some of the worst horrors of Hurricane Katrina," said Eric Balaban, a staff attorney for the ACLU's

¹⁵ Current BOP statistics do not include specific numbers for Latino or Hispanic prisoners, though they do report 19% of BOP prisoners are citizens of Latin American countries. (A 2010 report stated that 33% are "Hispanic from any race.") Source: http://www.bop.gov/about/statistics/statistics_inmate_race.jsp

¹⁶ U.S. Census Bureau, "The White Population 2010." Source: <http://www.census.gov/prod/cen2010/briefs/c2010br-05.pdf>

¹⁷ Complete EIS can be viewed here: <https://www.prisonlegalnews.org/news/publications/draft-eis-bop-prison-letcher-county-ky-2015/>

¹⁸ Complete Environmental Assessment can be viewed here: <https://www.prisonlegalnews.org/news/publications/environmental-audit-bops-thomson-correctional-center-2010/>

National Prison Project. “Because society views prisoners as second-class citizens, their stories have largely gone unnoticed and therefore untold.”¹⁹

- *Escambia County, Florida jail flood* – In May 2014, another flood-related disaster at a county-run jail on the Gulf Coast illustrated that very little had been done since the lessons of Katrina to address the dangers of incarcerating people in increasingly flood-prone areas. At the Escambia County jail in north Florida, severe rain led to flooding in the basement of the facility that in turn resulted in a gas leak and explosion that killed two prisoners and injured many others.²⁰
- *Chemical spill in Charleston, West Virginia* – Another risk to prisoners, who are often located in industrial wastelands where the likelihood of pollution disasters can contaminate the water supply, was demonstrated at the South Central Regional Jail in Charleston after a major coal-processing-related chemical spill occurred in January 2014 when a storage tank ruptured. Prisoners were affected by the water contamination to a greater extent than many other local residents, as they were exposed to the contaminated water for longer periods without proper notice.²¹
- *Sing Sing Correctional Facility and the Indian Point nuclear plant in New York* – A 2012 legal proceeding filed by environmental groups in the Hudson Valley of New York during an administrative hearing of the Nuclear Regulatory Commission exposed a completely insufficient emergency evacuation plan for prisoners held at Sing Sing Correctional Facility, again illustrating why this population fits the criteria of an EJ demographic.²²
- *Rikers Island jail, New York City* – The Rikers Island jail complex has become notorious for its location on a toxic waste landfill site where lawsuits have been filed against the facility by employees who have become ill due to the conditions there.²³ As a result of this landfill, there have been frequent methane gas explosions on the site. In addition, the lack of an evacuation plan during Hurricane Sandy illustrated the increased potential for disaster at this facility.
- *Coal ash dump in LaBelle, Pennsylvania* – Surveys and reports from prisoners at the State Correctional Institute-Fayette have indicated ongoing problems related to sickness among prisoners who are exposed to airborne coal dust. The prison houses over 2,000 prisoners, was built on top of a former coal mine and sits adjacent to a 506-acre coal ash dump owned and operated by Matt Canestrone Contracting (MCC). The dump receives ash waste from coal-fired power plants throughout the region.

¹⁹ Source: <https://www.aclu.org/news/aclu-report-details-horrors-suffered-orleans-parish-prisoners-wake-hurricane-katrina>

²⁰ Source: <http://www.cnn.com/2014/05/01/justice/florida-jail-gas-explosion/index.html>

²¹ Source: <http://storiesfromsouthcentralwv.com/resources/wv-chemical-spill-background/>

²² Sources: (1) <http://pbadupws.nrc.gov/docs/ML1218/ML12180A648.pdf>; (2) <http://www.clearwater.org/ea/indian-point-campaign/>; (3) <http://publicjustice.net/content/nuclear-regulatory-commission-nuclear-plant-operator-near-nyc-failed-consider-impact-sever-0>

²³ Source: <http://www.nydailynews.com/new-york/correction-officers-suit-rikers-island-prison-built-toxic-landfill-causing-cancer-article-1.149319>

Before it became a fly ash dump, it was one of the world's largest coal preparation plants, which left over 40 million tons of coal waste. MCC recently renewed its permit to dump 416,000 tons of coal ash per year at the site. Coal ash contains mercury, lead, arsenic, hexavalent chromium, cadmium and thallium. "In short, coal ash toxins have the potential to injure all of the major organ systems, damage physical health and development, and even contribute to mortality," according to a report by Physicians for Social Responsibility.²⁴

- *Thirteen Colorado prisons in contaminated area* – Cañon City is the location of nine state and four federal prisons and penitentiaries. It's also known for longstanding water quality problems related to the mining and processing of uranium. Liquid waste laced with radioactive material and heavy metals was discharged into 11 unlined ponds from 1958-1978. Those were replaced in 1982 with two lined impoundments, and after well tests in Cañon City showed contamination, the uranium mill site was put on a national list for Superfund cleanups. Samples collected from four wells north of the mill in October 2011, analyzed at outside labs, indicated trichloroethene concentrations of 1,800 parts per billion, 1,200 ppb, 490 ppb and 386 ppb. The EPA standard is 5 ppb. The wells were up to 360 times the federal health limit. "Vapors can seep up through the soil and get into homes. Then you have not only a drinking issue but an inhalation risk," EPA spokeswoman Sonya Pennock said. But the cleanup isn't expected until 2027.²⁵
- *Valley Fever at Avenal and Pleasant Valley State Prisons, California* – Lawsuits and news reports have repeatedly noted that people imprisoned in areas prone to valley fever (resulting from drought, over-development and increased temperatures) are at elevated risk of contracting that disease due to constant exposure and abysmal healthcare options available in prisons.²⁶ Valley fever has claimed the lives of more than 50 prisoners and sickened thousands of others. A federal court ordered the removal of thousands of prisoners from the Avenal State Prison and Pleasant Valley State Prison due to concerns about valley fever. "Medical studies have shown that Filipinos, [B]lacks, Hispanics and people suffering from diabetes and HIV are more susceptible to valley fever, meaning that prisoners in the Central Valley – where 16 of California's 33 adult prisons are located – are especially vulnerable. For example, blacks comprise just 6.6% of California's general population but make up 29% of the state's prison population."²⁷
- *Arsenic in Texas and California water supplies* – This is a reoccurring story, where prisons such as Kern Valley State Prison in Delano, California and the Wallace Pack

²⁴ Sources: (1) <https://www.prisonlegalnews.org/news/2015/apr/9/report-highlights-health-concerns-related-coal-ash-dump-pennsylvania-prison/>; (2) <https://www.prisonlegalnews.org/news/2015/apr/9/report-highlights-health-concerns-related-coal-ash-dump-pennsylvania-prison/%20>; (2) <http://atavist.ibtimes.com/poison-prisonj653t>

²⁵ Sources: (1) http://www.denverpost.com/ci_17811381; (2) <http://www.wise-uranium.org/umopcc.html>

²⁶ Source: <http://www.motherjones.com/environment/2013/08/valley-fever-explained>

²⁷ Source: <https://www.prisonlegalnews.org/news/2015/jun/3/california-tests-state-prisoners-valley-fever-amid-lawsuits-deaths/>

Unit near Navasota, Texas are built in areas with contaminated water supplies and prisoners are forced to endure health impacts due to these environmental conditions.²⁸

- *Prisons built on military Superfund site in California* – The Victorville Federal Correctional Complex was built on the site of one of the Weapons Storage Areas (WSA) for the former George Air Force Base in California, Superfund ID: CA2570024453. The DOD and Air Force did a federal-to-federal transfer of Parcel K to the BOP, a site which contains the former South WSA. The Victorville Federal Correctional Complex (FCC) consists of three facilities: FCI Victorville Medium I, Medium II and United States Penitentiary-Victorville.²⁹ A federal-to-federal transfer was also done with Castle Air Force Base’s WSA where the United States Penitentiary (USP) in Atwater was built “on a part of the base near where munitions were kept and where investigators from the Air Force Safety Center suspect nuclear weapons were maintained and stored.”³⁰
- *Toxic and hazardous site for immigrant detention in Tacoma, Washington* – The Northwest Detention Center, a privately-operated prison designed to house 1,575 immigrants, is adjacent to a Superfund site known as Project Area #3 of the Tacoma Tar Pits (EPA ID# WAD980726368).³¹ The location is also in a designated volcanic hazard zone.³²
- *Water contamination in prisons nationwide* – A report published by *Prison Legal News* in 2007 highlighted seventeen states, including Alabama, Georgia, Indiana, Massachusetts, Maryland, Ohio and Washington, where water contamination in prisons and their surrounding communities had been reported to cause problems including illness (such as Legionnaire’s Disease) and various environmental violations.³³ The report concluded that protections under the Clean Water Act may be difficult for prisoners, as such problems are often complex, requiring water testing and expert witnesses to prove a claim, neither of which are likely to be available to the average pro se prisoner litigant. According to author John Dannenberg, “As the environmental movement in the United States grows, it may be time to make the connection to environmental degradation caused by mass imprisonment.”

²⁸ Source on arsenic: <http://water.epa.gov/lawsregs/rulesregs/sdwa/arsenic/index.cfm>; in Texas: <http://gritsforbreakfast.blogspot.com/2014/09/well-water-contaminated-with-arsenic-at.html>; in California: <http://www.watertechonline.com/articles/arsenic-above-mcl-found-in-prison-water>

²⁹ EPA Superfund Record of Decision: <http://www.epa.gov/superfund/sites/rods/fulltext/r0994115.pdf><http://www.epa.gov/superfund/sites/rods/fulltext/r0994115.pdf>

³⁰ Source: <http://www.georgeafb.info/victorville-federal-correctional-complex/><http://www.georgeafb.info/victorville-federal-correctional-complex/>

³¹ Source: http://yosemite.epa.gov/r10/nplpad.nsf/0/06e1c0cda0d11fc285256594007559fd!OpenDocument&ExpandSection=-3#_Section1

³² Source: <http://www.documentcloud.org/documents/408880-snewsroom-p12081313010.html#document/p1/a67587>

³³ Source: <https://www.prisonlegalnews.org/news/2007/nov/15/prison-drinking-water-and-wastewater-pollution-threaten-environmental-safety-nationwide/>

Alternatives to Incarceration

While most of these issues present environmental justice concerns in a traditional sense of the concept, there is another component which is an overarching matter for many if not all of the examples listed above—the existence of alternatives to incarceration.³⁴ The review of alternatives is an integral piece of permitting through NEPA. When considering the value or need for a prison, there should be a review of the ways in which a reduction in prisoner populations would reduce or eliminate the need for expanding or constructing prisons, and thus reduce or eliminate the resulting environmental justice concerns.

Impacts on Children

In addition, we feel that consideration of environmental justice impacts on prisoners should extend to the families of prisoners as well, in particular those with children. Statistics show that one in 28 children have a parent in prison—2.7 million children are growing up in households in which one or more parents are incarcerated. Two-thirds of these parents are incarcerated for nonviolent offenses, primarily drug offenses. One in nine black children has an incarcerated parent, compared to one in 28 Hispanic/Latino children and one in 57 white children.³⁵ Even Sesame Street has taken note of the plight of children with parents in prison.³⁶

The absence of a parent due to incarceration has a significant impact on the communities where these children live. This factor should be considered among a review of the cumulative impacts that affect environmental justice communities.³⁷ And while a parent's absence may be temporary, negative health impacts resulting from incarceration can continue far beyond a prisoner's release date, causing additional financial and emotional hardships for families with children.

Next Steps

For the above-stated reasons, HRDC and the undersigned organizations ask the EPA to use the EJ 2020 Action Agenda Framework to ensure that the millions of prisoners in this country receive the protections that are intended under Executive Order 12898 and Title VI of the Civil Rights Act.

³⁴ Extensive examples of alternatives to incarceration can be found in the following websites: Office of National Drug Control Policy, <https://www.whitehouse.gov/ondcp/alternatives-to-incarceration>; American Psychological Association, <http://www.apa.org/monitor/julaug03/alternatives.aspx>; Families Against Mandatory Minimums (FAMM), <http://famm.org/wp-content/uploads/2013/08/FS-Alternatives-in-a-Nutshell-7.8.pdf>; article from *The Guardian*, <http://www.theguardian.com/commentisfree/2013/jul/04/alternatives-incarceration-prison-numbers>

³⁵ Source: http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2010/CollateralCosts1pdf.pdf

³⁶ Source: <http://www.sesamestreet.org/parents/topicsandactivities/toolkits/incarceration#>

³⁷ EPA's involvement in the Partnership for Sustainable Communities provides context for the EJ cumulative impacts that we are referring to here. "Creating healthy, sustainable, and equitable communities is a priority of the federal government. Environmental Justice plays a key role in an integrated effort that concurrently addresses housing, environment, transportation and health issues." Source: <http://www.epa.gov/oecaerth/environmentaljustice/sustainability/index.html#teamej>

HRDC would like to participate further in the EPA's EJ 2020 Action Agenda Framework, to ensure that prisoners are taken into consideration with respect to environmental justice and impacts on minority and low-income populations. Please contact me to discuss how we may do so. For example, one of our staff can be available for a meeting in-person or via conference call, and we can invite participation from other stakeholders and advocates in the prisoners' rights and criminal justice reform community who are interested in this issue.

Thank you for reviewing our concerns; I look forward to further communication on this subject. If you have questions or require additional information, please do not hesitate to contact me.

Sincerely,



Paul Wright.
Executive Director, HRDC

cc: All EPA Points of Contact for EJ 2020
Stuart Delery, Acting Associate Attorney General, DOJ
Thomas A. Webber, Chief, Capacity Planning and Construction Branch, BOP
Issac Gaston, Site Selection Specialist, BOP

This comment is endorsed by the following 93 organizations:

Abolitionist Law Center (PA)
Amistad Law Project (PA) *
Architects / Designers / Planners for Social Responsibility (ADPSR)
Bill of Rights Defense Committee – Tacoma (WA)
California Coalition for Women Prisoners
California Families Against Solitary Confinement
California Partnership
California Prison Moratorium Project
Campaign for Youth Justice (DC)
Cascadia Forest Defenders (OR)
Center for Gender & Refugee Studies (CA)

The Center for Sustainable Economy
Center for Women's Health and Human Rights (MA)
Climate Justice Alliance
Coalition for Prisoners' Rights (NM)
Columbia Legal Services (WA)
Communities United for Restorative Youth Justice (CURYJ)
Critical Resistance Los Angeles (CA)
Cross Timbers Earth First! (OK)
CURB (Californians United for a Responsible Budget)
Detention Watch Network
Dignity & Power Now (CA)
Drug Policy Alliance
Earth First! Humboldt (CA)
Earth First! Prison Support Project
Ella Baker Center for Human Rights
Enlace Int'l
Environmental Justice Advocates - Lewis & Clark Law School (OR)
Everglades Earth First! (FL)
Fen Valley Earth First! (MI)
Florida Institutional Legal Services (Project of Florida Legal Services, Inc.)
Florida Justice Institute, Inc
Georgia Detention Watch
Glacier's Edge Earth First! (IN)
Global Justice Ecology Project
Got Green? (WA)
Grassroots Leadership (TX)
Hudson River Sloop Clearwater, Inc. (NY)

Hudson Valley Earth First! (NY)
International CURE
Jesuit Social Research Institute
Justice for Families
Justice Now
Justice Strategies
Legal Services for Prisoners with Children
Longleaf Earth First! (FL)
Middle Ground Prison Reform
National Lawyers Guild
National Lawyers Guild - Lewis & Clark Chapter (OR)
National Lawyers Guild - Mass Incarceration Committee
National Police Accountability Project
National Religious Campaign Against Torture
New York City Jails Action Coalition
New York Environmental Law and Justice Project
November Coalition
Ohio Student Association
Palm Beach County Environmental Coalition (FL)
People's Law Office (IL)
Power U Center for Social Change (FL)
Prison Books Collective (Chapel Hill, NC)
Prison Law Office (CA)
Prison Policy Initiative
Prison Watch Network
Prisoners' Legal Services (MA) *
The Promise of Justice Initiative (LA)
Queer Detainee Empowerment Project

Radical Action for Mountains' and People's Survival (RAMPS)
RAICES (Refugee and Immigrant Center for Education and Legal Services)
The Real Cost of Prisons Project
Rising Tide North America
San Francisco Bay View National Black Newspaper
Sentencing and Justice Reform Advocacy (CA)
The Sentencing Project
Sin Barras
Solitary Watch
Southern Center for Human Rights
Southern Poverty Law Center (SPLC)
Stories from South Central (WV)
Support Vegans in the Prison System
Sylvia Rivera Law Project (NYC)
Tar Sands Blockade (TX)
Texas Civil Rights Project
Texas Jail Project
TWAC (Trans and Women Action Camp) Cascadia
UC Davis Immigration Law Clinic
Urban Justice Center (NYC)
Urbana-Champaign Independent Media Center
Vermonters for Criminal Justice Reform
Virginia Organizing
Washington Lawyers' Committee for Civil Rights and Urban Affairs (DC)
Women's Council of the CA Chapter of the National Association of Social Workers
Working Narratives (NC)
350 Vermont

** Organizations that were inadvertently left off this list in our original comment.*

IQAir appreciates the United States Environmental Protection Agency's (USEPA) commitment to environmental justice through the EJ2020 Action Agenda Framework (EJ 2020). IQAir is an industry-leader in air purification technologies and is dedicated to helping people live longer, healthier lives through these air quality products.

Please consider the following comments as you review EJ 2020 and create the corresponding implementation plan.

Goal 1: Deepen environmental justice practice within EPA programs to improve the health and environment of overburdened communities.

For goal 1, IQAir urges USEPA to consider prioritizing mitigation efforts as it pertains to educational environments.

There is ample discussion and action related to air quality improvement as a prevention measure, as prevention is a vital part of the solution. At the same time, some communities need immediate relief. These populations can't afford to wait until the air quality improvements take effect. Therefore, mitigation needs to be prioritized in highly impacted areas.

Mitigation provides immediate solutions and relieve those who suffer the largest burden of air pollution. There are schools across the nation engulfed by terrible air quality, leaving children and school staff exposed to air pollution, volatile organic compounds, and other lung irritants.

As children spend a substantial amount of time in school, these buildings should be safe, healthy and promote productivity. Since 1 in 10 children suffers from asthma and asthma is the number one reason for absenteeism of school-age children, something has to be done.

IQAir has partnered with local air quality management districts, school administrators and facility managers to install our technology in schools across Southern California. Our filters provide the highest air purification possible and exceeds the South Coast Air Quality Management District's requirements. More efforts like these, that provide immediate relief, are essential while longer-term prevention and abatement strategies are implemented. If not, disparate populations that already bear the burden of poor air quality will continue to suffer.

Goal 2: Collaborate with partners to expand our impact within overburdened communities.

For goal 2, IQAir urges USEPA to not only foster collaboration with local community partners but to put these collaborations to action. This will ensure EJ 2020 building on the groundwork laid by Plan EJ 2014. Continue to emphasize the "meet communities where they are" approach that is highlighted under this goal. Sharing best practices can only go so far without adequate funding and support to put these into action.

Consider modifying the restrictions of which types of agencies are eligible for this funding as well. As a corporate partner, we are restricted from applying on behalf of community partners and/or school districts who would benefit from these funds. Our goal is to provide our technology to the most vulnerable locations and support our partners in the process. Restrictions on funding for these projects is a huge barrier when working with small, non-profit advocacy groups who do not have the capacity to support the administration and execution of large federal grants.

For example, in a mitigation grant, we recommend that the following stakeholders be required when applying for funding: advocacy group, local air quality agency, government agency benefiting from funding, and air filtration contractor. This high-level cooperation ensures that the funding is used properly, the project is professionally administered, and that the burdened community benefits.

From: Joe James <[REDACTED]>
Sent: Monday, July 13, 2015 9:21 AM
To: ejstrategy
Cc: Joe James
Subject: EPA EN 2020 Action Agenda - Comments - 7/13/15

Dear EPA:

Given the fact that most communities facing EJ challenges are also distressed, with high poverty and unemployment, the Agenda should emphasize opportunities for community members to be engaged in and employed by the functions seeking to remediate or eliminate the EJ-causing conditions.

In addition, technologies and processes which enhance employment and business opportunities for the impacted communities should be given some preference.

Thanks for considering this comment.

Regards,

JJJ

Sent from my iPhone
Joseph J. James
[REDACTED]

From: Joe Salata <[REDACTED]>
Sent: Monday, June 08, 2015 2:30 PM
To: ejstrategy
Subject: Environmental Justice Strategy Draft

I have reviewed the draft EJ strategy fro 2020, and have a few comments. It would be nice if EPA could include a couple of place-based commitments, like improve environmental conditions in X, Y, or Z communities, e.g., South Bronx, NY (not meant to single-out this community); or to expand the commitments to outcomes expected, e.g., restore water quality standards in xx underserved watersheds by NPDES permitting, etc. You could ask the EPA Regions to come up with some specific place-based outcomes based on current or planned permitting or other EPA regulatory targets, which I am sure they have but do not recognize as EJ. Thanks for the opportunity to comment.

Joe Salata

[REDACTED]

From: John Ray <[REDACTED]@com>
Sent: Monday, June 01, 2015 12:12 PM
To: Lee, Charles; ejstrategy; Darling, Corbin; Nowak, April; Muriel, Jasmin; Carey, Pat; Minter, Marsha
Cc: Greene, Nikia; Sparks, Sara; Vranka, Joe; DalSoglio, Julie; John Ray; Feldt, Lisa; Faulk, Libby; Mccarthy, Gina; McGrath, Shaun
Subject: Comments Draft EJ 2020 Action Agenda Framework--Particular Application to Montana Office of EPA
Attachments: Environmental Justice and Butte Priority Soils.docx; Environmental Justice and Butte Priority Soils.docx; Environmental Justice and Butte Priority Soils--RMAP.docx; Butte Health Study Ignores Environmental Justice Issues.docx

I would like to offer the following comments on the Draft EJ 2020 Action Agenda Framework.
I would offer the following summary comments:

1. While concern for promoting environmental justice should permeate all of EPA's activities, often specific actions to promote environmental justice are not part of EPA activities. I would recommend that as part of any EPA action (for example, to remediate a site under Superfund), there be developed a specific, concrete and detailed action plan for promoting environmental justice. (Of course, this recommendation would pertain only to sites where there was a specific environmental justice community.) In Butte, Montana, for example, there is a Superfund site in the middle of town called central Butte. This area has a disproportionate number of low-income citizens and so is an environmental justice community. The Montana Office of EPA has never addressed environmental justice concerns in this area. Either the Montana Office of EPA doesn't know what is environmental justice or they choose to ignore the mandate in any effective way.
2. The Draft has lofty goals and ideals but lacks specifics. It expresses pious sentiments. On the ground, when EPA acts pursuant to a plan of action that plan of action needs a specific, concrete, measurable and definitive environmental justice component.
3. When doing health risk assessments, EPA needs to give specific consideration to environmental justice communities. For example, for various reasons, low-income citizens are more prone to the effects of exposure to toxics than are the non-poor. Yet, traditional health risk assessment fails to take this into account.
4. Specific, concrete and measurable outreach activities for reaching environmental justice communities should be a part of all EPA plans.
5. Specific, concrete and measurable activities to include environmental justice communities should be a part of all EPA plans. In Montana, the Montana Office of EPA has, de facto, adopted a one size fits all approach to environmental justice activities. Ways of communicating or including, for example, non-poor citizens may not work with low income citizens. Yet, the Montana Office makes no special effort to include environmental justice communities. The one size fits all approach doesn't work when it comes to environmental justice activities.
6. Certainly, in Montana, there should be training provided to make the Montana Office of EPA more sensitive to environmental justice issues.
7. The evaluation of all EPA activities should include a specific environmental justice component.

Of course, all of the above would only apply if there was an environmental justice community affected by EPA activities.

I have **attached** additional comments I would like to submit. One was prepared a while back, as the remediation plan for Butte Priority Soils was being developed, but, the arguments still apply today.

Please consider these attachments as input and comment on the Draft 2020 Action Agenda

Dr. John W. Ray



From: Patricia Schuba <prsmail@gmail.com>
Sent: Tuesday, July 14, 2015 11:32 PM
To: ejstrategy
Cc: echeuse@earthjustice.org; Lipeles, Maxine
Subject: Draft EJ2020 Action Agenda Framework Comments - Labadie Environmental Organization (LEO)

Please accept our organization's support for the Earthjustice comments submitted earlier today. Our organization represents a vulnerable and disproportionately impacted community in rural Missouri near one of the nation's largest mercury, SO₂ and particulate matter polluters. The Labadie Plant is the largest coal-fired power plant in Missouri. It has no scrubbers. It has an unlined ash pond which has been leaking for decades and will now have a large coal ash landfill in the floodplain endangering local groundwater resources.

The plant has operated in our backyard since 1973. Our county carries a heavier burden of cancer, cardiovascular disease, autoimmune diseases and respiratory diseases and the power plant is by far the largest source of environmental pollution.

Generations have grown up exposed to elevated air pollutants and potential water pollution. We are depending on state, regional and federal regulators to expand enforcement and provide meaningful and interactive opportunities for our community to assist in identifying risks and reporting data that can be used to better regulate the industry. The EPA's EJ agenda implementation creates community partners but is only as good as the outreach, education, reporting tools and attainment measurements put in place. Please see recommendations outlined in the Earthjustice comments.

Thank you for accepting my brief comments on behalf of my neighbors and our organization. We look forward to seeing the final framework and to working more closely with EPA in protecting our communities and the environment.

Communities can do so much more to assist regulators. Give us that chance.

Sincerely,

Patricia Schuba

Patricia Schuba, President
Labadie Environmental Organization (LEO)
P.O. Box 112 Labadie MO, 63055
c: 636.392.0018 (NEW 3/30/15)
prsmail@gmail.com

From: Lylianna Allala <[REDACTED]>
Sent: Friday, June 05, 2015 4:33 PM
To: ejstrategy
Subject: Public Comment: EJ 2020

Dear EPA,

Reading through the draft framework, I am heartened at the thought put into inclusive strategy and community building. I would like to urge the EPA to think of a quote that truly embodies the spirit of working in solidarity with communities.

“If you have come to help me, you are wasting your time. If you have come because your liberation is bound up with mine, then let us work together.” Lilla Watson

I was reminded of this quite as I specifically read the following line from the draft agenda (Sec. II C) as it seems to insinuate an “us v. them” approach when in reality, issues of environmental justice affect us all. The success, health, and happiness of overburdened, underserved, and economically distressed communities is predicate on our systems and institutions not only create agendas and strategy with the intention of holistic approach but truly embodying it.

“Promote holistic strategies that meet communities where they are and help them to achieve health, sustainability, economic opportunity, revitalization and resilience.”

I also want to urge the EPA to think from a community based strategic approach. This is to say that to create regulations, programs, and policy that is meant to support community success, it needs to come from the community or the grass roots NOT from a grasstop down approach. I’d also like to urge the EPA to continue to think on how to engage the immigrant and refugee communities as well as I don’t see any language specifically recognizing this community.

Thank you for your time,

Lylianna Allala

From: Marvin S. Robinson, II <[REDACTED]@[REDACTED].com>
Sent: Tuesday, July 14, 2015 9:19 PM
To: ejstrategy; Moses, Althea; Brooks, Karl; Hague, Mark; Lee, Charles
Subject: EJ 2020 Action Agenda Framework fr US EPA

Thank you again to the ENVIRONMENTAL JUSTICE and particularly for allowing and including the average everyday people the opportunity to comment.
It is both important and very appreciated.

A.) I think, or recommend that the EJ Division and the organizations that are involved with EJ, needs to include some sort of MARKER SYSTEM f the SUPER FUND and Non-Priority SUPER FUND SITES, similar to the National Register of Historic Places - so that the people in our communities, what's left of them can know that regular folks like Chicago's Hazel JOHNSON arose to the occasion to help her community and thereby STRENGTHENED the HUMANITARIAN Conscience f our government (local, state and federal). People like her and others should NOT be forgotten.

B.) As is true, that former president NIXON'S Administration as, I understand help to implement the EPA and those with different persuasion need to be reminded "THOUGHT LEADERS" may be a newer term used today, however- AMERICA is greater because of visionary decision-makers.

C.) And the inclusion of support for those in communities who arrive to inquire / complain / interrogative = about TOXIC WASTE matters should not be just thrown into the land of the UNKNOWN and be retaliated, vindictively by local, state and other decision makers who are resistant to helping.

Thank you for these thoughts,

Marvin S. Robinson, II



STATE OF MARYLAND

Commission on Environmental Justice and Sustainable Communities

Vernice Miller-Travis,
Vice Chair
Miller-Travis & Associates

Andrew Fellows, Vice Chair
Clean Water Action

Senator Victor Ramirez
Senate

Kenneth C. Holt,
MD Department of Housing and
Community Development

Secretary David R. Craig
MD Department of Planning

Secretary Peter K. Rahn
MD Department of Transportation

Secretary R. Michael Gill
MD Department of Business and
Economic Development

Secretary Van T. Mitchell,
MD Department of Health and
Mental Hygiene

Secretary Benjamin H. Grumbles,
MD Department of the Environment

Richard Fairbanks
Baltimore City Resident

Larissa Johnson,
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Environmental Science

Stephan Levitsky,
Locust Point Resident
Director of Sustainability, American
Sugar Refining, Inc.

Merrick Moise
Companions of the Incarnation

Dr. Laurence Polsky,
Calvert County Health Department

John Quinn,
BGE

Dr. Lesliam Quiros Alcala,
UMD School of Public Health

Rebecca Rehr,
MD Environmental Health Network

Benoy Thomas,
Washington, D.C., Children and
Family Services Agency

Charles Lee
U.S. Environmental Protection Agency
Office of Environmental Justice

July 6, 2015

Dear Mr. Lee,

Thank you for the opportunity to comment on EPA's Draft EJ 2020 Action Agenda Framework. The Maryland Commission on Environmental Justice and Sustainable Communities (CEJSC) analyzes and reviews what impact State laws, regulations, and policy have on the equitable treatment and protection of communities threatened by development or environmental pollution, and determines what areas in the State need immediate attention. Moreover, the Commission assesses the adequacy of statutes to ensure environmental justice, and develops criteria to pinpoint which communities need sustaining. We commend the EPA for monumental efforts towards achieving environmental justice (EJ) and the EJ 2020 Framework represents one more step in this process. We have the following comments for you to consider as you move forward:

- As you consider EJ in EPA permitting, consider issuing guidance for states. Maryland has long attempted to incorporate EJ into permitting, without success. Federal guidance may help in these efforts.
- As you advance EJ through compliance and enforcement, consider providing financial assistance for states to do the same.
- As you enhance science tools for considering environmental justice in decision-making, hold EPA accountable for finalizing their Framework for Cumulative Risk Assessment, which has been in draft format since 2003. Further, until there are concrete methods, the EPA should issue guidance on *how* to consider cumulative impact in decision-making. We know that real world exposure happens through many pathways and many chemicals at once, and throughout a lifetime. While the EPA has done a fine job explaining *why* it is important to consider cumulative impacts, it has not issued guidance on *how*.
- As you seek to engage business and industry, consider supporting states as they also employ these strategies. The Maryland Department of the Environment is convening a cumulative impacts working group to convene a diverse group of stakeholders to find solutions to address cumulative impacts and exposures on overburdened communities.
- Support meaningful community engagement and participation in federal, state, and local actions.
- We look forward, also, to your goals of full implementation of Title VI of the Civil Rights Act, as this is a topic we have taken up as a Commission in the past.

In conclusion, we would also congratulate your office on the recent rollout of EJ Screen and look forward to an upcoming information session on the tool. Thank you.

Sincerely,
The Maryland Commission on Environmental Justice & Sustainable Communities

July 14, 2015

Via electronic mail

Mr. Charles Lee
Deputy Associate Administrator for Environmental Justice
U.S. EPA Headquarters, Mail Code: 2201A
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington DC 20460
ejstrategy@epa.gov

Dear Mr. Lee,

The undersigned organizations and individuals submit these comments on the Environmental Protection Agency's ("EPA") draft Environmental Justice ("EJ") 2020 Action Agenda Framework ("Draft Framework"). We appreciate the EPA's commitment to continuing its efforts to address environmental justice in the United States and we believe that, through its actions over the next five years, EPA has the ability to assist Maryland and other states to more effectively address environmental injustice within their borders. Specifically, EPA can provide this assistance in the following ways:

1. Assisting states and other stakeholders to identify overburdened communities by developing publicly available community-level datasets for important health outcomes, such as asthma and low birth weight, and by incorporating updated information from the National Air Toxics Assessment into the EJSCREEN tool;
2. Encouraging the collection of accurate ambient air quality data in overburdened communities at the appropriate scale or unit of analysis;
3. Developing tools for addressing environmental justice in permitting by providing a method to conduct cumulative impacts analyses, providing a method for assessing local effects of mobile source pollution, providing guidance on translating health impacts analyses into improvements for communities, and encouraging meaningful public participation in state permitting decisions; and
4. Encouraging greater public access to environmental information.

I. Summary of Environmental Justice Efforts in Maryland

Addressing environmental injustice in Maryland is a major priority for the undersigned groups and individuals. Citizens throughout the state deserve the right to healthy communities where residents can breathe clean air, grow food in soil free from contamination, and access

clean water for drinking and recreation. However, certain communities in Maryland are located near a disproportionate number of polluting facilities. For example, the industrialized neighborhoods near the Port of Baltimore have long been home to a large number of polluting facilities and are exposed to pollution from mobile sources like passenger cars, trucks, trains, and ships. When viewed in light of the City's socio-economic struggles and high asthma rates, as discussed in more detail below, this raises serious concerns about the need for truly clean and sustainable development in these areas. Similarly, in the communities located near Sheriff Road in Prince George's County, citizens have long been requesting state action, including cumulative impacts review, to address local pollution and respond to high community asthma rates.

Recently, Maryland communities and environmental organizations have been working on legislation to address the cumulative impacts of multiple air pollution sources on disadvantaged communities. At the same time, the Maryland Department of the Environment ("MDE") has responded to community concerns by commencing a cumulative impacts workgroup, to provide information and obtain stakeholder input. As stated on MDE's website:

Multiple aspects of the environment in which we live, learn, work and play impact our health. The traditional approach of governmental agencies/policy makers responsible for protecting public health and the environment is to focus on one factor at a time. For many years, the State, the environmental justice movement, civic leaders and local communities have advocated for the consideration of multiple exposure and cumulative impacts in environmental policy and decisions.¹

Despite the near-unanimous agreement² by stakeholders in Maryland that it is timely and important to begin assessing the cumulative impacts of multiple pollution sources on overburdened communities, the primary challenges to conducting this kind of a review remain technical in nature. The greatest challenge appears to be the lack of a tool for assessing the entire health burden, including air, water, and soil pollution as well as socio-economic and other non-chemical stressors, on individual communities. Advocates in Maryland have established what we believe to be an appropriate and useful "geographic scoping tool" for identifying communities in which such a cumulative impacts review should be conducted for air pollution

¹ MDE, Cumulative Impact Workgroup, http://www.mde.state.md.us/programs/CrossMedia/EnvironmentalJustice/EJinMarylandHome/Pages/Cumulative_Impacts_Workgroup.aspx (last visited June 1, 2015).

² See *Cumulative Impacts Bill: Hearing on S.B. 693 Before S. Comm. on Educ., Health and the Env't*, 432nd Sess. (Md. 2015)(statement of Dr. Clifford Mitchell, Director of the Environmental Health Bureau in the Department of Health and Mental Hygiene), available at <http://mgahouse.maryland.gov/house/play/91d5689af8e84c2e965d57062f06b892/?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c&playfrom=24275460>. See also Attachment A, Letter of Information from MDE to the Honorable Maggie McIntosh and Members of the Environmental Matters Committee (Mar. 5, 2014)(regarding HB1210, a bill requiring cumulative impacts assessments).

permits.³ However, EPA could help us to refine and better this tool by encouraging greater public access to community-level health and pollution data.

In summary, the EPA can help states like Maryland overcome these challenges by providing technical tools and guidance that address gaps and by providing incentives or requirements for states to take action to protect overburdened communities.

II. EPA Should Assist States and Other Stakeholders to Identify Overburdened Communities

One of the challenges in our experience crafting cumulative impacts legislation has been developing a method of identifying overburdened communities. This is an essential piece of any plan to address environmental injustice in the real world, in which state and federal agencies have limited resources to devote to environmental protection. Government agencies can use these limited resources to improve conditions in overburdened communities by providing additional protections or enhanced public participation opportunities in the permitting process and by prioritizing inspections and enforcement measures to ensure compliance with environmental laws. State and federal agencies can also prioritize granting other benefits in overburdened communities, including green jobs opportunities and eligibility for EPA pollution reduction grants such as under the Diesel Emission Reduction Act (DERA).⁴ EPA should provide guidance on how to identify the overburdened neighborhoods in which these resources are most needed and would provide the greatest benefit.

We very much appreciate that EPA is in the process of making a new mapping tool, EJSCREEN, available to the public and that, within a few years, this tool should provide a method for some assessment of community exposure to pollution as well as important demographic information. However, at present, this tool falls short of what is needed to identify

³ This tool identifies overburdened communities, called “protected communities,” using the best localized data available. To be considered a protected community, the area must be a zip code in which the rate of individuals enrolled in Medicaid or participating in the Women, Infants and Children supplemental food program is above the state median. Additionally, that zip code must have a life expectancy rate below the state median or a percentage of low birth weight infants above the state median. Finally, in order for the state to conduct a cumulative impacts analysis on an overburdened community, a new or modified facility must be either a minor or major source of air pollution seeking an air permit to construct and within ¼ or 1 mile, respectively, of a school, child care facility, elderly care center or community recreation center. See H.B. 987, 431st Sess. (Md. 2014), available at <http://mgaleg.maryland.gov/2015RS/bills/hb/hb0987F.pdf>. While the indicators in this tool do not directly relate to air pollution, they are important in that they are stressors that reduce one’s ability to respond to or recover from additional exposure to chemical stressors.

⁴ EPA can also work with the Interagency Workgroup on Environmental Justice to make sure that other federal agencies contribute resources that address environmental injustice and environmental health disparities in overburdened communities. This could be helpful to agencies such as the Department of Housing and Urban Development, the Department of Transportation (DOT), and the Sustainable Communities Program within the Department of Health and Human Services. For example, it could help DOT to identify where to focus mitigation efforts for communities who live near heavily trafficked roadways or communities in Baltimore impacted by goods movement activities near the Port.

the communities on which agencies should focus limited resources. As an initial matter, EPA notes that the tool should be used only as a first step in the process of identifying environmental justice communities.⁵ While we understand that there may be political pressure for EPA to avoid providing a method of identifying environmental justice communities, we believe that it is essential that EPA use its technical expertise to provide agencies and the public with some method – be it a mapping tool or written guidance –of identifying overburdened communities.

Some of the undersigned groups expect to submit more detailed comments on EJSCREEN during the comment period on that tool. However, below we briefly discuss two ways in which EPA could fill existing information gaps and improve EJSCREEN.

A. EPA Should Help to Develop Community-Level Datasets for Important Health Outcomes like Asthma and Low Birth Weight

A key information gap that we encountered in our work on cumulative impacts legislation in Maryland is also a data gap in EPA’s EJSCREEN tool. This gap is the lack of community-level and community-specific data on health conditions that increase individual vulnerability to pollution. In Maryland, data on asthma rates is publicly available at the county level only.⁶ Thus, when trying to evaluate the Maryland neighborhoods that would most benefit from reduced air pollution, the public is in the dark with respect to one of the most important indicators of population sensitivity to air pollution. As an example, California, which has the most advanced “screening tool” in the country for identifying environmentally stressed communities, uses zip code level data on asthma emergency department visits, reapportioned to census tract-level data, as one of two health indicators of sensitive populations (the other is low birth weight).⁷ However, such a tool could not be implemented in Maryland because of the lack of publically available asthma data.

The dearth of community-level information on asthma is especially concerning to residents and advocates in Maryland because the data that *are* available show that Maryland’s asthma rates are higher than national averages,⁸ and that the highest rates occur in Baltimore City, which has a number of socio-economically distressed communities.⁹ According to the most recent state report on asthma, Baltimore City has the highest asthma rates in the state as

⁵ EPA, EJSCREEN Environmental Justice Screening Tool, *available at* http://www2.epa.gov/sites/production/files/2014-10/documents/ejscreen_102914.pdf.

⁶ The Maryland Department of Health and Mental Hygiene (DHMH) has represented that it possesses sub-county level data on asthma but that this information has not been made available to the public due to privacy concerns.

⁷ California Office of Environmental Health Hazard Assessment (OEHHA), *California Communities Environmental Health Screening Tool, Version 2.0 (CalEnviroScreen 2.0) Guidance and Screening Tool* at 99-100, October 2014, *available at* <http://oehha.ca.gov/ej/pdf/CES20FinalReportUpdateOct2014.pdf>.

⁸ U.S. Centers for Disease Control, *Asthma in Maryland*, http://www.cdc.gov/asthma/stateprofiles/asthma_in_md.pdf (last visited May 26, 2015).

⁹ *See generally* Baltimore Neighborhood Indicators Alliance, *Vital Signs 13: Work Force and Economic Development* (Spring 2015), *available at* http://bniajfi.org/wp-content/uploads/2015/04/VS13_Workforce.pdf. The Baltimore Neighborhood Indicators Alliance also has several maps on its website showing concentrations of various socio-economic stressors in Baltimore City, which you can find at <http://bniajfi.org/mapgallery/>.

measured by emergency department visit rates (the Baltimore City rate is almost three times the state average), average mortality from asthma (the Baltimore City rate is over twice the state average), and current prevalence in adults.¹⁰

There are also data gaps with respect to information on low birth weight in Maryland. While information is available on rates of babies born at low birth weight for zip codes with a population of 5,000 or more, this information is not available for zip codes where the population does not meet this threshold.¹¹ This population threshold effectively excludes many rural areas from any analysis that requires low birth weight data.

It is extremely important that local-level data on key health outcomes be included in any tool that effectively identifies overburdened communities. If the tool or method is assessing health effects of air pollution, then the availability of data on asthma – which dramatically increases a population’s susceptibility to air pollution¹² – is especially critical, particularly for health disparity populations. We understand that this information may currently be omitted from EJSCREEN because that tool incorporates only nationally consistent datasets. If the lack of nationally consistent local data on asthma and low birth weight is the reason that these indicators are not used in EJSCREEN, then we urge EPA to work with partners to develop such nationally consistent datasets. In addition, we also request that EPA (1) encourage the gathering and compilation of community-level data on key indicators of community health, including asthma and low birth weight; (2) encourage state and federal health agencies to make this data publicly available; and (3) incorporate this data into EJSCREEN.

B. EPA Should Incorporate Information from the National Air Toxics Assessment (“NATA”) Into EJSCREEN As Soon as Possible and Keep This Information Up to Date

We were pleased to learn during EPA’s recent webinar on EJSCREEN that, in 2016, EPA will be incorporating into EJSCREEN information from an important resource: EPA’s National Air Toxics Assessment (“NATA”). NATA, which allows assessment of health risks from toxic air pollution at the census tract level, is the only nationally available resource of which we are aware that allows any direct assessment of the effect of air emissions on community health.¹³

¹⁰ Maryland DHMH, *Asthma in Maryland 2011* at 62 (August 2011), available at http://phpa.dhmh.maryland.gov/mch/Documents/Asthma_in_Maryland-2011.pdf.

¹¹ For more information about availability of data on low birth weights, please see DHMH’s page on Health Enterprise Zones at <http://dhmh.maryland.gov/healthenterprisezones/SitePages/elligibility.aspx>.

¹² American Lung Association, *Making the Connection – Asthma and Air Quality* (May 1, 2013) <http://www.lung.org/about-us/our-impact/top-stories/making-the-connection-asthma-and-air-quality.html> (last visited June 2, 2015); see also EPA, *Asthma and Outdoor Air Pollution*, available at <http://www.epa.gov/airnow/asthma-flyer.pdf>.

¹³ EPA, National Air Toxics Assessment (NATA), <http://www.epa.gov/airtoxics/natamain/> (last visited May 26, 2015).

It is important that NATA information be as current as possible. The most recent available version of NATA was produced in 2011 and uses emissions information from 2005. Up until 2011, EPA was updating NATA every three years, each time using data that is approximately six years old. We understand, and greatly appreciate, that EPA is planning to publicly release the next NATA update early in the fall of 2015, using 2011 emissions data (instead of the older set of 2008 emissions data).¹⁴ We strongly urge EPA to hold to its projected timetable for updating NATA (early fall of 2015) and incorporating it into EJSCREEN (2016) due to the important and unique nature of the information provided by this tool. We also respectfully request that, after this information is incorporated into EJSCREEN, EPA continue to keep the NATA information as current as possible by updating it based on the most recent available emissions information from the National Emissions Inventory.

III. EPA Should Encourage the Collection of Accurate Ambient Air Quality Data in Overburdened Neighborhoods

As stated above, once overburdened communities are identified, state and federal agencies will know in which communities they might focus limited resources. One critical, though sometimes expensive, resource that can be allocated to overburdened communities is ambient air quality monitors. Ambient air quality data is the basis for many important decisions, including the kinds of air pollution controls required at new or expanding local plants. EPA should take steps to encourage additional ambient air quality monitoring in overburdened communities and should ensure that this data is of sufficient quality to be considered by regulators and other decision makers.

Many communities in areas where pollution sources are clustered close together have no information at all about the concentrations of pollution in their air because there are no air quality monitors in these neighborhoods. For example, in Maryland, the industrialized Curtis Bay community in Baltimore City has a zip code (21226) that repeatedly ranks as the top zip code in the state for industrial plant emissions when using EPA emissions databases. Using the 2011 National Emissions Inventory (NEI), this zip code has the highest emissions in Maryland for fine particles (PM_{2.5}), nitrogen oxides (NO_x), volatile organic compounds (VOCs), and ammonia, and it is in the top three zip codes in the state for emissions of carbon monoxide, sulfur dioxide (SO₂) and coarse particulate matter (PM₁₀). It is also consistently the top zip code in the state, and among the top 85 zip codes (top 1%) in the country, for point source toxic emissions using EPA's Toxic Release Inventory (TRI) and subject to significant traffic from sources of diesel exhaust such as trucks and trains. Yet a fine particle monitor located in this zip code was removed in 2008 and the closest state-run air quality monitor is now over four miles from the Curtis Bay community.

¹⁴ We received this information via a May 27, 2015 email from Ted Palma in EPA's Office of Air Quality Planning and Standards (OAQPS).

This is also the case in the Sheriff Road community in Prince George's County, Maryland. This community exists across the street from an industrial park in which three or more crushers operate and from which hundreds of trucks make trips on a weekly basis. The local health department conducted a survey of the residents in the area and found that approximately 20% had asthma, which is double the state average of adults who had asthma in 2009.¹⁵ Residents of this area have been requesting state assistance since at least 2006 to limit the number of polluting facilities sited in this area or provide enhanced review of new proposals. The closest air quality monitor to this neighborhood is also approximately four miles from the community.

We understand and appreciate that EPA is beginning to address the need for additional ambient air monitoring through its Next Generation ("NextGen") Monitoring program, under which it is developing new sensor technology that could possibly be used by citizens to gather their own data. Promotion of citizen science is important, and we applaud EPA for this effort. However, it is our understanding that much of the sensor technology being considered in the NextGen Monitoring program may not produce data that decision-makers will consider reliable. It is critical that communities that spend time and resources on a citizen air quality monitoring project are not left, at the end of the project, with data that will be quickly dismissed by decision-makers. This is of particular concern in the context of fine particle pollution, for which small differences in concentrations can have significant health effects,¹⁶ yet EPA's current monitoring requirements are very complex, indicating that it may be difficult for citizens to gather accurate data.¹⁷

Additionally, it is important that EPA not abdicate its responsibilities by means of citizen monitoring. It is the job of the EPA, state agencies, and local governments to protect the health and safety of the US population, particularly overburdened communities and citizens. It is not the job of residents of overburdened communities to do this. These citizens already bear many burdens including pollution and non-chemical stressors. The over-utilization of citizen scientists may lead to more social inequities and injustice for those overburdened, underserved, and in many cases with less power and voice.

EPA's goal should be to help communities gather data that reflects the quality of the air that residents are breathing and on which officials can rely when making decisions. It would be ideal if it were possible to do this using emerging and inexpensive technology. However, if it is necessary to increase the more expensive, regulatory-grade monitoring in order to obtain accurate information on the quality of the air in overburdened communities, then EPA should

¹⁵ U.S. Centers for Disease Control, *Asthma in Maryland*, available at http://www.cdc.gov/asthma/stateprofiles/asthma_in_md.pdf.

¹⁶ See C. Arden Pope et al., Lung Cancer, Cardiopulmonary Mortality, and Long-Term Exposure to Fine Particulate Air Pollution, 287 JAMA 1132 (2002).

¹⁷ See e.g. 40 C.F.R. 40 Part 50, Appendix L.

encourage or require this, especially if limited resources for monitoring can be focused on communities that are overburdened with air pollution and have poor health outcomes.

As an example, the EPA recently expanded the network of NO₂ monitors across the country near heavily trafficked roadways. The EPA should consider doing the same for overburdened communities with federal reference method monitors for PM_{2.5}. Since many communities are impacted by multiple pollutants, it would be helpful if the EPA made provisions to site multi-pollutant monitors that can measure both criteria air pollutants and select hazardous air pollutants, such as those captured by the TRI database.

IV. EPA Should Develop Tools for Addressing Environmental Justice in Permitting

In the Draft Framework, EPA proposes to “consider environmental justice in EPA permitting.” As an initial matter, we strongly urge EPA not to limit the scope of this objective to EPA permits. In Maryland, and many other areas of the country, state agencies issue permits for almost all polluting facilities pursuant to authority from EPA. Therefore, EPA should consider its relationship with states to be a critical piece of this objective and should issue guidance or requirements on environmental justice in permitting that can be followed by states. In addition, below we suggest four specific and concrete ways in which EPA can further this goal. The first is by developing a method for conducting a “cumulative impacts analysis,” i.e. an analysis of the combined effects on a community of a proposed pollution increase when combined with existing chemical and non-chemical stressors affecting that community. The second involves fixing an important gap in current air pollution permitting requirements by providing a method for assessing the local health effects of mobile source pollution associated with a new or expanding facility. The third is by issuing guidance on how health effects assessments can be translated into concrete improvements for communities. The fourth is by encouraging meaningful public participation in state permitting decisions.

A. EPA Should Provide a Method for Conducting a Cumulative Impacts Analysis

The most significant challenge in developing a strategy to protect overburdened communities in Maryland has been in determining how to measure the impacts of a particular proposed action in combination with other chemical and non-chemical stressors that affect the same community. Ideally, this method would allow an agency to consider the entire pollution load from a new or expanding facility for all media (air, water, and soil pollution) when combined with existing pollution across all media (air, water, and soil) and all non-chemical stressors, such as poverty and health outcomes that increase sensitivity to pollution. EPA has not prescribed any method for conducting this assessment and a constant refrain in the Maryland legislative process over the past year has been that “the science does not yet exist.”¹⁸ We urge

¹⁸ Attachment A at 1.

EPA to be a champion in this area and to develop the science on cumulative exposure, effects, impacts, and risk.

While we recognize that conducting a multi-media analysis is extremely complicated, we request that EPA develop guidance for analyzing cumulative impacts from air pollution, which – in the absence of drinking water contamination – most accurately illustrates real-world exposures particularly for vulnerable, overburdened, and health disparity populations, and most directly and predictably affects human health. This guidance could be applied most easily in overburdened communities as a supplement to the New Source Review program under the Clean Air Act. The New Source Review program already requires an ambient impacts analysis for new “major” sources or “major” expansions of existing facilities. However, EPA’s guidance should provide a method for analyzing the potential combined effect of all air pollutants that will be produced by a new or expanding facility, in contrast to the current practice of analyzing individual pollutants one at a time. It should also provide a method for considering the proposed new air pollution burden in combination with existing pollution from major sources, minor sources, and pollution from mobile sources like cars and trucks.¹⁹ Finally, the guidance should explain how to account for existing non-chemical stressors, such as race/ethnicity, high crime rates, poor food access, limited medical infrastructure, segregation, and poverty, in the analysis.

B. EPA Should Provide a Method for Assessing Local Effects of Mobile Source Emissions in Permitting

In the absence of guidance on conducting a full cumulative impacts analysis for air pollution, EPA can still help to fill in key gaps in permitting of new air pollution sources. Mobile sources, such as trucks, trains, and ships, produce the same pollutants that are emitted by many large power plants. In addition, mobile sources frequently produce diesel pollution, which contains significant levels of fine particles²⁰ and was recently recognized by the World Health Organization as being more carcinogenic than second-hand cigarette smoke.²¹ However, under the Clean Air Act, agencies may issue permits for new or expanded industrial sources without including almost all mobile source emissions²² in air quality assessments.²³ In other words,

¹⁹ We recognize that this kind of an analysis is required at times, but a full ambient impacts analysis involving modeling is required only after a number of different thresholds have been met, it is never required for minor sources or “synthetic minor” sources, and, most importantly, it is still performed on a pollutant-by-pollutant basis without considering the effects of other pollutants emitted by the same facility.

²⁰ EPA Region I, Diesel Exhaust and Your Health, at http://www.epa.gov/region1/eco/diesel/health_effects.html (last visited May 26, 2015).

²¹ McNeil, Jr., Donald J., *W.H.O. Declares Diesel Fumes Cause Lung Cancer*, New York Times (June 12, 2012), available at <http://www.nytimes.com/2012/06/13/health/diesel-fumes-cause-lung-cancer-who-says.html>.

²² There is law requiring that certain ship emissions must be considered in New Source Review. See e.g., EPA New Source Review Workshop Manual (“NSR Manual”) at A.18 (“As a result of a court decision in *NRDC v. EPA*, 725 F.2d 761 (D.C. Circuit 1984), emissions from vessels at berth (“dockside”) [sic] not to be included in the determination of secondary emissions but are considered primary emissions for applicability purposes.”). However, we have never seen these considered in any permit reviews.

²³ 40 C.F.R. § 52.21.

when an agency permits a new facility, it must undertake some evaluation of the air pollution from the facility itself, but it is not required to consider *in any way* the effects on nearby communities of diesel trucks and trains that serve that new plant no matter how many truck and train trips may be required for the plant's operation.

In recent conversations with Maryland state agencies, we were informed that, even if assessment of mobile source pollution were legally required in permitting, it would be impossible to model the local impacts of mobile sources because of air quality modeling limitations. We respectfully request that EPA, under Sections I.B (permitting) and I.D (scientific tools) of the Draft Framework, develop a tool or methodology for including mobile source pollution in the air quality analyses required under the Clean Air Act New Source Review program. While we recognize that this is not legally required, this tool should be available to agencies that desire to perform such an analysis for permits where significant additional mobile source pollution is proposed in already overburdened and/or unhealthy communities.

C. EPA Should Provide Guidance on Translating Health Impacts Analyses into Improvements for Communities

EPA should also provide guidance on how to use the data and conclusions obtained from the impacts assessments described above into improvements for communities. This guidance should include suggestions for incorporating the results of a cumulative impacts analysis into the permit for the new or modified facility to reduce its adverse effect on the neighborhood. Suggested permit improvements should include reductions in emissions and methods for mitigating negative effects of pollution. Permit conditions could also include methods for reducing pollution from diesel trucks, dirt roads, and dust-producing equipment, like crushers.

D. EPA Should Encourage Meaningful Public Participation in State Permitting Decisions

The minimum requirements for public participation under environmental statutes often fall short of providing overburdened communities with a meaningful opportunity to participate in agency permitting decisions. For example, the Clean Air Act provides that citizens may request a public hearing on a permit for a new pollution source and may submit written comments on the state's proposed permit conditions.²⁴ However, citizens frequently do not learn about these opportunities because written notices are published in the back of a newspaper and sent to a list of people who previously requested, in writing, to receive permit notices. This has proven insufficient to provide real-world notice to communities about projects of interest in Maryland in a number of instances.

²⁴ 40 C.F.R. § 51.161; 40 C.F.R. Part 124.

We appreciate the guidance that EPA has issued on promoting environmental justice and ensuring meaningful community engagement in the permitting process.²⁵ Specifically, EPA has correctly acknowledged that residents and permit applicants often both benefit when an applicant goes above and beyond minimum requirements to provide information in a way that is accessible to the community and to obtain input from multiple community stakeholders.²⁶ Unfortunately, we have seen very few, if any, instances in Maryland in which any of EPA's recommendations for enhanced public participation have been adopted. Therefore, we encourage EPA to use its oversight authority and other incentives to encourage states to promote these participation techniques when they issue permits.

V. EPA Should Encourage Greater Public Access to Environmental Information

Communities cannot meaningfully participate in official decision-making without access to relevant information. In Maryland, it is sometimes difficult to obtain public documents from the various state and local agencies that have information related to environmental matters. Public records requests are sometimes ignored or unfulfilled for months, associated fees are prohibitively expensive, or responses are produced in paper format when electronic documents are available.

While Maryland recently passed legislation that may address some of these issues, EPA should provide additional assistance by developing guidance on how states can increase transparency and provide the public with better access to information. Such guidance could, among other things, encourage states to make important documents and environmental data available online and to provide fee waivers when overburdened communities seek environmental information under public records laws. Specifically, the EPA could require as part of the Title V and New Source Review permitting process that application documents and draft permits be available online. Either the delegated state or the applicant could maintain the website containing these materials. This requirement would supplement the current requirement that permit applications and draft permit materials must be available at a public location.²⁷ In addition, considering that overburdened communities may be identified based on socio-economic need, it is unlikely that such a community would be able to pay significant, if any, fees for information. Fee waivers should, therefore, be granted for environmental information when the materials requested will benefit the entire community.

A community cannot participate in public review processes in a meaningful way if it does not have adequate access to information about the subject of a permit or regulation. EPA should

²⁵ See e.g. EPA Activities to Promote Environmental Justice in the Permit Application Process, 77 Fed. Reg. 38051 (June 26, 2012), available at <https://www.federalregister.gov/articles/2012/06/26/2012-15605/epa-activities-to-promote-environmental-justice-in-the-permit-application-process>.

²⁶ *Id.*

²⁷ 40 C.F.R. § 51.161.

issue guidance that will assist states in providing the public with increased access to this information.

VI. Environmental Justice in Land Use

While the EPA has compiled a list of laws that could be used to address EJ in land use legislation, it would be more useful for EPA to compile suggestions for incorporating EJ into land use laws. For example, the Sheriff Road community mentioned above challenged a zoning decision which allowed the construction of a concrete batch plant. As part of the decision, the county agreed that the new facility would not have a negative effect on “the neighborhood.” However, the defined “neighborhood” did not include any residents in the area, even though some homes were located a little over 500 feet from the site of the proposed facility. EPA could provide guidance that, if implemented, would ensure that communities are considered in land use decisions.

VII. Conclusion

Through our collective experiences, we have come to identify some of the more difficult challenges in addressing environmental justice policy. Our comments reflect that experience and respectfully request that EPA take a leadership role in addressing these obstacles. Thank you for considering our comments.

Sincerely,

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<http://www.progressivecheverly.org/>

Thelma Boyd-Nash


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From: Melvin M. Lusterio <[REDACTED]>
Sent: Friday, April 17, 2015 4:50 AM
To: ejstrategy
Subject: Comment on Draft EJ2020 AAF

Dear EPA admin,

The Good Force be with you!

The Draft EJ2020 Action Agenda Framework must conform to God's plan which is Paradise Regained (e.g. Planting more Paradise Garden Flowers on parks & recreational areas, planting of fruit-bearing trees on uncultivated lands, a sustainable cleaner protected environment, free water of life & more...). By doing these, we are going to have a safer & abundant environment for us & for our children's future.

Live forever & prosper! Alleluia! Amen!

Truly yours,
Melvin "Yahweh" M. Lusterio





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 /MidwestEnvironmentalAdvocates

 /MidwestAdvocate

July 14, 2015

Office of Environmental Justice
Environmental Protection Agency
Mail Code 2822T

1200 Pennsylvania Avenue NW
Washington, DC 20460

Via email: ejstrategy@epa.gov

Re: Comment on Draft Framework for Environmental Justice 2020

Midwest Environmental Advocates (MEA) appreciates the opportunity to submit comments to the Environmental Protection Agency's (EPA) regarding the draft framework for Environmental Justice 2020 (EJ 2020). MEA is a non-profit environmental law center in Madison, Wisconsin, that provides legal and technical assistance to communities and families working for clean air, clean water, and clean government. MEA supports EJ 2020's use of environmental justice principles to improve the health of our communities and the environment, and we applaud the framework's commitment to work with state partners to ensure better results for overburdened communities like tribal nations.

I. The EPA's commitment to centering environmental justice in policymaking and enforcement will help communities facing threats to their health and groundwater.

First, the EPA should deepen its commitment to centering environmental justice in enforcement and policymaking decisions by protecting the health of communities experiencing environmental degradation. The EJ 2020 draft framework includes the goal of "demonstrating progress on outcomes that matter to overburdened communities," specifically by using enforcement and compliance actions to advance environmental justice goals. Draft Framework at 2. The EPA has described health and sustainability as two central elements of "environmental justice." See Plan EJ 2014 at 2. Communities in Wisconsin and across the country share these goals of health and sustainability, and the EPA's commitment to them can lead to incredible results.

One such community is Kewaunee County in northeastern Wisconsin, whose water supply is under threat from agricultural pollution from concentrated animal feeding operations (CAFOs). Kewaunee County currently has the highest cattle density, the highest CAFO density, and the second-highest number of CAFO

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animal units in the state of Wisconsin. *See* Petition for Emergency Action Pursuant to the Safe Drinking Water Act, from Midwest Environmental Defense Council et al to the EPA, October 22, 2014, at 4. These CAFOs have become a substantial risk to public health in Kewaunee County as manure contaminates the groundwater with nitrates and bacteria like *E. coli*. *See id.*, at 7-22.

Although local authorities have failed to protect Kewaunee County's water, the EPA's environmental justice mission can make the difference that state authorities have not. Under the Safe Drinking Water Act (SDWA), the EPA has the authority to pursue a wide range of remedies to protect public health, such as orders to modify manure application processes, modify waste storage practices, or halt the disposal of pollutants contributing to the public health risk. *See* EPA Memorandum, Final Guidance on Emergency Authority under Section 1431 of the Safe Drinking Water Act (Sept. 27, 1991). In 2014, MEA partnered with Kewaunee County citizens and activists to petition the EPA to use its SDWA authority to protect Kewaunee County's water and health. Cases like Kewaunee County show the powerful potential of the EPA's commitment to environmental justice principles.

II. By strengthening the EPA's commitment to working with Native partners, EJ 2020 can lead to more robust protection for tribal nations and surrounding non-Native communities.

A key part of the EJ 2020 framework is the effort to strengthen the EPA's relationship with tribal nations. The draft framework calls for a commitment to the well-being of "overburdened communities," including Native communities, and repeatedly lists tribal nations as an important partner for EPA action. *See* EJ 2020 Draft Framework at 2-3.

A renewed focus on the environmental well-being of tribal nations would be particularly meaningful in Wisconsin, where Native nations have repeatedly faced threats to their water, their health, and their economies. Most recently, a proposed swine CAFO in Northern Wisconsin would house over 26,000 swine near the shores of Lake Superior. Lee Bergquist, *Proposed Hog Megafarm Causes a Stir in Bayfield County*, MILWAUKEE JOURNAL SENTINEL, June 27, 2015. Many residents, particularly local tribes, raised concerns about the impact this proposed CAFO would have on the drinking water, specifically citing the potential for algae blooms from phosphorus runoff. *Id.*

Citing tribal concerns about the size of the CAFO and its proximity to drinking water, the EPA agreed to review the draft permit for the proposed CAFO. This review is an example of how an environmental justice framework translates to tangible results. By listening to tribes, and centering Native communities in the analysis of environmental justice, the EPA is taking action to protect Wisconsin water and Wisconsin communities. Making this framework central to our analysis will lead to a sharper focus and quicker action on the environmental threats that communities like Wisconsin tribes face.

MEA thanks the EPA for the opportunity to comment on EJ 2020. MEA supports the principles contained in the draft framework and looks forward to translation of these principles into action and results for communities in Wisconsin and across the country.

Sincerely,

/s/

Evan Gorelick

Midwest Environmental Advocates
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Madison, WI 53703
Phone: (608) 251-5047 ext 9

From: Brooks, Ned (MPCA) <Ned.Brooks@state.mn.us>
Sent: Tuesday, July 14, 2015 7:11 PM
To: ejstrategy
Subject: EJ 2020 Comments

Thank you for the opportunity to comment on EPA's draft EJ 2020 Framework.

As Minnesota Pollution Control Agency Commissioner John Stine stated in [his post to EPA's EJ in Action Blog](#), addressing inequities so that all citizens can pursue health and fulfilling lives is one of our most important jobs in public service. EPA's strong leadership is important and has been influential in helping to strengthen complementary efforts in Minnesota.

The MPCA is very supportive of EJ 2020 overall and in particular the framework's emphasis on collaboration with states and other co-regulators. We believe that this will help to further strengthen our individual efforts and our joint work with EPA. While we share many of the same goals, we bring different strengths and resources to bear that complement each other.

With respect to Goal II. "Collaborate with partners to expand out impact within overburdened communities," I would like to acknowledge the benefit of guidance documents, best practices and tools that support our state efforts to integrate environmental justice into our work and recommend that EPA continue to expand on tools that can facilitate more comprehensive and deeper work to reduce disparities in exposures, access, health and livability.

I look forward to working with EPA colleagues on this challenge.

Ned Brooks
Environmental Justice Coordinator
651-757-2557



Our mission is to protect and improve the environment and enhance human health.

Charles Lee
Deputy Associate Administrator for Environmental Justice
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
lee.charles@epa.gov

7/14/2015

Re: Draft EJ 2020 Action Agenda Framework Comment Letter

Dear Mr. Lee:

The Moving Forward Network (the Network) thanks the Environmental Protection Agency (EPA) for the opportunity to provide comments on EPA’s Draft EJ 2020 Framework, and for extending the deadline for us to do so. We also thank you for providing a webinar on the Draft EJ 2020 Framework to our members, and for EPA’s recent release of EJ Screen—an important tool for identifying localized cumulative impacts.

The Moving Forward Network is a national coalition of community-based organizations, advocates, scientists, researchers, faith-based organizations, and others committed to reducing the public health harms our country’s freight transportation system creates. The Network is comprised of approximately 38 organizations and academics in 18 states, including New York, New Jersey, California, Illinois, Kansas and Texas, where large ports, rail yards and other freight corridors reside. Importantly, Network members include individuals who live in and work directly with environmental justice communities. Accordingly, the Network has a personal stake in how EPA develops its EJ 2020 plan, and makes the following recommendations:

- 1. EJ 2020 should identify reducing air pollution from the national freight transportation system (e.g., ports, rail yards, busy truck corridors and distribution centers) as a top priority**

The Draft Framework (section III.C) requests input on “critical nationwide program areas that matter to overburdened communities on which [EPA] should focus national attention.” Freight-related air pollution meets this standard. Diesel emissions from our freight system present a national environmental justice crisis.

Nearly a decade ago, EPA recognized that more than 13 million people (3.5 million of whom are children) live near major marine ports or rail yards, and that these individuals are disproportionately low-income communities of color and susceptible to increased health risks

from air pollution.¹ These figures do not include the approximately 45 million individuals who live within 300 feet of a highway² or close to large distribution centers where diesel emission sources congregate. Moreover, these facilities and corridors are expected to expand in the coming decades, potentially affecting even more individuals, and contributing to violations of clean air standards and creating toxic hot spots. The U.S. Army Corps of Engineers estimates that “imports [are] expected to grow more than fourfold and exports expected to grow more than sevenfold over the next 30 years.”³ Ports and industries are investing billions to expand their infrastructure to accommodate this expected growth.⁴

Conventional cargo movement relies on diesel powered ships, trucks and trains that emit dangerous particulate matter (PM) and nitrogen oxides, exposure to which results in a wide range of adverse health effects, including increased rates of asthma, cardiovascular disease, heart

¹ Office of Transportation and Air Quality (OTAQ), U.S. Environmental Protection Agency (EPA) (2008, March). *Regulatory Impact Analysis: Control of Emissions of Air Pollution from Locomotive Engines and Marine Compression Ignition Engines Less than 30 Liters Per Cylinder*, EPA420-R-08-001, p. 2-57. Retrieved from <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2003-0190-0938>.

² See Office of Transportation and Air Quality (OTAQ), EPA (2015, May 22). *Near Roadway Air Pollution and Health*. Retrieved from <http://www.epa.gov/otaq/nearroadway.htm>.

³ Institute for Water Resources, U.S. Army Corps of Engineers (Army Corps) (2012, June 20). *U.S. Port and Inland Waterways Modernization: Preparing for Post-Panamax Vessels*, p. iii. Retrieved from http://www.iwr.usace.army.mil/Portals/70/docs/portswaterways/rpt/June_20_U.S._Port_and_Inland_Waterways_Preparing_for_Post_Panamax_Vessels.pdf.

⁴ *Ibid*, p. xvi.

attacks, strokes, premature death, low birth weight, and premature birth.⁵ In June 2012, the International Agency for Research on Cancer, a part of the World Health Organization, classified diesel engine exhaust as carcinogenic to humans after determining that there was “sufficient evidence that exposure is associated with an increased risk for lung cancer.”⁶ Moreover, major freight operations are happening in counties that *already* violate federal clean air standards. The American Association of Port Authorities has identified nearly 40 U.S. ports that reside in counties that are in non-attainment of federal ozone and PM 2.5 standards.⁷

In addition to posing a nationwide environmental justice problem, air pollution from freight operations would greatly benefit from comprehensive national solutions. EPA is uniquely positioned to adopt standards that will benefit all communities near freight facilities. Furthermore, while some states and ports have undertaken meaningful diesel reduction measures, emissions standards for heavy duty trucks, marine vessels and locomotives often remain outside the legal authority of states and ports. National standards, therefore, are critical to achieving

⁵ Kuenzli, N., Jerrett, M., Mack, W.J., Beckerman, B., LaBree, L., Gilliland, F., Thomas, D., and Hodis, H.N. (2005). Ambient Air Pollution and Atherosclerosis in Los Angeles. *Environmental Health Perspective*, 113, p. 201-206; Miller, K.A., Siscovick, D.S., Sheppard, L., Shepherd, K., Sullivan, J.H., Anderson, G.L., and Kaufman, J.D. (2007). Long-term Exposure to Air Pollution and Incidence of Cardiovascular Events in Women. *New England Journal of Medicine* 1(356), p. 447-458; Hoffman, B., Moebus, S., Mohlenkamp, S., Stang, A., Lehman, N., Dragano, D., Schermund, A., Memmesheimer, M., Mann, K., Erbel, R. and Jockel, K.H. (2007). Residential Exposure to Traffic Is Associated With Coronary Atherosclerosis. *Circulation*, published online. DOI:10.1161 / CIRCULATIONAHA.107693622; Pope, C.A., Muhlestein, J.B., May, H.T., Renlund, D.G., Anderson, J.L., and Horne, B.D. (2006). Ischemic Heart Disease Events Triggered by Short-term Exposure to Fine Particulate Air Pollution. *Circulation*, 114, p. 2443-2448; Schwartz, J., Slater, D., Larson, T.V., Person, W.E. and Koenig, J.Q. (1993). Particulate Air Pollution and Hospital Emergency Room Visits for Asthma in Seattle. *American Review of Respiratory Disease*, 147, p. 826-831; Jerrett, M., Burnett, R.T., Ma, R., Pope, C.A., Krewski, D., Newbold, K.B., Thurston, G., Shi, Y., Finkelstein, N., Calle, E.E. and Thun, M.J. (2005). Spatial Analysis of Air Pollution and Mortality in Los Angeles. *Epidemiology*, 16, p. 727-736; Mustafic, H., Jabre, P., Caussin, C., Murad, M.H., Escolano, S., Tafflet, M., Périer, M.C., Marijon, E., Vernerey, D., Empana, J.P. and Jouven, X. (2012). Main Air Pollutants and Myocardial Infarction: A Systematic Review and Meta-analysis. *Journal of the American Medical Association. All Rights Reserved. (JAMA)*, 307(7), p. 713-721; Wellenius, G.A., Burger, M.R., Coull, B.A., Schwartz, J., Suh, H.H., Koutrakis, P., Schlaug, G., Gold, D.R. and Mittleman, M.A. (2012). Ambient Air Pollution and the Risk of Acute Ischemic Stroke. *Archives of Internal Medicine*, 172(3), p. 229-234; Bay Area Air Quality Management District (2012, August). *Understanding Particulate Matter: Protecting Public Health in the San Francisco Bay Area*, Draft. Retrieved from http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/Plans/PM%20Planning/UnderstandingPM_Draft_Aug%2023.ashx; Ritz, B., Wilhelm, M. and Zhao, Y. (2000). Air Pollution and Infant Death in Southern California, 1989–2000. *Pediatrics*, 118, p. 493-502; Ritz, B., and Wilhelm, M. (2003). Residential Proximity to Traffic and Adverse Birth Outcomes in Los Angeles County, California, 1994–1996. *Environmental Health Perspectives*, 111, p. 207-216; Wilhelm, M., and Ritz, B. (2005). Local Variations in CO and Particulate Air Pollution and Adverse Birth Outcomes in Los Angeles County, California, USA. *Environmental Health Perspectives*, 113, p. 1212-1221.

⁶ International Agency for Research on Cancer (IARC), World Health Organization (WHO) (2012, June 12). *IARC: diesel engine exhaust carcinogenic*, p. 1. Retrieved from http://www.iarc.fr/en/media-centre/pr/2012/pdfs/pr213_E.pdf.

⁷ American Association of Port Authorities (AAPA) (2013). *Port Communities in Non-Attainment Areas for National Ambient Air Quality Standards*. Retrieved from <http://www.aapa-ports.org/Issues/content.cfm?ItemNumber=1278>.

demonstrable improvements in air quality across the entire country and throughout the national freight system.

2. EPA can achieve its EJ 2020 Framework goals by identifying freight-related air pollution as a top priority and undertaking specific actions to curb those emissions

The Draft Framework articulates the following three goals: (1) deepen environmental justice practice within EPA programs to improve the health and environment of overburdened communities; (2) collaborate with partners to expand our impact within overburdened communities; and (3) demonstrate progress on outcomes that matter to overburdened communities. The Network supports each of these goals. The following actions will help EPA achieve each of them within the context of reducing air pollution from the freight transportation system;

- After identifying freight-related air pollution as a priority in EJ 2020, EPA should direct each of its ten regions to identify and prioritize actions in communities maximally exposed to or affected by goods movement-related facilities and activities. EPA's EJ Screen, a review of recent scientific literature on diesel exhaust, and collaboration with community partners will be key to this process.
- EPA should foster regular meetings in each region with environmental justice communities adversely affected by freight-related air pollution, and identify short-term and long-term goals that address the unique needs of each community while aiming to clean-up the freight system as a whole.
- EPA should expeditiously begin the rulemaking process for regulations that will directly reduce emissions from goods movement sources, including but not limited to new engine standards for locomotives, heavy-duty trucks, ocean-going vessels and cruise ship terminals. These standards should require the development and widespread use of zero-emission technologies.
- EPA should ensure states are effectively addressing freight pollution in their state implementation plans (SIPs). In non-attainment regions heavily impacted by freight emissions, EPA must ensure that SIPs include all reasonably available control measures for freight sources.
- EPA should issue guidance on diesel emission reduction measures for freight sources to facilitate the development and use of zero-emission technologies, and underscore the importance of reducing such emissions in connection with addressing pollution in nonattainment areas.
- EPA should advocate for environmental justice, mitigation and transparency in the permitting process (e.g., NEPA process) for major freight infrastructure projects, especially for those projects proposed in communities identified as already disproportionately impacted by freight and/or in nonattainment areas.

Over the course of the next year, the Network will be expanding upon each of these recommendations because of the vital importance of these public health threats facing millions throughout the nation. Our hope is to forge a long-term partnership with the Agency to tackle freight pollution once and for all. EJ 2020 provides a ripe opportunity to solidify this partnership.

Thank you for considering our comments. If you have any questions, please contact Angelo Logan at alogan@oxy.edu or (213) 258-5157.

Sincerely,

Angelo Logan
Moving Forward Network

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Natural Resource Defense Council

Deborah Kim Gaddy
Clean Water Action (NJ)

Jesse Marquez
Coalition for a Safe Environment

Juan Parras
Texas Environmental Justice Advocacy Services

Eric Kirkendall
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Denny Larson
Community Science Center

Bahram Fazeli
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Drew Wood
California Kids IAQ

Ricardo Pulido
Community Dreams

Pastor Alfred Carrillo
Apostolic Faith Center

cc: Matthew Tejada

A strategy for advancing environmental justice, such as EJ 2020 aims to do, must not ignore the millions locked away in U.S. prisons.

I am writing to tell you I support the comment filed by Human Rights Defense Center's Prison Ecology Project. Along with the 90 other organizations which signed on to this letter, I ask that you include ask that the EJ 2020 Action Agenda Framework includes language which can ensure that prisoners in this country receive the protections that are intended under Executive Order 12898 and Title VI of the Civil Rights Act.

Thank you.

christina tsao

[REDACTED]

Suki deJong

[REDACTED]

Mary Ratcliff

[REDACTED]

Judah Schept

[REDACTED]

Elizabeth Jennings

[REDACTED]

Nicholas Segal-Wright

[REDACTED]

bailey riley

[REDACTED]

Ned Baker

[REDACTED]

Separate submissions with the above language were recieved from the listed individuals.

June 15, 2015

Charles Lee
Deputy Associate Assistant Administrator for Environmental Justice
Environmental Protection Agency
Office of Environmental Justice (2201-A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Mr. Lee:

The National Association of County and City Health Officials (NACCHO) is writing to provide comment on the Environmental Protection Agency's Environmental Justice 2020 Action Agenda Framework. NACCHO represents the nation's 2,800 local governmental health departments. These city, county, metropolitan, district, and tribal departments work every day to protect and promote the health and well-being of all people in their communities.

NACCHO appreciates the Environmental Protection Agency's (EPA) work to protect the health and environment of environmentally overburdened, underserved, and economically distressed communities, as stated in the Environmental Justice (EJ) 2020 Action Agenda Framework. NACCHO recommends the following in response to the EPA EJ 2020 Action Agenda Framework:

1. A uniform community assessment process should be integrated into the framework.

The framework should integrate more community engagement during the initial scoping stages of a project to help produce tangible action items and solutions that reflect the priorities of affected communities. Community engagement is especially crucial in federal projects to ensure integration of local and community priorities. A uniform community assessment process, such as the Protocol for Assessing Community Excellence in Environmental Health (PACE-EH), is recommended. The PACE-EH process is designed to improve decision making by taking a collaborative community-based approach to generating an action plan that is based on a set of priorities that reflect both an accurate assessment of local environmental health status and an understanding of community values and priorities. The philosophy and methodology offered in PACE-EH incorporates the notion that environmental health is protected and improved most effectively when it is defined, understood, and acted upon locally.

2. The framework should include on-going mandatory training in environmental justice practice for all employees agency-wide.

To achieve the intended goals of the EPA EJ 2020 Action Agenda Framework, it is important to ensure that mandatory training in environmental justice practice for all

employees agency-wide is provided on an on-going basis. On-going training will ensure that the future workforce will be well-trained in environmental justice and culturally competent to work with diverse communities. Cultural competency is a core domain of the Core Competencies for Public Health Professionals. The Core Competencies reflect foundational skills desirable for professionals engaging in the practice, education, and research of public health and help strengthen the public health workforce.

3. The framework should include language about mandating environmental justice decision-making at the local, state, and national levels to be public and transparent to affected communities.

Environmental justice decision-making at the local, state, and national levels should be made public and transparent to affected communities so that analysis of potential health impacts of policies and activities throughout the process is understood, minimized, and equitably distributed.

NACCHO appreciates the opportunity to comment on the EPA EJ 2020 Action Agenda Framework. As an essential governmental public health partner, we look forward to continuing to work with EPA to realize the goals of the framework. NACCHO's Environmental Health Committee convenes monthly and would welcome the opportunity to engage in dialogue with EPA leadership on the framework. If you have any questions, please contact Jennifer Li, Director of Environmental Health, for further information at 202-507-4242 or jli@naccho.org.

Sincerely,



LaMar Hasbrouck, MD, MPH
Executive Director

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June 11, 2015

Charles Lee

Deputy Associate Assistant Administrator for Environmental Justice

U.S. EPA, Office of Environmental Justice (2201-A)

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Dear Mr. Lee:

The National Association of Clean Water Agencies (NACWA) appreciates this opportunity to provide comments on EPA's draft *EJ 2020 Action Agenda Framework*. NACWA is the advocacy voice for the nation's publicly owned wastewater and stormwater utilities, and our nearly 300 utility members nationwide are working on the front lines of environmental protection every day to ensure clean water. On behalf of our members, we are pleased to provide this vital municipal perspective on the draft *Framework* and environmental justice (EJ) issues in general.

NACWA members are committed to advancing EJ, and many are already including EJ considerations in how they manage their utilities and interact with their communities. This is especially true regarding low income and economically disadvantaged populations within their service areas. Utilities are also actively embracing EJ as a central component of the Utility of the Future concept, which is a blueprint created by the municipal clean water community to encourage more innovative thinking about how utilities serve their communities. NACWA is supportive of EPA's EJ efforts and applauds the Agency for proposing the draft *EJ 2020 Framework*. However, NACWA believes the *Framework* – and EPA's EJ efforts overall – must include a greater focus on the very significant financial capability and affordability challenges that communities all across the nation are facing, especially low-income urban populations.

Clean water and stormwater utilities will be required to spend hundreds of billions of dollars in the coming decades to address a variety of clean water challenges associated with wet weather, nutrients, biosolids management, and stricter water quality standards. These expenditures are the direct result of federal environmental mandates under the Clean Water Act (CWA), often implemented as part of federal consent decrees or enforcement orders. In addition, utilities have an obligation to operate and maintain current assets – e.g., the necessity to maintain, replace and upgrade existing infrastructure. These costs are not discretionary as they reflect the

cost of doing business for a utility. As a result, many utilities – especially those with large EJ populations – are finding it difficult to afford the increased water and sewer rates necessitated by their existing obligations coupled with new environmental mandates. This is particularly true in the wake of the Great Recession, from which many communities are still struggling to recover economically.

NACWA raised similar points with EPA in our 2010 comments on the Agency’s draft *Plan EJ 2014*. Our concerns remain as valid today as they were then. However, since 2010, a number of NACWA members have conducted extensive demographic and economic surveys of their service areas and now have much better data to quantify the disproportionate impact that rate increases required by CWA mandates are having on economically distressed EJ populations.

These studies have demonstrated that clean water rates as a percentage of median household income (MHI) – which is the indicator EPA looks at to determine affordability – can vary widely among segments or individual communities in a given service area. For instance, one set of data suggested that, while the percentage of MHI for monthly clean water bills in the top income quintile could range between .74% and 2.98%, the range for the same bill in the bottom income quintile was between 2.60% and 10.42% of MHI. That is a significant and very concerning difference in affordability between the top and bottom income brackets, and highlights the disproportionate economic burdens being placed on economically distressed communities.

NACWA raises this affordability concern not as an excuse to avoid making needed clean water investments, but instead to emphasize the unfortunate but all too real flip side of federal clean water mandates that many communities are struggling to address. On the one hand, EPA has indicated the regulatory and enforcement CWA requirements being imposed on many communities are in part to address environmental concerns disproportionately impacting EJ populations. But on the other hand, it is those very same EJ populations that are most often economically distressed and least able to afford the significant rate increases that follow, bearing a disproportionate percentage of the cost for the overall community.

This is a contradiction with respect to EJ priorities that, NACWA respectfully submits, EPA has not yet resolved. While EPA has taken important and very helpful steps in recent years to provide communities more flexibility in meeting CWA requirements through the Integrated Planning Framework and related Financial Capability Framework – for which NACWA is grateful and applauds the Agency – more work must be done in recognizing the EJ considerations involved in financial capability and affordability issues. This is particularly true with respect to requirements around federal consent decrees, which are more often than not the largest single drivers of large-scale, costly investments by clean water utilities.

Specific to the draft *EJ 2020 Framework*, NACWA suggests two targeted changes that could more directly incorporate concepts of community financial capability and affordability in the document without altering its overall intent. First, NACWA recommends that the first goal of the *Framework* be expanded to read as follows: “Deepen environmental justice practice within EPA programs to improve the health and environment of overburdened communities *in a manner that recognizes the financial challenges facing economically distressed populations.*” (New language in italics). Similarly, NACWA suggests the first bullet under subsection C of the first goal be reworded as follows: “Continue to advance environmental justice goals comprehensively through targeting, case development, and resolution of compliance and enforcement actions in overburdened

June 11, 2015

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communities, *taking into account financial capability and affordability challenges facing low-income and economically distressed populations.*”

Beyond the *Framework*, NACWA encourages EPA to pursue additional efforts to include financial capability and affordability concerns for low income populations in the Agency’s EJ efforts, especially those created by EPA’s own clean water environmental mandates to local governments. As part of this effort, NACWA strongly suggests EPA include a representative from the municipal clean water utility community on the National Environmental Justice Advisory Council (NEJAC). Having an individual from this key stakeholder group on the NEJAC would provide the council with valuable insights from the municipal clean water sector. NACWA has nominated a number of its members for seats on the NEJAC in recent years, and is hopeful a municipal utility representative can be seated on the NEJAC soon.

NACWA appreciates the opportunity to provide these comments on the draft *EJ 2020 Framework* and appreciates EPA’s effort on EJ issues. If you have any questions about these comments or would like to discuss them further, please don’t hesitate to contact me at ngardner-andrews@nacwa.org or 202/833-3692.

Sincerely,



Nathan Gardner-Andrews
General Counsel

CC: Ken Kopocis, Deputy Assistant Administrator, Office of Water
Cynthia Giles, Assistant Administrator, Office of Enforcement and Compliance Assurance

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May 18, 2015

U.S. Environmental Protection Agency
Attn: Charles Lee
Deputy Associate Assistant Administrator for Environmental Justice
Office of Environmental Justice (2201-A)
1200 Pennsylvania Avenue, NW Washington, DC 20460

Subject: NTAA Input on the Draft EJ 2020 Action Agenda Framework

Dear Mr. Lee:

The NTAA is a member-based organization with 94 principal member Tribes. The organization's mission is to advance air quality management policies and programs, consistent with the needs, interests, and unique legal status of Indian Tribes and Alaskan Natives. As such, the NTAA uses its resources to support the efforts of all federally recognized Tribes in protecting and improving the air quality within their respective jurisdictions. Although the organization always seeks to represent consensus perspectives on any given issue, it is important to note that the views expressed by the NTAA may not be agreed upon by all Tribes. Further, it is also important that EPA understands interactions with the organization do not substitute for government-to-government consultation, which can only be achieved through direct communication between the federal government and Indian Tribes.

NTAA generally supports the EPA's recognition of environmental justice (EJ) concerns within Tribal communities as well as the imperative to ensure fair and equitable treatment and meaningful involvement of all peoples, particularly overburdened indigenous communities. Regarding the Draft EJ 2020 Action Agenda Framework, NTAA agrees with many of the assertions presented by EPA and the general need to develop clear EJ protocols. NTAA has provided comments below to address improvements to the framework to better protect and advance environmental justice for Tribes communities throughout the nation. NTAA respectfully encourages EPA to seriously consider and incorporate these several improvements prior to issuing the final Framework.

NTAA's comments are submitted in an effort to help EPA implement this important policy.

Specific Guidance for States on Incorporation of EJ Principles in Federal Programs

The Framework's focus is primarily on deepening the practice of EJ within the EPA programs and offices, and only one section of the Framework addresses EPA's efforts to have other governments follow the EJ principles. This is a shortcoming because the Framework does not recognize that most of the implementation of federal environmental laws is done by the States and by Tribes who have been granted "Treatment as a State" (TAS). We believe that those federal programs that EPA has approved for other governments to administer should be required to follow the same EJ principles that EPA would follow if EPA were to administer the program through direct implementation.

Section II.A is on the topic "Collaborate with states, Tribes, local governments and other co-regulators to share and develop environmental justice tools and practices." This section of the Framework expects that collaborating, engaging in joint learning, and sharing with states, Tribes, and local governments will enhance how those governments integrate EJ into how they administer their programs. We believe that EPA should take stronger steps to ensure that the federal programs it approves to be administered by the states and other government partners include clear requirements to meet the same goals and principles of EJ as EPA follows. By doing so, the agency can ensure that the Framework indeed meets the stated objective to "advance environmental justice through [EPA's] programs, policies, and activities."

It is clear that EPA is responsible for administering all of the federal environmental laws nationally unless a state or Tribe submits a program that meets the federal laws' requirements and EPA's standards and regulations or is more stringent. There are some federal programs that cannot be delegated to the states, such as setting the National Ambient Air Quality Standards (NAAQS) under the Clean Air Act (CAA), which are promulgated by EPA. The CAA requires states to designate air quality control regions and submit state implementation plans (SIPs) that are designed to meet or exceed all of the NAAQS and other air quality management requirements that EPA has promulgated.¹ If a state submits a SIP that is disapproved by EPA, then Section 110(c) of the CAA² requires EPA to establish a federal implementation program (FIP) to properly regulate air quality. The CAA similarly requires EPA to designate air quality areas if the state fails to submit an approvable plan,³ and for EPA to designate areas as attainment, nonattainment, or unclassifiable for ozone, carbon monoxide, and particulate matter (PM10) if the state fails to submit an approvable list.⁴

If EPA must directly implement these statutory requirements because the partner government fails to submit an approvable program, EPA will administer the program itself and follow the EJ principles that it has adopted in its EJ policies. For example, EPA must approve state programs to issue air quality permits to major stationary sources under Title V of the CAA.⁵ Issuing appropriate permits for the construction and operation of major stationary sources of air pollution is an integral

¹ In the case of Native American tribal lands and reservations, where SIPs do not have effect, EPA's regulations provide that EPA "Shall promulgate without unreasonable delay such [FIP] provisions as are necessary and appropriate to protect air quality." 40 CFR 49.11(a)

² 42 USC 7410(c)(1)

³ 42 USC 7407(d)(1)(B)(ii)

⁴ 42 USC 7407(d)(4)(A)(ii)

⁵ 42 USC 7661

step to attaining or maintaining the air quality goals of an area in which the source will be located and the air quality in downwind areas and emissions may disproportionately affect EJ populations near or downwind of the facility. EPA regulations at 40 CFR Part 70 describe all the requirements of a state program in order for EPA to approve the state's Title V permit program. If a state program or a Tribe with TAS has not been granted full approval of its program under 40 CFR 70.4, then EPA must directly implement Title V under 40 CFR Part 71.⁶ Again, if EPA must issue permits under 40 CFR Part 71, it will follow its EJ principles and policies.

So, EPA is ultimately responsible for how the federal environmental statutes and regulations are administered by the states, and in the absence of an approved state program, EPA will administer those environmental programs, following the principles of EJ that are part of EPA's policies and practices, in accordance with Executive Order 12898. From that perspective, it makes sense that the state programs administered on behalf of EPA should follow the same EJ principles that EPA would follow. A state that runs a federally approved program should have an EJ program (procedures and protocols) that meet the requirements of EPA's EJ policies, or adopt a process that meets the objectives of EPA's EJ policies. It is especially important, in light of the federal government's trust responsibility to Native American Tribes, that state programs incorporate the principles of the 2014 *EPA Policy on EJ for Working with Federally Recognized Tribes and Indigenous Peoples* when administering a federal statute with a program approved by EPA.

EPA already has regulations in place that govern public participation at 40 CFR Part 25 for certain programs, and which directs states, interstate, and sub-state agencies how to provide for public participation in the implementation of certain programs under the Resource Conservation and Recovery Act (RCRA), the Safe Drinking Water Act (SDWA), and the Clean Water Act (CWA). Yet the requirements that EPA has imposed under these regulations do not require the state agencies to provide for implementation of those programs in a manner that meets the principles of EPA's EJ policies or procedures. The CAA provides authorities where EPA could establish a requirement that a state applying for program approval must show it has a program that meets the EJ principles in EPA's EJ policies. For example, Sec. 110(a)(2) of the CAA,⁷ requires that an implementation plan can only be approved by EPA if the state shows that it adopted the requirements "after reasonable notice and public hearing." Another CAA authority, Sec. 165(a)(2)⁸ requires that a permit may not be issued by a state to major emitting sources until it has held a public hearing and provided for submission of written comments. EPA can establish requirements for applicants under these statutory authorities that would embody EPA's EJ principles.

The NTAA recommends that EPA make a commitment to evaluate all delegable federal programs for how those programs could be strengthened by requiring that a state or other government partner applying to administer the program must include a demonstration of how it will administer the program in a manner consistent with the principles of EJ that are articulated in EPA's EJ policies. One first step is that EPA can amend its public participation rules at 40 CFR Part 25 to provide that the special attention to Environmental Justice. For example, 40 CFR 25.4(2) directs state, interstate and sub-state agencies to identify segments of the public likely to be affected by agency decisions. It would be appropriate for EPA to also specifically identify environmental justice populations,

⁶ 40 CFR 71.4(a)

⁷ 42 USC 7410(a)(2)

⁸ 42 USC 7475 (a)(2)

such as Tribes and Indigenous Peoples. Another step that EPA can take for amending Part 25 would be to clearly direct that its requirements apply to many other federal programs which do not yet have EJ or public participation procedures that embody EJ principles.

Training for EPA Staff in Cultural Competency Principles

In order to meaningfully advance EJ in Tribal communities, EPA staff must fully understand the cultural dimensions of Tribal lifeways insofar as they relate to unique vulnerabilities and sources of resilience. Conversely, it is imperative that Tribal partners understand the procedures and workings of the EPA as it administers and oversees the implementation of federal environmental laws. The Framework notes that in 2014, EPA staff completed mandatory EJ training. NTAA applauds EPA for developing mandatory EJ trainings and would strongly encourage an extension of this training to encompass cross-cultural competency for EPA staff working with Tribal communities.

In 2013 the National Environmental Justice Advisory Council (NEJAC) submitted recommendations to EPA in response to the Working Draft of the “EPA Policy on Environmental Justice for Tribes and Indigenous Peoples”. Subsequently in 2014, EPA Administrator Gina McCarthy issued the finalized EPA “Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples”. The NEJAC recommendations had included an amendment to Principle 7⁹ which would serve to improve the Policy by promoting effective cross-cultural competency. NEJAC stated that “outreach and training of Tribes and indigenous stakeholders to enhance their understanding of EPA’s roles, responsibilities, and corporate culture is needed.” It is unclear whether the NEJAC recommendations ultimately informed the subsequent or final iterations of the Policy. Nonetheless, NTAA agrees that if Tribes are meant to fully and successfully participate in EPA processes related to environmental justice, they must be given an opportunity for training on EPA culture. In turn, EPA staff training in Tribal culture competence must be incentivized and encouraged. The benefits of effective cross-cultural competence training will rapidly become apparent as EPA staff and their Tribal counterparts are tasked complex issues that arise from the unique cultural practices and customs of tribes and the way that these practices may influence susceptibility to harm from environmental degradation (e.g. reliance on specific pollutant-sensitive plant species for traditional practices; consumption patterns of fish that are unsuitable for high rates of consumption due to contamination).

Cross-cultural competence should include guidance on fundamentals of identifying and interacting with Tribal communities (e.g. indigenous peoples from outside of the United States), and methods of identifying culturally relevant information when dealing with Tribes. NTAA recommends that EPA staff work with Tribal leaders to finalize what specific culturally-relevant material should be included within cultural competency trainings.

The development of formalized cross-cultural competence training is especially important at this point in time, when EPA is grappling with high turnover of senior management and staff that

⁹ Principle 7 states that: “The EPA considers confidentiality concerns regarding information on sacred sites, cultural resources, and other traditional knowledge, as permitted by law. The EPA acknowledges that unique situations and relationships may exist in regard to sacred sites and cultural resources information for federally recognized tribes and indigenous peoples.

possess great institutional knowledge and may have already had longstanding relationships with Tribes in their respective regions. EPA regional staff, who interact most with Tribal communities, leadership, and staff would benefit tremendously from well-designed, required cultural competency training. Similarly, Tribal staff should be afforded the opportunity to participate in cross-cultural competence training so that they can better understand EPA workings and methods of navigating through complex Agency processes.

Agency-Wide Commitment to Considering Vulnerabilities/Disproportionate Impacts to Tribes, Native American and Alaska Natives During the Rulemaking Process

As the EJ 2020 Framework recognizes, it is very important to incorporate environmental justice into rulemaking. As described in the comments above, one important step is for those rules that govern what a state or government must include in a federal environmental program for EPA approval is to demonstrate its program meets the principles of EPA's EJ policies and guidance. A second important step is to ensure that EPA's rule writers and analysts fully consider the EJ principles while preparing EPA regulations that will be implemented by EPA itself.

We recognize that EPA has been in the process of preparing the *Technical Guidance for Assessing EJ in Regulatory Analyses* (Technical Guidance), with the most recent draft issued in 2013. This can be a very useful guide for EPA rule writers and analysts. However, a brief review of the draft Guidance finds that it could be updated to fully reflect the principles in EPA's EJ policies. For example, while the draft Guidance refers to Indian Tribes in various places, Section 3, Contributors and Drivers to Potential Environmental Justice Concerns, states "Minority, low-income and indigenous populations experience greater exposure and disease burdens that can increase their risk of adverse health effects from environmental stressors." Minority and Indigenous Populations are defined in Section 2.2 to include Native American and Native Alaskans among other types of indigenous peoples. However, Indian Tribes are not often specifically mentioned in the sections that follow. The Technical Guidance could be updated to specifically refer to the 2014 *EPA Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples*, and ensure that the principles in that EJ policy are incorporated into the Guidance.

Section 3 of the draft Technical Guidance covers the reasons why EJ populations may be disproportionately susceptible to adverse health effect from exposures, and so the draft Technical Guidance guides EPA analysts to evaluate the potential health and environmental effects on EJ populations that could result from the regulations that are being prepared. However, our recent review of EPA's proposed rule to revise the ground-level ozone National Ambient Air Quality Standard (NAAQS)¹⁰ found that the analysts and rule writers had missed an important disproportionate impact to the health of Native Americans and Alaska Natives, perhaps because the analysts and rule writers did not have a final Technical Guidance to follow. Native Americans and Alaska Natives and their children, suffer from the lung disease of asthma at nearly twice the rate of the general U.S. population. The studies and analyses for the proposed rule identified that ozone affects a significant number of plant species that are important to Indian Tribes for traditional and subsistence purposes as well as many other trees and plant species. This information was used to support lowering the secondary NAAQS to better protect public welfare. However, the disproportionate effect of ground-level of ozone on the human health of Native Americans due to

¹⁰ 79 FR 75234-75411, Dec. 17, 2014

their higher incidence of asthma was not covered as an important consideration in proposing to revise the primary NAAQS. For this reason, the NTAA commented on the proposal and asserted that EPA should adopt the lowest standard reviewed on the proposed rule of 60 ppb, rather than adopt a standard in the 65-70 ppb range as proposed, in order to provide the greatest protection to the disproportionately affected Native populations. We noted in our comments that the final section of the Preamble to the proposed rule that addresses Executive Order 12898 writes that the proposed action “will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health.” Further on, the proposal writes that the revised ozone standard will increase public health protection, and cites the Regulatory Impact Analysis as the basis for that conclusion. While we concur with the science, which suggests that a lower standard will increase public health protection, we believe that a standard higher than 60 ppb will have a disproportionate impact on Native Americans and Alaska Natives and their children. We strongly encouraged EPA to adopt the lowest standard that was discussed in the proposal so as to best protect the Native American and Native Alaskans who have a higher incidence of asthma than the general population.

In summary on this point, we urge EPA to finalize the Technical Guidance quickly, incorporating the suggestions made above. We also urge that EPA ensure that its analysts and rule writers are fully trained in EPA’s EJ principles and the Technical Guidance, and learn all of the steps that are to be considered when evaluating the EJ implications of regulations that are being prepared.

Conclusion

The NTAA is pleased to provide the aforementioned comments regarding the U.S. Environmental Protection Agency’s (EPA)’s Draft *EJ 2020 Action Agenda Framework*. Please contact us if you have any questions or need clarification.

On Behalf of the NTAA Executive Committee,

A handwritten signature in black ink, appearing to read "Bill Thompson", is centered on the page. The signature is fluid and cursive.

Bill Thompson, Chairman, NTAA



July 14, 2015

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Draft EJ 2020 Action Agenda Framework (June 15, 2015)**

*Submitted via e-mail - July 14, 2015
to ejstrategy@epa.gov*

Since 2010, NCA has been Oregon's only non-profit organization dedicated to reducing urban air toxics and other air pollution that puts Oregonians' health at risk. While Oregon is generally perceived as having clean air, national and state data put our city in the highest risk category for Hazardous Air Pollutants, the 188 air toxics that are emitted by industry, diesel engines, and motor vehicles. These are known to cause many adverse health effects like cancer, heart disease, upper respiratory problems, and asthma.

A study released in 2010 by the Oregon Department of Environmental Quality showed that higher concentrations of air pollution are present in Portland Metro area census tract with higher populations of color and low income communities. In addition, Multnomah County Health Department's 2014 report on racial and ethnic health disparities in the region, found that census tracts that had at least 15% of total tract population identifying as Black/African American, Asian/Pacific Islander, or Latino had an estimated two to three times higher median levels of diesel particulate matter than census tracts with 90% or more non-Latino White populations. County data also notes that these same populations are suffering higher rates of disease associated with air pollution including: asthma, cardio vascular disease, pre-term births and low birth weights.

The persistent problem of air pollution in Portland, while well documented by state regulators, is not publicly well understood or recognized, in a large part due to state and federal reliance on NAAQS standards to define general air quality in a region. NCA recognizes that individuals who live in non-attainment areas are at great risk, but we believe that a significant number of people in the US still are at danger from air pollution, even when they live in areas that meet NAAQS standards, such as the Portland Metro region. Many of these people live in hotspots and urban environments with significant levels of Hazardous Air Pollutants that are not well monitored or accounted for. NCA has taken the lead on educating community members and leaders on the sources, risks and solutions to the most dangerous air pollution, and believes this experience can help inform federal regulators on how they can better assist EJ communities:

- **EPA should move EJ Screen and C-Ferst beyond modeling and studying and provide clear and effective pathways for citizen science to impact decision making. When these modeling tools indicate elevated risk for a community, the burden of proof should be shifted to sources of air pollution, or local regulators, to prove that emissions do not cause excess harm to the health and well-being of people who live in the affected area.**

Neighbors for Clean Air | PO Box 10544 | Portland | OR | 97296

- **EPA should provide an approved protocol for measuring Diesel Particulate.**
- **Diesel Exhaust continues to pose a significant threat to EJ communities. Therefore, EPA should elevate EJ as a priority criteria for granting DERA funding, ensuring that no project is funded unless it can demonstrate real progress in reducing disparities or benefiting minority contractors.**
- **EPA should direct states to consider EJ and cumulative effects when permitting existing sources.**

NCA appreciates the opportunity to comment on EPA's EJ 2020 plan. It is essential that the agency provides leadership and direction to realize progress needed to reverse the damage of disparate impacts and avert the accumulation of risk posed by the threat of climate change on these already over-burdened communities.

With kind regards,

A handwritten signature in black ink, appearing to read "Mary Peveto". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mary Peveto
President
Neighbors for Clean Air

Comments on:

**The Draft EJ 2020 Environmental Protection Agency
Action Agenda**

Submitted By: New Jersey Environmental Justice Alliance

Date: 7/14/15

Prepared By:

Nicky Sheats, Esq., Ph.D.

Director, Center for the Urban Environment,

John S. Watson Institute for Public Policy of Thomas Edison State College

Introduction

One of the stated goals in the *Draft EJ 2020 Action Agenda Framework (EJ 2020)* is to “Demonstrate progress on outcomes that matter to overburdened communities.” The New Jersey Environmental Justice Alliance (NJEJA) agrees that this is a critical goal and believes that a specific outcome on which *EJ 2020* should focus is achieving a measurable reduction in the amount of pollution in communities overburdened with pollution and in environmental justice (EJ) communities.¹ EJ communities are more vulnerable to detrimental health impacts caused by pollution due to troubling vulnerabilities associated with race and income in our nation² and many EJ communities are also overburdened communities (see below).

The United States Environmental Protection Agency (EPA) should develop substantive policies that will achieve needed reductions in pollution. These comments offer several policies developed by NJEJA and its allies that would achieve such reductions and that are examples of the types of strategies EPA should adopt or create.

Title VI of the 1964 Civil Rights Act is also briefly discussed as a mechanism that could not only protect EJ and overburdened communities from additional pollution but that could also be used to reduce existing pollution.

¹ When we refer to EJ communities we mean communities Of Color and low-income communities.

² See Blank, R. M., 2001. "An Overview of Trends in Social and Economic Well-Being, by Race," in N. J. Smelser, W. J. Wilson, and Mitchell, F. (eds.), *America Becoming: Racial Trends and Their Consequences*, Volume 1 (Washington, D.C.: National Academies Press, 2009), pp. 21-39; S.J. Jones (ed.), *The State of Black America 2008 in The Black Woman's Voice*, (N.Y.: National Urban League, 2008); R.D. Bullard, G.S. Johnson and A.O. Torres 2011. *Environmental Health and Racial Equity in the United States, Building Environmentally Just, Sustainable and Livable Communities*. (Washington, D.C.: American Public Health Association Press, 2011).

These comments are being submitted by NJEJA, the only statewide New Jersey organization that addresses environmental issues and is a majority Of Color in both its leadership and membership.³

Outcomes

One of the primary community outcomes that should be a focus of *EJ 2020* is the actual reduction of the pollution load borne by EJ and overburdened communities since this pollution can have a negative effect on the health of community residents. For example, particulate matter air pollution alone has been estimated to cause 200,000 premature deaths in the United States every year.⁴ It is also well known that EJ communities have been found to have a disproportionate number of environmental hazards sited in their borders⁵ and to face disproportionate exposures to pollution, particularly air toxics.⁶

³ The NJEJA mission statement reads as follows: "The New Jersey Environmental Justice Alliance is an alliance of New Jersey-based organizations and individuals working together to identify, prevent, and reduce and/or eliminate environmental injustices that exist in communities of color and low-income communities. NJEJA will support community efforts to remediate and rebuild impacted neighborhoods, using the community's vision of improvement, through education, advocacy, the review and promulgation of public policies, training, and through organizing and technical assistance."

⁴ Caiazzo, F., Ashok, A., Waitz, I.A., Yim, S.H.L. and Barrett, S.R.H. "Air pollution and early deaths in the United States. Part 1: Quantifying the impact of major sectors in 2005," *Atmospheric Environment* 79 (2013), pp. 198-208.

⁵ United Church of Christ Commission for Racial Justice. *Toxic Waste and Race in the United States: A National Report on the Racial and Socioeconomic Characteristics in Communities with Hazardous Waste Sites*, New York, (1987); Mohai, P. and Saha, R. "Racial Inequality in the Distribution of Hazardous Waste: A National-Level Reassessment," *Social Problems* 54, No. 3 (2007): 343-370; Bullard, R.D., Mohai, P., Saha, R., and Wright, B., *Toxic Wastes and Race at Twenty 1987-2007: Grassroots Struggles to Dismantle Environmental Racism in the United States* (Cleveland, OH: United Church of Christ Justice and Witness Ministry, 2007); California EPA. *Cumulative Impacts: Building a Scientific Foundation*, (Sacramento, Calif.: California Environmental Protection Agency, Office of Environmental Health Hazard Assessment, 2010).

⁶ Wernette, D.R., and Nieves, L.A. "Breaking Polluted Air." *EPA Journal* 18 (1992), p. 16; Jarrett, M., Burnett, R.T., Kanaroglou, P., Eyles, J., Finkelstein, N., Giovis, C. and Brook, J.R., "A GIS-environmental justice analysis of particulate air pollution in Hamilton, Canada," *Environment and Planning A* 33, No. 6 (2001), pp. 955-73; Houston, D., Wu, J., Ong, P. and Winer, A. "Structural disparities of urban traffic in Southern California: implications for vehicle related air pollution exposure in minority and high poverty neighborhoods," *Journal of Urban Affairs* 26, No. 5 (2004), pp. 565-92; Pastor, M., Jr., Sadd, J.L., and Morello-Frosch, R. "Waiting to Inhale: The Demographics of Toxic Air Release Facilities in 21st-Century

EPA must develop strategies that will have a measurable impact on this outcome. Several such policies are discussed below.

Substantive Policies that Reduce Pollution in EJ Communities

EPA should develop, with the input of the EJ community, policies that will result in a measurable reduction in the pollution load of EJ and overburdened communities. While EPA has at times emphasized increasing community participation in EPA processes and the need for EJ analyses and mapping it has placed less of a priority on creating substantive policies that would actually reduce pollution in EJ and overburdened communities. For example, while NJEJA applauds the development of EJSCREEN we also strongly urge EPA to attach substantive policies to this tool to provide pollution protection and reduction for communities.

Community participation and EJ analyses are necessary but not sufficient to protect communities. EPA needs to move beyond them and create policies that will improve the quality of life in EJ and overburdened communities by reducing pollution loads. The creation of these policies should also be an integral part of *EJ 2020*.

California," *Social Science Quarterly* 85 (2004), pp. 420-440; Pastor, M., Morello-Frosch, R. and Sadd, J.L., "The Air is Always Cleaner on the Other Side: Race, Space, and Ambient Air Toxics Exposures in California," *Journal of Urban Affairs* 27 (2005), pp. 127-148; Ash, M., Boyce, J., Chang, G., Scoggins, R. and Pastor, M. "Justice in the Air: Tracking Toxic Pollution from America's Industries and Companies to Our States, Cities, and Neighborhoods (Amherst, Mass.: Political Economy Research Institute, 2009.); and see California EPA, *cited above in note 5*.

Below we provide a description of several policies developed by NJEJA and allies that would accomplish this goal and that EPA should adopt and emulate.

Cumulative Impacts

The issue of cumulative impacts should receive more attention than is currently given to it in *Draft EJ 2020*. Cumulative impacts, multiple pollutants emitted by multiple sources of pollution in a community that combine with social issues to create negative health impacts, is a significant issue in many EJ and overburdened communities across the country.⁷ EPA needs to develop a substantive policy that protects EJ and overburdened communities from cumulative impacts.

NJEJA has developed such a policy. The NJEJA strategy would identify EJ and overburdened communities and protect them from additional pollution while decreasing existing pollution. It would protect neighborhoods from additional pollution by not issuing new pollution permits in overburdened and/or EJ communities unless the proposed new facility can show it would not increase the amount of pollution emitted in the community. It could accomplish this by either demonstrating it would not emit pollution or by offsetting existing pollution emissions *in that community*. The policy would reduce existing pollution in the community by not renewing a pollution permit for a facility unless it can demonstrate that it will reduce pollution emissions in the community. It can show this by either demonstrating that it will reduce its own pollution

⁷ National Environmental Justice Advisory Council. *Ensuring Risk Reduction In Communities With Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts* (Washington, D.C.: U.S. Environmental Protection Agency, 2004); California EPA, *cited above* in note 5; Morello-Frosch, R., Zuk, M., Jarrett, M., Shamasunder, B. and Kyle, A.D. "Understanding The Cumulative Impacts of Inequalities In Environmental Health: Implications for Policy," *Health Affairs* 30 No. 5 (2011), pp. 879-887.

emissions or by offsetting existing pollution emissions *in that community*. The policy would also provide incentives to improve “quality of life” issues in these communities such as open space and the availability of fresh, affordable, food. EJ and/or overburdened communities could be identified through the use of EJSCREEN or tools similar to California’s⁸ or New Jersey’s⁹ cumulative impacts screening tools.

This policy was presented to EPA previously by NJEJA in comments submitted in response to an EPA request for suggestions on how to address cumulative impacts. Those comments and a short policy memorandum describing the policy are attached.

Clean Power Plan

NJEJA; the Center for Earth, Energy and Democracy; WEACTION; the Center for Race, Poverty and the Environment; the EJ Leadership Forum on Climate Change and their allies have all called for the Clean Power Plan to mandate carbon dioxide emissions reductions from power plants in and near EJ communities as a way of ensuring these communities receive greenhouse gas co-pollutant reductions that will improve their health. It would be preferable if co-pollutant reductions were maximized within the constraints provided by the carbon dioxide emissions reduction goal, but even if this is not the case EJ communities would benefit from the incidental co-pollutant reductions that accompany the carbon dioxide emissions reductions. EPA has touted the co-pollutant reductions that will be generated by the Clean Power Plan but there is nothing in the current version of the proposed rule that guarantees a certain amount of co-pollutant

⁸ Information on California’s tool can be found at: <http://oehha.ca.gov/ej/ces2.html>.

⁹ Information on New Jersey’s screening tool can be found at: http://www.state.nj.us/dep/ej/docs/ejc_screeningmethods20091222.pdf.

reduction will reach EJ communities and no analyses that even estimates how much co-pollutant reduction will reach EJ communities.

If the Clean Power Plan rule mandated emissions reductions in and near EJ communities this would reduce the existing air pollution burden on EJ communities and achieve the reduction in pollution that we are advocating in these comments. This policy is explained in more detail in comments on the Clean Power Plan that were previously submitted by NJEJA to EPA. Those comment are attached.

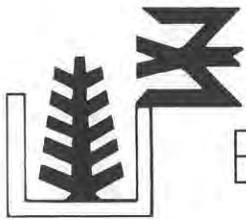
Title VI

Title VI of the 1964 Civil rights Act, 42 U.S.C. § 2000d et seq, is not, of course, a policy to be developed by EPA but an existing law of the United States. It can be used to not only address existing disparate pollution burdens associated with race but also to affirmatively protect Of Color EJ communities from disproportionate amounts of pollution or to ensure that they receive a fair share of environmental benefits. For example, several attorneys associated with the EJ community have suggested that Title VI could be used as legal justification for mandating emissions reductions for EJ communities under the Clean Power Plan. However, Title VI claims have been handled poorly by EPA¹⁰ and *EJ 2020* needs to ensure that EPA fully repairs its ability and intention to enforce Title VI.

¹⁰ Deloitte Consulting LLP. *Final Report: Evaluation of the EPA office of Civil Rights* (Washington, D.C.: Deloitte Consulting LLP, 2011).

Conclusion

NJEJA urges EPA to make reducing pollution in EJ and overburdened communities an outcome that is a focal point of *EJ 2020*. *EJ 2020* should also emphasize developing substantive policies that will achieve this outcome and NJEJA is eager to discuss any ideas contained in these comments with EPA.



NEW MEXICO ENVIRONMENTAL LAW CENTER

July 13, 2015

Charles Lee
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By electronic mail
(ejstrategy@epa.gov.)

Re: Draft EJ 2020 Action Agenda Framework

Dear Mr. Lee:

I write for the New Mexico Environmental Law Center (“the Law Center”) to comment on the Draft EJ 2020 Action Agenda Framework (“Draft EJ 2020 Framework”) prepared by the U.S. Environmental Protection Agency (“the EPA”). Although we appreciate the EPA making this Draft EJ 2020 Framework available for comment, we have serious concerns about the manner in which the Draft EJ 2020 Framework was prepared and about the means used by the EPA to solicit public input. We also have concerns about the scope of the Framework because it appears to be limited to EPA implementation of programs. We therefore urge that the Draft EJ 2020 Framework be made available in a more comprehensive manner for public comment, that it be expanded to include other entities that implement EPA programs, and that it be revised based upon the comments that are received.

In addition, the Law Center is joining in the comments on the Draft EJ 2020 Framework that are being submitted by the New York office of Earthjustice, and the Law Center hereby incorporates those comments by reference.

Introduction

This comment covers four areas. First, by way of introduction, it provides information about the work of the Law Center and its qualifications to comment on the Draft EJ 2020 Framework. Second, this comment explains why the EPA’s preparation of the Framework was inappropriate and why the EPA’s methods of soliciting public input on the Framework are inadequate, particularly with respect to involving and obtaining input from individuals and organizations in the communities that are most likely to be subjected to environmental hazards. Third, this comment points out that the Draft EJ 2020 Framework fails to provide for the involvement of communities that are most likely to be impacted by environmental contamination in the decisions and the work called for by the Framework. Finally, this comment explains why limiting the scope of the Draft EJ 2020 Framework to EPA implementation of programs is a particularly bad idea at this time.

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I. The Law Center is qualified to comment on the Draft EJ 2020 Framework.

The Law Center is a non-profit public interest law firm. The Law Center provides free and low-cost legal services for protection of communities and the environment. For the past 20 years a significant majority of the Law Center's legal services have been provided to communities in New Mexico whose residents are predominantly low-income and people of color. Residents of many of these communities are being impacted or are threatened by multiple environmental hazards.

One example of our work is our representation of residents of the predominantly Navajo communities of Crownpoint and Church Rock, New Mexico, in their effort to prevent proposed *in situ* leach mining of uranium that would contaminate (with uranium) the ground water aquifer that is the residents' sole source of drinking water. Another example of the Law Center's work is our efforts to address pollution in the South Valley of Albuquerque, where we have been involved in struggles concerning a construction and demolition debris landfill that adversely affects South Valley residents, and air quality issues throughout Bernalillo County, including the South Valley. One of the main issues to be addressed with regard to air quality in Bernalillo county is the effect of multiple sources of air pollution.

The Law Center also has worked in the southern New Mexico community of Chaparral, where we represented a local group in its effort to prevent the siting of a new solid waste landfill next to the community. One argument against the proposed siting of the landfill is that the community is already impacted by several other waste and industrial sites. Finally, we also are counsel for about 80 people in an effort to prevent the proposed extraction of 54,000 acre feet of ground water per year from an area west of Socorro, New Mexico because extraction of that amount of ground water would deplete the wells on which they depend for water.

These are just a few examples of the communities in which the Law Center has worked where residents are subjected to risks of environmental degradation. The Law Center also has worked on state-wide issues affecting such communities by lobbying the New Mexico Legislature, working on state-wide regulations, and engaging in efforts such as the drafting and adoption of the New Mexico Environmental Justice Executive Order. The following comments are based upon the Law Center's experience working in all of these arenas.

II. The Draft EJ 2020 Framework does not include adequate provisions for participation by members of environmental justice communities.

A. EPA's development of the Draft EJ 2020 Framework has not provided adequately for participation by environmental justice community members.

1. The Draft EJ 2020 Framework is an environmental policy.

The EPA's own definition of environmental justice includes participation by all people in the development of environmental policies. The definition states that environmental justice is:

the fair treatment and meaningful involvement of all people regardless of race,

color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

EPA website; Environmental Justice home, page 1.

The Draft EJ 2020 Framework covers the EPA's strategies for improving the health and environment in overburdened communities. To this end, the Draft EJ 2020 Framework sets forth three goals. They are to:

1. Deepen environmental justice practice within EPA programs to improve the health and environment of overburdened communities;
2. Collaborate with partners to expand [EPA's] impact within overburdened communities; and
3. Demonstrate progress on outcomes that matter to overburdened communities.

Each of these goals includes policy elements designed to promote environmental justice in overburdened communities. Separately and together, these goals and the more specific objectives within each goal constitute environmental policies. Despite that, the EPA's preparation of the Draft EJ Framework and the EPA's mechanisms for obtaining input on the Draft EJ Framework fail to provide for input by affected communities.

2. The Draft EJ 2020 Framework was prepared without adequate involvement by impacted communities.

Even though the Draft EJ 2020 Framework is an environmental policy, the EPA prepared the Plan without input from residents of environmental justice communities. As far as we know, EPA made public its preparation of the Draft EJ 2020 Framework only after the Draft was prepared, presumably internally. We are not aware of any EPA efforts to inform members of environmental justice communities that the EPA was developing the Draft EJ 2020 Framework. In addition, as far as we know the EPA did nothing to solicit input from the members of those communities about the principles that should be addressed in the Draft EJ 2020 Framework or the strategies that should be utilized to implement those principles. On the contrary, the EPA sought input from members of environmental justice communities only after the Draft EJ 2020 Framework was prepared. That is inappropriate; it means that environmental justice community members are able to comment only after decisions have already been made.

3. The methods used by the EPA to solicit input on the Draft EJ 2020 Framework are inadequate.

Moreover, the methods that the EPA is using to obtain input on the Draft EJ 2020 Framework will preclude environmental justice communities from providing that input. It is our understanding that the EPA has solicited comments through two media. The first is publication in the Federal Register of the invitation to comment at a meeting of the National Environmental Justice Advisory Council, and the second is through announcements sent by electronic mail and provided on the EPA's internet website. Neither of these methods of soliciting comments is likely to reach residents of environmental justice communities.

- a. Publication in the Federal Register will not reach residents of environmental justice communities.

The Federal Register is a publication that is read almost exclusively by attorneys, employees of regulatory agencies, analysts for regulated industries, and advocacy groups. It is seldom, if ever, read by members of the general public, and it is even less likely to be read by residents of environmental justice communities. The residents of those communities usually do not have access to the Federal Register. Moreover, even if they do have that access, the demands of their jobs and daily lives are such that they are not likely to have the time to track down and read the Federal Register.

- b. Solicitation of comments by electronic means will not reach environmental justice community residents.

A notice soliciting comments that is published on the EPA internet website and by electronic mail is also very unlikely to reach many residents of environmental justice communities for two reasons. The first reason is that the electronic mail information about soliciting comments and concerning processes for submitting comments is in written English. Many residents of Hispanic, immigrant, and Native American communities affected by environmental injustice do not read English, and information provided in written English only therefore does not provide effective notice to them.

The second reason is that many residents of environmental justice communities do not have access to electronic means of communication. In a report issued in May 2013 (“Computer and Internet Use in the United States: Population Characteristics”, U.S. Census Bureau, May 2013, available at www.census.gov/hhes/computer/), the U.S. Census Bureau reported that in 2011 only 58.3% of Hispanic households had household internet access, and only 56.9% of African-American households had household internet access. *Id.*, Table 1, p. 4. For the same year, the Census found that only 54.4% of Hispanics and only 60.3% of African-Americans accessed the internet from a location other than their homes. *Id.*, Table 2, p. 5. These numbers indicate that at least 40% of Hispanics and at least 39% of African-Americans do not have internet access (and therefore access to electronic mail or the EPA internet website) either in their homes or elsewhere. For that reason, none of those individuals will be able to access the EPA’s solicitation of comments that was distributed electronically.

Moreover, other people of color are similarly unlikely to be reached by the EPA’s electronic request for comments. The Census does not provide internet access data for American Indian, Alaska Native, Native Hawaiian, and Other Pacific Islander populations because of the small sample size of those four populations in the Census’s October 2011 Current Population Survey (*Id.*, note 7, p. 2.), but at least two of those groups are likely to have very limited internet access. American Indians and Alaska Natives often live in areas where infrastructure either does not exist or is very limited, and there are large areas of some of the states in which those populations reside in which there is no electricity. Alaska, Arizona, and New Mexico are examples of this.

Finally, the Census also indicates that low-income populations are less likely to have internet access than are populations with more substantial economic means. Only 56.7% of the people living in households with an annual income of less than \$25,000 have internet access in their homes, and only 49.8% of those people have internet access elsewhere. "Computer and Internet Use in the United States: Population Characteristics", U.S. Census Bureau, May 2013, available at www.census.gov/hhes/computer/, Table 2, p. 5.

For these reasons, it was inappropriate for the EPA to rely on electronic mail, the internet, and the Federal Register as the means of soliciting comments on the Draft Technical Guidance from residents of environmental justice communities. Instead, the EPA should have made efforts to reach out to environmental justice communities through methods such as:

- using languages other than English,
- communicating in non-written languages, and
- use of non-electronic means such as:
 - o announcements provided to agencies of local and Tribal governments,
 - o advertisements in local newspapers,
 - o notices given to community groups and displayed in public facilities such as community centers and libraries, and
 - o radio and television announcements, particularly in areas such as Native American reservations where the predominant languages may not be written.

B. The Draft EJ 2020 Framework does not provide for participation by members of overburdened communities.

The Draft EJ 2020 Framework recognizes that degradation of health and environment in overburdened communities must be addressed by the EPA. Unfortunately, the Draft EJ 2020 Framework does not provide for the involvement of those communities' residents in EPA efforts to address environmental degradation in their communities.

1. The Draft EJ 2020 Framework recognizes that EPA must address environmental degradation in environmental justice communities.

Each of the three goals of the Draft EJ 2020 Framework addresses adverse impacts on health and the environment in overburdened communities. This theme is repeated in specific objectives within the goals. For example, the first goal includes objectives such as testing tools for including environmental justice into EPA permitting, continuing to promote environmental justice in overburdened communities through targeting and other means, and considering impacts on overburdened communities in developing various approaches to environmental degradation. Draft EJ 2020 Framework, sections I.B, I.C. As another example, the third goal includes objectives such as using measures that demonstrate outcomes in communities and showing positive outcomes in communities. Draft EJ 2020 Framework, sections III.A, III.B. Moreover, the Draft EJ 2020 Framework makes clear that members of overburdened communities must be involved in these efforts.

2. The Draft EJ 2020 Framework purports to recognize the need to include residents of overburdened communities in environmental justice efforts.

There are several points in the Draft EJ 2020 Framework at which the EPA purports to make involvement of overburdened communities' residents in decision-making a priority. For example, the first goal includes objectives such as continuing to implement plans to enhance public participation and enhancing communication and transparency with affected communities. Draft EJ 2020 Framework, sections I.B, I.C. Similarly, the second goal's objectives include identifying opportunities for public participation and leveraging federal resources to support community-based efforts. Draft EJ 2020 Framework, sections II.B, II.C. Finally, the objectives listed in the third goal include ensuring EPA accountability in communities and developing indicators of progress through collaborative processes with communities. Draft EJ 2020 Framework, sections III.A, III.D.

3. The Draft EJ 2020 Framework fails to provide for meaningful involvement of overburdened community residents.

Despite these assurances of EPA's commitment to working on environmental justice issues and with overburdened communities, the Draft EJ 2020 Framework contains no specific information about how residents of such communities will be involved in this work. Moreover, there is nothing to indicate what specific forms of communication the EPA proposes to use to involve residents of overburdened communities. Specifically, the Framework says nothing about particular forms of communication that are more likely than electronic means to be effective in overburdened communities. Some of these forms of communication are listed on page five above, but there is no indication in the Framework that any of them or any other non-electronic means of communication are being considered by EPA. This is a critical issue because, as has been pointed out above, many residents of overburdened communities do not have the means to access electronic information. The EPA's continued reliance on electronic information and electronic means of communication therefore means that those residents will be unable to have access to information that affects their health and environments.

III. The Draft EJ 2020 Framework fails to address the need for environmental justice in EPA programs that are implemented by other agencies.

A. Many programs that impact overburdened communities are not administered by the EPA.

Although the Draft EJ 2020 Framework calls for collaboration and working with other federal agencies, Tribes, and states, it does not propose to impose mandatory requirements on those other entities. This limitation will have the effect of severely limiting the effectiveness of the Draft EJ 2020 Framework for two reasons.

First, there are other federal agencies whose programs have significant impacts on the residents of environmental justice communities, such as the Army Corps of Engineers, the Department of Defense, the Department of Energy, and the Department of Transportation. The Army Corps of Engineers and the Department of Transportation are often involved in projects such as waterways, roads, and airports that directly affect the residents of environmental justice

communities. The Department of Energy and the Department of Defense have many facilities that are located adjacent to or near environmental justice communities. These include military installations and national laboratories such as the Los Alamos National Laboratory in New Mexico, which is surrounded by four Native American Pueblos.

Second, more than 90% of the programs that are delegable to the states are administered by them and not by the EPA. "Ecos Green Report", Status of State Environmental Agency Budgets, 2009-2011, August, 2010, Environmental Council of the States, p. 2. These programs include those designed to implement statutes such as the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act, whose implementation is likely to have an impact on environmental justice populations.

B. In states like New Mexico, overburdened communities are not being protected by the agencies that administer EPA programs.

New Mexico is an example of a state in which the EPA programs administered by the state government are not protecting either overburdened communities or the environmental resources on which they depend. New Mexico's Governor, Susana Martinez, was elected following a campaign during which she proposed to eliminate environmental protection regulations in order to create jobs. Since she was elected and re-elected, Governor Martinez's Administration has taken drastic steps to eliminate regulations that had been adopted by New Mexico state agencies to reduce greenhouse gas emissions, to protect ground water from the impacts of oil and gas drilling and the impacts of copper mining, and to require energy efficiency in the construction of new buildings.

In addition to these statewide efforts to eliminate regulations designed to protect the environment, the Martinez Administration has taken positions with respect to site-specific issues that are inconsistent with the emphasis throughout the Plan on protecting overburdened communities from environmental degradation. For example, the administration that was in office prior to Governor Martinez's election determined that a New Mexico air quality permit was required for the air emissions from the Helena Chemical Company plant in Mesquite, New Mexico, a community that has been adversely affected by air pollution and contamination of ground water. That position was reversed by Governor Martinez's Administration. As another example, Governor Martinez's Administration has asserted that a ground water discharge permit issued to a uranium mining company for discharges into an aquifer in Church Rock, New Mexico remains valid even though the deadline for renewing the permit passed several decades ago. Church Rock and the communities that surround it have all been severely impacted by uranium mining in the past, and the residents of those communities are overburdened with the pollution that has resulted from that mining.

These statewide and site-specific efforts by the Martinez Administration demonstrate that the EPA's measures designed to protect overburdened communities must be applied not just to the EPA, but also to the other entities that implement EPA programs. The Draft EJ 2020 Framework therefore must be expanded to include these other entities.

Conclusion

EPA must change the manner in which it communicates and proposes to communicate with the residents of overburdened communities and the methods by which EPA proposes to involve those residents in environmental justice efforts. EPA must also apply the goals and objectives of the EJ 2020 Framework to the other entities that implement EPA programs.

Thank you for the opportunity to comment on the Draft EJ 2020 Framework. Please do not hesitate to contact me if you have questions about this comment or about the Law Center and its work.

Yours truly,



Douglas Meiklejohn

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June 30, 2015

Charles Lee
Deputy Associate Assistant Administrator for Environmental Justice
USEPA, Office of Environmental Justice (2201-A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Mr. Lee:

New Partners for Community Revitalization (NPCR) is pleased to respond to the Environmental Protection Agency’s invitation to comment on the Draft Environmental Justice 2020 Action Agenda Framework.

NPCR was created as a non-profit 501(c)(3) organization in 2002. It emerged out of the multi-year policy debate that surrounded the passage of brownfields legislation in New York State. NPCR was quick to recognize that low and moderate income neighborhoods and communities of color were most often and most egregiously burdened with undeveloped and blighted brownfields and, at the same time, were least likely to have existing organizations with the expertise and mission to develop programs and policies to address the brownfield remediation and reuse needs specific to their communities. In brief, seeking Environmental Justice within the framework of brownfield redevelopment and renewal was a founding goal of NPCR.

NPCR applauds EPA’s recognition of the importance of Environmental Justice through its 2014 Environmental Action Agenda and is greatly encouraged by EPA’s continued commitment to this need. We are supportive of all the major areas of effort outlined in the 2020 Action Agenda Framework — clarity about, and sensitivity to, EJ in rulemaking, permitting, enforcement; improving collaboration among and between public agencies, stakeholders, businesses and local communities; and defining, collecting and reporting on metrics that are valid measures of community-level results of environmental remediation and compliance.

However, we are somewhat concerned that the term “brownfields” does not appear in the Framework except in the list of 2015 priorities, where EPA wished to make “Further efforts to make equitable development an integral part of EPA’s Smart Growth, Brownfields, and climate adaption and resilience efforts.”

We respectfully submit that brownfield redevelopment, if properly planned and managed, is a

NPCR 90 State Street, Suite 1009, Albany, New York 12207 □□□□□□□□□□□□□□

critical and effective means of rectifying a legacy of unjust siting of environmentally risky facilities at a time when those with little power had little leverage over zoning regulations or municipal decision-making. We therefore suggest that one area of the framework should be strengthened by specifying the exact mechanism to ensure that communities are involved in addressing a fundamental community issue: Environmental Justice in the context of brownfield redevelopment.

NPCR was a driving force in the passage of New York State's first brownfield legislation and successfully advocated for a nation-leading element within that legislation – the New York State Brownfield Opportunity Areas Program (BOA). BOA provided State funding to local economic development agencies and community based organizations to assemble and facilitate local advisory committees with members from all sectors – residents, businesses, stakeholders and government agencies. BOA planning built consensus for a brownfield redevelopment plan based on area-wide needs and market potentials as well as community needs and desires -- a potent combination that attracted the public and private investments needed for area-wide brownfield revitalization. Community-based planning precedes and in many ways can simplify the permitting, regulatory and compliance challenges that EPA rightfully recognizes as critical to address on the path towards obtaining and sustaining environmental justice.

We therefore urge you to include a straightforward recommendation as part of your Environmental Justice 2020 Action Agenda Framework, perhaps in the context of the Community Resource Network: "Support the development of community-based, consensus-driven, area-wide plans for brownfield redevelopment and revitalization."

Thank you,



Val Washington
President, NPCR



Richard Werber
Chair, Policy Committee, NPCR



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June 15, 2015

By Email to: ejstrategy@epa.gov

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Re: Comments on Draft EPA Environmental Justice 2020 Action Agenda Framework

To Whom It May Concern:

The New York City Law Department, on behalf of the City of New York (“City”) hereby submits the following comments in response to the United States Environmental Protection Agency’s (“EPA”) *Draft Environmental Justice 2020 Action Agenda framework*¹ (“Draft Agenda”), which was issued for public comment on April 15, 2015.

Recognizing that equity and environmental conditions are inextricably linked; that a community’s proximity to environmental hazards may translate into poor health, loss of wages, and diminished quality of life; and that low-income communities have historically been burdened with a disproportionate share of environmental risk, the City has taken significant steps to make decisions about facility placement, infrastructure investment, and the allocation of community benefit funds based on environmental justice concerns. Through *One New York: The Plan for a*

¹Available at <http://www.epa.gov/environmentaljustice/resources/policy/ej2020/draft-framework.pdf> (last visited June 4, 2015).

Strong and Just City (“OneNYC”),² the City had established both substantive and procedural goals and policies to advance environmental justice and improve the quality of life in low income communities. *See* OneNYC at 164. The Draft Agenda complements the City’s determination to strengthen public participation to ensure that local knowledge and goals are accounted for in planning and permitting efforts and actions.

The City supports and welcomes EPA’s efforts to improve its environmental justice programs and to assess the impact of its actions on individual communities overburdened by environmental exposures. EPA’s efforts to introduce more transparent, rigorous, and consistent approaches to integrating environmental justice concerns into its decision-making; facilitate community and stakeholder involvement in EPA actions; and develop scientific tools to track progress, will enhance the agency’s efficacy in addition to ensuring that the concerns of all communities are accounted for.

EPA has expressed its intent to consider the consequences to environmental justice resulting from its permit approval and enforcement actions. One way in which EPA may directly and markedly reduce the burden imposed on environmental justice communities is to specifically address the impact of increased water and sewer rates. EPA’s embrace of its Integrated Planning Framework³ and recent work on affordability⁴ reflect a welcome recognition of the importance of prioritizing investments in meeting burdensome Clean Water Act regulatory requirements to achieve the greatest water quality benefits while ensuring that drinking water and sewer service are affordable to all. Unlike other local services that are funded through progressive tax structures, water rates in New York – and in most states in the nation – are based on rate payers’ water use, and therefore increases in water rates to pay for Clean Water Act compliance measures have a direct and disproportionate effect on low income communities. The Draft Agenda should explicitly acknowledge the importance of strategic prioritization in implementing Clean Water Act compliance measures.

The City also believes that the Draft Agenda would benefit from identifying a mechanism to distribute printed versions of documents provided to communities via the “Resources for Communities” web portal and EJSCREEN tool in order to reach communities without internet and stakeholders who are infrequent internet users, providing greater access to materials in multiple languages, and developing mobile and social media-based tools for

² Available at <http://www.nyc.gov/html/onenyc/downloads/pdf/publications/OneNYC.pdf> (last visited June 4, 2015).

³ *See, e.g.,* EPA, *Integrated Municipal Stormwater and Wastewater Plans*, available at <http://water.epa.gov/polwaste/npdes/stormwater/Integrated-Municipal-Stormwater-and-Wastewater-Plans.cfm> (last visited June 8, 2015).

⁴ *See, e.g.,* EPA, *Affordability Considerations*, available at <http://water.epa.gov/infrastructure/sustain/affordability.cfm> (last visited June 8, 2015).

community involvement. The City also looks forward to continuing its involvement in EPA's integration of environmental justice into its rulemaking and compliance guidelines.

The City hereby submits these comments for EPA's consideration. Thank you again for the opportunity to comment.

Sincerely yours,



Kathleen Schmid
Senior Counsel
Environmental Law Division
New York City Law Department

cc: Meredith Jones, General Counsel, New York City Economic Development Corporation
Nilda Mesa, Director, Mayor's Office of Sustainability
Robert Orlin, General Counsel, New York City Department of Sanitation
John Rousakis, General Counsel, New York City Department of Environmental Protection
Daniel Zarrilli, Director, Mayor's Office of Recovery and Resiliency

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July 14, 2015

Mr. Charles Lee
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Dear Mr. Lee:

Thank you for the opportunity to comment on EPA's EJ 2020 Action Agenda Framework. We appreciate the great deal of effort EPA has put into crafting such a detailed plan and for soliciting feedback from us. The New York State Department of Environmental Conservation has a long history of collaboration with EPA, and the Office of Environmental Justice supports this framework, especially since we often look to EPA as a model for best practices while carrying out our environmental justice initiatives in New York.

Below are a few thoughts for your consideration:

Green Infrastructure

As you look to promote climate adaptation, resilience and greenhouse gas reduction co-benefits, we suggest you incorporate job training and green infrastructure into this plan. Also, there is a need for residents in EJ communities to have input into GI implementation. These goals are aligned with efforts underway by the Center for Watershed Protection out of Maryland.

Since we are looking to create a green infrastructure jobs training/certification program in NY, it would be helpful to have partners we could tap into that have similar goals and could support us through funding, research, guidance, etc. Establishing such a program will help us equip residents in EJ communities with a different set of job skills to make them more marketable, fulfill a need for qualified workforce for this growing field that has especially ascended since major storm events have hit our state and encourage developers/contractors/municipalities to implement GI to help deal with stormwater management and climate change issues.



Research

As you develop and implement a cross-cutting Environmental Justice Research Roadmap and research on cumulative risks and impacts, we would like to ensure that we have access to this research when it is complete.

EJ Outside of Permitting

As we looking to make sweeping changes within our own EJ policies and procedures, we would like to see EPA consider incorporating EJ in other areas outside of permitting like remediation.

More Details

We would like to better understand and have more details on the following aspects of the framework:

- How do you plan on incorporating EJ in rulemaking?
- How do you plan to engage the community in a way that empowers residents to help their own community?
- Regarding the plan to engage business & industry to promote sustainable practices beneficial to both business and communities, we would like to see more information on this as it develops so that we could possibly utilize this on a local level (either incorporate it into our existing Operation ECO-Quality Program or develop another program around this). We would like to get examples of sustainable practices for businesses.
- Regarding EPA demonstrating progress on outcomes, we would like to get examples of how you plan on measuring outcomes of your work and how you plan to show positive impacts. This could help us incorporate such metrics in NY.
- As part of new and ongoing program work, what other environmental justice tools will we have access to?
- Under “collaborate with partners to expand our impact within overburdened communities”, you want to work with states and others to promote consideration of EJ in our collective decision-making. Can you give examples of where there has been collective decision making in the past?

We sincerely look forward to working with you, especially on your goal to collaborate with partners to expand your impact within overburdened communities. Thank you.

Sincerely,



Lisa DeJesus, Acting Director
Office of Environmental Justice

North Carolina Environmental Justice Network

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252-314-0703

Email: ncejnetwork@gmail.com, Web: www.ncejn.org

Comments on [Draft EJ 2020 Action Agenda Framework, U.S. Environmental Protection Agency, June 15, 2015](#)

*Submitted via e-mail - July 14, 2015
to ejstrategy@epa.gov*

NCEJN appreciates the support of US-EPA officials who are working for environmental justice. We recognize that building a democracy that supports human dignity requires partnerships with people of goodwill in all sectors of society. We recognize that our shared goal of environmental justice will not and cannot be granted by those who now profit from the exploitation of people of color and low income people, and that nothing short of self-determination for all people is needed to bring about environmental sustainability and health for all. These goals are urgent for the future of our planet because the ability of the wealthy to avoid the immediate consequences of environmental destruction by displacing them on the poor allows them to recklessly burn fossil fuel, make war, and destroy the ecosystems that sustain human life.

Environmental injustice in the United States occurs in the context of extreme inequalities in wealth and power. According to a University of California [report](#), in 2010 the top 1% of the US population owned 42% of non-home wealth and the top 5% owned 72% of non-home wealth; the bottom 80% owned less than 5%. Average white non-home wealth was almost 20 times more than African-American and 70 times more than Latino. These inequities threaten prospects for democracy and environmental justice.

As part of the federal government, US-EPA is responsive to the interests of campaign contributors, lobbyists, and members of Congress who vote on EPA's budget. Despite corporate public relations efforts to paint EPA as a threat to business, we recognize that part of the agency's function is to issue permits that help protect polluters from being held accountable for damages to health and the environment that disproportionately impact people of color and low income communities. Like other federal and state regulatory agencies, EPA has close ties with the industries it regulates and considers their interests more than those of communities that are negatively impacted by industry practices. While mainstream environmental groups also influence EPA, they overwhelmingly represent the interests of constituents who do not live in communities directly impacted by environmental injustice.

EPA's EJ2020 Action Agenda Framework must be evaluated in the context of these limitations on EPA as an institution. We support EJ2020's goal of influencing the agency's rulemaking, permitting and enforcement. We support EJ2020's goal of enhancing science. We support efforts to raise the profile of EJ issues within the agency and beyond as a necessary part of building a movement for change.

At the same time we recognize that EPA's policies may provide little relief in a government dominated by corporate interests. EPA does not have the authority to regulate many environmental threats. Its science is influenced by industry and it [funnels public funds through industry trade associations](#). These structural limitations impede the agency's ability to advance EJ.

For example, since 1997 North Carolina residents have called on the EPA to help relieve them from exposure to livestock feces and urine in the densest area of hog production in the nation. Many of these residents did not know the extent of the [pork industry's influence on EPA](#). While scientific evidence of the health and environmental damages caused by industrial livestock production mounted, neighbors continue to suffer from water pollution, toxic gases and particles, and the stench of animal waste. In 2014 the state re-permitted over 2,000 facilities that collect hog waste in open pits and spray it into nearby fields, disproportionately located in communities of color, leading NCEJN to join a [civil rights complaint](#) asking EPA to require the state to implement regulations that would protect approximately one million people who live within three miles of a re-permitted facility.

How will EPA's EJ2020 goals impact the outcome of this and other civil rights complaints? If EJ is a priority for EPA administrators we would expect the strongest action to remedy the decades-long suffering of people who live beside industrial hog operations that pollute their air and water, reduce their health and quality of life, and undermine their human dignity. Although we hope that our complaint will help promote protection of impacted communities in North Carolina and all over the country, we do not expect EPA to be able to do this alone. The agency needs powerful and effective community partners that understand the roots of environmental injustice and are committed to people's enforcement to be able to achieve its EJ2020 goals.

For this reason we welcome EJ2020's call to partner with "overburdened communities" as long as partnerships promote the ability of communities to organize and protect themselves from environmental injustices perpetrated by coalitions of state and corporate actors. Partnerships that provide photo opportunities and rhetoric about inclusiveness are harmful if they do not change the balance of power towards democracy and self-determination for all communities. Partnerships that only involve a few individuals, without the involvement and mobilization of the broader communities impacted by environmental injustice, threaten efforts to bring about environmental justice.

One serious omission from the draft EJ2020 framework is recognition of the role of structural racism in perpetuating environmental injustice. The term "race" is absent from the document. How can EPA seriously address environmental civil rights complaints if it avoids discussion of race, which provides the legal grounds for federal remedies under the Civil Rights Act of 1964? The profound consequences of hundreds of years of wars against Native Americans, slavery,

segregation, voter suppression, and continued exclusion of occupations dominated by people of color from basic labor protections, are central to understanding and correcting current environmental injustices. The historical roots of NCEJN's civil rights complaint are evident in the [overlap of the locations of the industrial hog operations re-permitted in 2014 and the proportion of the state's population that was enslaved in 1860.](#)

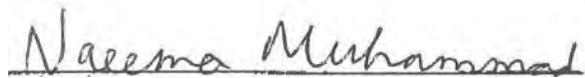
We ask our EPA partners to recognize the extent to which environmental *injustice* has been built into the laws, economics and culture of our country. This means environmental *justice* is not attainable without addressing the unfinished business of movements for civil and human rights, including equal access to education, public services, courts, voting, safe workplaces and communities free from state violence. Government agencies cannot effectively advance EJ without promoting movements outside of government that will shift power from corporations and the state to communities and workers impacted by injustice. In its EJ2020 plan, EPA should commit to coordinating with popular movements to strengthen their ability to bring about environmental, social and economic justice. One tool should be a People's Bill of Rights that expands and protects the ability of communities impacted by environmental justice to protect themselves from environmental degradation and lack of access to the resources and amenities required for public health.

We also recognize that funding from the state, foundations, and other institutions of the wealthy can coopt and undermine movements for justice. Therefore, we assert that funding alone, without a fundamental change of commitment, may do more harm than good because it makes exploited communities dependent on support from institutions that enhance their own power by restricting those communities' ability to challenge and change policies that place profits over human rights and needs. To promote such a change of commitment, EJ2020 should include plans for educating regulators, scientists, policy makers, the EJ community and the general public about the racial and economic inequalities that reproduce environmental injustice.

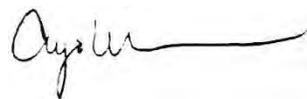
We appreciate EPA's consideration of these comments. We are happy to provide additional information.

Sincerely,

Naeema Muhammad, Co-Director, North Carolina Environmental Justice Network



Ayo Wilson, Co-Director, North Carolina Environmental Justice Network



Office of Environmental Health Hazard Assessment



Matthew Rodriguez
Secretary for
Environmental Protection

Lauren Zeise, Ph.D., Acting Director
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Edmund G. Brown Jr.
Governor

June 12, 2015

Charles Lee
Deputy Associate Assistant Administrator for Environmental Justice
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC 2201A)
William Jefferson Clinton Building South, Room 2226B
Washington, DC 20460

Dear Mr. Lee:

First, let me commend you and the US Environmental Protection Agency (US EPA) for releasing the "EJ 2020 Action Agenda Framework" draft document for public review and comments. The document is well written and the three proposed goals are reasonable for the 2020 timeframe. The actions items to be undertaken towards achieving each of the goals are ambitious, but correctly have the primary components as public engagement and partnership with state and local authorities. Our major comments are forwarded for your consideration as you finalize the document.

The three goals are rightly focused on "overburdened communities." However, none of the proposed actions show how the agency would proceed to identify these communities across the country or in each state. You may want to consider convening a National Environmental Justice Advisory Council workgroup to recommend how these communities should be defined and a process to follow in addressing this task in the framework. Section 39711 of California's Senate Bill 535 (De Leon, Statutes of 2012, http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0501-0550/sb_535_bill_20120930_chaptered.pdf) and the California Environmental Protection Agency's (CalEPA) definition of "cumulative impacts" (<http://www.oehha.ca.gov/ej/pdf/CES20FinalReportUpdateOct2014.pdf>, pg. 4) could serve as a starting point for this discussion.

In California, the identification of such communities was the critical first step in initiating investment opportunities in "disadvantaged communities" – similar to what US EPA has envisioned for "overburdened communities." The identification of such communities will facilitate state and local authorities joining hands with federal agencies to initiate community-specific improvement activities to reduce pollution burdens. These activities may range from investment, planning and permitting, to enforcement and compliance. Environmental Justice Research Roadmap development and advancing research on

California Environmental Protection Agency

Sacramento: (916) 324-7572 Oakland: (510) 622-3200

cumulative risks and impacts are worthwhile activities to pursue. These will require substantial long-term financial and personnel commitments. As US EPA moves forward in this direction, a first step would be to distinguish between cumulative risks and impacts. These two words — risk and impact — are frequently conflated, suggesting they convey the same outcome or a quantitative index. In the context of health and environment, risk means chance of injury or loss. One expects that the risk to an individual can be quantified. This has been the practice over several decades in the current regulatory paradigm. Hence, the phrase “cumulative risk assessment” creates an expectation that the effects from multiple stressors and sources can be quantified in terms of likelihood by applying a state-of-science approach similar to traditional risk assessment.

However, traditional risk assessment can only account for sensitivities of some subpopulations, such as children and the elderly, and at this point cannot incorporate community characteristics such as area-specific information (e.g., water quality, pesticide use), proximity to multiple nearby sources, or socioeconomic or health status. These factors may also affect a community’s vulnerability to pollution. Further, traditional risk assessments are only applicable to environmental contaminants that are well-characterized with respect to exposure levels and their dose-response relationships. These assessments are useful in estimating the risk to an individual, but they cannot provide a comparable estimate of risk facing a community in a specific area. The hazards of many environmental contaminants are not well-characterized, and exposure to these contaminants within a community will vary greatly among individuals. In addition, the data required to adequately characterize the huge number of contaminants in the environment cannot be generated easily and may not even be feasible. In fact, these limitations have also deprived decision-makers the ability to see emerging issues, such as the siting of multiple pollution sources in some communities.

Because of such limitations, many institutions have used alternatives to the traditional risk assessment paradigm of quantifying cumulative risk. In California, both researchers and CalEPA have successfully used “cumulative impacts” analysis at local, regional (<https://dornsife.usc.edu/pere/cumulative-impacts/>) and state levels (<http://www.oehha.ca.gov/ej/pdf/CES20FinalReportUpdateOct2014.pdf>). “Impacts” could be interpreted to mean potential effects or influences of stressors or sources that do not necessarily result in injury or loss.

Thus, in the context of identifying overburdened communities, cumulative impacts assessment is better-suited and could serve as a model for others to follow. Several science-based methods are readily available in this context and most of the data sets that US EPA has already incorporated in EJSCREEN can also be included. CalEPA’s Office of Environmental Health Hazard Assessment developed CalEnviroScreen, a science-based method for evaluating and quantifying relative cumulative impacts that takes into consideration multiple pollution levels and sources in a community while

Charles Lee
June 12, 2015
Page 3

accounting for the community's underlying health and socioeconomic status. We are willing to offer consultation should you decide to follow a similar path forward.

US EPA has the jurisdictional authority and influence to reduce pollution burdens in communities nationwide. These burdens are a primary cause for many environmental justice (EJ) concerns expressed by communities across the country. In the framework, we suggest that the third goal be modified to read "Demonstrate progress on outcomes that reduce the pollution burden in overburdened communities" instead of "Demonstrate progress on outcomes that matter to overburdened communities." This change would improve the clarity and avoid outcome expectations that are beyond the scope of US EPA's influence.

Another related issue is that many of US EPA's permitting functions are delegated to the states, and in turn to the local authorities in some jurisdictions. Hence, the consideration of EJ in the permitting context needs to include detailed guidelines to be considered by the states to ensure compliance and accountability and to track progress over time in each state. We envision that this could be the most important but most challenging task ahead, and would require experienced and dedicated staff as well as resources.

Once again, we commend you to have taken this bold step and hope that our comments will be useful as you move forward to finalize the goals and action items of the EJ 2020 Framework. Should you need clarification or have questions, please contact Shankar Prasad of my staff at (916) 323-2808 or shankar.prasad@oehha.ca.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lauren Zeise".

Lauren Zeise, Ph.D.
Acting Director



**PALM BEACH MONTHLY MEETING
of the
RELIGIOUS SOCIETY OF FRIENDS (QUAKERS)**
823 North A Street, Lake Worth, Florida 33460-2424
Phone: (561) 365-7522
pbquakers@gmail.com

July 9, 2015

Charles Lee
Deputy Assoc. Asst. Admin for Environmental Justice
USEPA Office of Environmental Justice (2201-A)
1200 Pennsylvania Ave, NW
Washington, DC 20460

Re: Comment on the inclusion of prisoner populations in EPA's Draft Framework
for EJ 2020 Action Agenda

Dear Mr. Lee:

We believe prison populations need to be included in environmental justice
planning. Prison populations meet the EJ 2020 Action Agenda criteria of being
minority, low income and are in need of environmental protection.

Sincerely,

Eleanor Caldwell, Clerk
Palm Beach Monthly Meeting of the
Religious Society of Friends (Quakers)

Walk cheerfully over the world greeting that of God in everyone.



PENDER WATCH & CONSERVANCY

RESPONSIBLE ADVOCATES FOR THE ENVIRONMENT SINCE 1986

PO Box 662 | Hampstead, NC 28443 |
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J
uly 13,
2015

Charles Lee
Deputy Associate Assistant Administrator for Environmental Justice
USEPA Office of Environmental Justice (2201-A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Public Comment re: Draft EJ 2020 Action Agenda Framework

Dear Mr. Lee:

Thank you for the opportunity to comment on the Draft EJ 2020 Action Agenda Framework. PenderWatch & Conservancy (“PenderWatch”) is an all-volunteer organization founded in 1986 in Pender County, North Carolina as “Responsible Advocates for the Environment.” We have approximately 400 members. PenderWatch is committed to preserving the natural environment of Pender County for current and future generations by promoting environmentally sound policies and programs.

We are grateful for this opportunity to comment on the draft framework for EJ 2020. In particular, we would like to draw your attention to a pressing need - and excellent opportunity - for EPA to meet its goal to “Engage states and other co-regulators in environmental justice,” particularly with regards to permitting, by using the pending NC Division of Air Quality permit for Carolinas Cement Company as a test case.

Engaging states and other co-regulators in environmental justice

EPA can meet its over-arching goal to “make a visible difference for over-burdened communities” by addressing the points under Goal I, “Deepen environmental justice practice

within EPA programs to improve the health and environment of overburdened communities.”

Nearly every environmental

permit issued is an opportunity to do just that. EPA’s focus on considering environmental justice in EPA permitting decisions is well-placed; however, only a tiny fraction of permits are actually issued by EPA. Most permits are issued by state agencies or tribal governments. Many of these permitting

staffs issued the very permits that created current Environmental Justice hotspots.

Environmental Justice will not be considered in most environmental permitting decisions unless

EPA strongly supports - or even compels - states to do so. **We urge EPA to focus on advancing**

the engagement of states in considering and implementing environmental justice:

- **Require Environmental Justice training for state agency staff members and leaders under cooperative agreements**

EPA has completed mandatory training on Environmental Justice for all employees, according to the Plan EJ 2020 Draft Action Agenda Framework. Congratulations on this important achievement! Many state agency staff are in dire need of training on environmental justice as well. State agency representatives in North Carolina, and presumably in many other states, are unclear about what environmental justice is, why it is important, and how to consider or implement it in their jobs. North Carolina serves as a key example, as it no longer even has a coordinator for Environmental Justice within the Department of Environment and Natural Resources. We suggest that EPA require all state agency staff involved in permitting and enforcement to receive mandatory environmental justice training under the terms of their cooperative agreements with EPA. States like PA, CT and IL, which have shown leadership in implementing environmental justice principles, could be tapped to help provide these trainings, so that the message is peer-to-peer and thus more likely to be well-received by states. Such an approach would also help meet EPA’s goal to “Collaborate with states, tribes, local governments and other co-regulators to share and develop environmental justice tools and practices” (EJ 2020 Draft Framework).

- **Guide states to consider Environmental Justice and develop hooks that compel them to do so**

There are likely multiple barriers that prevent states from considering and implementing Environmental Justice in their permitting and regulatory functions. These barriers may include a lack of understanding of the principles of environmental justice (see previous bullet point), a perceived lack of resources or specialized knowledge to implement environmental justice, pressure from regulated entities to speed up regulatory processes in ways that could preclude full consideration of environmental justice, or others. EPA should identify and address these barriers through education and training, guidance materials, and by compelling states to

consider Environmental Justice in permitting and enforcement whenever possible, such as under cooperative agreements or other funding mechanisms. For example, EPA could adapt the Agency's guidance "Considering Environmental Justice in Permitting" for state use, and provide direct assistance in using such a tool. EPA could require states to make use of the guidance as a condition of specific funding / cooperative agreements.

- **Use the Carolinas Cement Company air permit as a test case under EJ 2020 to move a state to thoroughly consider and implement environmental justice principles in a state permitting decision.**

EPA has an excellent opportunity to help a state make considerable progress by learning hands-on how to use the principles of Environmental Justice in permitting. In issuing an air permit to Carolinas Cement Company in 2013 (a permit that is currently before the North Carolina Supreme Court), an endeavor that would build one of the world's largest cement plants in an over-burdened community of poor and minority residents on the Northeast Cape Fear River on the border of Pender County, North Carolina regulators summarily rejected the community's many requests to consider environmental justice factors in its permit analysis. PenderWatch has submitted comments on the proposed permit, and has communicated our concerns about environmental justice with regards to this permit to NC DENR and to EPA's Region IV Environmental Justice staff members.

The NC DENR Division of Air Quality held a public hearing on the revised permit in 2013, at which PenderWatch, the New Hanover County NAACP and several other community representatives urged the state to consider the special vulnerabilities of the nearby community reliant on well water, already overburdened by legacy contamination from present and historical polluters on the Northeast Cape Fear River. Despite our specific requests to do so, the Division of Air Quality *flatly refused* to consider any secondary impacts of the permit, from air deposition of mercury and heavy metals into an impaired waterway, to the tremendous increases in heavy truck traffic that would accompany the opening of a massive cement plant. The hearing officer publicly belittled community members for urging the Division of Air Quality to consider environmental justice in their permitting decision. From the hearing officer's written report:

"Commenters appear to allege that the federal Environmental Justice policy applies to NC DAQ's issuance of this permit. The federal policy, set forth in Federal Executive Order No. 12898, addresses the federal government's responsibilities only, not the State's. Therefore it is not applicable here." - NC DENR Recommendation for Issuance of Air Quality Permit, Carolinas Cement Company, August 29, 2013

([http://daq.state.nc.us/permits/psd/docs/titan/CCC Hearing Officer Report.pdf](http://daq.state.nc.us/permits/psd/docs/titan/CCC_Hearing_Officer_Report.pdf)
, page 13).

The Hearing Officer's opinion was adopted in its totality and the Carolinas Cement Company air permit signed by Donald Van der Vaart, who was subsequently appointed Secretary of the North Carolina Department of Environment and Natural Resources.

See http://daq.state.nc.us/permits/psd/docs/titan/titan_perm_08292013.pdf

We strongly urge EPA to conduct a thorough review of this permit and use your authority under the Clean Air Act and other federal laws to give Environmental Justice its due consideration in this matter. **Mr. Lee, we would like to meet with you as well as meet again with Mr. Mustafa Ali to discuss this proposal. We will contact you separately with a meeting request.**

Thank you very much for the opportunity to comment on the EJ 2020 Draft Framework, and for your diligent work to promote environmental justice. Please contact me at any time for additional information about the issues which have been raised in this comment letter.

Respectfully yours,

Allie Sheffield
President



Public Employees for Environmental Responsibility

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EPA's Environmental Justice Program – Isolated from Civil Rights

PEER Comments on EPA 2020 Environmental Justice Action Agenda

July 14, 2015

The U.S. Environmental Protection Agency (EPA) has invited comment on a “draft EJ 2020 Action Agenda.” These comments by Public Employees for Environmental Responsibility (PEER) contend that this draft EJ 2020 plan continues, and in fact worsens, core flaws that have weakened and marginalized EPA’s environmental justice program for the past two decades.

The key weaknesses on the draft plan are that it –

- Wrongly separates environmental justice from its underlying basis in the Civil Rights Act of 1964;
- Contains no guidance for state and local recipients of EPA funds, leaving the program as an intellectual construct without content; and
- Lacks any planning for enforceable regulation.

I. Flunking Civil Rights

By severing environmental justice from civil rights EPA has reduced environmental justice to a largely voluntary program. As articulated in this plan, environmental justice is aspirational in nature, with EPA serving mainly in a cheerleading role.

This diminution of environmental justice stands in stark contrast to the core values of the environmental justice movement itself, coming out of the civil rights movement of the 1960s.

Before the expression “environmental justice” came into usage, the core issue was clearly named and understood as environmental racism. Yet over the years EPA has increasingly turned away from the issues of race and civil rights, to a degree that it is fair to ask whether at EPA environmental justice has become a distraction from EPA’s obligation to deal with issues of race and civil rights.

Whatever the motivation, the fact remains that at EPA civil rights has fallen off the environmental justice table, and among the costs has been the disempowerment of communities desperately in need of environmental justice and a lessening of their ability to invoke Title VI of the Civil Rights Act of 1964 in order to obtain that justice. The further isolation of civil rights

from EJ is evident in the draft EJ 2020 Action Agenda in its relegation of Title VI of the Civil Rights Act to a single bullet in a short list of “related efforts” at the tail end of the draft EJ 2020 “Framework.”

This disconnection of EJ from Title VI has left both programs in weaker shape than is needed, at a time when the programs should be working hand in hand, complementing and reinforcing each other. Both are in need of attention.

In reality, EPA’s management of these issues actually undermines communities’ civil rights. Many and perhaps most communities facing environmental discrimination are predominantly minority. Yet EPA, by withholding the involvement of its Title VI civil rights program and staff, has effectively neutered the agency’s own capacity for engaging the issues as the civil rights issues which in fact they are.

Title VI of the Civil Rights Act is not only the law of the land, but is a recognized tool for bringing about environmental justice. Environmental justice and the Civil Rights Act are intertwined, and have been so since the inception of the environmental justice movement.

Environmental justice was institutionalized at EPA and in the federal government on February 11, 1994, when President Clinton signed Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.” In almost every action addressing environmental justice since then the Agency has cited E.O. 12898 as its basis for action, including in Plan EJ 2014, issued in 2011. In issuing that Executive order in 1994, President Clinton accompanied it with a Presidential memorandum, the purpose of which was:

“...to underscore certain provision of existing law that can help ensure that all communities and persons across this Nation live in a safe and healthful environment. Environmental and civil rights statutes provide many opportunities to address environmental hazards in minority communities and low-income communities.”
(Emphasis added.)

Having noted that the E.O. is intended “to promote nondiscrimination in Federal programs substantially affecting human health and the environment,” his memorandum then went on to direct “that all department and agency heads take appropriate and necessary steps to ensure that the following specific directives are implemented immediately:” among them the following:

“In accordance with Title VI of the Civil Rights Act of 1964, each Federal agency shall ensure that all programs or activities receiving Federal financial assistance that affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin.”

Thus from inception, environmental justice at the federal level and in its foundational Executive Order 12898 has been intended to work in tandem with the Civil Rights Act, most specifically by way of Title VI of the Civil Rights Act. In sum, environmental justice has a basis in law, most specifically in the Civil Rights Act of 1964.

Title VI of the Civil Rights Act gains practical traction and consequence in its prohibition of federal funding for any “recipient” state and local agencies whose programs may have a discriminatory effect on minority populations. In practice the vast majority of EPA’s programs are implemented at the state and local level by such “recipient” agencies, and almost every one of these agencies receives EPA funds. Under the law a “discriminatory” effect includes any impact resulting from “procedures, criteria or methods” used in those programs that may result in a disparate or disproportionate impact. It is Title VI which provides the federal government with powerful role in overseeing hundreds of state and local agencies, and imposing on them an affirmative obligation to take steps and implement procedures to protect communities from discriminatory environmental impacts.

Where environmental justice and Title VI overlap is in their shared goal and requirement to protect communities of color from being subject to disparate or disproportionate impacts. Environmental justice expands this protection to include low income and other populations, but the core requirement in law to protect minority communities remains embedded. The relevance of this to the day-to-day struggles of environmental justice communities is that many, and perhaps most, such communities have a substantial minority population. Therefore, when a minority community raises a concern regarding disparate environmental impacts, that concern can and ought to be addressed as both an environmental justice and a civil rights issue.

While there was little progress on the EJ front during the administration of President Bush (2001-2008,), there were high expectations when President Obama took office in January 2009. His appointment of Lisa Jackson as EPA Administrator further kindled hopes for renewed attention to EJ. By 2010 a multi-year strategy was coming together and was issued in 2011 as “Plan EJ 2014,” the first ever such plan at EPA.

Significantly, however, a near final draft was almost completely silent on Title VI of the Civil Rights Act. Then, largely in response to a series of meetings Administrator Jackson had been holding with the “Title VI Alliance,” a group of about a dozen EJ and civil rights advocates from across the country, the final Plan EJ 2014 was revised to include more than three dozen references to Title VI.

By contrast with the 2014 Plan and Title VI Supplement, the EJ 2020 Action Agenda stands out by way of its almost complete omission of Title VI.

In short, EPA has lost its way on civil rights and environmental justice. The agency has allowed Title VI to become a “third rail,” too hot to be touched. The EJ 2020 plan needs to touch that rail if it seeks to have any power.

II. Absence of Substantive Guidance

The most fundamental gap in EPA meeting its civil rights and environmental justice responsibilities is that it has never provided substantive guidance to the hundreds of state and local “recipient” agencies funded by EPA on how to fulfill their obligations under Title VI of the Civil Rights Act.

Other federal agencies such as the Departments of Transportation (DOT), Education and Health and Human Services have issued such guidance and followed up with vigorous oversight to ensure that it is used in practice, in some cases withholding tens of millions of federal dollars because recipients failed to follow agency guidance.

While EPA has issued procedural Title VI guidance on public involvement, it has not provided guidance on addressing the substantive issue of actual disparate impacts. It is the lack of this guidance, more than any other single factor, which has let state and local environmental agencies off the hook for their obligations under the Civil Rights Act, and left communities vulnerable to environmental negligence and discrimination.

It is imperative that EPA move immediately to remedy the gap it has allowed to develop between its environmental justice and civil rights programs, and that steps to address this gap be incorporated into both EJ 2020 as well as the Civil Rights Office “Strategic Plan” mentioned in the draft EJ 2020 Framework. This gap exists in many forms, including the Agency’s organizational structure, policies, programs and day-to-day operations, and must be addressed at all of these levels. Clearly this will not happen without a clear, credible and sustained commitment from the EPA Administrator herself.

Without guidance supported by regulations requiring use of that guidance, there will be no right of redress for environmental injustice. In 2001, the U.S. Supreme Court ruled, in *Alexander v. Sandoval* (532 U.S. 275) against the right of private citizens to bring suit under Section 602 of the Civil Rights Act. This section deals with discriminatory effects or impacts and does not rely on demonstrations of “intention” to discriminate. The Act’s accompanying Section 601 prohibits intentional discrimination and under this provision individuals have the right to sue but proving intentional discrimination is a tall order. If EPA issued binding Title VI guidance for recipients, and the recipients failed to comply with that guidance, then such failure could be used as powerful evidence that the discriminatory effects are indeed intentional.

On May 4 of 2015, EPA released a “Title VI Progress Report” in which it once again committed, as it had in the 2012 Supplement, to issue guidance or a “toolkit” for recipients. What was lacking, however, was any acknowledgment of, or explanation for, why such a commitment has been contained in formal Agency every year for each of the past four years, (always for “this year”) and yet the commitment has never been met. Meanwhile a draft of such guidance has yet to be circulated by the Office of Civil Rights within the Agency or even at the Office of Environmental Justice.

Without guidance, EJ will remain a voluntary, aspirational goal with no practical tools for affected communities to defend themselves.

III. No Enforcement, No Progress

The Environmental justice section of the EPA website declares:

“EJ 2020 is a strategy for advancing environmental justice ... It is not a rule”

That statement encapsulates its limitations.

It is no secret either within EPA or among civil rights advocates that other agencies such as DOT, and the Federal Highway Administration (FHWA), are far ahead of EPA when it comes to administering their Title VI programs and coordinating between their EJ and Title VI programs. The FHWA recently released a “Reference Guide” for EJ practitioners at both the agency and at the state and local agencies receiving FHWA funds. The Guide lays out FHWA’s view of the relationship between EJ and Title VI, and goes on to describe in practical terms how the programs should interact in dealing with EJ and Title VI issues that arise in any particular community.

Beyond the Guide, it is the actual practices of FHWA staff that show how FHWA has taken a common sense problem-solving approach into communities raising Title VI and EJ issues. EJ staff at EPA likewise is well aware of, and seen in practice, the DOT’s willingness to work hand in hand with other federal agencies such as EPA in developing practical solutions to communities’ Title VI concerns.

This contrasts fundamentally with EPA’s highly legalistic and analytically oriented approach in which countless hours and staff resources are spent on essentially desk exercises rather than in pursuit of practical solutions working with the communities and other involved parties.

A look at FHWA’s working definition of what EJ means at that agency may shed light on the difference between the two agencies. From FHWA’s “Environmental Justice Reference Guide” (April 1, 2015):

“Environmental justice at FHWA means identifying and addressing disproportionately high and adverse effects of the agency’s programs, policies, and activities on minority and low-income populations to achieve an equitable distribution of benefits and burdens. This includes the full and fair participation by all potentially affected communities in the transportation decision-making process.”

By way of contrast consider the opening statement of EPA’s Draft EJ 2020 Framework, also released in April, 2015:

“EPA’s environmental justice efforts seek to protect the health and environment of overburdened communities, support them to take action to improve their own health and environment, and build partnerships to achieve community health and sustainability.”

While the FHWA is making a clearly stated commitment to “identify and address” real situations on the ground in communities, EPA’s plans to “seek,” “support” and “build partnerships.” Thus, EPA adopts a passive cheerleading-like approach. This contrasts with FHWA’s clear statement of who (FHWA) will do the acting, that they will “identify and address” discriminatory activities, and FHWA’s clear statement that the affected communities are to be involved in “decision-making.”

Thus, other federal agencies are less confused about EJ and civil rights. It is especially disconcerting that EPA, the one federal agency tasked with coordinating EJ efforts among all

federal agencies, lags so far behind other federal agencies when it comes to carrying out the requirements of the Civil Rights Act.

Nor does EPA use its traditional enforcement to further EJ goals. For example, in June 2010 the EPA Office of Inspector General slammed EPA for a decade-long failure to implement national urban air toxics control plans, designed to alleviate a major public health threat to the nation's urban centers with concentrations of disadvantaged populations. ("Key Activities in EPA's Integrated Urban Air Toxics Strategy Remain Unimplemented" Report No. 10-P-0154). The Clean Air Act Amendments of 1990 required EPA to develop a strategy to reduce air toxics emissions in urban areas, particularly from small stationary sources. While the agency was required to issue new urban emissions standards in 2000 for these smaller local sources, such as cars, dry cleaners and gas stations, EPA failed to follow through. Yet EPA figures show acute risks from these local sources – potentially causing cancer in one in 28,000 Americans with two million residents in areas where the lifetime risk was one in 10,000 or greater..

Perhaps more problematic is the delay once again of any action on a previously proposed policy on the role of environmental standards in resolving Title VI complaints. In looking into Title VI complaints EPA has long relied on pre-existing environmental standards (such as the National Ambient Air Quality Standards, or NAAQS) as essentially disposing (by way of a "rebuttable presumption") of any disparate impact issues. In practice this tends to neutralize Title VI complaints simply by way of a desk exercise, rather than a real investigation of the root causes of the complaint at the community level. EPA had proposed changes to this policy nearly three years ago requiring a closer look at, for instance, localized impacts, but that policy change has apparently stalled.

Tellingly, EPA has not even come to grips with how it should investigate EJ complaints. An attempt at developing Title VI investigative guidance fell victim to an EPA management hoping to deal with discrimination solely as a technical issue that could be resolved with "science." The net result was an extremely lengthy, largely incomprehensible and fundamentally unusable guidance document proposed in 1998, then revised and recirculated as "draft revised" guidance document in 2000.

EPA has tried to obscure the fact that the guidance was never finalized by referring to it as "interim" guidance. The document pleased no one and drew a large amount of critical comments which were never responded to. Regardless, the main underlying flaw in this approach and a tendency which continues at EPA even now, was in trying to resolve issues that are essentially policy issues by hoping they could be resolved by "science." Whether this is due to confusion or political and managerial timidity remains unclear, but the result is the same – EPA has choked when it comes to identifying and acting on discriminatory practices.

In summary, it can be fairly said that the pattern at EPA on actually addressing environmental justice is studded with stalled policies, fragmented efforts and repeated unmet commitments.

Does EPA Have a Race Problem?

There have long been rumblings within EPA that its problems in dealing with race outside the agency in its EJ and Title VI programs are directly related to its still unresolved issues around

race within the agency, issues which as described above, came to a head in the 1990s. The primary authority for addressing such issues is Title VII of the Civil Rights Act. EPA has placed both the Title VI (“external”) and Title VII (“internal”) programs in the same office. It is hard to imagine that problems in one program within the office would not have some effect on other programs in the same office.

Many agency employees feel strongly that fairness outside the agency goes hand in hand with fairness inside the agency. It is unlikely that the agency would be able to deal effectively with discrimination outside the agency if it has not been able to deal with it inside the agency. Many current employees of all ethnicities would say the agency has never addressed, let alone remedied, its “internal” civil rights issues.

Conclusion

In summary, a real commitment to EJ by EPA would –

- Restore the rightful relationship between civil rights and environmental justice by putting Title VI of the Civil Rights Act at the heart of the EJ plan and committing to implement the letter of that law fully.
- Issue guidance and supporting regulations directing the hundreds of “recipient” agencies to comply with Title VI and protect communities from discriminatory environmental effects. This guidance would clearly explain what steps these recipient agencies need to take.
- Would look to adopt best practices from other agencies such as the US DOT and FHWA for models of EJ and Title VI programs and how they are enforced.

In addition, meaningful progress would require that EPA get its own act together. At a minimum, the EPA’s civil rights and EJ programs need to learn how to work together towards common goals. Ideally, it would then incorporate that new-found coordination between the programs into both the EJ 2020 plan and the Office of Civil Rights Strategic Plan.

Given the mixed, at best, record of EPA on EJ and Title VI thus far, there may not be reasonable grounds for optimism for meaningful progress during the final 18 months of the Obama administrator.

Respectfully submitted,

Jeff Ruch
Executive Director.

Public Laboratory for Open Technology and Science comments on EPA EJ 2020 Action Agenda Framework

Section I. Deepen Environmental Justice practice within EPA programs to improve the health and environment of overburdened communities

- A. Finalize guidance on considering environmental justice in rulemaking. *This is a dense comment, it would be helpful to clarify what is meant by this.*
- B. Continue to implement regional plans for enhanced public participation. *How is encouragement happening? We urge you to consider public participation in a wide range of activities from permitting to project evaluation and rule making.*
- C. Advance environmental justice through compliance and enforcement. *Will timeliness of enforcement and compliance in disadvantaged communities be addressed? We would like to see enforcement in overburdened communities with environmental justice infringements fast-tracked.*
- D. Enhance science tools for considering environmental justice in decision-making. *We firmly support the call to advance research on cumulative risks and impacts. We would like to see utilization of community-based participatory research and citizen science data specifically in EPA's effort to foster Next Generation compliance. The public can contribute to documentation of environmental conditions and identification of noncompliance, especially at a screening level. In order to utilize community-collected data, EPA-approved methods should be performance-based rather than technology-based. Additionally, publicity around Next Generation compliance strategies and tools such as ECHO and EJ Legal Tools is necessary for them to be impactful.*

Section II. Collaborate with partners to expand our impact with overburdened communities

- A. Collaborate on tools and mechanisms, such as EJSCREEN and E-Enterprise, we can use together to advance environmental justice: *Please describe the planned public outreach for these tools. In addition to these EPA-developed tools, it would be efficient and mutually beneficial to look outward to tools and data produced by the public. Promote avenues for tool input. Want them to say something about new tools price point that they'll incorporate into E-Enterprise.*
- B. Work with other federal agencies to advance environmental justice through the Interagency Working Group on Environmental Justice: *We would like to see environmental justice advanced at all levels, and to do so, we need to enhance accountability at the state level. We recommend state and regional partners participate in the Working Group in order to facilitate direct communication and promote action.*
- C. Support community-driven efforts to identify and address environmental challenges with comprehensive roadmap approaches for development and capacity-building. *In addition to "development and capacity building" this should also include redress.*

Section III. Demonstrate progress on outcomes that matter to overburdened communities

C. In addition to measuring outcomes in particular communities, invite comment on whether there are a few critical nationwide program areas that matter to overburdened communities on which we should focus national attention (e.g., drinking water, lead paint): *We think there are more relevant examples, such as air quality issues and household pollutants.*

Section IV. Related efforts

- A. Promoting climate adaptation and resilience and greenhouse gas reduction co-benefits will be an important part of the EJ 2020 Action Agenda. *We support the emphasis on climate adaptation and resilience and encourage EPA EJ to emphasize locally relevant instances of adaptation, resilience and reduction. An interesting example of how the process for public participation in planning for climate adaptation is being led by people is with pacific island peoples and their widespread adoption of P3DM (participatory 3D modeling). Participation improves outcomes on climate processes and is recommended by the National Research Council¹.*

Note: We would like to see dedication through EPA EJ to Superfund remediation.

Under 2015 priorities

- *This list does not include priorities that will address Section I.D: Enhance science tools for considering environmental justice in decision-making. We suggest that specific actionable steps towards inclusion of priorities be added to support Section I.D.*
- *This point is vague and needs additional clarification: "Conduct community resources and training workshop".*

¹ Dietz, Thomas and P.C. Stern, eds. 2008. *Public Participation in Environmental Assessment and Decision Making*. A report from the *Committee on the Human Dimensions of Global Change Division of Behavioral and Social Sciences and Education*. Washington, DC: National Academies Press.

From: Rebecca Gallogly <[REDACTED]>
Sent: Monday, June 15, 2015 6:33 PM
To: ejstrategy; Lee, Charles; Saltman, Tamara; Altieri, Sonia; Knorr, Michele; Maguire, Kelly; kacker.adhir@epa.gov; Reed, Khesha; Dorka, Lilian; Minter, Marsha
Subject: EJ 2020 Open Public Comment

The purpose of this public comment is to emphasize above all else the need to aggressively pursue your line item, "Making a Visible Difference in Communities." Whereas righting past wrongs through Environmental Justice efforts is definitely important, our energy and other infrastructures as they stand are working in ways that serve to perpetuate the occurrence of more wrongs. Mitigating future problems through prevention, by way of reducing exposures of individuals to pollutants, contaminants, and poisons is the most ethical and efficacious approach to take in addressing health disparities among individuals living in environmentally overburdened, underserved, and economically distressed communities, as they relate to environmental protection.

Individuals living in environmentally overburdened, underserved, and economically distressed communities are exposed to more pollutants from vehicular traffic, than other individuals. Because of the history of land acquisition before The Civil Rights Movement in this country, many if not most of our highways and interstates cut through economically disadvantaged neighborhoods. Underserved individuals also typically do the "dangerous" or "dirty" work, such as directly handling gas. Much of the work that involves using gas-powered equipment day in, and day out, such as landscape and construction equipment with gas engines, is work that confers lesser pay, thereby relegating individuals to earn less while being persistently exposed to noxious pollutants. People with older cars tend to be economically distressed, which means their own exhaust can leak into the cabin of their car, and their emissions are dramatically worse than those from a car owned by someone with the financial means to maintain it properly. People without garages or carports tend to be economically distressed. Weathering from the elements wears the gaskets / sealants that seal car cabins, making these individuals more susceptible to leakage of vehicular pollutants from other vehicles, into their car cabin, where they are left to essentially "stew" their lungs in these toxins. People who don't own cars are more likely to be economically distressed, and when living in an urban or suburban environment, are also more likely to suffer from frequent or daily exposures to vehicular exhaust. Walking in urban areas where there are many cars with bad emissions increases exposure to these emissions, as the time taken during a single trip is orders of magnitude greater by foot than by car. In more distressed urban areas, walkers will be exposed to more and worse emissions. In urban areas, most bus stops are at traffic lights, where groups of vehicles idle and then must start again, producing the most pollution when reinitiating forward movement. People without cars often must rely on buses for transportation, and can spend an inordinate amount of time sitting at bus stops as a result.

Individuals living in environmentally overburdened, underserved, and economically distressed communities are often those who have lower paying jobs that involve exposure to toxins. Many paints and almost all solvents have toxins in them, and often, jobs involving painting or the use of solvents are lower-paying. Also, not only do they do others' dirty work, e.g., painting other people's houses — but they also often do their own home improvement repairs, because it further saves on costs.

Finally, individuals living in environmentally overburdened, underserved, and economically distressed communities often do not have the resources to buy healthier food. Many of the cheaper foods we buy are sprayed with chemicals, and packaged in plastic. We need to eliminate this differential stratum in food pricing,

and simply make organic foods the default. We also need to educate people about the dangers of involving plastics in food, and reduce or eliminate plastics use where possible in food packaging.

A primary component of your line item, "Making a Visible Difference in Communities," needs to involve educating the general public about how particulate matter and polycyclic aromatic hydrocarbons in vehicle exhaust are cancerous; how many of the products we use in everyday applications, such as solvents, etc., are cancerous; how these and related compounds leak from our vehicles and onto our lands, and then run into our waters during rains; and how we breathe in these components daily when living in urban environments and / or working with readily available products such as paints and solvents. Education ought to also include more in depth information about pesticides, and how components in plastic can leech into food and health problems — including but not limited to problems in developing fetuses.

With this preliminary summary of problem and need, I now give you several concrete solutions that I urge you to take on immediately, with the help of other relevant Departments, and with the goal of preventing further health disparities negative outcomes for people in environmentally overburdened, underserved, and economically distressed communities. A side benefit includes the fact that these improvements will have rippling effects that will positively impact individuals in all communities.

- 1) Outlaw all fracking outright.
- 2) Aggressively pursue the creation of fossil-fuel free energy, a/k/a Renewable Energy (RE), lobbying to use funds from the Department of Defense's discretionary budget for widespread startup and implementation.
- 3) Implement standardization of battery packs for electric vehicles, so that battery replacement can happen on a large scale (and batteries don't need to be sent back to the original owner; although, I strongly suspect only hydrogen may be the better option).
- 4) Aggressively pursue the installation of RE highways on all interstates, to implement stations wherein hydrogen cell fuel and battery swaps are available. Provide strong incentives to gas station owners and gas companies to invest in the turnover to RE. Add to / replace existing fossil fuel stations whenever possible. Must have both hydrogen and battery pack swaps available every X miles on RE highway (unless hydrogen proves the better option -- no lithium -- a limited resource, is required; can power a range of vehicle engine sizes from hydrogen).
- 5) Get large cities over a certain metropolitan size, on the fast track of implementation of vehicular RE over the span of 5-10 years, max.
- 6) Federally mandate cities over a certain metropolitan size (say, 1 million residents) to begin planning and building state-of-the-art and comprehensive RE commuter rail, reaching from all suburban areas, to all major destinations (e.g., universities, airports, courthouses, entertainment districts).
- 7) Implement a mandatory fuel conversion plan, wherein vehicles older than the year 2000, and all two-wheeled vehicles must be hydrogen or electric. Invest heavily in matching funds for this program, as you will be hitting a lower socio-economic target here, and the goal is to improve people's health and the health of the environment -- not to make tons of money from already disadvantaged individuals. Require this by 2020. Quickly pull in existing fossil fuel workforce for training and implementation of new program. Every five years, raise the year cutoff by five years, until there are no more fossil fuel powered vehicles (or maybe it would make better business sense, for continuity, if we raised the cutoff every year by a year or two — while actively creating a work transition conduit for people in this business to pursue training in related, or if desired, unrelated line of work after conversion is complete, as conversion program will have a limited life).

- 8) Require all states to be at AT LEAST 50% RE for both uses (vehicular and non-vehicular) by 2020.
- 9) Require conversion of all semi trucks, nationwide, to RE by 2020.
- 10) Require conversion of all vehicles involved in governmental affairs (city to federal), whether via public-private partnership (e.g., USPS) or directly, to convert to RE by 2020.
- 11) Generate and enforce stricter standards for distance of residential living from coal burning plants — factoring in issues such as (1) pollutants and contaminants generally flow downhill in water, and (3) coal ash can disperse in any direction based on weather patterns.
- 12) Require conversion of all landscape-related equipment with engines, to hydrogen or electric by 2020.
- 13) Seek to put measures in place to limit vehicular number, size, and turnover for the general population. Making fewer vehicles of smaller size will be less taxing on the workers making vehicles, exposed to carpet off-gassing, welding solder, solvents, plastic, etc. etc. etc.
- 14) Make engine emissions STRICT, and make their violation a finable offense. If an officer can do a breathalyzer test, they can do a tailpipe test. Hire more law enforcement and demand strict enforcement — BUT MAKE CONVERSION FREE FOR THE POOR, MAKE SURE THERE IS A WARNING / INFORMATION / REMEDIATION MECHANISM IN PLACE (e.g., if your tail light is out you can get it fixed, bring evidence of getting it fixed to judge, and you don't have to pay fine — do same thing with hydrogen conversion).
- 15) Get fossil fuel related participants OUT OF The Department of Energy's H2 design and implementation measures — unless they have a very clear and detailed plan for cycling down fossil fuels to zero and ramping up in renewable energy. Otherwise, IT IS A CONFLICT OF INTEREST.
- 16) REQUIRE electric vehicle manufacturers to actively work toward phasing in aluminum metal-air batteries, with the goal of completely eliminating the manufacture of new lithium-ion batteries by 2020 (lithium is a much more limited resource than aluminum).
- 17) Provide welfare assistance for a family with up to two biological children. Cut off welfare assistance wherein family has more than two biological children. We have the right to procreate, but increasing population is bad for the environment.
- 18) Enforce a requirement of the provision of only organic food.
- 19) Require one certified OSHA expert on site per number of individuals working in industrial settings to actively work with, observe, and enforce stricter standards (e.g., masks and not just hardhats worn at construction sites), and provide very detailed and specific and ongoing training on safety hazards for workers. What may be salient to one worker (e.g., inhalation of toxin could lead to liver damage in later life), may be different from what is salient to another worker (e.g., inhalation could cause immediate degradation of sperm quality, increasing probability of birth defects).
- 20) Ban all styrofoam applications for use by public.
- 21) Very actively and strongly reduce the use of plastics in food packaging — both unnecessary packaging, and packaging wherein liquid / oily / acidic food is directly in contact with plastics for a prolonged period.
- 22) Require all products possible (e.g., paints, adhesives, etc.) that have variants that are low in or have no volatile organic compounds (VOCs), to switch to providing only the low- or no-VOC variants.
- 23) In all applications possible, eliminate spray versions of substances (e.g., sunscreens, paints, solvents, etc.).
- 24) Aggressively target janitorial workforce health by carefully considering those things to which people working in a supportive cleaning capacity are exposed to daily, and consider omitting the more toxic variants such as powders (e.g., Comet, which is easily and repeatedly inhaled), and toxic cleaning solutions (e.g., I recently confirmed that Fabuloso has a nasty chemical or two in it) from the list of allowable cleaning agents. Require affordable, less toxic alternatives, and implement training and education in this vein.

24) Urge the President of the United States to call on all people and business entities in the U.S. to actively and vigorously assist toward the RE goals in the next five years.

Let's make a visible difference in communities!!

Thank you,
Rebecca Gallogly

From: Robert <[REDACTED]>
Sent: Monday, July 13, 2015 6:40 PM
To: ejstrategy
Cc: [REDACTED]
Subject: EJ EPA 2020 Plan Comment

Hello,

My comments are brief, and I speak for myself.

State Application

After reviewing this strategy in the context of EJ at EPA since the early 90's this Plan is a testament to the decades of EJ work done, the undeniable and overriding importance of EJ, and a road map for parts of EJ in the future. It is evident that an unusual amount of thought, focus, collaboration and expertise went into the 2020 proposed plan. In many ways this particular plan could be a foundation for state environmental agencies with the political willpower to engage EJ issues. It is not, however, as useful in the many states which choose not to engage in Environmental Justice. Many state environmental agencies simply do not engage in our issues, and usually are obstacles.

It is for this reason the emphasis on Title VI is important. Although there is no longer a private right of action via Title VI, there is a course of action from a federal agency to state agency that could rescind EPA monies from non complying states and local governments. There was a Title VI FACA subcommittee many years ago at EPA with Lang Marsh as chair that fleshed out the issues, for a historical and agency perspective.

OCR lack of plan

The EPA 2020 plan notes the lack of an OCR plan. The lack of a Office of Civil Rights plan within the context of this plan could be an issue, again. OCR was where many EJ people at the EPA regional level were moved. They didn't do much EJ work. OCR's work is organizationally different. Without a clear statement as to OCRs work plan it seem like this relocation of EJ could happen again. Although EPA EJ personnel are unlikely to comment on this it has been an issue for them, along with job and career stability at EPA.

Rural populations and methodology

The EJ Screen is a terrific piece of work. We are waiting to see whether it is a nice piece of policy research that develops concrete EJ sensitive policy recommendations that are implemented, unlike EISs which are advisory and often categorically excluded as not required. The Portland Superfund Site is of particular interest. I hope that it is transparent, and is applicable to all populations, not just urban populations. To the extent it relies on Census data it will fall short because of Privacy Act limitations on rural census data. Rural areas in my state, including tribal and band lands, are becoming dumping grounds.

EJ Inclusion: advancing the dialogue

The plan does a wonderful job of including some EJ voices and issues, but not all. That is to be expected because many EJ folks are often financially stressed and coping day to day. It is not to be accepted, although the only answer I have is to pay people for lost work when they participate. It is obvious that the plan process was long and motivated by inclusion, but research in my encyclopedias does turn up other types of EJ. Some of the missing EJ voices are from academics, both nationally and internationally; overburdened communities in rural areas; local government; and state level advocacy groups outside of state agencies. Some of the loudly silent voices seem to be the mainstream US environmental organizations, big business and their state and federal trade associations, and health workers. This may not reflect on the plan, but on their willingness to collaborate with EJ. Personally as an activist, and chair of the EJTF in Oregon when we won the EPA collaboration award, I fear a growing lack of collaborative partners for us. I hope this plan with some of the initiatives will actually increase the pool of collaborative partners for us outside and inside the agency.

Conclusion

Many environmental policies fall short because of a failure to address issues of institutional racism, with “sustainability” becoming the latest one. Epigenetic impacts will even further prove the long reaching human impact of avoiding EJ. While this is a very good plan, it does not engage local government in a way that obstacles to implementation, such as institutional racism, are addressed. Almost all environmental problems are solved and mitigated on the site in the community. EJ leads the way in developing realistic environmental problem solutions because it directly confronts conflictual values of on the ground implementation of industrial and environmental projects. While awkward for some, it is a necessary growing pain for a mature and inclusive environmental policy. That is why the 2020 Plan is at the cutting edge of environmental policy right now in the US.

Respectfully Submitted

Robert W. Collin




July 15, 2015

Charles Lee,
Deputy Associate Assistant Administrator for Environmental Justice
USEPA, Office of Environmental Justice (2201-A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: To EJ 2020 Open Public Comment Period

Dear Charles Lee,

The EPA is distinguished among many government agencies by positioning their works within the priorities and context of communities affected by the unjust geographies of environmental pollution. If there is something we hear from EJ communities in San Juan is that the EPA is always there when you need them. The history of EPA in Puerto Rico is the victory of many communities struggling for social and environmental justice. In our barrios and communities as many other places, the antidote for the long term mitigation of environmental injustice is the participatory planning for a sustainable community development. This type of planning requires deep levels of commitment, organization and capacity building, both facilitated by EPA to many local residents of the EJ communities in Puerto Rico. However, we are curious and interested in knowing the planning processes and methodology for creating the EJ 2020 Action Agenda framework.

Following the community based and participatory tradition of the San Juan Bay Estuary Program, on November of 2013 we started working closely with local communities of the San Juan Bay Estuary on a multidisciplinary and participatory project that has the goal of identifying point and non-point sources pollution in the watersheds of the San Juan Bay Estuary. Our job requires a high level of commitment and empathy with the local communities affected by social and environmental injustices. On the other hand the success of our work depends on the trust and emotional bonds established with the communities affected by the impacts of injustice.

We were invited by our project manager to participate in the last conference for the EJ 2020 Action Agenda Framework feedback (region 2) held on June 9, 2015. We are deeply grateful for the invitation to participate in this important matter. However, is our opinion that this passive level of participation fails to recognize the diverse contributions, inputs, claims, preferences, knowledge and experiences that local residents of EJ communities have towards the agenda. It would be contradictory to the

proposed goals of EJ 2020 to create an EJ plan without propitiating the participation of the SJBE EJ communities and many other EJ communities affected by the impacts of unjust geographies.

The EPA knows that reducing inequalities and providing access to the planning and decision making are requirements for achieving the long term sustainability of justice. The participation of local EJ communities in the processes of planning the agenda must be a priority since the proposed draft of the agenda states: “*Under Plan EJ 2014, EPA laid a foundation for integrating environmental justice in all its programs,*” hence, suggesting that the EPA is prepared for a robust dialogue with local EJ communities, as is expected for the creation of the EJ 2020 Action Agenda Framework. For this dialogue to occur we proposed stakeholders to transfer the scale of planning the agenda to a local community scale, to capacitate and propitiate the discussion of local solutions and strategies to attend the development of environmental injustices.

In our short experience working with EJ communities, community leaders are constantly reminding the historical social exclusion processes leading up to the development of environmental injustices. The history of social exclusion is printed in the landscape and memory of local EJ communities, whereas remembrance of the causes of injustice stimulates the claims and development of justice. We are convinced that to genuinely include Puerto Rico’s EJ communities’ feedback, the plan should be contextualized and presented at a local scale and comments should be requested and discussed at this scale.

As an informal, limited and voluntary exercise to provoke the discussion about the draft goals of the Action Agenda Framework, we asked community leaders about their environmental situation in relation to EJ. The following selected answers to questions regarding EJ and the environmental situation of the community portray some of the common knowledge and perception in regards to EJ. Interviews were given informally by some leaders of the local communities participating in the project.

-¿What is environmental justice?-

- I am not sure
- Justice for the environment
- ¿To not have environmental problems in my community?
- To avoid the placement of a polluting facility close to my home or community

-¿What is an environmental problem?-

- When something affects the environment
- When the air’s smell stings
- When we have dead fish in the river
- When we have trash in the lagoon

-¿What environmental problems does your community have?-

- We don’t have garbage dumpsters
- We have a waste water treatment plant very close to our homes

- We don't have waste water connection and we have to dump our water straight to the river
- When it rains everything gets flooded
- Waste water running in the street
- Trash in the river
- Grey water in the river
- Heavy metals in our soils
- Our lagoon is filled with everyone's trash
- We can't use the basketball court because it's filled with waste water

-¿How do you see your participation in solving these problems?-

- Working hand to hand with the government to solve the problems
- Actively
- Community development
- Consulting the community when making a decision that affects the community

Comments to environmental injustice constantly leads to identify *social exclusion* as part of the causes of injustice:

-¿What would you identify as the cause of environmental injustices in the community?-

"This happens in a daily basis, the government does not come, we are the ones that have to do the cleanup" **Peter, Playita resident**

"I do not understand why they bull dozer comes to cut my trees to create an easement, if these trees do more for us holding the ground when the river floods" **Don Rafa, Sierra Maestra resident**

"I would not be surprised if one of these days the government pulls me out of here, to build a hotel" **Don Juan, Plebiscito I, resident**

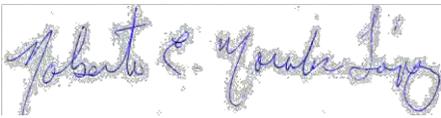
"The smell is unbearable, I don't go out anymore or open my windows. I've been in many government agencies and nobody helps me because I am from the Venezuela community" **Doña Ines, Venezuela resident**

"There's something you have to understand, the history of poor communities is the history of the garbage, back then, it was through garbage the only way that many of us could survive" **South Hill Brother resident**

"... A visit? ..., Kid, we are tired of walking the community every time someone comes. The community have walked many times and no one does anything" **Maria, Villa Kennedy, resident**

Our objective with this letter is to provide feedback towards the *processes* for planning the EJ 2020 Agenda Action Framework, not to provide feedback on the draft. The main comment of our feedback is to provide equal, transparent and participatory platforms for encouraging and including the voice of EJ communities in the EJ 2020 Agenda. This effort will guarantee an equal, just and sustainable long term effect of EPA actions for tackling environmental injustices.

We are deeply grateful for your consideration to our comments. If you have any question, suggestion and/or need more information please contact us to facilitadorestuari@gmail.com and rmorales@estuadio.org.



Cordially,



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**Draft EJ 2020 Action Agenda
Framework (June 15, 2015)**

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Via email
July 14, 2015
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Thank you for accepting these comments on the Environmental Protection Agency's ("EPA") Draft EJ 2020 Action Agenda Framework (June 15, 2015) ("EJ 2020 Framework"). The Sierra Club is the oldest and largest grassroots environmental group, with over 1.2 million members and supporters. The Sierra Club has joined with other environmental groups in a detailed set of comments to EPA's EJ 2020 Framework focused on demonstrating progress on outcomes that matter to minority and low income communities and creating specific initiatives that will assist the agency in achieving this progress. These comments discuss in more detail how to integrate environmental justice ("EJ") in rule making and rule implementation, with an emphasis on practical suggestions to effectively apply the EPA's recently finalized "Guidance on Considering Environmental Justice During the Development of Regulatory Actions" ("Final Guidance"), focused primarily on air pollution rules.

The Sierra Club would also like to take this opportunity to recognize and thank EPA staff for its continued commitment to comply with Executive Order ("EO") 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, which requires every federal agency to make environmental justice a part of its mission. However, as these comments note, there is still much left to do for environmental justice to truly take root in every section of the agency. As numerous studies have documented and EPA has also acknowledged, minority, low income, and indigenous communities often live in close proximity to large sources of air and water pollution, experience adverse or even disproportionate health impacts resulting from numerous environmental hazards, and have less opportunities to participate meaningfully in decisions that affect their health and environment. Minority and low income communities are also more likely to reside in areas vulnerable to climate change impacts such as sea-level rise and to spend higher proportions of their income as a result of rising food prices or increased water scarcity.

Consistent with its obligations under EO 12898, EPA must integrate environmental justice in all its regulatory actions, assessing not only whether the agency's regulations would have the potential of creating adverse or disproportionate impacts on minority and low-income populations, but also whether those communities in particular can receive the benefits expected from the implementation of those rules. These comments offer practical suggestions on how to effectively put into practice EPA's Final Guidance to implement EO 12898, in order to ensure that EPA appropriately addresses environmental justice both in the development and implementation of the agency's regulatory actions. Toward this end, we also provide input on EPA's environmental justice screening tools, with an emphasis on EJSCREEN, which EPA recently released, and EJView, which the agency plans to discontinue this fall.

I. Incorporating environmental justice in rule making

A. EPA must prepare an environmental justice analysis of every federal rule under EO 12898 and the agency's policies that implement it

Executive Order ("EO") 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, requires each federal agency to make

environmental justice part of its mission “by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States.”¹ EO 12898 requires all federal agencies to collect, maintain, and analyze information that assesses and compares environmental and human health risks to populations identified by race, national origin or income, and to use that information in determining whether their actions have “disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.”²

Incorporating environmental justice into the rule making process is a critical part of implementing EO 12898. Sierra Club commends EPA for its continued commitment to make this one of the agency’s focus areas, now under its Plan EJ 2020. The recently-finalized Final Guidance will be an important tool to assist EPA’s rule writers and decision makers in incorporating EJ in its “Action Development Process” (“ADP”) for developing environmental regulations.³ As EPA notes, rule making will be more effective if, following the Final Guidance, EJ is considered not only in the development of the rules themselves, but also in other “up-front” actions that support the development of those regulations, such as risk assessments and analytical tools.⁴

Sierra Club shares EPA’s view that the agency’s rules need not entail “disproportionate” impacts in order to trigger a requirement to protect the health and environment of minority, low income, and indigenous communities (“EJ communities”). As the Final Guidance notes, the Clean Air Act “provide[s] a broader basis for protecting human health and the environment.”⁵ Consistent with its authority under the Act, EPA may address any adverse impacts from the implementation of a rule on EJ communities without having to show that those impacts are disproportionate. If EPA is required to make such a determination in particular contexts, however, EPA’s Final Guidance provides a good recommendation that agency staff must implement in every rule they craft—to consider “the severity and nature of health consequences; the magnitude of the estimated differences in impacts between population groups; mean or median exposures or risks to relevant population groups; distributions of exposures or risk to relevant population groups; characterization of the uncertainty; and a discussion of factors that may make population groups more vulnerable.”⁶

EPA must promote the effective use and robust implementation of the Final Guidance, as proposed in its EJ 2020 Framework.⁷ Consistent with EPA’s obligations under EO 12898, EPA

¹ Exec. Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, § 1-101.

² *Id.* § 3-302(a).

³ U.S. EPA, Guidance on Considering Environmental Justice During the Development of Regulatory Actions (“Final Guidance”), May 2015, at i.

⁴ *Id.* at 1.

⁵ *Id.* at 7.

⁶ *Id.*

⁷ U.S. Environmental Protection Agency, Draft EJ2020 Action Agenda Framework, June 15, 2015, at 2.

must prepare an EJ analysis in every rule it issues. EPA and other federal agencies have for many years conducted cost-benefit (“CBA”) analyses for each and every “significant” action they issue, in accordance with EO 12866, *Regulatory Planning and Review*.⁸ Just like CBA has become a critical component of agencies’ decision making, we believe that EJ analyses must become more rigorous in order to really become an integral part of the regulatory process. This would also help offset some of the gaps in traditional CBA analyses, which do not focus centrally on distributional issues.⁹ Effective integration of EJ concerns into EPA’s regulatory analysis would provide both substantive and practical benefits. It would also fully comport with EPA’s legal mandates under EO 12866 and EO 12898. Perhaps most importantly, integrated CBA and EJ analyses would help ensure that EJ considerations are not overlooked at key moments in the decision-making process and that EJ communities are treated like equal stakeholders, whose costs and benefits are, as a matter of fact, part of the CBA calculus.

Sierra Club fully supports the Final Guidance’s expansion of the concept of “fair treatment” to include the distribution of benefits of the agency’s regulations across all populations, in particular EJ communities. In light of this expanded concept, agency staff should not only evaluate potential adverse impacts to these communities, but also “the distribution of the positive environmental and health consequences resulting from their regulatory actions.”¹⁰ Thus, as part of its EJ analyses, agency staff must assess not only whether the agency’s regulations would have the potential of creating adverse impacts on minority, low-income, and indigenous populations, but also whether those communities specifically can receive the expected benefits of those rules. Robust implementation of the Guidance means

⁸ See Exec. Order 12866, *Regulatory Planning and Review*, § 6(a)(3)(B).

⁹ The draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis (“Draft Technical Guidance”), which EPA must finalize this year, observes that “analyses of potential EJ concerns are often conducted separately from an assessment of benefits and costs (i.e., benefit-cost analysis evaluates efficiency, while analyses of potential EJ concerns evaluate whether impacts are distributed differently).” It also notes that consideration of EJ concerns is distinct from “other parts of the regulatory analysis” such as CBA; that “the focus of E.O. 12898 is on human health or environmental effects, which is generally at least one step prior to monetization of benefits and precludes certain other benefit categories covered in the EPA’s Economic Guidelines,” and that decision-makers are to consider distributional impacts analyses “along with” efficiency analyses. U.S. EPA, Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis, Post-Internal Agency Review Draft, May 1, 2013, at 4, n. 14., 5, n. 17. See also Office of Management and Budget (“OMB”), “Circular A-4” (September 17, 2003), available at: https://www.whitehouse.gov/omb/circulars_a004_a-4/ (implying that the two analyses should be separate). However, the Draft Technical Guidance fails to note that EPA’s own description of its Economic Guidelines states that they “provide guidance on analyzing the benefits, costs, and economic impacts of regulations and policies, including assessing the distribution of costs and benefits among various segments of the population.” U.S. EPA, Guidelines for Preparing Economic Analyses, available at <http://yosemite.epa.gov/EE%5Cepa%5Ceed.nsf/webpages/Guidelines.html>. EPA needs to revise its Draft Technical Guidance to address this possible inconsistency. In particular, EPA should provide its staff with clear guidance on exactly at what point in the regulatory process will EPA ensure that EJ concerns are considered “along with” efficiency, and what will be the relative priority of the two if/when they conflict.

¹⁰ Final Guidance, at 4-5.

that, going forward, EPA's analyses of the environmental justice implications of its rules should be done differently if EPA really is to make environmental justice part of its mission. The following comments offer practical suggestions on how to implement the Guidance and ensure that the rules EPA issues address EJ appropriately.

Finally, Sierra Club supports EPA's direction to rule writers to consider environmental justice not only in the development of the agency's regulatory actions, but also in the implementation of those actions.¹¹ As these comments detail, EPA must provide guidance and work closely with states in developing implementation plans to comply with applicable EPA standards and in developing the operating permit program to comply with these requirements at the state level in a manner that addresses environmental justice effectively.

B. EPA must establish more stringent standards for the regulation of pollutants that affect minority and low income communities

In order to effectively implement the Final Guidance in the rule making context, EPA must establish more stringent and more protective standards for the regulation of pollutants that affect the health of environmental justice communities. For example, in its proposed Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone ("ozone NAAQS"), EPA concluded that "the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment," and that, if finalized, the revised ozone NAAQS will actually increase public health protections.¹² Contrary to this statement, the level of the standard established by EPA will affect the level of protection to human health and the environment, including for minority, low income, and indigenous communities. The more stringent the final standard is, the more benefits EJ communities will receive from the implementation of the ozone rule.

EPA's proposed Regulatory Impact Analysis ("ozone RIA") to the proposed ozone NAAQS provides a limited analysis of the socio-demographic characteristics of populations living in counties with monitors with current design values (2011-2013) that exceed the proposed standards (65 to 70 ppb). As the agency itself indicates, the analysis does not identify in detail the demographic characteristics of the most affected communities nor does it quantify the level of risk those communities currently face. The RIA does not provide state-level or county-level information either, and it does not assess in detail the health burdens that EJ communities face. EPA has thus concluded that the analysis "cannot be used to draw any conclusions regarding potential disparities in exposure or risk across populations of interest from an EJ perspective."¹³

¹¹ *Id.*, at 11.

¹² U.S. EPA, National Ambient Air Quality Standards for Ozone; Proposed Rule, 79 Fed. Reg. 75,234, 75,387 (Dec. 17, 2014).

¹³ U.S. E.P.A., Regulatory Impact Analysis of the Proposed Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone ("ozone RIA"), at 9A-1.

On the other hand, based on this limited analysis EPA has quickly concluded that, to the extent that an EJ community is disproportionately impacted by ozone levels because it resides in an area of interest (i.e., an area which ozone levels exceed the proposed standard), those communities stand “to see increased environmental and health benefits from the emission reductions called for by this proposed rule,” and that the proposed standard “will tend to benefit” geographic areas with a larger proportion of minority (particularly Hispanic and African-American) and low-income residents than the national average.¹⁴ EPA has the opportunity to address and ameliorate existing adverse impacts on EJ communities in revising the ozone NAAQS standard by setting a stringent level and form for the new standard, which will contribute to decrease the disproportionate ozone-related health burdens that EJ communities (in particular minorities) bear throughout the country, both in non-attainment and attainment areas, as detailed below.

1. Minority and low income communities are disproportionately exposed to higher levels and health impacts of ozone air pollution

Ozone is a public health threat. Ozone exposure can cause numerous health problems, including chest pain, coughing, throat irritation, and congestion.¹⁵ Breathing ozone inflames and damages the airways, reduces lung function, and continues to damage the lungs even after symptoms have disappeared.¹⁶ Ozone also makes the lungs more susceptible to infection and repeated exposures may permanently scar lung tissue and cause premature death from heart or lung disease. Ozone is particularly dangerous for those who already suffer from respiratory illnesses because it can trigger and exacerbate conditions such as asthma, emphysema, and chronic bronchitis.¹⁷ Sensitive populations such as children and the elderly are especially susceptible to the negative health effects of ozone.¹⁸ These effects lead to increased school absences, work absences, emergency department visits, hospital admissions, and reliance on medication.¹⁹

Minority and low income communities are disproportionately exposed to higher levels of ozone air pollution, to more types of elevated air pollution and to more chronic air pollution. African-Americans, in particular, are at higher risk of early death from ozone pollution than the

¹⁴ *Id.*, at 9-7, 9A-7.

¹⁵ *See, e.g.*, U.S. EPA, National Ambient Air Quality Standards for Ozone; Final Rule, 73 Fed. Reg. 16,436, 16,440 (Mar. 27, 2008); *see also* U.S. EPA, Integrated Science Assessment for Ozone and Related Photochemical Oxidants, EPA 600/R-10/076F (Feb. 2013), available at <http://www.epa.gov/ncea/isa/ozonehtm> (cataloguing scientific studies and discussing in depth the wide range of adverse health effects associated with short- and long-term ozone exposure) [hereinafter “ISA”].

¹⁶ *Id.* at sec. 6.2.

¹⁷ *Id.*

¹⁸ *Id.* at ch. 8.

¹⁹ *See, e.g.*, U.S. EPA, Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards, EPA-452/R-14-006 (Aug. 2014), at 4-57.

general population. Bell et al. (2008)²⁰ examined 98 urban communities in the U.S. and reported that the risk between ozone and mortality was greatest in areas with high unemployment, a higher percentage of African-Americans, higher public transportation use, and a lower availability of air conditioning.

There are far higher proportions of minority populations than white populations living in ozone non-attainment areas. The Sierra Club has cross-referenced census data, EPA's nonattainment designations for the 2008 ozone standard, and levels of ozone (2011-2013 design values for the 2008 ozone standard) in several states,²¹ finding that this is a clear and persistent trend. (See Appendix A.) Sierra Club has provided this information as part of its joint comments²² to EPA's proposed ozone standard, and reiterates it here as a means to provide practical suggestions to EPA on how to analyze EJ issues and implement its Final Guidance in the context of the ozone rulemaking. Sierra Club hopes that this information also contributes to further EPA's obligation to collect and analyze information on environmental and human health risks borne by populations identified by race, national origin, or income, as mandated under Section 3-302(a) of EO 12898.

Sierra Club's analysis found that, in the south of the country, Alabama, Arkansas, North Carolina, Georgia, Kentucky, Tennessee and Texas all have higher relative concentrations of blacks—sometimes far higher—living in areas that fail to meet the 2008 ozone standards than concentrations of whites when compared to average state wide racial demographics. The same holds true for central and mid-west states: Wisconsin, Illinois, Michigan, Missouri, Ohio, Kansas, and Oklahoma are particularly notable in the over representation of blacks living in areas that fail to meet minimum air quality standards for ozone. Nevada also follows this trend. This trend can also be seen in eastern and mid-Atlantic states, where Pennsylvania and Rhode Island have higher relative exposures among blacks than whites, though in other states, such as New York and Virginia, minorities that are at greater relative exposure than whites are Hispanics and Asians.

Indeed, as Appendix B demonstrates,²³ for many states there is a striking correlation between increasing concentrations of smog, increasing concentrations of people of color and decreasing concentrations of whites in areas that fail to meet minimum air quality standards.

²⁰ M.L. Bell & F. Dominici (2008). Effect modification by community characteristics on the short-term effects of ozone exposure and mortality in 98 US communities, *Am. J. Epidemiol.*, 167: 086-997.

²¹ Data derived from US Census Bureau, "QuickFacts," available at <http://quickfacts.census.gov/qfd/index.html> and EPA, "Design Values: Ozone 2013 Design Value Report," available at <http://www.epa.gov/airtrends/values.html>

²² Comments of Sierra Club, et al. on EPA's Proposed Revisions to the National Ambient Air Quality Standards for Ozone (March 2015), available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2008-0699-2720>

²³ Data derived from US Census Bureau, "QuickFacts," available at <http://quickfacts.census.gov/qfd/index.html> and EPA, "Design Values: Ozone 2013 Design Value Report," available at <http://www.epa.gov/airtrends/values.html>

Stated another way, as air quality progressively worsens, representation of people of color increases while representation of whites in the population decreases.

It is also undisputed that ozone is a trigger for asthma attacks. Minority and low income communities suffer a disproportionately higher asthma burden in the United States – particularly African-Americans, Hispanics (especially Puerto Ricans), and Native Americans.

In absolute number terms, African-Americans are most heavily burdened by asthma in the U.S. Nationally, the current asthma prevalence rate for non-Hispanic blacks is 11.9%, compared to 8.1% for non-Hispanic whites and 7.0% for Hispanics.²⁴ While the prevalence rate reflects a relatively significant impact, it actually understates asthma’s true burden on the African-American community. Other key statistical measures of asthma’s impact – including hospitalization rates, emergency department visit rates, and mortality rates – show a much starker contrast amongst races, with disproportionate impacts of approximately 200-400% when comparing non-Hispanic blacks to non-Hispanic whites. Figure 1, which includes statistics from several states that have recent data in at least three of the four major categories, illustrates this pattern:

Fig. 1. State data on statistical measures of asthma’s impact

| State | Current Prevalence among Adults | | Hospitalization Rate* | | Emergency Department Visit Rate* | | Mortality Rate* | |
|------------------|---------------------------------|--------------------|-----------------------|--------------------|----------------------------------|--------------------|--------------------|--------------------|
| | White Non-Hispanic | Black Non-Hispanic | White Non-Hispanic | Black Non-Hispanic | White Non-Hispanic | Black Non-Hispanic | White Non-Hispanic | Black Non-Hispanic |
| CT ²⁵ | 8.3% | 15% | 86 | 405 | 342 | 1273 | 0.77 | 2.61 |
| TX ²⁶ | 9.2% | 10.2% | 88 | 195 | N/A | N/A | 1.0 | 1.9 |
| NC ²⁷ | 7.2% | 10% | 75 | 210 | N/A | N/A | 0.68 | 1.8 |
| IN ²⁸ | 8.7% | 13.7% | 85 | 306 | 344 | 1293 | N/A** | N/A** |
| WI ²⁹ | 8.6% | 15.9% | 63 | 346 | N/A | N/A | 0.79 | 3.54 |

²⁴ CDC, Asthma Surveillance Data, available at <http://www.cdc.gov/asthma/asthmadata.htm> (accessed Mar. 13, 2014).

²⁵ Connecticut Dept. of Health (2012). The Burden of Asthma in Connecticut 2012 Surveillance Report, available at http://www.ct.gov/dph/lib/dph/hems/asthma/pdf/full_report_with_cover.pdf.

²⁶ Texas Dept. of State Health Services, Asthma Health Facts 2011, available at https://www.dshs.state.tx.us/asthma/data.shtm#New_Asthma (accessed Mar. 13, 2014).

²⁷ North Carolina Dept. of Health and Human Services (2010). The Burden of Asthma in north Carolina 2010, available at <http://www.asthma.ncdhhs.gov/docs/TheBurdenOfAsthmaInNorthCarolina-2010.pdf>; North Carolina Dept. of Health and Human Services, African Americans and Asthma in North Carolina (Mar. 12, 2014), <http://www.asthma.ncdhhs.gov/docs/factsheets/2011/AfricanAmericansAndAsthmaInNorthCarolina.pdf>.

²⁸ Indiana State Dept. of Health, Asthma Fact Sheet, available at [http://www.in.gov/isdh/files/ISDH_FactSheet_Asthma_Nov2013_FINAL\(1\).pdf](http://www.in.gov/isdh/files/ISDH_FactSheet_Asthma_Nov2013_FINAL(1).pdf) (accessed Mar. 13, 2014).

²⁹ Wisconsin Dept. of Health (2013). Burden of Asthma in Wisconsin 2013.

* Per 100,000 persons

**Indiana data provides raw mortality numbers but not mortality rates. In 2011, 73 Indiana residents died from asthma, 54 of whom were white and 18 of whom were black. African-Americans thus comprised approximately 24% of asthma deaths despite accounting for only 9% of Indiana's total population.

As the data summarized above shows, asthma's disproportionate impact is greater for the most serious, life-threatening asthma-related complications. Not only are African Americans more likely to have asthma, but even among asthma sufferers, they are more likely to have the worst asthma-related complications, as not all individuals who have asthma suffer from it equally. In other words, a higher percentage of African-Americans have asthma, but an even higher percentage suffers from its most serious symptoms and outcomes.

Minority groups other than African-Americans are also disproportionately affected by asthma. Nationally, Hispanics (especially Puerto Ricans) and American Indians/Native Alaskans have a much higher current asthma prevalence rate than even African-Americans, at 16.7% and 14.3% respectively.³⁰ In Hawaii, the prevalence rate for Native Hawaiians is 14.9%, compared to only 9.0% for whites living in Hawaii.³¹ Asthma's heavy burden on these groups is also evident from other statistical measures. Nationally, the mortality rate for Puerto Ricans is four times higher than the mortality rate for whites.³² Similar trends exist at the state level for Native Americans. In Oregon and Wisconsin, for example, the American Indian hospitalization rate is double the rate for non-Hispanic whites.³³ And while asthma prevalence among the total Hispanic population is actually lower than the national average, Hispanics also have higher hospitalization and mortality rates than non-Hispanic whites, and thus also suffer disproportionately.³⁴ Hispanics are 30% more likely to visit the hospital for asthma, as compared to non-Hispanic whites, and Hispanic children are 40% more likely to die from asthma.

Epidemiological studies also suggest that socioeconomic status ("SES") is associated with higher risks of ozone-related health outcomes.³⁵ EPA concludes that "most studies of

³⁰ The Office of Minority Health, Asthma and American Indians/Alaskan Natives, available at <http://minorityhealth.hhs.gov/templates/content.aspx?lvl=3&lvlID=532&ID=6172> (accessed Mar. 13, 2014).

The Office of Minority Health, Asthma and Hispanic Americans, available at <http://minorityhealth.hhs.gov/templates/content.aspx?lvl=3&lvlID=532&ID=6173> (accessed Mar. 13, 2014).

³¹ Hawaii State Dept. of Health, Hawai'i Asthma Plan 10 (2013).

³² The Office of Minority Health, Asthma and Hispanic Americans (Mar. 13, 2014), <http://minorityhealth.hhs.gov/templates/content.aspx?lvl=3&lvlID=532&ID=6173>.

³³ Oregon Health Authority, Asthma Emergency Department Visits and Hospitalizations (Mar. 12, 2014), available at <https://public.health.oregon.gov/DiseasesConditions/ChronicDisease/Asthma/Documents/burden/ch7.pdf> (Mar. 12, 2014); Wisconsin Dept. of Health 2013, *supra*.

³⁴ The Office of Minority Health, Asthma and Hispanic Americans, *supra*.

³⁵ S. Lin, X. Liu, L.H. Le, & S. Hwang (2008). Chronic exposure to ambient ozone and asthma hospital admissions among children, *Env. Health Perspect.*, 116(12): 1725-1730.; J.T. Lee, J.Y. Son, H. Kim, & S.Y.

individuals have reported that individuals with low SES and those living in neighborhoods with low SES are more at risk for O₃-related health effects, resulting in increased risk of respiratory hospital admissions and ED visits.”³⁶ For example, a New York City study showed that children with lower socioeconomic status had greater risk of ozone-induced hospital admissions for asthma.³⁷ Accordingly, the ISA noted that “evidence is suggestive of SES as a factor affecting risk of O₃-related health outcomes.”³⁸

Even in ozone attainment areas, environmental justice communities are adversely affected by high ozone pollution levels due to the weak form of the current (2008) ozone NAAQS. The form, known as the “design value,” is the three-year average of the fourth highest 8-hour average ozone concentration. This form of the standard completely ignores the top three ozone concentrations each year, and thus authorizes extremely high levels of ozone without triggering any requirement to clean the air.

There are many areas largely in the eastern region that have recently attained the 2008 ozone NAAQS of 75 ppb based on 2012-2014 design values. However, it is important to note that this shift is largely based on aberrant weather, as ozone and temperature are inextricably linked, rather than a result of permanent and enforceable emission reductions. Despite now being in attainment, many of these areas have regular and extreme exceedances, up to 111 ppb, that threaten public health but are entirely permissible due to the weak form of the ozone NAAQS.

For example, the Baltimore community regularly suffers from ozone exceedances up to 109 ppb, as the following graph shows.³⁹ Baltimore City has the highest percentage of people living below the poverty line in the entire state⁴⁰ and is predominantly black. Moreover, blacks are over 30% over-represented and whites are 25% under-represented compared to the state average.⁴¹ Baltimore City also consistently has the highest asthma prevalence, rates of emergency department visits, hospitalization and death caused by asthma in all of Maryland, which already has disproportionately high asthma rates compared to the rest of the nation.⁴²

Kim (2006). Effect of air pollution on asthma-related hospital admissions for children by socioeconomic status associated with area of residence, *Arch. Environ. Occup. Health*, 61(3): 123-120; S. Cakmak, R.E. Dales, M.A. Rubio, M& C.B. Vidal (2011). The risk of dying on days of higher air pollution among the socially disadvantaged elderly, *Environ. Res.*, 111(3): 388-393; M. Pastor, R. Morello-Frosch, & J. Sadd (2010). Air Pollution and Environmental Justice: Integrating Indicators of Cumulative Impact and Socio-Economic Vulnerability into Regulatory Decision-Making, California Air Resources Board.

³⁶ ISA at 8-27.

³⁷ Lin. et al. 2008, *supra* note 654.

³⁸ *Id.* at 8-28.

³⁹ Data derived from: http://www.epa.gov/airdata/ad_data_daily.html.

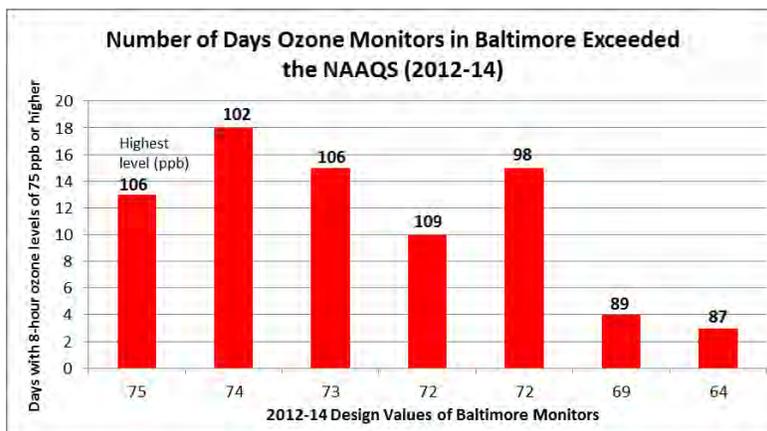
⁴⁰ Maryland Alliance for the Poor, “Maryland Poverty Profiles: 2014,” available at <http://www.catholiccharities-md.org/public-policy/2014-map-poverty-profiles.pdf>

⁴¹ US Census Bureau, “QuickFacts: Maryland,” available at <http://www.census.gov/quickfacts/table/IPE120213/24,24510,24005>

⁴² Maryland Department of Health and Mental Hygiene, Asthma in Maryland 2011, available at:

Blacks Marylanders bear a significant asthma burden statewide as they are over 3 times as likely to visit the hospital for asthma, over 4 times as likely to visit the emergency department for asthma, and nearly 2.5 times more likely to die from asthma than white Marylanders.⁴³

Fig. 2. Number of Days Ozone Monitors in Baltimore Exceeded the NAAQS (2012-14)



Source: Data derived from: http://www.epa.gov/airdata/ad_data_daily.html.

Yet EPA issued a “Clean Data Determination” for the Baltimore area, thus suspending any obligations to improve local air quality, despite the endemic EJ and asthma issues in the area. In order to effectively implement its Final Guidance, EPA should be cognizant of these EJ concerns in the rulemaking process when setting the level and form of the ozone NAAQS, as problematic areas such as Baltimore City can be in attainment despite their high ozone levels which further exacerbate adverse health impacts to those communities.

Similarly, Charlotte, North Carolina, achieved attainment based on its 2012-2014 design value largely due to aberrant weather. EPA promptly proposed a “Clean Data Determination” and “Redesignation to Attainment” for the area, despite the regular and severe ozone exceedances (up to 111 ppb) as displayed in the graph below,⁴⁴ and disproportionate asthma burdens on people of color and low-income communities. For example, African American adults and children are significantly more (up to twice as) likely to have lifetime and current asthma compared to whites; three times as likely to be hospitalized for asthma; and twice as likely to die from asthma compared to whites.⁴⁵ Additionally, low income households (less than \$25,000) are about twice as likely to have lifetime and current asthma compared to the highest

[http://phpa.dhmh.maryland.gov/mch/Documents/Asthma in Maryland-2011.pdf](http://phpa.dhmh.maryland.gov/mch/Documents/Asthma%20in%20Maryland-2011.pdf)

⁴³ *Id.*

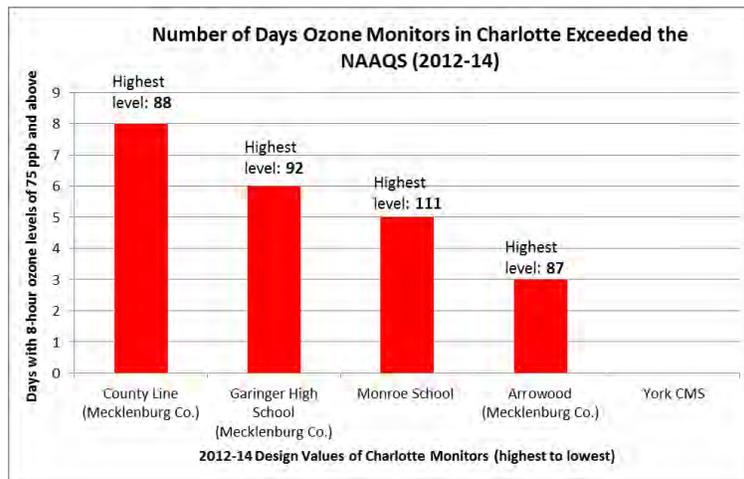
⁴⁴ Data derived from: http://www.epa.gov/airdata/ad_data_daily.html.

⁴⁵ NCDHHS, African Americans and Asthma in North Carolina Fact Sheet, 2011, available at <http://asthma.ncdhhs.gov/docs/factsheets/AfricanAmericansandAsthmainNorthCarolina.pdf>.

NCDHHS, The Burden of Asthma in North Carolina: 2010, 90, available at <http://www.asthma.ncdhhs.gov/docs/TheBurdenOfAsthmainNorthCarolina-2010.pdf>.

income brackets.⁴⁶ Yet the Charlotte community still endures significant ozone impacts and asthma burdens and will soon have no obligation to improve its air quality due to the weak form on the NAAQS.

Fig. 3. Number of Days Ozone Monitors in Charlotte Exceeded the NAAQS (2012-14)



Source: Data derived from: http://www.epa.gov/airdata/ad_data_daily.html.

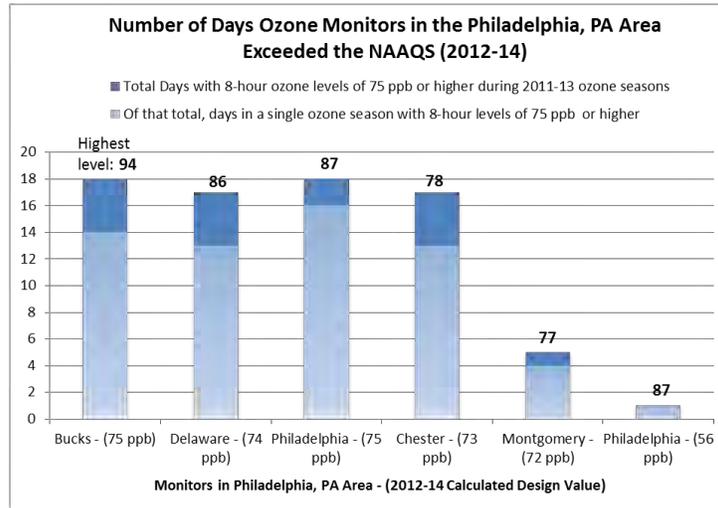
The Philadelphia area also recently came into attainment, but still endures frequent exceedances, well above the current standard of 75 ppb and at levels deemed unsafe by EPA, as the following graph shows.⁴⁷ Once again, these egregious exceedances are entirely permissible due to the weak form of the NAAQS. The Philadelphia area has some of the highest asthma rates in the entire state. The Southeast region of Pennsylvania, which includes Philadelphia, has the highest asthma hospitalization rate, emergency room visit rate, and lifetime asthma prevalence amongst school students in the entire state. And as displayed in the graph below, blacks are significantly overrepresented and whites are underrepresented in Philadelphia.⁴⁸ Blacks bear a disproportionate asthma burden, as black children are nearly twice as likely to have lifetime asthma as white children in Pennsylvania. Moreover, Blacks are also over five times as likely to be hospitalized for asthma as whites, and Hispanics are three times as likely. And finally, Blacks are over three times as likely to die from asthma as whites.

⁴⁶ NCDHHS, Low Income Households and Asthma in North Carolina Fact Sheet, 2011, available at <http://www.asthma.ncdhhs.gov/docs/factsheets/2011/LowIncomeHouseholdsAndAsthmainNorthCarolina.pdf>.

⁴⁷ Data derived from: http://www.epa.gov/airdata/ad_data_daily.html.

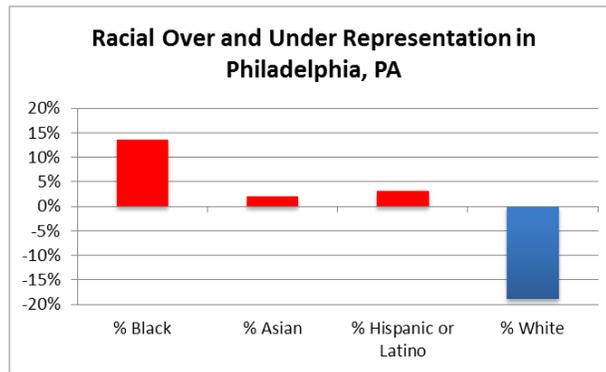
⁴⁸ US Census Bureau, "QuickFacts: Pennsylvania," available at <http://www.census.gov/quickfacts/table/PST045214/42,4260000,42101>

Fig. 4. Number of Days Ozone Monitors in the Philadelphia, PA Area Exceeded the NAAQS (2012-14)



Source: Data derived from: http://www.epa.gov/airdata/ad_data_daily.html.

Fig. 5. Racial Over- and Under-Representation in Philadelphia, PA



Source: US Census Bureau, "QuickFacts: Pennsylvania"

It is evident that throughout the country, in both currently attaining and non-attaining areas, minority and low-income communities are disproportionately exposed to ozone and bear an undue asthma burden. EPA must address these EJ concerns when setting the level and form of the new ozone NAAQS.

C. It is practicable to require states to conduct an environmental justice analysis as part of implementation plan submission and approval

Effective implementation of EPA's Final Guidance in the rule making context also means that, in the context of rules where EPA cannot initially perform an environmental justice analysis due to lack of information on the content of state implementation plans, the agency should require states to conduct such an analysis as part of plan submission and approval. For

example, in the proposed Clean Power Plan, EPA has not performed the analysis required by EO 12898.⁴⁹ The agency states that, because it “cannot exactly predict how emissions from specific EGUs would change as an outcome of the proposed rule due to the state-led implementation ... it is not practicable to determine whether there would be disproportionately high and adverse human health or environmental effects on minority, low income, or indigenous populations from this proposed rule.” In addition, the proposed rule highlights the co-benefits of the Clean Power Plan in terms of emissions reductions from criteria and hazardous air pollutants, but does not look at how those benefits could be distributed to minority and low-income communities because there is no analysis of communities overburdened by criteria air pollutants and their resulting health impacts.⁵⁰

In the proposed Clean Power Plan, EPA is essentially leaving the decision on how to avoid the creation of environmental justice impacts to the states. The proposed rule provides that a state can take steps to avoid increased utilization of particular fossil fuel-fired power plants, and thus avoid increased emissions of regulated pollutants with localized environmental effects. To the extent that states take this course of action, “there would be no new environmental justice concerns in the areas near such EGUs.”⁵¹ EPA also contemplates that any environmental justice impacts that result from the implementation of the rule will be dealt with after the fact, because existing tracking systems will inform EPA and the states of which power plants have increased their utilization significantly, to enable them to prioritize efforts in assessing changes in air quality in the vicinity of such plants.⁵²

The Clean Power Plan differs from other environmental rules because, as proposed, it provides states with great flexibility to comply with the required state targets through the combination of emission reduction measures that makes the most sense depending on their particular circumstances. This is why EPA cannot at this point predict with certainty which fossil fuel-fired plants will increase or decrease their utilization as a result of the implementation of this rule. While EO 12898 is addressed directly to the activities and policies of federal agencies, in order to implement its Final Guidance effectively EPA could determine, in the context of rules that provide flexible avenues for compliance (such as, for example, the Clean Power Plan and rules issued under Section 110 of the Clean Air Act, which require the development of state implementation plans), that it is practicable to require states to conduct an environmental justice analysis as part of the development of their implementation plans and to effectively address EJ concerns in order to receive plan approval. This will ensure that EJ impacts are avoided and benefits to EJ communities are encouraged as a matter of compliance plan design.

⁴⁹ U.S. EPA, Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Proposed Rule, 79 Fed. Reg. 34,830, 34,950 (June 18, 2014); Regulatory Impact Analysis for the Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants (“CPP RIA”), at 7-9- 7-13.

⁵⁰ 79 Fed. Reg. at 34,950.

⁵¹ 79 Fed. Reg. at 34,949.

⁵² *Id.*

To this end, EPA needs to provide guidance to states on how to prepare this analysis and effectively address environmental justice in their plans.

EPA is also authorized to require owners or operators of affected stationary sources to provide necessary information to assist in the development of state plans pursuant to Section 114 of the Clean Air Act.⁵³ The information collected from states and owners and operators of affected sources will enable the agency to prepare a full-fledged environmental justice analysis as required under EO 12898, which EPA should complete before approval of state plans. Once the agency has collected and assessed state-specific environmental justice analyses, this information will enable it to assess the environmental justice implications of its rules (in terms both of mitigation of adverse impacts and distribution of benefits) at the national level.

D. EPA must provide guidance to staff and states on how to conduct an environmental justice analysis and address minority and low-income communities' concerns

EPA must provide guidance to its own staff (both in Headquarters and in the EPA Regions) and to states on how to prepare an environmental justice analysis and address adverse impacts and distribution of benefits to minority and low-income communities in the agency's rules and their implementation plans. EPA has done robust environmental justice analyses of its rules in the past that can help towards this guidance. In particular, the environmental justice analysis to the Definition of Solid Waste ("DSW") rule,⁵⁴ together with EPA's Final Guidance, provide agency staff and states with a robust sample methodology that they can use (and then adjust as appropriate) to develop expanded EJ analyses. In the EJ analysis on the DSW rule, EPA mapped the facilities that it thought may take advantage of the rule against the demographics of the surrounding communities, finding that certain population groups would experience an increased risk of adverse impacts. EPA then incorporated means to mitigate these adverse impacts, for example, by closely monitoring the facilities that notify under the rule.⁵⁵

The Draft DSW Rule analysis used a 6-step approach to identify affected areas and formulate targeted requirements to improve both oversight and accountability for hazardous materials recycling regulated under the rule:⁵⁶

1. Hazard characterization

⁵³ 42 U.S.C. §7414(a)(i)(1).

⁵⁴ U.S. EPA, Office of Solid Waste and Emergency Response, Potential Adverse Impacts Under the Definition of Solid Waste Exclusions (Including Potential Disproportionate Adverse Impacts to Minority and Low-Income Populations), Executive Summary, December 2014.

⁵⁵ *Id.*

⁵⁶ EPA, Environmental Justice Analysis of the Definition of Solid Waste Rule: Draft for Public Comment (June 30, 2011), available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-RCRA-2010-0742-0004>, at ii.

2. Identification of potentially affected communities
3. Demographics of potentially affected communities
4. Identification of other factors that affect vulnerability in potentially affected communities
5. Assessment of disproportional impact
6. Identification of potential preventive and mitigation strategies

In providing guidance to agency staff and states on how to perform an environmental justice analysis of an environmental rule, we suggest EPA to review the above methodology and perform those steps that it can readily execute using publicly available information on pollution from the regulated sources contained in the agency's various databases, demographic information available in the U.S. Census, and information on cumulative impacts, as documented in extensive research under various EPA programs and environmental justice screening tools. Sierra Club believes that, under any rule, EPA can characterize the potential hazards from the application of the relevant rule in detail.

EPA can also identify potentially affected communities (in many cases located in close proximity to the sources of pollution regulated under the relevant rules) and their demographic make-up. In the context of the Clean Power Plan, for example, EPA can assess and explain the co-pollutant implications of the increased utilization of coal-fired and gas-fired plants that are located in areas where minority and low income communities reside. Utilizing its unit-level data, EPA can identify plants with large co-pollutant emission levels and "map" these facilities against the demographics of the surrounding communities.

EPA can also assess other factors that increase the vulnerability of those communities (for example, other sources of pollution), based on information available in its own environmental justice screening tools such as EJSCREEN and EJView, as well as web-based tools such as Google Earth. EPA may also require states to provide detailed information on their minority, low income, and indigenous communities and the different kinds of localized pollution hazards and health impacts they face, some of which is not available in national databases, as further discussed below.

In short, Sierra Club believes that the EJ analysis conducted by EPA under its DSW rule provides a sound methodology to identify potential hazards to environmental justice communities from the implementation of a rule. It also provides good examples of practical solutions that EPA took to address EJ concerns in the 2014 DSW final rule; for example, a requirement that generators send their hazardous secondary materials to a RCRA-permitted reclaimer or to a verified hazardous secondary materials reclaimer who has obtained a solid waste variance; detailed requirements for the containers of hazardous secondary materials; emergency preparedness and response requirements to address the risk of fires, explosions, and other accidents; and additional recordkeeping requirements for certain persons subject to "speculative accumulation" requirements.⁵⁷

⁵⁷ Potential Adverse Impacts Under the Definition of Solid Waste Exclusions, at 15-18.

On the other hand, the concept of distributing benefits from its rules specifically to these communities, as provided in EPA's Final Guidance, needs to be further developed and implemented. The steps in the methodology above are critical to identify those communities whose health and environment are and have for years been overburdened by different sources of pollution, both from the sources regulated under the rules and from other sources. Strengthening environmental regulations will, as a general rule, provide benefits at the national level to all populations affected by those rules. But if EPA really is to make environmental justice part of its mission, the agency also needs to ensure that its agency staff or the states, where applicable, devise targeted efforts to ensure that those communities receive the benefits expected from those regulations.

For example, as discussed above in the context of EPA's proposed ozone standard, minority communities are heavily overburdened by ozone pollution in both attainment and non-attainment areas and, as a consequence, they are greatly affected by asthma, in a much higher proportion than whites are. In order to truly address benefits to these communities from the implementation of the ozone rule, the standard needs to be strengthened, both in level and form. In the Clean Power Plan, EPA has quantified the co-benefits of the proposed rule in terms of emissions reductions from criteria and hazardous air pollutants, but has also acknowledged that its benefit-per-ton estimates "may not reflect the local variability in population density, meteorology, exposure, baseline health incidence rates, or other local factors for any specific location."⁵⁸ EPA and the states must identify minority and low income communities potentially affected by the increased utilization of fossil fuel-fired power plants and ensure that those plants must actually reduce their utilization and thus their emissions. These communities must also benefit from the expansion of renewable energy and demand-side energy efficiency, which the Clean Power Plan authorizes as compliance measures.

In addition, EPA must provide guidance to states on how to integrate environmental justice in the context of state implementation plan revisions to ensure that states continue to address adverse impacts and benefits for environmental justice communities as part of this process. The underlying environmental justice analysis provided as part of initial plan approval may need to be updated to address potential adverse impacts or opportunities for distribution of benefits from the proposed plan revisions. EPA should provide guidance on the type and level of analysis that states should be required to submit as part of their applications for approval of plan revisions.

Finally, Sierra Club commends EPA for providing sample language for the EO 12898 section of its rules to agency staff, as the Final Guidance provides.⁵⁹ In addition, we specifically recommend EPA to create a central repository for environmental justice analyses, and for rule writers to prepare memoranda summarizing the key aspects of the relevant rules at issue and the specific methodologies used in the environmental justice analyses of those rules. If agency

⁵⁸ CPP RIA, at ES-16.

⁵⁹ Final Guidance, at 29.

staff and states have a robust information resource that they can rely on to conduct and improve their analyses in future rules, the practice of preparing expanded environmental justice analyses will take root inside the agency and help fulfil the goals of EPA's EJ 2020 Framework.

E. Promoting greenhouse gas reduction co-benefits must be a critical component of the EJ 2020 Framework

The EJ 2020 Framework provides that promoting climate adaptation and resilience and greenhouse gas ("GHG") reduction co-benefits will be a "related effort" under the Framework.⁶⁰ Sierra Club fully supports EPA's proposal to incorporate the concept of co-benefits from GHG emissions reductions into its Plan EJ 2020, but believes that it cannot be simply a "related effort." Instead, EPA should incorporate it as one of the key components of effective integration of environmental justice in the rule making context. Standards to reduce GHG emissions from stationary sources such as the Clean Power Plan, which regulates CO₂ emissions from existing power plants, can result in decreased emissions of both criteria and hazardous air pollutants, including sulfur dioxide ("SO₂"), nitrogen oxides ("NO_x"), particulate matter ("PM"), and mercury ("Hg"). SO₂ causes the formation of fine particle pollution ("PM_{2.5}") and NO_x is an ozone ("O₃") precursor. As discussed elsewhere in these comments, these pollutants contribute to an increased risk of premature death, heart attacks, an increased incidence and severity of asthma, and other health effects.⁶¹

The Clean Power Plan provides EPA with the opportunity to promote GHG reduction co-benefits in a manner that effectively addresses environmental justice. EPA has estimated that the Clean Power Plan will substantially reduce emissions of CO₂, SO₂, NO_x, and directly emitted PM_{2.5}, which could result in lower ambient concentrations of PM_{2.5} and ozone.⁶² The agency has calculated that, in 2020, implementation of the CPP using an individual state compliance approach would yield climate benefits⁶³ of approximately \$18 billion and air pollution co-benefits ranging between \$17 to \$40 billion, with net benefits (i.e., less compliance costs) of \$27 to \$50 billion.⁶⁴ In 2030, the climate benefits of this approach are estimated at \$31 billion, and the air pollution health co-benefits are estimated to range between \$27 and \$62 billion, with net benefits of \$49 to \$84 billion.⁶⁵

⁶⁰ Draft EJ 2020 Action Agenda Framework, at 3.

⁶¹ CPP RIA, at ES-9.

⁶² *Id.*, at ES-9.

⁶³ EPA's estimates of climate benefits are based on the average social cost of carbon estimated at a 3 percent discount rate, but the RIA considers the full range of SCC values (model average at 2.5, 3, and 5 percent. Monetized benefits correspond to \$2011 USD.

⁶⁴ Table 18-Summary of the Monetized Benefits, Compliance Costs and Net Benefits for Proposed Option 1 in 2020; 79 Fed. Reg. at 34,943. EPA also looked at monetized climate and co-pollutant benefits, compliance costs, and net benefits of a regional compliance scenario, both in 2020 and 2030.

⁶⁵ Table 19-Summary of the Monetized Benefits, Compliance Costs, and Net Benefits for Proposed Option 1 in 2030, *id.* at 34,944. Monetized health co-benefit estimates do not include the benefits of

Fully taking into account the co-benefits of EPA’s rules aimed at regulating GHG emissions from air pollution sources is consistent with EO 12866, which requires federal agencies, in choosing among alternative regulatory approaches, to select “those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).”⁶⁶ OMB’s Circular A-4 further provides that CBA analyses should include, among other things, “any important ancillary benefits,” which are the favorable impacts of the alternative under consideration that are unrelated or secondary to the purpose of the regulatory action.⁶⁷ EO 12898 and EPA’s policies provide guidance on how to ensure that those co-benefits are distributed to the populations that most need it.

It is clear that policies intended to address climate change by reducing CO₂ emissions can result in substantial public health benefits through co-pollutant reductions. But EPA must address the environmental justice part of the equation, by performing (or requiring states to perform) a robust environmental justice analysis that identifies low income and minority communities overburdened by the impacts of air pollution (including cumulative impacts) to ensure that those communities in particular receive the co-pollutant benefits from the rule, for example, by ensuring that state plans do not allow increased utilization of fossil fuel-fired power plants that affect these communities and that they provide for expanded renewable energy and energy efficiency to directly benefit those communities.

F. EPA must prioritize further research on cumulative impacts and address those impacts in its environmental justice analyses

In preparing environmental justice analyses of its rules, EPA staff must also consider cumulative impacts, i.e., “the impact[s] on the environment which result from the incremental impact of [an] action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”⁶⁸ As EPA itself notes, minority and low income populations are in many instances affected by multiple environmental hazards, such as industrial facilities, landfills, poor housing, leaking underground tanks, pesticides, and incompatible land uses. Analyzing the effects from these multiple stressors would allow a more complete evaluation of pollutant risks to specific populations.⁶⁹

reducing direct exposure to SO₂, NO_x, and mercury, as well as ecosystem effects and visibility impairment. These unquantified benefits could be substantial.

⁶⁶ § 1(a).

⁶⁷ OMB, Circular A-4, at 7.

⁶⁸ 40 C.F.R. § 1508.7; EPA, Office of Fed. Activities, Consideration of Cumulative Impacts In EPA Review of NEPA Documents, EPA 315-R-99-002 (May 1999), available at

<http://www.epa.gov/compliance/resources/policies/nepa/cumulative.pdf>, at 2.

⁶⁹ Final Guidance, at 13.

While, as EPA notes in the Final Guidance, the science supporting cumulative impact assessments is still evolving, EPA has already undertaken significant efforts to develop research on cumulative impacts, and should apply it in elaborating EJ analyses of its rules. It is critical to consider the cumulative impacts of multiple stressors when assessing health impacts, including a population's exposure to multiple pollutants, exposure to higher levels of multiple pollutants, and chronic exposure to lower levels of multiple pollutants. This is particularly true when evaluating sensitive sub-groups such as minority communities and low-income communities that frequently experience higher exposure to air pollution and other disproportionate impacts.⁷⁰ As noted above, minority and low income communities are more likely to live or work near sources of pollution, which is only exacerbated by factors such as health care access, housing market dynamics, and predisposed traits.⁷¹ These higher pollution burdens are associated with adverse health outcomes such as respiratory and cardiovascular disease, low birth weight, and premature mortality.⁷²

Controlled human exposure studies are valued for their ability to control and eliminate confounding factors such as temperature, co-pollutants, or allergens, and the epidemiological studies EPA relies upon are subjected to rigorous statistical analysis to control for confounding effect of multiple pollutant exposures.⁷³ Yet in the real world, physiological impacts are likely to be even worse than what is experienced in the exposure studies because of the addition of these other factors. The combined effects among air pollutants produce important physiological effects.⁷⁴ Air pollutants are inhaled as a mixture of different sources, yet focus has historically been placed on monitoring and regulating individual pollutants in isolation.⁷⁵

In conducting its EJ analyses, EPA should draw on its own Framework for Cumulative Risk Assessment and prior cumulative impacts analyses, such as the one prepared in the context of the DSW rule. EPA may also rely on its own guidance for the agency's review of NEPA documents. Although focused on the analysis of projects on ecological resources, the agency could consider the same principles as applied to socioeconomic and human health issues, particularly with respect to the identification of areas cumulatively impacted by a given measure, the delineation of geographic and time boundaries, the identification of all relevant past activities into the affected environment, the utilization of qualitative and quantitative

⁷⁰ Policy Assessment at 1-15; ISA at 8-1, 8-2, 8-2.

⁷¹ Morello-Frosch et al. (2011). Understanding the Cumulative Impacts of Inequalities in Environmental Health: Implications for Policy, *Health Affairs*, 30(5): 879-887.

⁷² American Lung Association, State of the Air-Disparities in the Impact of Air Pollution (2013), available at http://www.stateoftheair.org/2013/health-risks/health-risks-disparities.html#_ftn1.

⁷³ See 79 Fed. Reg. 75,234, 75,251: "Most O₃ effect estimates for lung function were robust to adjustment for temperature, humidity, and copollutants such as PM_{2.5}, PM₁₀, NO₂, or SO₂."

⁷⁴ J. Mauderly & J. Samet (2009). Is there Evidence for Synergy Among Air Pollutants in Causing Health Effects?, *Environ. Health Perspect.*, 117(1):1-6; ISA sec. 4.3.4.

⁷⁵ U.S. EPA, Exposure and Health Effects of Mixtures of Air Pollutants, available at <http://www2.epa.gov/air-research/exposure-and-health-effects-mixtures-air-pollutants> (accessed Mar. 16, 2015).

thresholds to determine degradation and cumulative impacts, and the incorporation of mitigation measures to avoid or reduce the severity of those impacts.⁷⁶

There are many programs and tools to evaluate different components of risk assessments, for example, the Community-Based Technical Support Forum, an EPA workgroup on technical issues that supports community-based risk assessments; EPA's Community Action for a Renewed Environment ("CARE") program, which addresses risk mitigation needs, and the Office of Research and Development's ("ORD") National Exposure Research Laboratory's ("NERL"), which develops and applies exposure models and tools to conduct cumulative exposure assessments, both with respect to health impact and other stressors.⁷⁷ NERL is also developing the Community-Focused Exposure and Risk Screening Tool ("C-FERST"), which will help identify environmental issues and prioritize exposure and risk reduction efforts based on EPA's best available information.⁷⁸ Furthermore, EPA's Community Cumulative Assessment Tool ("CCAT"), currently under development, will use information from C-FERST in order to inform the public about the process and complexities of assessing cumulative impacts.⁷⁹ To the extent EPA needs more community-level information to prepare a comprehensive "cumulative effects" analysis, it should ask the states to provide it in their own environmental justice analyses in state plans.⁸⁰ EPA must, however, continue to prioritize the development of research on cumulative impacts.

G. Comments on EPA's environmental justice screening tools

EPA has a breadth of environmental justice screening tools that can help to integrate EJ considerations in its rules and in "up-front" actions that support the development of those regulations, as the Final Guidance provides.⁸¹ EPA recently launched EJSCREEN, a new environmental justice mapping and screening tool that provides demographic and environmental information for a selected geographic area. The tool combines environmental and demographic indicators into "EJ indexes" to identify potential exposure and susceptibility

⁷⁶ EPA, Consideration of Cumulative Impacts In EPA Review of NEPA Documents, at 5-19.

⁷⁷ ORD and NERL have also developed models to estimate children's cumulative exposures to chemicals. See Zartarian et al., ORD/NERL's Model to Estimate Aggregate and Cumulative Exposures to Chemicals: SHEDS – Multimedia Version 4 (Jan. 13, 2011), available at http://ghhidetroit.cus.wayne.edu/blog/file.axd?file=2011%2F1%2FSHEDS_Presentation_01-13-2011_clearance.pdf.

⁷⁸ Zartarian et al., The EPA's Human Exposure Research Program for Assessing Cumulative Risk in Communities, *J. of Exposure Sci. and Env'tl. Epidemiology* (April 15, 2009), at 352-355.

⁷⁹ EPA, *Plan EJ 2014, Progress Report* (Feb. 2014), available at <http://www.epa.gov/environmentaljustice/resources/policy/plan-ej-2014/plan-ej-progress-report-2014.pdf>, at 23.

⁸⁰ In a separate rulemaking, EPA should issue a cumulative impacts standard that fully recognizes the existence of these effects on minority and low income communities, providing guidance to states, or any other obligated entity under its rules, to identify and address cumulative impacts in all their programs, policies, and activities.

⁸¹ Final Guidance, at 1.

to air and water pollution and other environmental risks in a selected location. EJSCREEN's main purpose is to provide a nationally consistent tool that EPA, other agencies, and the public can use to understand demographic and environmental characteristics of different locations defined by the tool users.⁸² Sierra Club recognizes EJSCREEN as an extremely valuable tool, in particular because it summarizes information in percentiles, allowing users to compare environmental information for a selected geographic area to that of the state, EPA region, or the country. Below we offer specific comments on how to further improve this screening tool. We also ask EPA not to discontinue EJView.

1. EPA must prioritize the completion of NATA assessment updates to finalize EJSCREEN

EJSCREEN contains 12 environmental indicators, some of which quantify proximity to sources of exposure to pollutants, and others which estimate ambient levels of air pollutants. Available indicators for air pollution include particulate matter and ozone. Available indicators relevant to a proximity analysis include traffic proximity and volume (amount of nearby vehicular traffic and distance from roads), lead paint (percentage of housing units built before 1960), and proximity to waste and hazardous chemical facilities and sites (National Priorities List, Risk Management Plan Facilities, Hazardous Waste Treatment, Storage and Disposal Facilities, and National Pollutant Discharge Elimination System discharges, which have been calculated from various EPA databases.⁸³ The data for these indicators ranges between 2011 and 2013. We note that the tool will have to be updated periodically to reflect the latest information available. In addition, EPA has not yet made available several indicators from EPA's National Air Toxics Assessments ("NATA"), including cancer risks, neurological hazard, respiratory hazard, and diesel particulate matter.⁸⁴ Sierra Club urges EPA to prioritize the completion of these assessment updates so that EJSCREEN can be finalized.

2. EPA should add SO₂ to EJSCREEN's environmental indicators

With respect to EJSCREEN's available indicators, Sierra Club urges EPA to add sulfur dioxide (SO₂) to the list of environmental indicators provided by this tool. Exposure to SO₂ in even very short time periods—even five minutes—has significant health impacts and causes decrements in lung function, aggravation of asthma, and respiratory and cardiovascular morbidity.⁸⁵ SO₂ pollution can have local impacts on minority and low income communities

⁸² How Does EPA Use EJSCREEN?, available at <http://www2.epa.gov/ejscreen/how-does-epa-use-ejscreen>

⁸³ Overview of Environmental Indicators in EJSCREEN, available at <http://www2.epa.gov/ejscreen/overview-environmental-indicators-ejscreen>; see also EJSCREEN Environmental Justice Mapping and Screening Tool, EJSCREEN Technical Documentation, May 2015, available at http://www2.epa.gov/sites/production/files/2015-05/documents/ejscreen_technical_document_20150505.pdf

⁸⁴ *Id.*

⁸⁵ Primary National Ambient Air Quality Standard for Sulfur Dioxide Final Rule, 75 Fed. Reg. 35,520, 35,525 (June 22, 2010).

located in proximity to large sources of SO₂ pollution. Its impacts can also extend far beyond those communities, affecting the health of other populations.

3. EPA must provide detailed guidance on its intended uses of EJSCREEN

The EJ 2020 Framework clarifies that EJSCREEN is a “screening” tool; i.e., EPA uses it as a preliminary step to identify areas that may be candidates for additional consideration, analysis or outreach as the agency develops programs that affect EJ communities. In EJSCREEN’s website, EPA indicates that the tool is not used to “label” an area as an EJ community; to quantify specific risk values for a selected area; to measure cumulative impacts of multiple hazards; or as a basis for agency decision making regarding the existence or absence of EJ concerns.⁸⁶ Sierra Club, however, believes that the tool can be used to identify low-income and minority communities suffering disproportionate impacts, without having to formally “label” or categorize them as EJ communities. Identifying populations of concern would help agency staff to ensure the agency avoids adverse impacts from their actions and to target the distribution of benefits from its rules.

In its website, EPA also states that the tool is used to help inform outreach to communities; implement aspects of permitting, enforcement, compliance, and voluntary programs; enhance geographically-based initiatives, and develop retrospective reports of EPA work.⁸⁷ EPA must provide clarity on how exactly the tool is used in permitting and enforcement processes, so that the public can comment and provide further input on additional ways the tool could be utilized in these contexts. Training communities in how to use EJSCREEN will also empower them to participate more meaningfully in the actual permitting process. Sierra Club also urges EPA to provide guidance to its staff and to states on how to use EJSCREEN in EJ analyses in the rule making context.

4. EPA must provide guidance on how to use EJSCREEN for cumulative impacts analyses

Sierra Club believes that EJSCREEN provides valuable information on cumulative impacts by displaying pollution data and data on proximity to sites of concern as percentiles, which allows users to determine how pollution and air quality in a selected area compares to that of the relevant state, the relevant region, and the country as a whole. For example, as shown in Figure 6 below, the EJSCREEN report for Eckert Station Power Plant in Michigan indicates that the levels of PM_{2.5} within 5-miles of the plant are worse than in 79 percent of the state. Moreover, populations living within 5 miles of the Eckert plant are in closer proximity to other sites of concern than the majority of people living in Michigan. The population living within 5 miles of the plant is also in closer proximity to Treatment Storage and Disposal Facilities (TSDFs) than 76 percent of the state; to National Priorities List (NPL) sites than 94 percent of the state; to Risk Management Plan (RMP) sites than 78 percent of the state; and to Major Direct Water

⁸⁶ How Does EPA Use EJSCREEN?, available at <http://www2.epa.gov/ejscreen/how-does-epa-use-ejscreen>

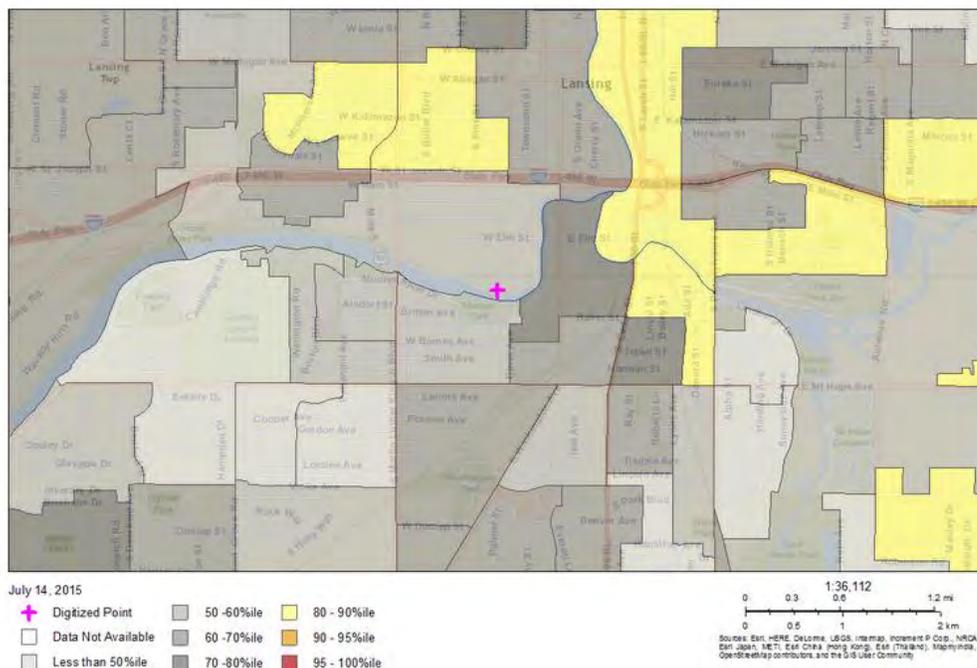
⁸⁷ *Id.*

Dischargers than 88 percent of the state. EJSCREEN, however, does not allow mapping all these indicators together, which would be useful for a cumulative impacts screening. (See Figure 7). Sierra Club believes that EJSCREEN’s mapping tool would be more useful if users could visualize the EJ indexes both individually and cumulatively.

Fig. 6. EJSCREEN’s EJ Indexes for 5 mile radius around Eckert Station, Michigan

| Selected Variables: EJ Indexes | State Percentile | EPA Region Percentile | USA Percentile |
|---------------------------------------|------------------|-----------------------|----------------|
| PM _{2.5} | 79 | 79 | 66 |
| Ozone | 79 | 79 | 65 |
| Traffic Proximity and Volume | 83 | 86 | 75 |
| Lead Paint Indicator | 84 | 84 | 80 |
| Proximity to NPL sites | 94 | 92 | 84 |
| Proximity to RMP sites | 78 | 77 | 65 |
| Proximity to TSDFs | 76 | 76 | 63 |
| Proximity to Major Direct Dischargers | 88 | 86 | 76 |

Fig. 7. Map of EJ Index PM 2.5 for Eckert Station



These percentiles provide perspective on how the selected block group or buffer area compares to the entire state, EPA region, or nation. The darker gray the area, the higher the EJ Index PM_{2.5} Level percentage is, with the yellow area being the highest percentage in the map.

5. EPA must reassess EJSCREEN's limitations regarding demographic information

EPA has indicated that EJSCREEN does have important limitations in so far as it is not a detailed risk analysis; there is uncertainty in the data provided; and it does not examine the full range of issues relevant to an environmental justice analysis. On the second aspect, Sierra Club notes that the source of all demographic data (for the Printable Standard Reports) appears to be the American Community Survey five-year summary file and the 2010 Census.⁸⁸ In its website, EPA correctly warns that EJSCREEN's demographic estimates involve substantial uncertainty, particularly when looking at small geographic areas such as Census blocks groups because these estimates come from surveys and are uncertain.⁸⁹

Sierra Club has compared the demographic data in EJSCREEN's various reports (Printable Standard Report, 2010 Census Report, and ACS Report, but not 2000 Census Report) with demographic data obtained using Alteryx's "Site Selection" application,⁹⁰ an online geographic information tool that allows users to define a study area using radii or driving times in order to generate detailed reports on demographic trends for that area. Alteryx demographics' tools have been used in the past for environmental justice analyses, most notably in NAACP's "Coal Blooded" report.⁹¹ Alteryx's Site Selection also uses census block-level data from the 2010 U.S. Census, which is the smallest scale on which the U.S. Census collects demographic data. Site Selection produces individual reports for each selected location that display 2010 Census information as well as 2014 and 2019 estimates. For 2010 demographic information, the tool draws not only from the ACS, but also from the U.S. Census Bureau's Annual Population Estimates and the Current Population Survey (CPS).⁹²

Alteryx's Site Selection reports display different population counts for larger geographic areas when compared with EJSCREEN results. EJSCREEN various reports also display different population counts, depending on the report selected by the user. By way of example, Figures 8, 9, and 10 below display population numbers for Mount Storm Power Plant in West Virginia, as well as Eckert Station and River Rouge Power Plant in Michigan within a half-mile, 1 mile, 3 mile, 5 mile and 25 mile radius using both Site Selection and EJSCREEN's various reports. As noted, Site Selection displays different population numbers than EJSCREEN. Sierra Club urges EPA to explain in detail how EJSCREEN calculates population counts when users define larger areas, offer guidance to users on how to select specific types of reports and why, provide more detailed information on margins of error, contrast this information with other available tools, and adjust its population calculations if necessary. EPA has already acknowledged that there is uncertainty in its estimates of smaller areas and has instead suggested using EJSCREEN by

⁸⁸ EJSCREEN Technical Documentation, at page 21.

⁸⁹ Limitations and Caveats in Using EJSCREEN, available at <http://www2.epa.gov/ejscreen/limitations-and-caveats-using-ejscreen>

⁹⁰ See Alteryx, Analytics Gallery, at <https://gallery.alteryx.com/#>! (last visited June 12, 2015).

⁹¹ NAACP, Coal Blooded: Putting Profits Before People (Nov. 2012)..

⁹² CAPE Briefing Note, at 9.

defining larger areas in buffer reports.⁹³ But, as Figures 8, 9, 10, and 11 show, it appears that the tool cannot obtain population counts (or generate reports) for larger radii that is still relevant for the assessment of certain air pollutants that travel long distances. Providing the most accurate population numbers possible is critical as this information underlies the tool’s EJ Indexes.

Fig. 8. 2010 Census Demographics for Mount Storm Plant, West Virginia

| 2010 Demographics | 0.5 Miles | 1 Mile | 3 Miles | 5 Miles | 25 Miles |
|---|-----------|--------|---------|---------|---|
| Total Population (Alteryx) | 0 | 15 | 231 | 681 | 72,791 |
| Total Population (EJSCREEN 2010 Census) | 0 | 15 | 231 | 681 | 71,098 |
| Total Population (EJSCREEN ACS Report) | 0 | 15 | 237 | 703 | 72,029 |
| Total Population (EJSCREEN Printable Standard Report) | 0 | 15 | 237 | 703 | “The area is too large to generate an EJSCREEN report.” |

Fig. 9. 2010 Census Demographics for Eckert Station, Michigan

| 2010 Demographics | 0.5 Miles | 1 Mile | 3 Miles | 5 Miles | 25 Miles |
|---|-----------|--------|---------|---------|---|
| Total Population (Alteryx) | 2,418 | 11,827 | 89,752 | 193,248 | 497,484 |
| Total Population (EJSCREEN 2010 Census) | 2,418 | 11,827 | 89,233 | 192,743 | 501,790 |
| Total Population (EJSCREEN ACS Report) | 2,511 | 11,821 | 87,942 | 193,736 | 501,684 |
| Total Population (EJSCREEN Printable Standard Report) | 2,511 | 11,821 | 87,942 | 193,736 | “The area is too large to generate an EJSCREEN report.” |

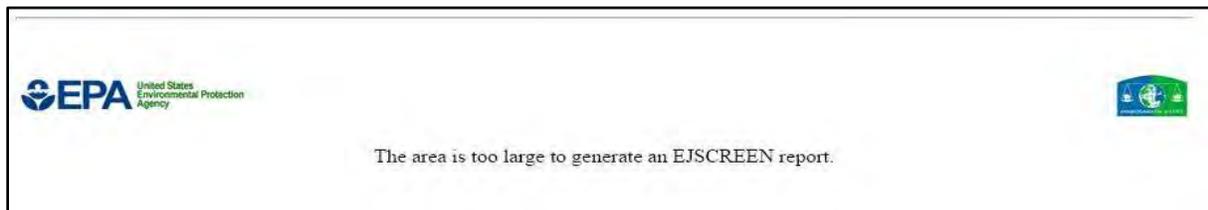
Fig. 10. 2010 Census Demographics for River Rouge, Michigan

| 2010 Demographics | 0.5 Miles | 1 Mile | 3 Miles | 5 Miles | 25 Miles |
|---|-----------|--------|---------|---------|------------------------------------|
| Total Population (Alteryx) | 0 | 1,747 | 55,537 | 173,489 | 3,037,033 |
| Total Population (EJSCREEN 2010 Census) | 0 | 1,747 | 55,496 | 173,177 | 3,039,164 |
| Total Population (EJSCREEN ACS Report) | 0 | 1,731 | 57,115 | 173,014 | 3,046,717 |
| Total Population (EJSCREEN Printable Standard Report) | 0 | 1,731 | 57,115 | 173,014 | “The area is too large to generate |

⁹³ Limitations and Caveats in Using EJSCREEN, available at <http://www2.epa.gov/ejscreen/limitations-and-caveats-using-ejscreen>

| | | | | | |
|--|--|--|--|--|----------------------|
| | | | | | an EJSCREEN report.” |
|--|--|--|--|--|----------------------|

Fig. 11. Screenshot of EJSCREEN Printable Standard Report for Area Within 25 Miles of Eckert Station, Michigan



6. CalEnviroScreen 2.0 provides good lessons on additional information that EPA could incorporate into EJSCREEN

To further strengthen EJSCREEN we suggest EPA to again review the design of the California Communities Environmental Health Screening Tool (“CalEnviroScreen 2.0”), which California state and local agencies use to identify communities that are disproportionately burdened by different sources of pollution and better direct their resources and programs. CalEnviroScreen 2.0 uses a myriad of environmental indicators, including ozone, PM_{2.5}, diesel particulate matter, drinking water contaminants, pesticide use, toxic releases from facilities, traffic density, clean-up sites, groundwater threats, hazardous waste generators and facilities, impaired water bodies, and solid waste sites and facilities. It also provides information on health and socioeconomic indicators, including age (to distinguish children and elderly populations), asthma rates, low birth weight infants, educational attainment, linguistic isolation, poverty, and unemployment.⁹⁴ The demographic data is derived from roughly 8,000 census tracts (from the 2010 Census) throughout the state.⁹⁵ This tool compiles all of the different indicators when evaluating a particular location, and ranks zip codes statewide for comparison.

EJSCREEN relies on most but not all of these indicators. To the extent that some of the additional indicators of CalEnviroScreen 2.0 are also available in national databases or this information can be collected from state level health agencies (for example, asthma-related information), EPA should incorporate these indicators to EJSCREEN, particularly if those indicators can help to prioritize clean-up and abatement projects. In addition, CalEnviroScreen’s scores are, to a degree, based on available scientific literature on environmental pollutants, risk assessment principles (in particular that some populations, such as children, may be 10 times more sensitive to certain chemical exposures), and established risk scoring systems quantifying risks by both the relevant threat and the vulnerability to it. To the

⁹⁴ <http://oehha.ca.gov/ej/pdf/CES20FinalReportUpdateOct2014.pdf>

⁹⁵ California Env’tl Protection Agency, *Designation of Disadvantaged Communities Pursuant to Senate Bill 535* (Oct. 2014), at 13.

extent that these principles have not yet been incorporated in EJSCREEN's calculation of EJ indexes, EPA should integrate them into the relevant formulas used.

7. EPA should not discontinue EJView

EPA's EJView website states that EJView will be taken down in September 2015.⁹⁶ Sierra Club urges EPA not to do so. EJView provides valuable information on cumulative impacts in terms of the actual number of potential sources of pollution, by tallying total sites/facilities and environmental concerns in a selected area based on sources that report to EPA under various programs. For example, according to the EJView report for Eckert Station in Michigan, there are 879 sites and facilities and 35 environmental concerns within 5 miles of this power plant. More specifically, EJView identifies 726 hazardous waste sites reporting to EPA, as well as 26 impaired streams within the said radius. In this area there are also 121 schools, 5 hospitals and 147 places of worship. Schools, in particular, suggest that children may be subject to adverse exposures to pollutants that need to be studied further.

Cross-referencing EJView's number of environmental concerns and sites with the population information generated in EJSCREEN (which appears to be the same population information available in EJView), we find that 710 people live within the 5 mile radius and are potentially exposed to pollution risks that need to be analyzed further. We appreciate the feature in EJView maps that allows users to click on the relevant objects in a map and be redirected to the relevant EPA databases in order to gather detailed information on those sites and concerns, which does not exist in EJSCREEN.

Some of the databases where EJView and EJSCREEN draw their information for the analysis of proximity impacts overlap; for example, it appears that both tools use RCRAInfo, which contains information reported by hazardous waste generators, transporters, treaters, storers, and disposers of hazardous waste under the Resource Conservation and Recovery Act, including information on releases and clean-ups, as well as the Permit Compliance System (PCS), which contains information collected under the National Pollutant Discharge Elimination System (NPDES) permit program. But there seem to be other databases used by EJView that have not been incorporated into EJSCREEN; for example, the Toxics Release Inventory (TRI), which contains information about hundreds of toxic chemicals that are being used, manufactured, treated, transported, or released into the environment, as well as the Assessment, Cleanup and Redevelopment Exchange System (ACRES) database, which captures data reported by grantees on environmental activities (assessment, cleanup and redevelopment) under the Brownfields Program.

EJView's ability to visualize all these concerns in a single map (individually or together, as chosen by the user) is very helpful to provide communities a full picture of potential cumulative impacts that need to be analyzed further. (See Fig. 12 below for an example). We urge EPA to not discontinue EJView unless it incorporates this aspect of the tool and any other

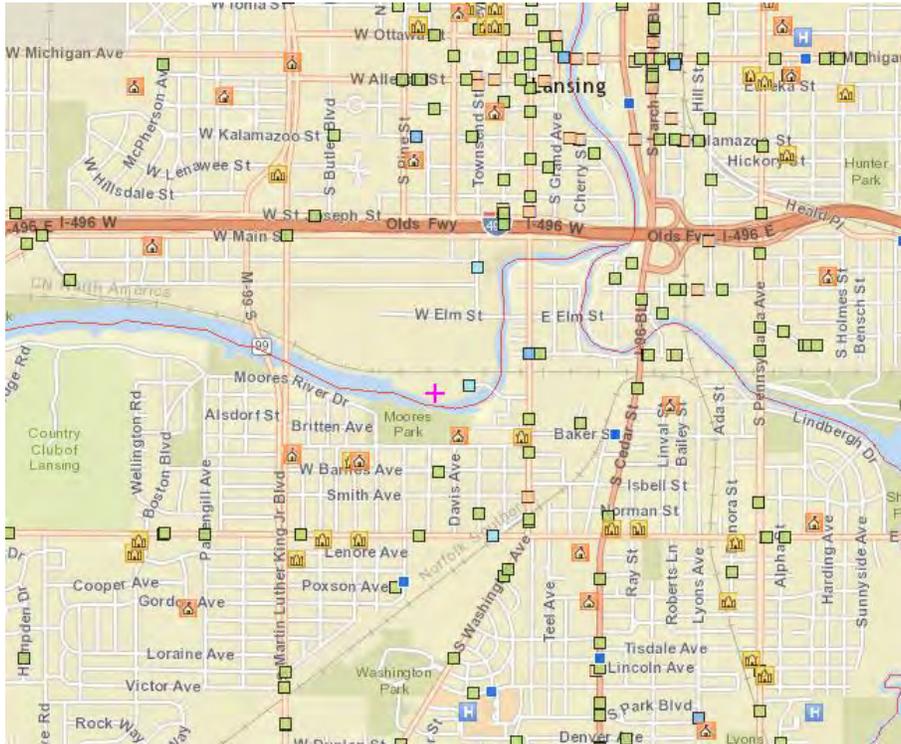
⁹⁶ <http://epamap14.epa.gov/ejmap/entry.html>

databases that have not yet been incorporated into EJSCREEN. Furthermore, as noted, EPA must ensure EJSCREEN’s (and EJView’s) population estimates are accurate, so that EJView reports can be compared to the specific populations that these sites and concerns are potentially affecting.

Fig. 11. EJView Environmental Report for 5-mile radius around Eckert Station

| Sites and Facilities | Count |
|--|--------------|
| Air Facility System (AFS) | 33 |
| Superfund Sites (NPL) | 3 |
| Toxic Releases (TRI) | 27 |
| Hazardous Waste (RCRAInfo) | 726 |
| Water Dischargers (PCS & ICIS) | 24 |
| Brownfields (ACRES) | 65 |
| Radiation Information Database (RADInfo) | 0 |
| Toxic Substances Control Act (TSCA) | 1 |
| Environmental Concerns | Count |
| National Water Information System (NWIS) sites | 6 |
| STOrage and RETrieval (STORET) sites | 3 |
| Impaired Streams | 26 |
| Impaired Waterbodies | 0 |
| National Parks | 0 |
| Places | Count |
| Schools | 121 |
| Hospitals | 5 |
| Worship Places | 147 |

Fig. 12. EJView’s Map of Environmental Concerns around Eckert Station



Eckert Station is represented by the pink cross in the center of the map. Green squares represent hazardous waste sites; light blue squares are toxic release sites; dark blue squares represent sources of air emissions; and orange squares are brownfields. The houses with flags are schools; the yellow houses are churches, and the letter “H” depicts hospitals. This map shows that there is a school 0.15 miles southeast of the facility, which raises concerns that children may be exposed to various environmental hazards that need to be further evaluated.

H. EPA must continue to ensure meaningful involvement of minority and low income communities in regulatory actions

EO 12898 requires federal agencies to conduct their programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons from participation in these actions, denying them the benefits of those actions, or subjecting them to discrimination because of their race, color, or national origin.⁹⁷ EO 12898 also seeks to promote public participation by requiring federal agencies to ensure that public documents, notices, and hearings are concise, understandable, and readily accessible to the public” and encouraging them to translate crucial public documents, notices, and hearings for limited English speaking populations.⁹⁸

⁹⁷ § 1-101.

⁹⁸ § 5-5.

In furtherance of these requirements, the Final Guidance provides that “meaningful involvement” means that communities whose health or environment would be potentially affected by a regulatory action should have an appropriate opportunity to participate in and influence those decisions, and that rule-writers and decision-makers should reach out and facilitate the involvement of those populations potentially affected by the agency’s actions.⁹⁹ The Guidance emphasizes that public involvement from minority and low income populations, as well as tribes and indigenous peoples, works best when rule writers consult with these communities early and often so that they can obtain relevant information on their needs and vulnerabilities. To the extent possible, these populations should have a meaningful role in designing the regulatory action.¹⁰⁰

Sierra Club commends EPA for arranging outreach opportunities for communities to obtain their input in the design of recently proposed rules, and for organizing visits by communities to the agency’s campus in Research Triangle Park. We urge the agency to continue providing these communities with opportunities for meaningful involvement in the process of developing regulatory actions and to increase these opportunities to the extent possible. EPA should also do trainings for environmental justice communities to educate and inform them on the public health and environmental impacts of its actions (both in terms of potential adverse impacts as well as distribution of benefits, as discussed above). EPA’s Final Guidance encourages rule writers to develop a formal public involvement plan early in the rule making process.¹⁰¹ Sierra Club believes that this public involvement plan must become an integral part of every regulatory action by the agency.

Finally, EPA’s obligations under EO 12898 also involve public participation from tribes (whether federally-recognized or not) as environmental justice communities. As part of this mandate, EPA must ensure public participation by a broad range of tribal stakeholders (not just tribal officials, which EPA is required to consult with under EO 13175, including community and neighborhood groups; traditional leaders (elders); community service, environmental, and other non-governments organizations; academic institutions; and religious communities.

⁹⁹ Final Guidance, at 4.

¹⁰⁰ *Id.*, at 32-33.

¹⁰¹ *Id.*, at 26.

II. EPA must ensure that environmental justice concerns are adequately addressed in the operating permit process¹⁰²

EPA must ensure that environmental justice concerns are adequately addressed in the operating permit process through the implementation and enforcement of emission limitations that fully comply with applicable EPA's standards for the regulation of pollution set forth in state implementation plans. For example, under Title V of the Clean Air Act all major stationary sources of air pollution are required to apply for operating permits.¹⁰³ Title V permits must provide for all federal and state regulations in one legally enforceable document, thereby ensuring that all Clean Air Act requirements are applied to the facility and that the facility is in compliance with those requirements.¹⁰⁴ These permits must include emission limitations and other conditions necessary to assure a facility's continuous compliance with all applicable requirements of the Act, including the requirements of any applicable state implementation plan.¹⁰⁵ Title V permits must contain monitoring, recordkeeping, reporting, and other requirements to assure continuous compliance by sources with emission control requirements.¹⁰⁶ It is unlawful for any person to violate any requirement of a Title V operating permit.¹⁰⁷

Under Title V of the Act, EPA establishes the minimum elements that must be included in the operating permit programs, and assists states and local governments in developing their programs.¹⁰⁸ EPA is responsible for overseeing the implementation of permit programs and may object to a permit that fails to comply with the program requirements. The agency is also required to establish a federal permit program in any area where the relevant permitting authority fails to develop and maintain an adequate operating program.¹⁰⁹

Below we discuss the results of Sierra Club's modeling of the permitted maximum allowable SO₂ emission limits of select coal plants, which shows that facilities' permitted SO₂

¹⁰² Sierra Club endorses the comments of the Human Rights Defense Center on the EJ 2020 Framework, which urge EPA to prioritize the provision of the environmental protections intended under EO 12898 to prisoner populations and their families, the great majority of whom are low income and people of color.¹⁰² HRDC's "Prison Ecology" Project has conducted extensive research to understand how environmental justice criteria have been applied to prisoner populations, particularly in the permitting process, noting that EPA does not take prisoners into account as local residents of the regions where they are incarcerated in assessing environmental impacts from land use decisions on siting the prison facilities. Human Rights Defense Center, *Comment on the inclusion of prisoner populations in EPA's Draft Framework for EJ 2020 Action Agenda*, July 14, 2015.

¹⁰³ 40 C.F.R. § 70.5(a); see 42 U.S.C. § 7661a(a).

¹⁰⁴ See 42 U.S.C. §§ 7661a(a) and 7661c(a); 40 C.F.R. § 70.6(a)(1).

¹⁰⁵ See *id.*

¹⁰⁶ See 40 C.F.R. § 70.

¹⁰⁷ See 42 U.S.C. § 7661(a).

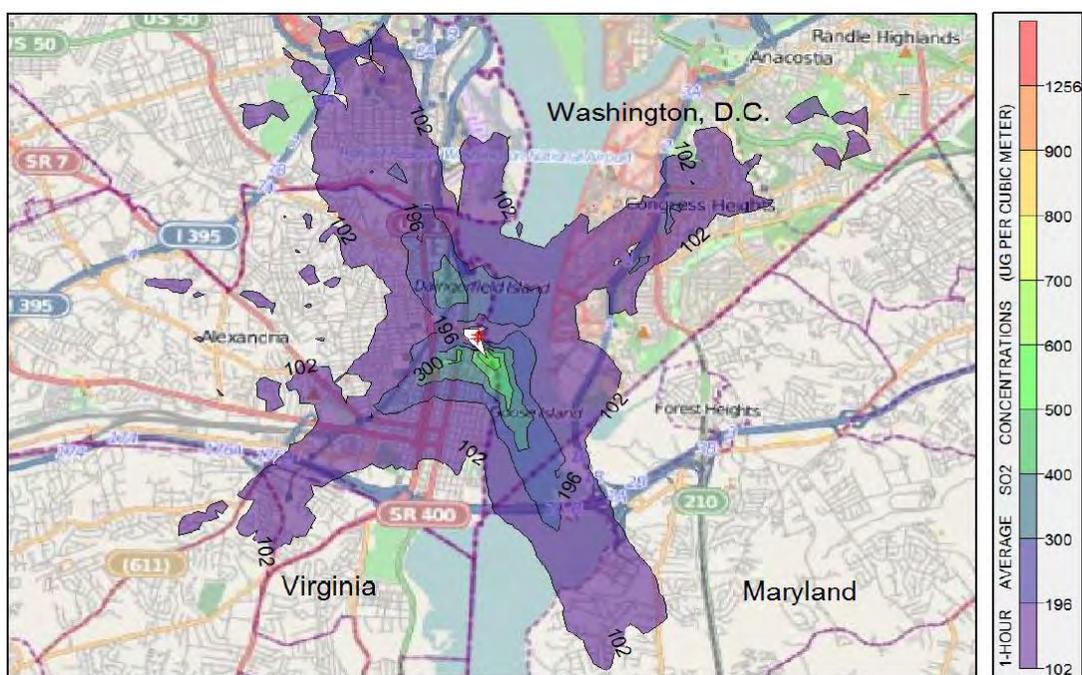
¹⁰⁸ U.S. EPA, Air Pollution Operating Permit Program Update, Key Features and Benefits, Title V Operating Permit, at 1, available at <http://www.epa.gov/oaqps001/permits/permitupdate/permits.pdf>

¹⁰⁹ *Id.*, at 3.

emission limits can be dramatically higher than what is necessary to adequately protect human health. The modeling shows that the permitted emission limits caused violations of the 1-hour SO₂ NAAQS, which not only threatens public health but also disproportionately affects EJ communities. Thus, developing permits with restrictive limits is essential to protecting EJ communities, and EPA must play a critical role in this effort.

Specifically, Sierra Club used AERMOD software to model the permitted allowable SO₂ emission limit for the Potomac River Generation Station in Alexandria, Virginia. The plant has now retired, but the analysis is useful to understand how allowable emission limits under valid permits can create adverse impacts to EJ communities. In this modeling, the resulting SO₂ plume map overwhelmingly demonstrated that the station’s emissions were causing violations of the 1-hour SO₂ NAAQS in not only the local area but also in neighboring Maryland and D.C. More specifically, the plant was causing violations in D.C.’s Ward 8, which has been consistently the poorest ward of D.C. and predominantly (93.5%) black.¹¹⁰ Ward 8 also, perhaps not surprisingly, has consistently had the highest asthma emergency department visits for children, adults and the elderly.¹¹¹

Fig. 13. SO₂ Plume Map of Potomac River Generation Station, Virginia



NOTE: All colored areas represent a violation of the National Ambient Air Quality Standard for Sulfur Dioxide.

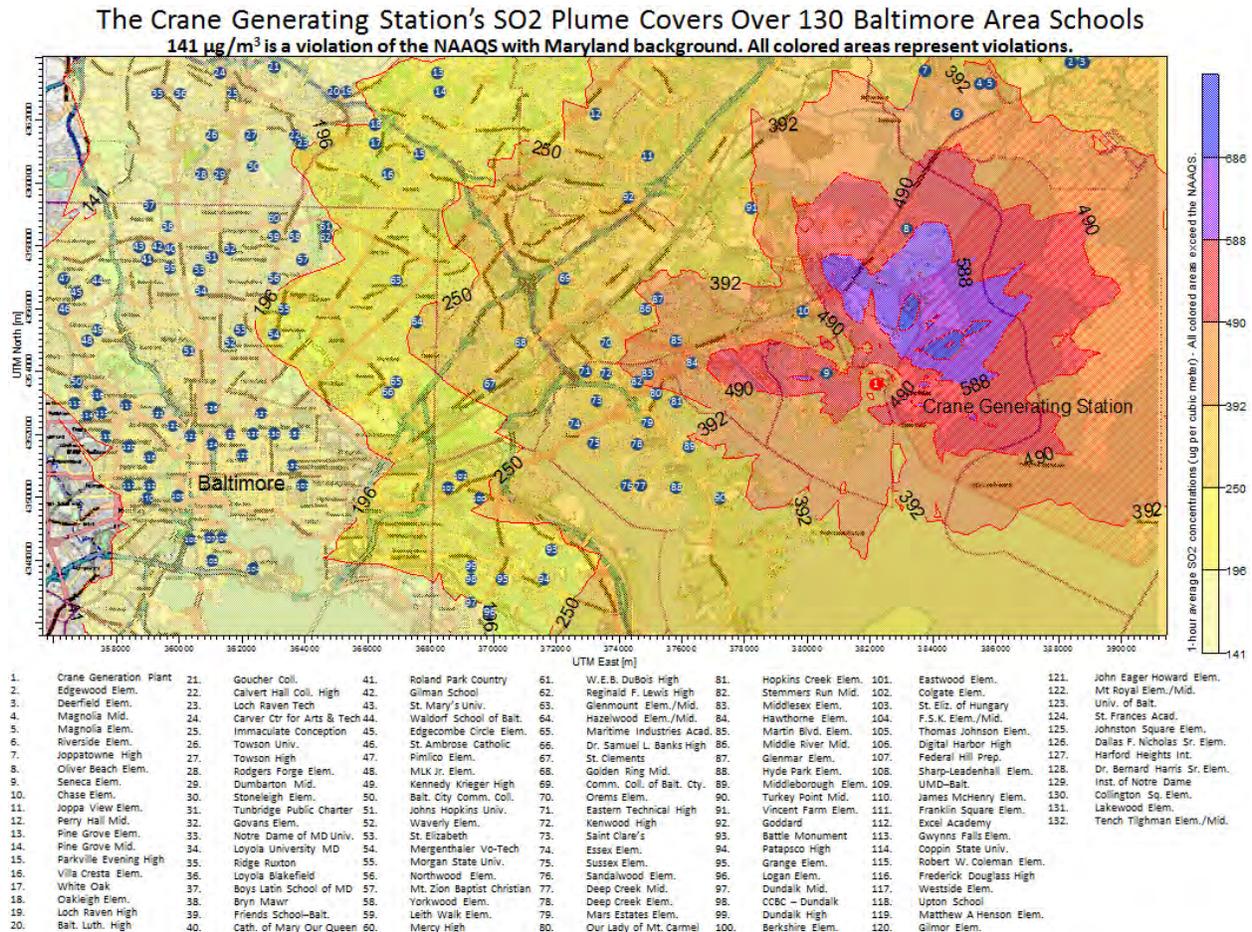
¹¹⁰ D.C. Office of Planning, “Census 2010 Population by Race and Ethnicity – Ward 8,” available at <http://planning.dc.gov/sites/default/files/dc/sites/op/publication/attachments/Census%25202010%2520Population%2520by%2520Race%2520and%2520Ethnicity%2520-%2520Ward%25208.pdf>

¹¹¹ Children’s National Medical Center, D.C., “Asthma Surveillance in DC Emergency Departments,” available at http://childrensnational.org/~media/cnhs-site/files/departments/impactdc/impact-dc-surveillance-20022011_website-compatibility-mode.aspx?la=en

Source: "Evaluation of Compliance with the SO₂ 1-hour Average NAAQS – Mirant Potomac River LLC, Alexandria City, Virginia – May 9, 2011" attached as Exhibit 1.

Similarly, for the Baltimore area Sierra Club used AERMOD to model the permitted allowable SO₂ emission limit for the Crane Generating Station in Bowleys Quarters, Maryland, currently in operation. The SO₂ plume map displayed massive violations of the 1-hour SO₂ NAAQS, including impacts on over 130 schools and Baltimore City, an environmental justice community. As described previously, Baltimore City is a predominantly black county, and it has the highest asthma rates and highest poverty rate in all of Maryland.

Fig. 14. SO₂ Plume Map of Crane Generating Station, Maryland

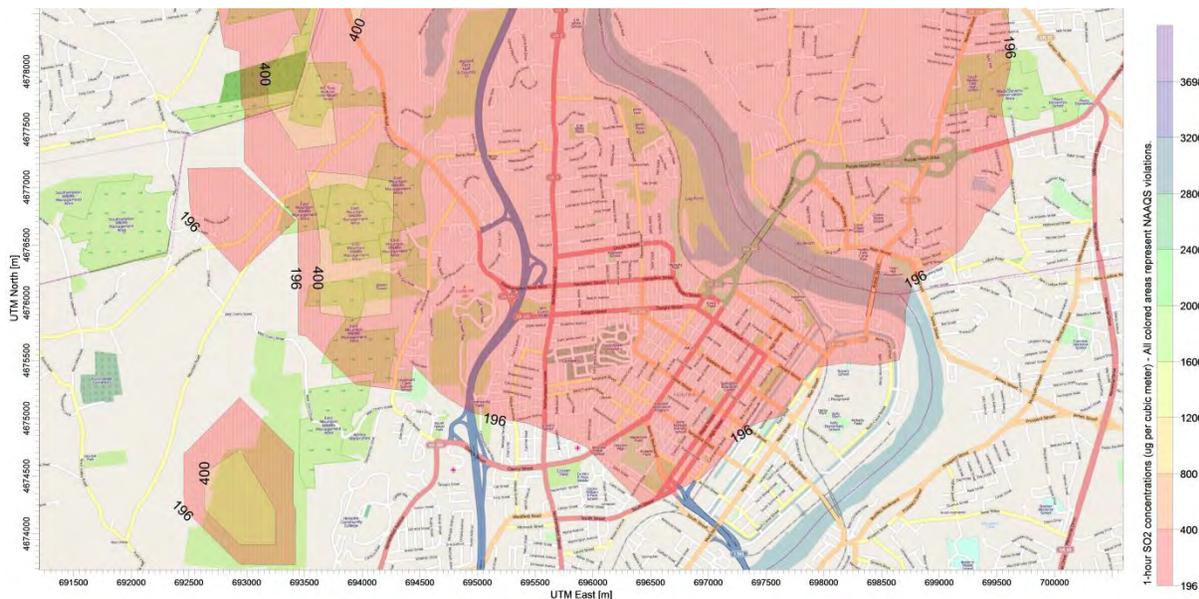


Source: Sierra Club, "Critical Levels of SO₂ in Baltimore," available at http://content.sierraclub.org/creative-archive/sites/content.sierraclub.org/creative-archive/files/pdfs/100_164_Mary_CraneWagner_SO2_FactSheet_02_low_0.pdf

Sierra Club conducted a similar analysis for the Mount Tom Power Station in Holyoke, Massachusetts, which has also retired but provides important lessons. The SO₂ plume map, modeling the plant's allowable emission limit according to its permit, showed flagrant violations of the 1-hour SO₂ NAAQS. Holyoke is located in Hampden County, which has the second highest

poverty rate in Massachusetts.¹¹² Holyoke is also a predominantly Hispanic community, with a Hispanic overrepresentation of nearly 40% and a nearly 30% underrepresentation of whites compared to the state average.¹¹³ Holyoke’s age-adjusted asthma emergency room visit rate is nearly four times higher the state age-adjusted rate¹¹⁴ and within that metric, Hispanics had by far the highest rate (up to triple) compared to all other races. Moreover, Hispanics were over 2.5 times as likely to go to the emergency room for asthma if they lived in Holyoke compared to the rest of the state. Even more disturbingly, Holyoke’s age-adjusted asthma mortality rate is triple the state rate, and the asthma mortality rate for Hispanics in Holyoke in particular is four times the state rate.

Fig. 15. SO₂ Plume Map of Mount Tom Power Station, Massachusetts



Source: “Sierra Club Evaluation of Compliance with 1-hour SO₂ NAAQS - Mount Tom Station, Holyoke, Massachusetts - August 19, 2011” attached as Exhibit 2.

In all of these instances, the facilities’ permits were so lax that they allowed violations of the 1-hour SO₂ NAAQS, endangering local populations and in particular minority communities. EPA should work with states in developing stringent permits to realize the environmental and public health protections intended by the agency’s rules, to protect overburdened communities, and to meet its EJ goals under its EJ 2020 Framework.

¹¹² US Census Bureau, “American Fact Finder,” available at <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>

¹¹³ US Census Bureau, “QuickFacts: Massachusetts,” available at <http://www.census.gov/quickfacts/table/PST045214/25,2530840#flag-js-X>

¹¹⁴ Massachusetts Department of Health and Human Services, “Asthma – Mortality and Hospital Data,” available at <http://www.mass.gov/eohhs/researcher/community-health/masschip/asthma-mortality-and-hospital-data.html>

III. EPA must effectively incorporate EJ concerns in reviewing and approving amended state plans and enforcing the requirements of the SSM rule under those plans

The Clean Air Act requires states to craft state implementation plans to meet Clean Air Act requirements, including the requirement to ensure attainment and maintenance of the National Ambient Air Quality Standards (NAAQS).¹¹⁵ However, many plans contain illegal exemptions and affirmative defenses that allow polluters to exceed federally-applicable emission limitations during startup, shutdown, malfunction (“SSM”) events without consequences. These SSM loopholes undermine the emission limits in state plans, threaten states’ abilities to achieve and maintain compliance with the NAAQS, and endanger public health and public welfare. These provisions also undermine other requirements of the Act, including Prevention of Significant Deterioration increments, nonattainment plans, and visibility requirements. Ignoring emissions during SSM events undermines the entire state operating program because for years there has been no check on whether SSM events are violating EPA’s standards or the facilities’ applicable permits.

The pollution caused by these events often exceeds the routine pollution levels emitted by a source during normal operations. However, because of the SSM loopholes in state plans, facilities have been effectively exempted from permit limits or face no penalties for these large emissions. Excessive pollution during SSM events from large facilities has devastating impacts on surrounding communities, which are often minority or low income communities. During these events, the facility can emit a toxic mix of pollutants, which the community bears witness to, as described below.

On May 22, 2015, EPA issued a final rule –the SSM Emissions Rule—which requires states to fix these unlawful loopholes in their state plans implementing the NAAQS.¹¹⁶ The U.S. Court of Appeals for the D.C. Circuit recently evaluated the validity of an affirmative defense provision in EPA’s NESHAP for manufacturers of Portland cement, holding that affirmative defense provisions in EPA’s regulations are inconsistent with Clean Air Act requirements because the Act gives citizens the right to have a court determine whether violators should be penalized for not taking reasonable precautions to avoid upset events that cause disproportionate impacts on the surrounding communities.¹¹⁷ In issuing this rule to ensure that states have implementation plans that are fully compliant with Clean Air Act requirements and are consistent with recent court decisions, EPA has identified loopholes in the state plans of 36 states and issued a “SIP call” to direct them to correct the relevant SSM provisions in their

¹¹⁵ *Id.* § 7410(a)(1).

¹¹⁶ U.S. EPA, State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update on EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, available at <http://www.epa.gov/air/urbanair/sipstatus/docs/20150522fr.pdf>

¹¹⁷ *NRDC v. EPA*, 749 F.3d 1055 (D.C. Cir. 2014).

plans. States have until November 22, 2016 to propose the relevant revisions.¹¹⁸ EPA must effectively incorporate EJ concerns in reviewing and approving amended state plans, as well as in enforcing the requirements of the SSM rule under the approved plans. Below we provide testimony from members of communities that have been disproportionately affected by these SSM loopholes. We hope EPA takes these issues into account in evaluating states' modified plans, in accordance with EO 12898.

A. Testimony from members of the Fairmount, Alabama community surrounding the Walter Coke Facility

The federal government has identified environmental justice concerns in North Birmingham, Alabama.¹¹⁹ Jefferson County, in particular, ranks tenth in the nation for the highest risk of cancer from toxic air pollution.¹²⁰ In accordance with the SSM exemptions allowed under the current Alabama SIP, the operating permit for the Walter Coke facility, which coke for use in blast furnaces and foundries, allows large excess emissions events to occur without consequence.¹²¹ The Walter Coke facility had at least 80 SSM events from July 2008 to June 2012, with many spanning several hours, including one for almost 30 hours.¹²²

Charlie Powell lived very close to the Walter Coke facility for over forty years. His house and car were regularly covered in soot pollution, so he had to routinely hose off his house and if he didn't wash his car weekly, it would accumulate a dense layer of soot that he would have to scrape off the windows.¹²³ Charlie also developed sleep apnea and other respiratory problems while living near the facility, and his wife developed cancer. Since moving a few more miles away from the facility, Charlie's health has improved and he doesn't have to sleep hooked up to a machine as often.¹²⁴

¹¹⁸ State Implementation Plans: Response to Petition for Rulemaking, at 2.

¹¹⁹ Defined as "low income, minority communities that are unfairly burdened with industrial pollution." Deadly Deception, CBS-TV 42 (Aug. 5, 2011), available at <http://www.cbs42.com/2013/01/11/deadly-deception-part-1/>. In August 2011, CBS-TV 42 aired a documentary titled "Deadly Deception" about the health concerns of North Birmingham residents due to the Walter Coke plant, and other industrial facilities. The opening scenes of the video show flares from the Walter Coke facility and a resident describing how he can taste the chemicals coming from the flares.

¹²⁰ *Id.*

¹²¹ Ala. Admin. Code r. 335-3-14-.03(1)(h)(1)-(2), available at <http://www.epa.gov/region4/air/sips/al/335-3-14.pdf>; see Sierra Club Petition at pp. 17-18.

¹²² Copies of Walter Coke Six-Month Monitoring Reports from July 2008 to June 2012 as referenced and attached as an exhibit in "Sierra Club et al. Comments Supporting EPA's Proposed SSM Rule," available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2012-0322-0622>

¹²³ Sierra Club et al. Comments Supporting EPA's Proposed SSM Rule at 30, available at

<http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2012-0322-0622>

¹²⁴ *Id.*

Eunice Webb is Charlie Powell's 70-year old aunt and she blames Walter Coke for a range of sicknesses that she and her family have suffered.¹²⁵ She developed asthma after moving to the area, and she lives with her son, who is very sick, and three of her grandchildren, one who has asthma and another who suffers from cerebral palsy. One of her sisters has cancer, both her mom and other sister have suffered from heart attacks, and her husband died of cancer. Air pollution is particularly bad in the summertime, and while Eunice would like to sit outside on her porch, she cannot do so because the poor air quality exacerbates her asthma. The air quality often makes it too difficult for Eunice to go outside at all. She would like to move away from the area, and has family and friends who have already done so.¹²⁶

B. Testimony from members of the Detroit, Michigan community surrounding the Marathon Refinery

The diverse community surrounding the Detroit Marathon Refinery is located in the zip code with the highest levels of air pollution in the country. One-quarter of the residents live below the poverty level¹²⁷ and the community's cancer and death rates are "significantly higher" than the rest of the state.¹²⁸ Since 2001, the Michigan Department of Environmental Quality has issued several air-pollution violations notices to Marathon's Detroit Refinery, but nevertheless in 2008 the refinery underwent a \$2.2 billion dollar expansion to allow it to process more high-sulfur tar sands crude oil from Canada.¹²⁹ Since that expansion, the community has noticed that flaring events have significantly increased. The Michigan SIP's SSM provisions do not discourage constant flaring events because the SIP allows excess emissions from the facility without penalty. The SIP contains both an enforcement discretion approach to "excess emissions resulting from malfunction, start-up, or shutdown," and an affirmative defense for "excess emissions during start-up or shutdown."¹³⁰

Sherry Griswold has lived within a few hundred feet of this enormous refinery for 21 years, and has raised her children in this home.¹³¹ For the last five years, Sherry has been tormented by relentless flaring from this facility – usually three times every night. Twenty-foot tall flames shoot out from the flares accompanied by a loud howling sound and a pungent odor.

¹²⁵ *Id.* at 31.

¹²⁶ *Id.*

¹²⁷ Global Community Monitor, Southwest Detroit, available at <http://www.gcmonitor.org/section.php?id=156>.

¹²⁸ Center for Public Integrity, Detroit Refinery expansion adds more Canadian crude, brings more worries, available at <http://www.publicintegrity.org/2012/10/31/11566/detroit-refinery-expansionadds-more-canadian-crude-brings-more-worries#!5>.

¹²⁹ *Id.*

¹³⁰ Mich. Admin. Code r. 336.1915; id. r. 336.1916, available at <http://yosemite.epa.gov/r5/r5ard.nsf/SIPs%20View%20By%20State%20Main%20View!OpenView&art=1&Count=30&Expand=3.12#3.12>; see Approval and Promulgation Michigan Provisions for Excess Emissions During Startup, Shutdown or Malfunction, 68 Fed. Reg. 8,550 (Feb. 24, 2003); see also Sierra Club Petition at pp. 44-45.

¹³¹ Sierra Club et al. Comments Supporting EPA's Proposed SSM Rule at 33.

Once while Sherry was in her backyard, a flaring event literally knocked her to the ground. Her house shakes and her ceiling tiles have fallen down during these events. Sherry doesn't have her children and grandchildren come over anymore because she is afraid the pollution from the refinery will impact their health. When the kids did play outside, soot from the flaring would coat their skin, and was very difficult to wash off.¹³²

C. Testimony from members of the Shreveport, Louisiana community surrounding Calumet Shreveport Refining

The Louisiana Department of Environmental Quality documented over 100 SSM incidents from 2005 through 2012 at the Calumet Shreveport Refining facility,¹³³ emitting over 320,000 pounds of unpermitted excess air pollution into the community.¹³⁴ The Calumet Refinery permit allows excess pollution events and flaring because the SIP contains automatic and discretionary exemptions for specific pollutants.¹³⁵ Other conditions and affirmative defense provisions allow Calumet to escape penalties for excess emissions during SSM events.¹³⁶

Velma White has lived two streets over from Calumet's massive oil refinery for over 38 years in the Ingleside neighborhood, a predominately African-American, low income community in Shreveport.¹³⁷ When Velma White first moved, the Calumet refinery was a much smaller facility, but it has since expanded from approximately half a block in size to over twelve blocks. Velma White's daughter was diagnosed with renal failure at a young age, and many others in the community suffer from respiratory illnesses, such as asthma, heart disease, renal failure, cancer and skin problems, which Velma believes are caused by pollution from the Calumet refinery. Velma spends much of her time documenting the refinery's accidents and upsets: she usually smells strong odors accompanying the flaring ranging from a rotten egg, sulfuric smell to a more chemical smell, and experiences physical reactions including a burning sensation in her nose and throat, nausea, and a funny taste in her mouth. These symptoms can last for days after the flaring. In addition to the smells, Velma has often awakened in the middle of the night to a loud, roaring noise when the facility is flaring. There also can be a black ash or debris from the flaring, which on occasion has covered her house and property, and even her skin.¹³⁸

¹³² *Id.*

¹³³ Louisiana Bucket Brigade, Refinery Accident Database, Calumet Lubricants 8, available at <http://ec2-54-234-227-88.compute-1.amazonaws.com/refinery.php?refinery=BB004>.

¹³⁴ Louisiana Bucket Brigade, Air Emissions - Calumet Lubricants 8 (1214), available at http://ec2-54-234-227-88.compute-1.amazonaws.com/emission_list.php

¹³⁵ La. Admin. Code tit. 33, §§ III:1107, III:1507(A) & (B), III:2153(B)(1)(i), III:2201(C)(8) and III:2307(C)(1) & (2), available at <http://yosemite.epa.gov/r6/Sip0304.nsf/home?Openview&Start=1&Count=30&Expand=3>;

¹³⁶ Calumet Shreveport Refinery Operating Permit, Specific Requirements, at p. 30

¹³⁷ Sierra Club et al. Comments Supporting EPA's Proposed SSM Rule at 33.

¹³⁸ *Id.* at 33-35.

D. Testimony from members of the Port Arthur community surrounding the BASF Chemical Plant and the Total Petrochemicals and Refinery

Hilton Kelley was born in Port Arthur and returned to the area in 2000. He has lived downwind from the BASF Chemical plant and Total Petrochemicals and Refinery for the past 12 years.¹³⁹ Port Arthur, where most residents are African American or Hispanic,¹⁴⁰ has one of the highest concentrations of hazardous waste and petrochemical facilities and refineries in the country. He routinely notices soot on the cars in his neighborhood, and a pungent, sulfurous odor in the air. His eyes frequently sting and water when he leaves his house, and when the air smells particularly strong of sulfur, his lips immediately chap and he feels a tingling sensation on his tongue. He also deals with hypertension, sinus problems, and allergies. He did not suffer from any of these ailments before moving back to Port Arthur. His 12-year old grandson lives nearby and spends a lot of time at his house and has, since birth, suffered from respiratory problems, allergies, and sinus infections. His grandson's symptoms persist, and worsen when he spends time outdoors. Hilton had returned home to fight for environmental justice and over the last couple of years, he helped to successfully relocate families from the housing project where he spent his childhood, which was located on the fence line of the Valero and Motiva refineries, to another part of town not directly in harm's way.

IV. EPA must ensure compliance with Title VI of the Civil Rights Act by any entity that receives funding from the agency

EPA must ensure compliance with Title VI of the Civil Rights Act by any entity that receives funding from the agency to implement its rules, programs, and policies. Title VI of the Civil Rights Act ("Title VI"), Section 601, provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."¹⁴¹ Title VI "reaches unintentional, disparate-impact discrimination as well as deliberate racial discrimination."¹⁴² Title VI, Section 602, requires every federal agency and department empowered to grant financial assistance to issue regulations to effectuate the provisions of Section 601.¹⁴³

EO 12250, *Leadership and Coordination of Nondiscrimination Laws*, directs federal agencies to issue appropriate Title VI implementing directives, either in the form of policy

¹³⁹ Sierra Club Comments Supporting EPA's Supplement to the SSM Rule Eliminating Affirmative Defenses at 14, available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2012-0322-0961>

¹⁴⁰ See EPA, Environmental Justice Showcase Communities, <http://www.epa.gov/environmentaljustice/grants/ej-showcase.html>

¹⁴¹ 42 U.S.C. § 2000d.

¹⁴² *Guardians Ass'n v. Civil Service Com'n of City of New York*, 103 S.Ct. 3221, 3227 (1983).

¹⁴³ *Id.* § 2000d-1.

guidance or regulations consistent with the requirements prescribed by the Department of Justice’s Assistant Attorney General for Civil Rights.¹⁴⁴ The presidential memorandum accompanying EO 12898 also requires federal agencies providing funding to programs or activities that affect public health or the environment to comply with Title VI of the Civil Rights Act.¹⁴⁵

EPA’s implementing regulations forbid recipients¹⁴⁶ of federal funds from using criteria or methods of administering their programs in a manner that has the effect of discriminating on the grounds of race, color, national origin, or sex.¹⁴⁷ These regulations also preclude a recipient of federal funds from choosing a site or location for a facility that would result in discriminatory effects.¹⁴⁸ Other EPA’s regulations mandate that state agencies that receive federal funds maintain Title VI compliance programs for themselves and other recipients that obtain federal assistance through such programs.¹⁴⁹

State agencies implementing EPA’s rules are responsible for ensuring that EPA-funded activities (for example, permitting processes) conform to Title VI requirements. If any program or measure that was funded by EPA resulted in discrimination on the basis of race, color, or national origin, those agencies would be in violation of Title VI, and aggrieved persons would be entitled to file an administrative complaint with EPA.¹⁵⁰

Title VI cannot be just a “related effort;”¹⁵¹ it needs to be an integral part of EPA’s EJ 2020 Framework. EPA must prioritize and devote additional resources to Title VI compliance and enforcement. As part of this process, Sierra Club reiterates EPA’s need to make modifications to the complaint investigation and resolution process in a manner that ensures meaningful participation of environmental justice communities and effective enforcement of Title VI complaints.¹⁵²

¹⁴⁴ Exec. Order No. 12250, § 1-402.

¹⁴⁵ Memorandum from President Clinton Executive Order on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Feb. 11, 1994), available at http://www.epa.gov/swerffrr/documents/executive_order_12898.htm.

¹⁴⁶ The regulations define “recipient” as “any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.” 40 C.F.R. § 7.25.

¹⁴⁷ 40 C.F.R. § 7.35(b).

¹⁴⁸ 40 CFR § 7.35(c).

¹⁴⁹ 28 C.F.R. § 42.410.

¹⁵⁰ 40 C.F.R. § 7.120.

¹⁵¹ Draft EJ 2020 Action Agenda Framework, at 3.

¹⁵² Letter from Center on Race, Poverty & the Environment, The City Project, Conservation Law Foundation, Earthjustice, Environmental Justice League of Rhode Island, Humansynergyworks.org, New Mexico Environmental Law Center, NRDC, Sierra Club, West End Revitalization Association, Inc., Marc

In addition, if compliance cannot be achieved voluntarily, the regulations authorize EPA to deny, suspend or terminate funding to the particular program under which the agency has found discrimination. EPA may also refer the matter to the Department of Justice to ensure compliance.¹⁵³ EPA should make use of this authority if any program funded by the agency results in a Title VI violation. EPA should also finalize its “Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs” and its “Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits.”

Meaningful public involvement is also necessary to ensure recipients’ compliance with Title VI. As EPA notes in its Title VI’s “Recipient Guidance,” early and inclusive public involvement of environmental justice communities in the permitting process is critical to ensure that the use of federal funds does not discriminate against these communities on the basis of race, color, or national origin.¹⁵⁴ In this guidance, EPA has suggested specific public involvement approaches in the permitting process, which could also inform the development of environmental rules. As noted above, the Final Guidance directs rule writers to develop formal public involvement plans to ensure the participation of EJ communities in the making and implementation of the agency’s rules.

Specifically, Title VI “Recipient Guidance” encourages the preparation of a “public involvement plan” with the participation of environmental justice communities.¹⁵⁵ The guidance also suggests equipping communities with appropriate tools such as information materials, training sessions (including in other languages, if there are non-English speaking communities), and grants to ensure their active and effective participation in the plan development process.¹⁵⁶ Finally, funding recipients should work to ensure that local authorities integrate environmental justice concerns early in the process, which will require acknowledging communities’ concerns about existing facilities near residential areas; working with the relevant authorities to ensure that data on demographics and location of existing facilities in communities are considered before making any siting decisions; and working with those authorities to identify locations for new facilities that avoid net increases in pollution in communities with disproportionately high exposure or that already host a number of facilities.”¹⁵⁷

Brenman, and Patrice Lumumba Simms to EPA Administrator Gina McCarthy (Nov. 5, 2013), attached as Exhibit 3.

¹⁵³ 40 C.F.R. § 7.130; Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (“Draft Recipient Guidance) and Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigation Guidance), 65 Fed. Reg. 39,650, 39,696-97 (June 27, 2000).

¹⁵⁴ Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Recipient Guidance), 71 Fed. Reg. 14,207, 14,210 (Mar. 21, 2006).

¹⁵⁵ *Id.* at 14,211.

¹⁵⁶ *Id.* at 14,213.

¹⁵⁷ *Id.* at 14,214-15.

Respectfully submitted,

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Sierra Club Group Comments

The email on the following page was sent 573 times from Rhonda Anderson on behalf of Sierra Club members. The email is only included in this document once and the names of the 573 Sierra Club members who this message was sent on behalf of are not listed in this compilation of public comments.

From: Rhonda Anderson on behalf of Eric Keller <sierra@sierraclub.org>
Sent: Thursday, June 11, 2015 10:44 AM
To: ejstrategy
Subject: Act without delay to address issues in overburdened communities

Jun 11, 2015

Deputy Associate Assistant Administrator Charles Lee

USEPA, Office of Environmental Justice (2201-A) 1200 Pennsylvania Avenue, NW Washington,, DC 20460

Dear Deputy Associate Assistant Administrator Lee,

I am responding to the EPA's request for comments to the Draft EJ 2020 Action Agenda Framework. I appreciate EPA's efforts through Plan EJ

2014 to integrate environmental justice into all its programs and particularly to build environmental justice into enforcement targeting and enforcement cases.

For decades, tribal areas, communities of color, and low-income populations have been experiencing disproportionate impacts of pollution. This pollution affects impacted individual's health and quality of life daily and in the long-term, including children who suffer physical and cognitive development delays due to this pollution.

In places like Wayne County, Michigan, a portion of which has been titled "the Epicenter of Asthma Burden" by the Michigan Department of Health, 92 schools lie in communities where children are exposed to air pollution that affects their ability to learn.

I urge you to adopt an additional element under the goal to "Demonstrate progress on outcomes that matter to overburdened communities." Where federal authority exists and state government has failed to address environmental justice issues, the EPA should act without delay to address issues in overburdened communities. An example of this situation already exists in Wayne County Michigan, an area that failed to meet federal minimum standards for sulfur dioxide

(SO₂) pollution. There the state put aside an effort to finalize a state implementation plan that, with a few changes, would have brought the region into attainment; instead the state allowed the polluting industries to dictate pollution levels through a draft permit process that provided grossly inadequate SO₂ reductions. The timeline for Michigan to produce a state plan has long passed, and people in the Wayne County continue to suffer.

Thank you for helping ensure that the Environmental Protection Agency achieves real outcomes that matter to overburdened communities.

Environmental justice delayed is justice denied.

Sincerely,

Eric Keller





Lionel Lopez, Director
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EJ 2020

In Nueces County we have never had a good health survey.

We need help with the Clean Water Act.

We need an EJ representative to come more often to visit colonias and talk to residents about our problems. We don't even know who EJ Representative for our area is.

We need help placing more of our colonias placed on the S.O.S. website.

Executive Order 12898 – Federal agencies to address the disproportionately high and adverse human health or environmental effects of their programs on minority and low-income population.

How can we advance when we, in some of our colonias don't even have mail delivered to their homes.

We need help with sewage systems when the colonias get flooded the septic tanks over flow on the inside of the houses.

NEEDED:

Have classes to educate our residents!

We have no community centers in Nueces County.

We have two toxic injection sites that bring toxic materials even from Mexico and all over the states. One site is within ¼ of a mile from a neighborhood. The other site across the street with no monitors.

Roads in some of our colonias are so bad the school children have trouble walking to the bus stop even in good weather.

E.J. 2020 also needs bilingual people when it comes to teaching classes in our area.

Our most important asset that we have is our children and often our children are sick because of the environment, water they drink or air they breathe. The soil they play on is contaminated with pesticides.

Southeastern North Carolina Environmental Justice Coalition
5000 Blue Clay Road
Castle Hayne, North Carolina
scncejcoalition@gmail.com
910-409-8457

September 14, 2015

Public Comment re: Draft EJ 2020 Action Agenda Framework

Dear Mr. Lee:

Thank you for the opportunity to comment on the Draft EJ 2020 Action Agenda Framework.

The Southeastern North Carolina Environmental Justice Coalition is an all-volunteer organization founded in 2014 to address the rampant environmental injustice in Southeastern North Carolina, in the Wilmington regional area. Our Coalition members are the New Hanover County NAACP, the North Carolina Coastal Federation, Cape Fear RiverWatch, PenderWatch & Conservancy, Rural Empowerment Association for Community Help (REACH), the Cape Fear (NC) Chapter of the Sierra Club and the Duke University Environmental Justice Clinic. Our member organizations have approximately 15,000 members. Among the most pressing of the numerous EJ issues in our region are the proposed Carolinas Cement (aka Titan Cement) kiln and quarry, the Duke Energy coal ash pond with its leaks, the massive pollution caused by the CAFO hog farms in many eastern North Carolina counties and the superfund sites at Navassa, NC. Our air, aquifers and the Cape Fear River or its tributaries are grossly polluted or threatened with pollution by all of these.

We are very grateful for this opportunity to comment on the draft framework for EJ 2020. In particular, we would like to draw your attention to a pressing need - and excellent opportunity - for EPA to meet its goal to “Engage states and other co-regulators in environmental justice,” particularly with regards to permitting, by using the pending NC Division of Air Quality permit for Carolinas Cement Company as a test case.

Engaging states and other co-regulators in environmental justice

EPA can meet its over-arching goal to “make a visible difference for over-burdened communities” by addressing the points under Goal I, “Deepen environmental justice practice within EPA programs to improve the health and environment of overburdened communities.” Nearly every environmental permit issued is an opportunity to do just that. EPA’s focus on considering environmental justice in EPA permitting decisions is well-placed; however, only a tiny fraction of permits are actually issued by EPA. Most permits are issued by state agencies or tribal governments. Many of these state permitting staffs – including those in North Carolina -- issued the very permits that created current Environmental Justice hotspots. Environmental Justice will not be considered in most environmental permitting decisions unless EPA strongly supports - or even compels - states to do so. **We urge EPA to focus on advancing the engagement of states in considering and implementing environmental justice:**

- **Require Environmental Justice training for state agency staff members and leaders under cooperative agreements**

EPA has completed mandatory training on Environmental Justice for all employees, according to the Plan EJ 2020 Draft Action Agenda Framework. Congratulations on this important achievement! Many state agency staff are in dire need of training on environmental justice as well. State agency representatives in North Carolina, and presumably in many other states, are unclear about what environmental justice is, why it is important, and how to consider or implement it in their jobs. North Carolina serves as a key example, as it no longer even has a coordinator for Environmental Justice within the Department of Environment and Natural Resources. In other words, no one at NC’s DENR considers EJ issues in evaluating permits, which is appalling. We suggest that EPA require all state agency staff involved in permitting and enforcement to receive mandatory environmental justice training under the terms of their cooperative agreements with EPA. States like PA, CT and IL, which have shown leadership in implementing environmental justice principles, could be tapped to help provide these trainings, so that the message is peer-to-peer and thus more likely to be well-received by states. Such an approach would also help meet EPA’s goal to “Collaborate with states, tribes, local governments and other co-regulators to share and develop environmental justice tools and practices” (EJ 2020 Draft Framework).

- **Guide states to consider Environmental Justice and develop hooks that compel them to do so**

There are likely multiple barriers that prevent states from considering and implementing Environmental Justice in their permitting and regulatory functions. These barriers may include

a lack of understanding of the principles of environmental justice (see previous bullet point), a perceived lack of resources or specialized knowledge to implement environmental justice, pressure from regulated entities to speed up regulatory processes in ways that could preclude full consideration of environmental justice, or others. EPA should identify and address these barriers through education and training, guidance materials, and by compelling states to consider Environmental Justice in permitting and enforcement whenever possible, such as under cooperative agreements or other funding mechanisms. For example, EPA could adapt the Agency's guidance "Considering Environmental Justice in Permitting" for state use, and provide direct assistance in using such a tool. EPA could require states to make use of the guidance as a condition of specific funding / cooperative agreements.

- **Use the Carolinas Cement Company air permit as a test case under EJ 2020 to move a state to thoroughly consider and implement environmental justice principles in a state permitting decision.**

EPA has an excellent opportunity to help a state make considerable progress by learning hands-on how to use the principles of Environmental Justice in permitting. In issuing an air permit to Carolinas Cement Company in 2013 (a permit that is currently before the North Carolina Supreme Court), an endeavor that would build one of the world's largest cement plants in an over-burdened community of poor and minority residents on the Northeast Cape Fear River on the border of New Hanover and Pender Counties, near Wilmington, North Carolina. State regulators summarily rejected the community's many requests to consider environmental justice factors in its permit analysis. Our member organizations have submitted critical comments about the proposed permit, and we have communicated our concerns about environmental justice with regards to this permit to NC DENR and to EPA's Region IV Environmental Justice staff members.

The NC DENR Division of Air Quality held a public hearing on the revised permit in 2013, at which our member organizations the New Hanover County NAACP and PenderWatch as well as several other community representatives urged the state to consider the special vulnerabilities of the nearby community reliant on well water, already overburdened by legacy contamination from present and historical polluters on the Northeast Cape Fear River. Despite our specific requests to do so, the Division of Air Quality *flatly refused* to consider any secondary impacts of the permit, from air deposition of mercury and heavy metals into an impaired waterway, to the tremendous increases in heavy truck traffic that would accompany the opening of a massive cement plant. The hearing officer also publicly belittled community members for urging the

Division of Air Quality to consider environmental justice in their permitting decision. Quoting the hearing officer's written report:

"Commenters appear to allege that the federal Environmental Justice policy applies to NC DAQ's issuance of this permit. The federal policy, set forth in Federal Executive Order No. 12898, addresses the federal government's responsibilities only, not the State's. Therefore it is not applicable here." NC DENR Recommendation for Issuance of Air Quality Permit, Carolinas Cement Company, August 29, 2013 (http://daq.state.nc.us/permits/psd/docs/titan/CCC_Hearing_Officer_Report.pdf page 13).

The Hearing Officer's opinion was adopted in its totality and the Carolinas Cement Company air permit issued by Donald Van der Vaart, who was subsequently appointed Secretary of the North Carolina Department of Environment and Natural Resources, where he remains today. See http://daq.state.nc.us/permits/psd/docs/titan/titan_perm_08292013.pdf

We strongly urge EPA to conduct a thorough review of this permit and use your authority under the Clean Air Act and other federal laws to give Environmental Justice its due consideration in this matter. **Mr. Lee, we would like to meet with you as well as meet again with Mr. Mustafa Ali to discuss this proposal. We will contact you separately with a meeting request.**

Thank you very much for the opportunity to comment on the EJ 2020 Draft Framework, and for your diligent work to promote environmental justice. Please contact me at any time for additional information about the issues which have been raised in this comment letter.

Respectfully yours,

Veronica Carter
Chair



Patrick J. Hester
Associate General Counsel

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July 14, 2015

Submitted electronically to ejstrategy@epa.gov

Charles Lee
Deputy Associate Assistant Administrator for Environmental Justice
USEPA, Office of Environmental Justice (2201-A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Draft EJ 2020 Action Agenda Framework

Dear Deputy Associate Assistant Administrator Lee:

Spectra Energy Corp (“Spectra” or “Spectra Energy”) submits the following comments and recommendations on the U.S. Environmental Protection Agency (“EPA”)’s draft EJ 2020 Action Agenda framework.¹ Spectra supports EPA’s environmental justice efforts but requests that EPA commit to concrete environmental justice goals and policies that produce predictable outcomes and expectations for regulated entities.

Spectra Energy is one of North America’s leading pipeline and midstream companies. Based in Houston, Texas, the company’s operations in the United States and Canada include more than 22,000 miles of natural gas, natural gas liquids and crude oil pipelines. For nearly a century, Spectra Energy and its predecessor companies have developed critically important pipelines and related infrastructure connecting energy supplies to premium markets.

Spectra Energy’s core customers are local distribution companies, marketers and traders, natural gas producers, gas-fired electric generators, and residential, commercial, and industrial facilities. Spectra Energy provides infrastructure that is vital to meeting the Nation’s energy demands. The company is constantly constructing new projects to keep up with the growing demand for oil and natural gas and maintaining its existing pipeline infrastructure to ensure pipeline safety.

Natural gas plays an increasingly vital role in the United States economy, and interstate pipelines are essential to that development. The INGAA Foundation, Inc. projects that the United States and Canada will need to invest an average of \$14 billion per year through 2035 on natural gas midstream assets, including new mainlines, natural gas storage fields, laterals to/from storage, power plants and processing facilities, gas lease equipment, LNG export facilities, and related

¹ Draft EJ 2020 Action Agenda, *available at* <http://www.epa.gov/environmentaljustice/ej2020/draft-framework.pdf>.



Charles Lee
July 14, 2015
Page 2

equipment.² Spectra alone anticipates investing \$35 billion by 2020 in much needed infrastructure. The role of natural gas and need for pipeline construction will only increase in importance as EPA seeks to achieve other priorities such as the proposed Clean Power Plan.

The siting, construction, and operation of interstate natural gas pipelines are regulated by FERC pursuant to the Natural Gas Act (“NGA”). Pursuant to the Energy Policy Act of 2005, which amended the NGA, FERC is the designated lead agency for NEPA review of interstate natural gas pipeline projects.³ Before a new interstate natural gas pipeline is constructed or expanded, FERC must issue a certificate of public convenience and necessity finding that there is a need for the project and that it is in the public interest. As part of the certificate process, FERC conducts a thorough review of the proposed pipeline route and environmental impacts under NEPA. Although FERC is not bound by Executive Order 12,868, FERC’s thorough review includes an extensive opportunity for meaningful public input and often incorporates environmental justice considerations.

Pipeline construction projects require an efficient and predictable permitting process in order to meet construction schedules and the in-service dates demanded by customers. This efficient and predictable process is of utmost importance to creating the infrastructure necessary to “maintain our Nation’s competitive edge, and ensure an economy built to last.”⁴ In this regard, Congress, the White House, and the Federal Energy Regulatory Commission have all adopted the goal of efficient permitting for pipeline operations.⁵

Against this backdrop of clear and stringent regulatory and permitting requirements, Spectra has at times been concerned with the vagueness of EPA’s environmental justice goals and policies. Vague environmental justice policies lead to three major problems. First, vague policies do not provide a roadmap for compliance. The pipeline industry is highly regulated. The schedules associated with pipeline construction and maintenance require a degree of predictability that

² The INGAA Foundation, Inc., *North American Midstream Infrastructure Through 2035: Capitalizing on Our Energy Abundance at 14* (Mar. 18, 2014), available at <http://www.ingaa.org/Foundation/Foundation-Reports/2035Report.aspx>.

³ Pub. L. No. 109-58, 119 Stat. 594 (2005) (codified as amended in scattered sections of Title 42 of the U.S. Code).

⁴ Executive Order 13,604 (Mar. 22, 2012).

⁵ See Energy Policy Act of 2005, Pub. L. No. 109-58, § 316(b), 119 Stat. 594, 689 (2005) (requiring that Federal and State agencies comply with deadlines established by FERC); Exec. Order No. 13,604 (Mar. 22, 2012) (“[I]t is critical that executive departments and agencies . . . take all steps within their authority, consistent with available resources, to execute Federal permitting and review processes with maximum efficiency and effectiveness. . .”); FERC Order No. 687, 18 C.F.R. § 157.22, 71 Fed. Reg. 62,912, 62,921 (establishing 90 day deadline for Federal authorization); *Oversight Hearing to Review the Permitting of Energy Projects: Hearing Before the S. Comm. on Env’t and Pub. Works*, 109th Cong. 7-9 (May 25, 2005) (statement of J. Mark Robinson, Dir., Office of Energy Projects, FERC, advocating for a rational siting process).



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cannot be provided by vague regulatory guidance. Environmental justice guidance should not leave regulated parties guessing as to compliance requirements. Second, where policies are unclear, preventable conflicts and associated delays will occur. These delays are particularly difficult for linear projects like pipelines which are subject to multiple permits and scheduling constraints. It is not unusual for a large pipeline project to involve multiple state jurisdiction and multiple federal agency regions/districts. Third, without clear and concrete guidance, environmental justice policies may be applied inconsistently from one agency official to the next. Inconsistent application of environmental justice policies undermines predictability and consistency for regulated entities. Confusion, delay, and inconsistent policy application negatively impact both environmental justice communities and regulated entities.

Accordingly, Spectra recommends that EPA establish concrete goals and policies that advance environmental justice while producing predictable outcomes and expectations for regulated entities. Concrete goals are necessary for the agency to consistently and effectively produce positive environmental justice outcomes. Predictable outcomes and expectations are necessary for regulated industries to plan infrastructure investments and effectively partner in advancing the goal of environmental justice.

Specifically, Spectra submits the following requests. First, the agency should ensure that the EJ 2020 framework incorporates complementary mandates to streamline permitting. As suggested by Executive Order 13,604, EPA's environmental justice guidance should be structured to "provide a transparent, consistent, and predictable path for both project sponsors and affected communities" and seek to "significantly reduce the aggregate time required to make decisions in the permitting and review...*while* improving environmental and community outcomes..."⁶ Second, the agency should use specific language to describe the effect that environmental justice considerations will have in different contexts (*e.g.*, compliance) and avoid vague undocumented goals that do not provide predictability for the regulated community.⁷ Third, in order to ensure consistent policy application, the agency should make environmental justice policies clear and easy to follow for regulators, affected communities, and the regulated public. Finally, the agency should expressly identify how environmental justice considerations interact with the EPA's existing statutory and regulatory requirements and the requirements of other regulatory agencies.

Spectra appreciates the Agency's willingness to listen and respond to our concerns and recommendations. Spectra looks forward to working with the leadership and staff of the Office

⁶ Executive Order 13,604 (Mar. 22, 2012) (emphasis added).

⁷ Spectra understands that some of these goals will be elucidated in future guidance and looks forward to participating in those discussions.



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of Environmental Justice to finalize a framework that advances environmental justice and promotes predictability and clarity.

Sincerely,

A handwritten signature in blue ink that reads "Patrick J. Hester". The signature is written in a cursive style with a large, prominent initial "P".

Patrick J. Hester

July 14, 2015

Via Electronic Mail to ejstrategy@epa.gov

U.S. Environmental Protection Agency

ATTN: Charles Lee

Mail Code: 2201A

1200 Pennsylvania Ave., NW

Washington, D.C. 20460-0001

Dear Mr. Lee:

The Tennessee Department of Environment and Conservation (TDEC) appreciates the opportunity to provide comments on the Environmental Protection Agency's (EPA) *Draft EJ 2020 Action Agenda Framework* (Draft Framework). EPA proposes the Draft Framework as a tool to assist the agency in advancing environmental justice (EJ) through its programs, policies and activities, and will support its cross-agency strategy on making a visible difference in environmentally overburdened, underserved, and economically distressed communities. The Draft Framework will build on the foundation established through EPA's Plan EJ 2014 in an effort to expand existing initiatives through commitments that will continue through the next five years.

Various programs within TDEC reviewed the Draft Framework. Based on this review, TDEC appreciates EPA's work on developing a new Draft Framework that provides current information and direction on EJ efforts and outcomes. TDEC is already actively engaged with EPA staff, through the Environmental Council of the States, regarding the public release of EJSCREEN. Additionally, some TDEC programs provide services to a significant portion of Limited English Proficient (LEP) customers and regularly use tools like written document translation, over the phone interpretation, and in-person interpretation to better communicate with their customers. TDEC looks forward to continuing its work with EPA to better understand and address EJ issues. Specific comments for consideration include:

- TDEC recommends EPA add language to the introductory paragraph that places EPA's EJ efforts into context within its regulatory and voluntary programs. Suggested additional information includes information pertaining to the Office of Environmental Justice's creation, its roles and responsibilities, how it relates to various program areas within EPA as well as how it might relate to programs at the state or municipality level. Additionally, any internal policies and/or executive orders related to EJ efforts and its authorities would be a welcomed inclusion. TDEC also recommends that EPA clarify for the reader that EJ is not a rule or regulation. TDEC recommends that EPA clarify what it aims to achieve through its EJ work. This is not clear to the reader in the draft framework.

- TDEC acknowledges that the Draft Framework is a welcomed high-level summary of strategic goals and approaches for EPA’s EJ efforts. However, in general, TDEC recommends that EPA include an additional layer of detail within all objective areas that outline specific action steps EPA will take and deadlines within which action steps will be completed in order to accomplish all stated goals or objectives. For example, on page 2 within goal I, focus area C, the statement “Consider impacts on overburdened communities in developing EPA injunctive relief, mitigation, and Supplemental Environmental Project options in enforcement settlements” does not provide the reader with the necessary information to understand how and when EPA proposes to accomplish this step. Will EPA develop resources, guidance materials, or other examples that address how impacts on overburdened communities should be considered? Similarly, on page 3, within goal II, focus area A, what steps will EPA take to “work with states, tribes, local governments and other co-regulators to promote consideration of EJ in collective decision-making”? In addition to specifying to the reader how EPA plans to accomplish its goals, such action steps would allow each state or partner to better identify opportunities for collaboration and/or potential impact areas within their own programs. While TDEC provides these two examples, EPA should note that additional details regarding action steps and deadlines throughout the entire framework should be included. Within goal I, focus area D, TDEC recommends that EPA define “Next Generation environmental monitoring” and include additional information regarding this effort and what it encompasses. While this may be a well-known term within EPA, it may be less understood by external communities.
- Within each focus area of goal II, “collaborate with partners to expand our impact within overburdened communities,” TDEC recommends that EPA consider adding an objective or outcome to annually publish case studies and success stories for incorporating EJ practices into state and community-level programs, regulatory actions, decision-marking, etc. By providing partners with a regularly updated repository of EJ best practices and examples of innovative approaches to considering EJ communities, partner agencies and organizations can learn from the successes of one another. Understanding how other states and communities have incorporated EJ considerations into their regulatory activities and addressed challenges within particular regulatory contexts would be helpful. Additionally, it is TDEC’s experience that EPA’s expectations regarding the manner in which EJ should be incorporated into regulatory activities on a state-specific basis is not often understood and/or communicated through EPA program staff to the same level as EPA staff dedicated to EJ issues.
- EPA should include information regarding specific communication tools and formats it will use to accomplish goal III. Further, TDEC recommends that EPA publish

progress on outcomes in multiple, publicly-accessible locations, such as websites, local government entities, video recording, posters, handouts, articles, etc., such that the public, regardless of geographic location or other factors, will be able to access information. While EPA may make progress with regard to its EJ goals, it may achieve greater success in improving education and influence within impacted communities with a more detailed plan to effectively communicate this progress to interested stakeholders.

- EPA should include hyperlinks to completed Plan EJ 2014 commitments/accomplishments on page 4 to provide readers with direct access to those materials from the framework.
- TDEC recommends that EPA provide additional information for the items listed in the “Priorities in 2015” section. In particular, TDEC recommends that EPA outline specific action steps EPA will take and a timeframe for accomplishing the stated priorities. Given that these comments are being collected mid-way through 2015, it may be helpful to include the anticipated priorities for 2016 as well. Providing guidance on the quickly approaching 2016 priorities will assist states and partner organizations in strategic planning of opportunities for collaboration and/or potential impact areas within their own programs.

EPA should be commended for its ongoing efforts to advance environmental justice and make a difference in underserved communities. TDEC appreciates the opportunity to comment on the Draft Framework.

Sincerely,



Costin Shamble
TDEC Office of Policy and Planning
Title VI and Environmental Justice Manager



Tennessee Interfaith Power & Light

A Spiritual Response to Climate Change
www.tennipl.org tennesseeipl@gmail.com
PO Box 26313 Knoxville TN 37912

To: Charles Lee, Deputy Associate Assistant Administrator for Environmental Justice, EPA
From: Louise Gorenflo, coordinating secretary, Tennessee Interfaith Power & Light
Re: Draft EJ 2020 Action Agenda Framework
Date: June 15, 2015

Tennessee Interfaith Power & Light (TIPL) thanks EPA for the opportunity to submit our comments on its Draft EJ 2020 Action Agenda Framework. It is of great value that EPA is developing its capacities to advance EJ through its programs, policies, and activities, as well as engaging other agencies in developing their own capacities.

It is our understanding, however, that EPA's commitment to EJ is largely an internal process that does not extend to states. Certainly EPA encourages states to incorporate EJ in development of SIPs, state regulations, and state enforcement, but encouragement is not the same as requirement.

Our experience here in Tennessee has taught us that state agencies do not hold EJ in high regard. We have seen no actual evidence that our state's agencies have considered EJ in their rulemaking, regulations, and enforcement.

It is important the EPA has developed its own EJ capacities. However, without developing the capacities of the states to do the same, we the people do not experience EPA's efforts making a difference in how states operate.

After the release of the draft Clean Power Plan, EPA convened conference calls and meetings with many EJ leaders and public interest groups to affirm EPA's valuing of EJ. Yet absent within the draft Clean Power Plan were any requirements that states incorporate EJ into the development of their SIPs.

This disconnect between EPA's aspirations for EJ and actual requirements for EJ on the state level is reflected in the draft EJ 2020 Action Agenda Framework which recommends not one step towards making states accountable for EJ in their rulemaking, regulations, or enforcement.

Some states have on their own made EJ part of the way they do business. We live in a state that would not do so unless it was required to do it.

We encourage EPA to include within its draft EJ 2020 Action Agenda Framework agenda items that would move EPA in the direction of requiring states to incorporate EJ in their SIPs, regulations, and enforcement.

Thank you.

Louise Gorenflo, coordinating secretary
Tennessee Interfaith Power & Light

Comments for EJ2020 Draft Framework

Terrence E. Gilchrist

Columbus, Ohio

Submitted: Tuesday, July 14, 2015

Part II, Section A

Collaborate with states, tribes, local governments and other co-regulators to share and develop environmental justice tools and practices

Commissions. There are local and state-level authorities, such as conservation districts and health commissions, which have intervention and regulatory capacity on behalf of jurisdictions. For instance, according to Chapter 1515 of the Ohio Revised Code, the state's Soil and Water Conservation Commission may "[s]eek the cooperation and assistance of the federal government or any of its agencies, and of agencies of this state, in the work of the districts ..."¹ The Ohio Soil and Water Conservation Commission is within the state's Department of Natural Resources. Other authorities of interest include the Bureau of Underground Storage Tank Requirements of the state's Department of Commerce; the Ohio Minority Health Commission; and the Utility Radiological Safety Board of the Public Utilities Commission of Ohio.

Marginalization. Though there are governmental and non-governmental authorities, some perceive themselves as non-traditional partners. A perception problem arises such that potential mission-compatible partners have relegated 'social justice' issues as a concern not-central to conservation of natural resources or their main constituents e.g. farmers, exurbs.

Part II, Section C

Support transformative efforts in communities to advance environmental justice through EPA's Community Resources Network

Libraries. To ensure the accessibility and continuity of knowledge as federal administrations and priorities change, local and state libraries may help with archiving the accrued resources e.g. publications, webinars. This can increase the diffusion of innovation in environmental justice as well as serve a function as introductory subject matter exposure for community members and local public officials. Public libraries can serve as a repository of legacy information and historical data in the Community Resources Network.

Reinvestment. The Community Resources Network could incorporate data about the performance of financial institutions serving overburdened communities. The Community Reinvestment Act of 1977 enables robust participation of banks via financing, foundation support, and corporate social responsibility.² It has been coupled with historic preservation to revitalize neighborhoods such as the Manchester District of Pittsburgh, Pennsylvania and the Mount Auburn District in Cincinnati, Ohio.³

Part III, Section B

Show positive impacts of our work through community-level results, such as revitalization and sustainability, partnerships and collaborative problem-solving, and grassroots capacity-building

Depth. Research partners can provide technical assistance and train members of the community who want to extend their skills in data collection, organizing, and problem-solving. Collaborators such as universities already collect, refine, and store the type of data associated with the EJSCREEN. For instance, the Kirwan Institute for the Study of Race and Ethnicity of The Ohio State University as well as the Franklin Soil and Water Conservation District have personnel with geographic information systems capabilities and regularly compile datasets. For especially overburdened communities, such partners can provide precise and up-to-date data.

Part III, Section D

Develop indicators of progress through collaborative processes with communities, states, tribes and other stakeholder partners

Metrics. There are ways to demonstrate progress in addition to geographic profiles of the presence of chemicals of concern. For instance the set of social network analysis metrics pioneered by Albert-László Barabási⁴, Nicholas Christakis^{5,6}, James Fowler^{5,6}, and Andrew Papachristos⁷ reveal the extent to which social ties influence health. With respect to the environmental justice gap, the number of connections and types of partnerships established with communities across time can show an indication of the trajectory of success in attaining outcomes and eventual impact.

Perhaps in evaluating progress in environmental justice, categories of metrics from different disciplines, such as epidemiology with chronic disease surveillance, can provide a comprehensive view of progress in environmental justice. Recent public health metrics have measurements that show mediating factors in the preventive and risk determinants in health.⁸

With vast amount of data as well as the computing capability of government institutions, the emerging field of data science is revealing patterns that statistics does not sufficiently convey.^{9, 10, 11} The linear measurement from multilevel regression discerns a certain type of insight. Non-linear measurement from the sciences of complexity adds another understanding of the interaction of stakeholders which contributes to the emergent, system-level patterns in the distribution of environmental hazards. The Santa Fe Institute and behavioral economists have developed a copus of knowledge in this area.¹²

Part IV, Section A

Promoting climate adaptation and resilience and greenhouse gas reduction co-benefits will be an important part of the EJ 2020 Action Agenda

Finance. For communities with willing property owners and renters as well as businesses, there are ways to adapt financial products to assist environmental conservation and energy sustainability. In states such as Ohio, which have legislatures influenced by special interests of the carbon-based economy, e.g. Big Coal, a market-based approach may complement the regulatory tools of any federal administration. With such overburdened communities, the financing instruments can accelerate the adoption of green infrastructure and energy sustainable infrastructure which improve public health¹³; save costs to owners and the municipality¹⁴; and increase housing value¹⁵. Credit enhancement helps with green infrastructure and renewable energy projects, particularly in neighborhoods affected by sub-prime predatory lending. The innovative deployment of Clean Water State Reserve Funds could play a role with liability settlements between communities, states, and corporations. Given the extent of contamination in some overburdened communities, a large loan fund or combination of funding approaches may be necessary for remediation.

Part IV, Section B

EPA will advance its program relative to the implementation of Title VI of the Civil Rights Act through a comprehensive, long-term Office of Civil Rights (OCR) Strategic Plan, which OCR is currently developing

Enforcement. Sometimes the lack of political commitment can impede the efforts of a community to mitigate an environmental justice gap. National level data and the precedent of cases can move regulatory and private actors to participate. The Office of Civil Rights can assist organized communities with determining if their local regulatory institutions are performing the role of enforcing accountability, liability, and social responsibility of banks, companies, and municipalities. For instance, according to the Ohio Revised Code, the supervisors of the county-level conservation districts, which are considered political subdivisions in Ohio, have powers which include the ability “[t]o sue and plead in the name of the district, and be sued and impleaded in the name of the district, with respect to its contracts and, as indicated in section 1515.081 of the Revised Code, certain torts of its officers, employees, or agents acting within the scope of their employment or official responsibilities, or with respect to the enforcement of its obligations and covenants made under this chapter ...”¹⁶

Disclosure. Recently, in places such as the County of St. Louis in Missouri, there are revelations that the radiological remnants of special nuclear material persist. To the extent possible, the source of contamination in communities may be illuminated from further declassification of records from and another comprehensive accounting of the production of resources for the country’s weaponized atomic arsenal and peaceful atomic energy.

Endnotes

1. "Ohio Soil and Water Conservation Commission - Powers and Duties," Ohio Revised Code, Title XV, Chapter 1515, Section 2, Part C
Site: <http://codes.ohio.gov/orc/1515.02>
Accessed: July 14, 2015
2. Community Reinvestment Act (CRA), Board of Governors of the Federal Reserve System
Site: http://www.federalreserve.gov/communitydev/cra_about.htm
Accessed; July 14, 2015
3. "Preservation at the Grassroots: Pittsburgh's Manchester and Cincinnati's Mt. Auburn Neighborhoods," Stephanie R. Ryberg, *Journal of Planning History*, May 2011 vol. 10 no. 2 139-163
doi: 10.1177/1538513210381848
Accessed: July 14, 2015
4. "Network Medicine: A Network-based Approach to Human Disease," Albert-László Barabási, N. Gulbahce, J. Loscalzo, *Nature Reviews Genetics* 12, 56-68 (2011).
Site: http://www.barabasilab.com/pubs/CCNR-ALB_Publications/201012-18_NatureRev-NetMedicine/201012-18_NatureRev-NetMedicine.pdf
Accessed: July 14, 2015
5. "Social Contagion Theory: Examining Dynamic Social Networks and Human Behavior," Nicholas A. Christakis and James H. Fowler, *Statistics in Medicine*, February 20, 2013; 32(4):556-77
DOI: 10.1002/sim.5408
6. ***Connected: The Surprising Power of Our Social Networks and How They Shape Our Lives; How Your Friends' Friends' Friends Affect Everything You Feel, Think, and Do*** Nicholas A. Christakis and James H. Fowler (Little, Brown, and Company, New York: 2009)
7. "Social Networks and the Risk of Gun Shot Injury," Andrew V. Papachristos, Anthony A. Braga, and David M. Hureau, *Journal of Urban Health*, December 2012; 89(6): 992–1003
DOI: 10.1007/s11524-012-9703-9
Accessed: July 14, 2015
8. "Behavioral Science at the Crossroads in Public Health: Extending Horizons, Envisioning the Future," Thomas A. Glass, Matthew J. McAtee, *Social Science and Medicine*, 2005, Number 62, 1650-1671
Site: https://blogs.nursing.osu.edu/boch_10/files/2011/12/Glass_Thomas_A.pdf
DOI: 10.1016/j.socscimed.2005.08.044
Accessed: July 14, 2015

9. "Statistics 2.0: From Data Revolution to the Next Level of Official Statistics,"
Keynote Speech, Enrico Giovannini
Federal Committee on Statistical Methodology, 2014 Policy Seminar
Official Statistics in a Changing Society-Making Choices and Balancing Tradeoffs, December 15-16, 2014
<http://www.copafs.org/seminars/fcsm2014policy.aspx>
Speech: http://www.copafs.org/UserFiles/file/2014fcsm/KeynoteStatistics2_0.pdf
Accessed: July 14, 2015
10. "Why Measuring Progress Matters," Enrico Giovannini , *OECD Observer*, Number 262, July 2007
Site: http://www.oecdobserver.org/news/archivestory.php/aid/2283/Why_measuring_progress_matters.html
Accessed: July 14, 2015
11. Report by the Commission on the Measurement of Economic Progress and Social Performance
Joseph E. Stiglitz, Amartya Sen, Jean-Paul Fitoussi, September 14, 2009
Site: http://www.stiglitz-sen-fitoussi.fr/documents/rapport_anglais.pdf
Accessed: July 14, 2015
12. "An Interview with W. Brian Arthur," *The Development of Complexity Perspectives*, November 8, 2002
Site: <http://tuvalu.santafe.edu/~wbarthur/InterviewsandNews/ETAPAEInterview.pdf>
Accessed: July 14, 2015
13. "Growing Green: How Green Infrastructure Can Improves Community Viability and Public Health," Stacey Detwiler, American Rivers, Compton Foundation, June 2012
Site: <https://www.americanrivers.org/assets/pdfs/green-infrastructure-docs/growing-green-how-green-infrastructure-can-improve-community-livability.pdf>
Accessed: July 14, 2015
14. "The Value of Green Infrastructure: A Guide to Recognizing Its Economic, Environmental, and Social Benefits," Center for Neighborhood Technology, American Rivers, Kresge Foundation, 2010
Site: <http://www.americanrivers.org/wp-content/uploads/2013/09/Value-of-Green-Infrastructure.pdf?506914>
Accessed: July 14, 2015
15. "A Spatial Autocorrelation Approach for Examining the Effects of Urban Greenspace on Residential Property Values," Delores Conway, Christina Q. Li, Jennifer Wolch, Christopher Kahle & Michael Jerrett, *Journal of Real Estate Financial and Economics* (2010) 41:150–169
DOI: 10.1007/s11146-008-9159-6
Accessed: July 14, 2015
16. "Supervisors of Soil and Water Conservation District - Additional Powers,"
Ohio Revised Code, Title XV, Chapter 1515, Section 8, Part G
Site: <http://codes.ohio.gov/orc/1515.08>
Accessed: July 14, 2015



Texas Pipeline Association

Thure Cannon
President

June 15, 2015

Via e-mail to ejstrategy@epa.gov

Mr. Charles Lee

Deputy Associate Assistant Administrator for Environmental Justice
Environmental Protection Agency
Office of Environmental Justice
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20460

Re: Draft EJ 2020 Action Agenda Framework

Dear Mr. Lee:

The Texas Pipeline Association (“TPA”) submits the following comments on EPA’s Draft EJ 2020 Action Agenda Framework (“EJ 2020”). TPA is an organization composed of 50 members who gather, process, treat, and transport natural gas and hazardous liquids materials through intrastate pipelines in Texas. TPA’s members will be affected by efforts outlined in the draft framework because our members engage in activities that could be affected by federal environmental justice initiatives.

1. Introduction.

EPA seeks input on EJ 2020, which according to EPA will help advance environmental justice efforts in environmentally overburdened, underserved, and economically distressed communities. As stated in the following comments, TPA believes that the draft EJ 2020 framework should be revised so that the agency’s statement of its future environmental justice efforts is clear, the applicability of such efforts is easily understood, and those efforts do not impose undue burdens on the regulated community.

2. EPA should clarify its definition of “overburdened communities.”

A central focus of EPA’s environmental justice efforts is to address and alleviate impacts on “overburdened communities.” For example, EPA states that the goals of EJ 2020 are to “deepen” an environmental justice practice within EPA programs to improve the health and environment of overburdened communities¹; collaborate with partners to expand EPA’s impact

¹ EJ 2020 Framework at I.

within overburdened communities; and demonstrate progress on outcomes that matter to overburdened communities.

The term “overburdened community,” is key to the applicability of these future efforts. Accordingly, we would urge EPA give grave consideration as to how this term is defined and to provide clarification, as necessary. EPA has defined an “overburdened community” as one that potentially experiences disproportionate environmental harms and risks as a result of cumulative impacts or greater vulnerability to environmental hazards²; alternatively, EPA has used the term to describe “the minority, low-income, tribal, and indigenous populations or communities in the United States that potentially experience disproportionate environmental harms and risks as a result of greater vulnerability to environmental hazards.”³

If these definitions are to be used with regard to EPA’s EJ 2020 efforts, we urge EPA to consider adding additional criteria so that the general public and the regulated community have a better understanding of when future environmental justice initiatives might be employed. In determining whether a community should be considered as being subject to the EJ 2020 efforts, TPA urges EPA to consider inclusion of such factors as whether a substantial percentage of the population of the affected community has an annual income that is less than the poverty threshold or whether a substantial percentage of the population of the affected community is part of a minority group. In addition, in all cases EPA should consider whether the community is actually disproportionately impacted by industrial development, regardless of whether it is an economically disadvantaged area. A community that is not disproportionately burdened by the effects of industrial development is not an “overburdened community,” regardless of the socio-economic status of its population.

3. TPA supports voluntary efforts to increase community awareness and involvement.

Part of the EJ 2020 effort is focused on enhancing public participation in the permitting process and enhancing communication with low socio-economic (which are often majority minority) communities affected by industrial activities.⁴ TPA supports voluntary efforts aimed at increasing public understanding of, and participation in, the permitting process as well as efforts aimed at increasing communication between industry and local affected communities. Indeed, TPA has been at the forefront of initiatives aimed at opening the lines of communication between industry and local communities. For example, TPA worked in concert with elected officials and community leaders to improve communications between the pipeline industry and local governments in the Barnett Shale area of Texas. The result of this collaborative effort was a document titled *Best Practices for Pipeline and Municipality Relations*, which addresses issues such as public participation in pipeline routing, use of public rights-of-way, and steps aimed at creating enhanced communication between industry and affected communities.

² See, e.g., 77 Fed. Reg. 38052 (June 26, 2012).

³ EPA Plan EJ 2014, Legal Tools (Dec. 2011) at 1 n. 2.

⁴ EJ 2020 Framework at I.B, I.D.

TPA's efforts in the Barnett Shale area are an example of the proactive and voluntary initiatives that industry is already undertaking to foster better communication and to engage local communities. To the extent that EPA's environmental justice efforts encourage additional initiatives that can be undertaken on a voluntary basis, TPA supports those efforts. Industry has demonstrated a willingness and capacity to engage in voluntary efforts to engage local communities and keep them informed of local development activities. This being so, there is no reason for EPA to development mandatory regulatory requirements to increase community awareness of, and involvement in, new permitting and development activities by industrial sources.

4. EPA should not assume that environmental justice efforts are needed simply because a certain type of permit is being applied for.

The draft EJ 2020 framework states that EPA intends to “build[] environmental justice into EPA permitting.”⁵ While EPA does not provide examples of the kinds of permits that might be subject to future EPA environmental justice efforts, EPA in the past has indicated that construction permits under the Clean Air Act (CAA), underground injection permits under the Safe Drinking Water Act (SDWA), and certain permits under the Clean Water Act (CWA) and the Resource Conservation and Recovery Act (RCRA) may have significant public health or environmental impacts, such that they might be a proper focus of agency environmental justice efforts.⁶

Assuming that EPA continues to view such permits as warranting particular focus in the environmental justice context, TPA would note that current requirements already mandate stringent pollution controls for the issuance of permits under those statutory programs.⁷ Current regulations also require broad public participation during the application process for permits issued under these programs. This being so, it would not be accurate to assume that enhanced public participation, or other environmental justice efforts, are warranted every time an application is made for one of these permits.

In determining which permit applications are worthy of enhanced public participation or other environmental justice efforts, EPA should not begin the analysis by focusing on the kind of permit that is being applied for. Rather, EPA should first identify the location of any overburdened communities in relation to the proposed facility or project, the upstream/downstream or upwind/downwind impacts of the facility on individuals in the community at issue, the magnitude of the impact on those individuals, and similar factors to determine whether enhanced public participation is warranted. Only then would it be appropriate

⁵ EJ 2020 Draft Framework at I.B.

⁶ See 77 Fed. Reg. 38054 (June 26, 2012); see also EPA Plan EJ 2014, Legal Tools (Dec. 2011).

⁷ For example: Use of BSER or BACT technology (CAA); prohibition of unauthorized injection and movement of fluid into underground sources of drinking water, requirement of proper operation and maintenance, duty to provide information, and monitoring and recordkeeping requirements (SDWA); requirements establishing effluent limitations, monitoring and reporting obligations, upset and bypass provisions, and use of best available technology economically achievable, or best conventional pollutant control technology (CWA); and cradle-to-grave controls, including minimum technology requirements, groundwater monitoring, air emission controls, and corrective action requirements (RCRA)).

for EPA to assess the specific nature of anticipated impact from the issuance of the permit on the nearby community and whether the community would benefit from environmental justice efforts, such as enhanced public participation. Simply put, we urge EPA to refrain from concluding that environmental justice efforts are appropriate based solely on the type of permit being requested.

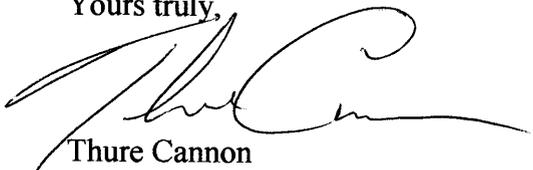
5. Siting decisions in the natural gas industry are generally based on the location of natural resources, and as such are outside of the industrial development trends that environmental justice initiatives target.

Environmental justice initiatives have traditionally sought to address perceived inequities that can be caused by a company's decision to locate industrial facilities in low-income areas, where real estate prices tend to be relatively low. In the natural gas industry, however, siting decisions are not entirely driven by real estate prices; rather, these decisions are driven by the location of the natural resource and the pathway to the marketplace. EPA should bear these considerations in mind when it is developing methods to address environmental justice concerns. Even if the facility is located in an overburdened community, TPA would urge EPA to take into account whether or not siting of the facility is driven by factors other than simply the price of real estate, such as the location of the natural resource.

6. Conclusion.

The clarifications discussed above are necessary in order to ensure that the public and the regulated community have a clear understanding of the scope of EPA's environmental justice efforts. Those efforts should not include the development and implementation of additional mandatory regulations where voluntary guidance would provide the greater flexibility necessary to address the needs of all stakeholders in a variety of situations. EPA should also make clear that any strategies that result from the current EJ 2020 effort will be entirely voluntary. The federal rules that are already in place are more than sufficient to ensure environmental protection for all citizens, and there is no need for additional regulatory requirements.

Yours truly,



Thure Cannon
President

From: [REDACTED]
Sent: Tuesday, July 14, 2015 12:43 PM
To: ejstrategy; Lee, Charles
Cc: Arnold, Tony; Eley, Carlton
Subject: Comments on Draft EJ 2020 Action Agenda Framework

To: Charles Lee, Deputy Associate Assistant Administrator for Environmental Justice, US EPA

Dear Charles:

Thank you very much for the opportunity to comment on the Draft EJ 2020 Action Agenda Framework. I offer these comments as a long-time scholar of environmental justice and as someone who has been deeply involved in various environmental justice projects, planning, and advocacy throughout the U.S. for the past 25 or more years. However, these comments reflect solely my own personal viewpoints and do not necessarily reflect the position of the University of Louisville or any other entity with which I am affiliated.

The Draft EJ 2020 Action Agenda Framework is an exciting first step towards taking federal environmental justice policies and principles to the next level of development and implementation. As a framework, it is fairly broad and general. I would like to suggest some additional ideas and approaches that are fully consistent with those that are expressed in the draft framework but that could either deepen the framework or be used to implement the framework's general elements.

There is an urgency to facilitate resilience in historically marginalized communities, which are especially vulnerable to a variety of social-ecological-institutional changes and disturbances, such as drought, floods, storms, sea-level rise, overstressed or polluted water sources, environmental effects on health, land use and population changes, changing vegetation and species patterns (including pest and disease migration), urban heat island effects, wildfires, declining forests and tree cover, pollution, economic shocks, local-government fiscal crises, and the like.

An environmental justice strategy focused on community resilience and adaptive capacity does not aim just to strengthen communities so that they can resist changes (resistance concepts of resilience) or to increase their capacity to bounce back from disasters (bounce-back concepts of resilience). Instead, the strategies should aim to increase communities' adaptive capacity to navigate transitions in linked social, ecological, and institutional systems and to use inevitable disturbances and changes as opportunities for community transformation (social-ecological concepts of resilience). Resilient communities are the ones that have resources for change, flexibility or adaptability, strong social capital (e.g. cooperation, trust, collaborative innovation), well-functioning ecosystems, and mechanisms for both participation in environmental governance and social learning. In order to facilitate resilience in historically marginalized or vulnerable communities, I would urge several strategies:

First, develop and use resilience assessments or community vulnerability assessments in planning and program design. These assessments should include but not be limited to vulnerability to disasters. Community resilience is much broader than disaster resistance or bounce-back. Moreover, I would encourage the development and increased use of community-resilience self-assessment tools that allow marginalized or vulnerable communities to engage in their own assessments. There are a number of tools available and new ones are currently being developed to facilitate resilience assessments in a variety of different ways (i.e., appropriate to different needs, goals, and conditions) and at varying levels of scope and detail. The EPA can assist in improving access to these tools and helping to facilitate design or modification of tools to make them easier to use.

Second, invest in ecosystem services that benefit low-income, minority, Native American, disabled, elderly, young, and other historically vulnerable and/or marginalized groups. Ecosystem services -- the beneficial and valuable functions that natural ecological systems, such as wetlands, forests, and watersheds, provide to society and communities -- are critical to the health and functioning of our communities. All too often, our historically marginalized groups and communities are not just overburdened by harms but also under-benefitted by infrastructure (including green infrastructure) and nature's services, which are necessary to their health and well-being. Thus, federal policies and programs should evaluate the distribution of ecosystem services, the access of vulnerable or marginalized groups to these services, and the participation of those groups in environmental, natural resources, and land use governance affecting ecosystem services.

Third, support and facilitate the incorporation of environmental-justice principles and resilience strategies into land use decision making, because land use is a major driver of change in complex and interlinked ecological, social, and institutional systems. Land use patterns and decisions affect local community resilience and adaptive capacity. Watersheds can be effective and valuable scales at which to engage in planning and multi-stakeholder collaboration (including inter-governmental collaboration) in ways that link ecosystem services, environmental justice, community resilience, and land-use policies with one another. The federal government can influence local land use planning, regulation, and decision making by mandating actions, stimulating changes, facilitating progress, or partnering to collaborate with localities and other stakeholders. The first two methods are controversial, given strong cultural preferences in the US for local control of land use decisions and relatively strong private property rights. However, in my opinion, the federal government could do more to facilitate incorporation of environmental justice into local land use decision making and to partner with localities, marginalized communities, and many other stakeholders to improve land use decisions, despite the many different and beneficial ways that the EPA and other federal agencies engage in facilitation and partnership activities. In general, polycentric systems are more resilient and adaptive than monocentric systems. Strong federal control over land use would likely put historically vulnerable communities at greater risk, not lesser risk, of harm from any failed policies or uniform programs ill-matched to local conditions and needs. However, facilitating polycentric action or partnering with many different stakeholders and governance institutions could help considerably, while also being well-received politically and socially.

Fourth, develop multiple-method (or multi-modal) design of participatory processes that provide many different ways for historically marginalized groups to participate meaningfully and effectively in environmental, natural resources, and land use decision making or governance. Research on participatory preferences and the fit of participatory processes to participant needs shows that people prefer many different types and means of participation in planning and program design, implementation, and enforcement, and that there is no "one-size-fits-all." Moreover, most governance processes are iterative, with many different decisions being made and remade over time. One-time opportunities to participate formally (e.g., in hearings) are not adequate to ensure full and meaningful participation in how environmental and resource decisions actually get made. Moreover, the use of formal legal processes can facilitate informal collaborative processes. For example, in some cases, litigation escalates conflict and fails to solve environmental problems fairly, but in other cases, litigation can stimulate opportunities for under-represented groups to participate in governance and better multi-participant collaborative problem-solving in the long run. Participatory processes should be assessed against the preferences of participants and people who would like to participate, and should be assessed for diversity of methods over time.

Fifth, use adaptive planning processes for governance where planning is desired or legally mandated. Although scientists and resource managers often prefer adaptive management processes for complex management of ecosystems and related natural resources, there is a misperception that the kind of flexibility and experimental learning that characterize adaptive management are inconsistent with planning. However, planning is often necessary for public goal-setting, compliance with legal requirements, and incorporation of environmental-justice principles into decisions. Fortunately, there is a well-developed theory and practice of adaptive planning, which integrates adaptation to changing conditions into planning processes. In fact, I will be teaching an online, six-week, asynchronous professional-development course in Adaptive Planning and Resilience through the University of Louisville, beginning in October 2015. This course is being developed in order to meet a need for both environmental/natural-resources/land-use governance professionals and leaders/members of historically marginalized communities to develop knowledge and skills in adaptive planning. As new conditions, disasters, and disturbances affect communities and institutions, plans must be flexible enough to adapt. An environmental-justice strategy would focus on enhancing the planning capacity of vulnerable communities.

Sixth, all federal, state, and local governance processes for the environment, natural resources, and land use should include feedback loops that enable learning and adaptation. Feedback loops involve continual monitoring of management actions and plan implementation, assessment or analysis of monitoring data, identification of key lessons learned, and changes to (adaptation of) plans, policies, programs, and management activities to incorporate the lessons learned. Learning includes both expert learning (e.g., scientific learning) and public learning (e.g., social learning). An environmental-justice strategy requires feedback loops that evaluate effects of environmental, natural resources, and land use decisions and actions on marginalized or vulnerable groups. However, it also requires involving these groups in monitoring, assessment, learning, and adaptation. Diverse participation in feedback loop processes is essential. Moreover, we need methods and tools by which these groups and communities can develop their own feedback loops and communicate the information to various decision making entities.

I hope that these comments are useful to you and the EPA as you develop and implement a final EJ 2020 Action Agenda Framework. Thank you for all that you do to advance and seek environmental justice. Please let me know if you have any questions. All the best, Tony

Tony Arnold
Boehl Chair in Property and Land Use
Professor of Law
Affiliated Professor of Urban Planning
Ph.D. Faculty in Urban and Public Affairs
Chair of the Center for Land Use and Environmental Responsibility,
University of Louisville

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Visit the Law School's microsite: www.brandeis.is

July 14, 2015

Dr. Charles Lee
Deputy Associate Assistant Administrator for Environmental Justice
USEPA, Office of Environmental Justice (2201-A)
1200 Pennsylvania Avenue, NW Washington, DC 20460

Dear Deputy Associate Assistant Administrator for Environmental Justice Lee,

On behalf of the Union of Concerned Scientist's 450,000 members and supporters, we are writing in support of the EPA's efforts to advance environmental justice through its programs, policies and activities in accordance with Title VI of the Civil Rights Act of 1964. We strongly believe that environmental sustainability and environmental justice can and must go hand-in-hand, and that over the long term one cannot be achieved without the other. We welcome the opportunity to provide input on the draft EJ2020 Action Agenda framework and would like to highlight opportunities to strengthen the framework.

UCS recommendations:

1. To ensure a more robust incorporation of environmental justice considerations in EPA policies, they must be made a key required component from the beginning of a rulemaking process or permitting action and not just a possibility, afterthought or late-stage add-on. The complexity and importance of EJ issues cannot be adequately addressed without devoting sufficient time, attention and resources to them throughout the rule-making process.
2. Environmental Justice analyses of major new rules must be made mandatory, and done as part of, or alongside, the regulatory impact analysis (RIA) as part of the proposed rule. If there is an Advanced Notice of Proposed Rulemaking, the agency should explicitly solicit comments on how to incorporate EJ concerns in the proposed rule. Simply using a traditional cost-benefit analysis to evaluate the impact of a rule does not appropriately account for significant impacts on certain communities that may not be easily monetized or may be undervalued. We welcome the EPA's *Guidance on Considering Environmental Justice During the Development of Regulatory Actions* and

look forward to the finalization of the *companion Draft Technical Guidance for Assessing EJ in Regulatory Analysis* (EJTG) in 2015. We support many of the recommendations made by the Scientific Advisory Board in April 2015 to strengthen the EJTG.¹ In particular, we reiterate the need to: provide clear, specific options, and examples of best practices for EJ analyses; tighten the EJTG to convey a stronger commitment to the requirement for EJ analysis instead of erring on the side of flexibility; and develop guidance on how to incorporate and evaluate cumulative impacts.

3. If a rule has already been proposed at the time that this framework is finalized, the EJ analysis should either be done for the final rule or required as part of the state implementation process. The EPA should extend to states the requirement to take into account EJ considerations in their state implementation plans, and provide clear guidance on how to do so.
4. The Agency must provide clear, actionable guidance for mandatory implementation and reporting requirements for EJ analyses for all major agency actions, else there is a risk that environmental justice will continue to be treated as an optional consideration rather than an integrated component of rulemaking and permitting. Agency staff and programs should be held accountable for meeting these mandatory requirements. The draft framework does not provide enough specific guidance for actions that *must* happen, and instead leaves a lot of room for interpretation and much flexibility for implementation.
5. The EPA should provide more guidance on which of the existing, or newly developed tools, trainings, and resources are most appropriate for conducting EJ analyses in specific scenarios, as well as offer advice on follow-up monitoring and reporting to assess progress toward achieving identified goals. The recently released Environmental Justice and Mapping Tool (EJSCREEN), and the California Environmental Protection Agency's environmental health screening tool, CalEnviroScreen, [C-FESRT](#) and [T-FESRT](#), are good examples that should be replicated and used nationwide. The new EJSCREEN tool is a step in the right direction but needs further development and strengthening, for example, enabling users to compare data across locations and over a period of time so that progress on EJ efforts can be tracked. Every effort should be made to ensure that data underlying this tool stays up-to-date, is

¹ SAB Review of the EPA's Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis Online at [http://yosemite.epa.gov/sab/sabproduct.nsf/02ad90b136fc21ef85256eba00436459/2D0917AD730593CF85257E3100505062/\\$File/EPA-SAB-15-008+unsigned.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/02ad90b136fc21ef85256eba00436459/2D0917AD730593CF85257E3100505062/$File/EPA-SAB-15-008+unsigned.pdf)

user friendly and accessible, and that users understand the utility and limitations of the tool.

6. EJ analyses and tools must take into account the cumulative burden of multiples stressors faced by EJ communities. Communities of color in the U.S. disproportionately reside in neighborhoods with higher cancer risk from toxic air contaminants,² higher exposure to traffic-related criteria air pollutants,³ and more environmentally hazardous sites.⁴ This unequal distribution of exposures appears to contribute at least in part to health disparities between racial and ethnic groups in environmentally-sensitive diseases such as cancer and asthma.⁵ It is particularly important to evaluate the cumulative impacts of multiple environmental stressors, rather than look narrowly at the single, latest one being considered, and also to evaluate them in the context of socioeconomic stressors that make communities more vulnerable.⁶
7. An EJ screening tool must routinely be applied to all EPA rulemaking, policies and actions, including permitting actions such as permits for siting toxic landfills as well as for monitoring, compliance and enforcement. We look forward to the finalization and implementation of guidelines for *EJ analysis for EPA permits* as soon as possible.
8. The implementation of the EPA's EJ action agenda must be outcome-oriented, and accompanied by clear markers of progress and metrics of success. The metrics should be developed in collaboration with EJ partners so as to ensure that their priorities are represented and closely tracked. In this regard, we support the outcomes-oriented approach requested in the

² Morello-Frosch R, Pastor M, Sadd J. Environmental Justice and Southern California's "Riskscape" The Distribution of Air Toxics Exposures and Health Risks among Diverse Communities. *Urban Aff Rev.* 2001;36(4):551-578. doi:10.1177/10780870122184993.

³ Clark LP, Millet DB, Marshall JD. National Patterns in Environmental Injustice and Inequality: Outdoor NO₂ Air Pollution in the United States. *PLoS ONE.* 2014;9(4):e94431. doi:10.1371/journal.pone.0094431.

⁴ Mohai P, Saha R. Racial Inequality in the Distribution of Hazardous Waste: A National-Level Reassessment. *Soc Probl.* 2007;54(3):343-370. doi:10.1525/sp.2007.54.3.343.

⁵ Brender JD, Maantay JA, Chakraborty J. Residential Proximity to Environmental Hazards and Adverse Health Outcomes. *Am J Public Health.* 2011; 101(S1):S37-S52. doi:10.2105/AJPH.2011.300183.

⁶ Morello-Frosch R, Zuk M, Jerrett M, Shamasunder B, Kyle AD. Understanding the Cumulative Impacts of Inequalities in Environmental Health: Implications for Policy. *Health Aff (Millwood).* 2011;30:879-887. doi:10.1377/hlthaff.2011.0153.

comments submitted by the Environmental Justice Leadership Forum on Climate Change.

9. The EPA must engage proactively and in an ongoing way, including during the rulemaking process, with stakeholders from the environmental justice community, including holding action-oriented community listening sessions and workshops in locations e.g., in urban settings that are relevant and accessible for the EJ community, building capacity, sharing tools and know-how, and taking proactive steps to incorporate feedback from stakeholders. Disadvantaged communities may not have the resources to engage alongside larger organizations or well-funded industry interests but it is incumbent on the EPA to seek out and elevate their perspective.
10. The Agency should make a long term commitment to training its staff and dedicating resources to implementing its EJ action agenda across the breadth of Agency actions, particularly related to significant statutes like the Clean Air Act and Clean Water Act. The Agency should highlight to the Administration and Congress the importance of dedicated funding to fulfill these goals, along with attendant staffing needs to continually update EJ tools, engage with stakeholders, deploy resources, train users, and undertake capacity building in communities, as requested.

Thank you for taking our comments into consideration as you work toward finalizing this draft framework.

Sincerely,



Andrew A. Rosenberg, Ph.D.
Director, Center for Science and Democracy



Angela Ledford Anderson
Director, Climate and Energy Program

KATHY CASTOR
14TH DISTRICT, FLORIDA

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ENERGY AND COMMERCE
SUBCOMMITTEE ON HEALTH

SUBCOMMITTEE ON
ENERGY AND POWER

SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS

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June 15, 2015

The Honorable Regina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, N.W.
Washington, DC 20460

RE: Environmental Justice 2020

Dear Administrator McCarthy:

I applaud the Environmental Protection Agency (EPA) for its commitment to “environmental justice” and for crafting the *draft EJ 2020 Action Agenda (EJ 2020) framework*. In response to the release of the draft EJ 2020 Action Agenda and request for comments, I convened meetings with elected and community leaders from my district to solicit their input. A list of the outstanding and knowledgeable Hillsborough County and Pinellas County leaders who participated is provided below. I have summarized our comments and concerns and EPA’s initiatives and policies, including support for a cross-agency strategy to benefit economically-distressed communities.

Enhance Grants to Local Communities for Job Training & Education - When granting funds and assistance to communities to reduce or eliminate pollution, the EPA should focus on training, educating and employing people in the affected communities to do the work, including local small businesses. Environmental workforce development and job training grants could employ individuals in the affected areas in the fields of hazardous and solid waste management, assessment, and cleanup associated activities, chemical safety, emergency response, integrated pest management, and waste and stormwater management. When conducting Brownfields and Superfund redevelopment, job training and employment for individuals in the affected disadvantaged communities would put people and places back to work and create more sustainable communities. Training folks in environmental services, health and safety would also ensure a steady supply of labor for future oil or coal ash spills and the resulting restoration activities.

Furthermore, reducing air pollution from power plants through energy conservation and renewable energy could create thousands of local jobs. Energy conservation focuses on making buildings and homes more energy efficient and these investments require a broad range of expertise in different industries. Energy conservation will increase demand for electricians, heating/air-conditioning installers, carpenters, construction equipment operators, roofers, insulation workers, industrial truck drivers,

construction managers and building inspectors. More solar energy would increase demand for installation professionals, manufacturing, sales and distribution and project developers. We respectfully urge you to focus environmental justice, education, job training and other environmental remediation grants in low income communities and to provide job training and jobs to individuals in those communities. We also request that the EPA consider leveraging its resources with Community Redevelopment Areas where possible. Further, we suggest that the EPA consider making grants available directly to local governments and non-profits agencies in addition or in lieu of recalcitrant state governments.

Expand Brownfields- There are over 378 Brownfield sites in the state and of Florida's 50 highest hazard-ranked Superfund sites, Hillsborough County has the two highest-ranked sites and Pinellas County has one site. Incorporating Brownfield redevelopment into environmental justice initiatives and prioritizing redevelopment in low income communities, as well as providing job-training, education and employment to the people in these targeted areas, would help to both stem the issue of poverty and create lasting, positive economic improvements in the areas surrounding Brownfield sites. Success in developing these sites can already been seen in both Hillsborough County and Pinellas County, with redevelopment being strategically used to attract investors and, in turn, jobs to impoverished areas.

For example, when the accreditation of the Old Mercy Hospital, located in a minority populated section of St. Petersburg, was in jeopardy due to a perception of environmental contamination with the site, the City of St. Petersburg and the EPA stepped in to renovate and upgrade the building. The project not only created 80 jobs, but it saved the existing jobs from the hospital and the surrounding jobs it supports. In Tampa, we have a great example of the growing "Healthfields" movement, improving access to health and healthcare through Brownfield redevelopment. The Tampa Family Health Center in East Tampa provides services to 16,500 patients a year in a severely underserved area. We need to invest much more in Brownfield redevelopment, especially in the creation of health care facilities, recreational opportunities, housing and access to healthy food in places where these resources are scarce. Robust support for Brownfield redevelopment will clean up sites, create jobs and improve health.

Strengthen Clean Air Monitoring - Estimated lifetime cancer risks from hazardous air pollutants in Florida are highest for Latinos and African Americans, especially those in the lower income categories. In Hillsborough County, low income families are numerically worse off than the rest of the population in the county for one or more of the following environmental burdens: cancer risks from hazardous air pollutants, releases of toxic chemicals, superfund sites, facilities emitting smog and particulates. With an increase in residential development near industrial areas in both Hillsborough County and Pinellas County, increased monitoring of utility and other industrial sulfur dioxide emissions to ensure compliance with standards are necessary, particularly in light of potential SO² related health issues.

Increase Drinking Water and Clean Water Revolving Loans – Traditionally underserved communities have historically lacked infrastructure modernization. Many of them have old water pipes that may contain lead, which can damage the central nervous system and impact a child's learning abilities. Increasing investments in Drinking and Clean Water State Revolving Funds in low income

communities, especially those with a history of contamination, would aid in further planning, designing, and constructing water pollution control facilities to counteract water quality issues experienced within those communities.

Combine Clean Power Plan with carbon reduction strategies and energy efficiency - In 2013, total greenhouse gas emissions were the equivalent of over 128 million metric tons of carbon dioxide, which contributes to climate change. While work reducing carbon production at the local level is advancing, implementation of the Clean Power Plan in conjunction with local efforts will maximize potential reduction of carbon emissions. This can be achieved by reducing carbon dioxide pollution from power plants through energy efficiency and renewable energy and providing and prioritizing job-training and employment in the associated occupations such as electricians, insulation workers, installers and carpenters to individuals in low income communities. Furthermore, the EPA could assist local governments in reducing carbon pollution by increasing the Diesel Retrofit grants, assistance in smart growth planning and alternative modes of transportation.

Target Gulf of Mexico Restoration Initiatives – With billions of dollars expected to flow to the Gulf Coast Restoration Trust Fund, per the historic RESTORE Act, a once-in-a –lifetime opportunity to revitalize the Gulf of Mexico, states and local governments should consider restoration and economic development projects in disadvantaged communities. EPA and its partner agencies should train individuals in low income communities in cleanup associated activities and environmental restoration. In addition, the EPA should consider setting aside a portion of the work hours to be performed by disadvantaged workers. The RESTORE Act calls for grants to be used for environmental restoration, economic development, research, science, observation, monitoring and technology. We encourage EPA and other RESTORE Act participants to keep in mind our neighbors in disadvantaged communities, when proceeding with these initiatives.

Strengthen the Toxic Release Inventory - The economy of the State of Florida depends on a clean and healthy environment and on a safe and healthy workforce and citizenry. While EPA and the State of Florida have made progress over the past decade in reducing on-site toxic releases, there is great room for improvement. As you know, the Toxic Release Inventory (TRI) tracks certain toxic chemicals from industrial facilities that pose a threat to human health and the environment. Florida ranks 4th in the country with reported underground injection of TRI chemicals and 7th with reported releases of TRI chemicals to the environment. However, TRI does not include many toxic chemicals nor does it include other industries that release toxic chemicals.

No child or family should suffer disproportionately because they do not have the means to move to a neighborhood that is not polluted or their community traditionally did not have the power to fight the siting of noxious or dangerous uses in their neighborhood. I trust that the EPA through the EJ 2020 Action Agenda, will continue to champion improvements to environmentally overburdened and underserved communities. Too often, these communities have been abandoned by a lack of investment and environmental protection, causing a dearth of job opportunities and health disparities. By educating, training and hiring disadvantaged workers to clean up contaminated sites and develop them into health

centers, parks, urban farms or housing, we can begin to address the underlying issues plaguing these deprived communities. I look forward to working with you as you develop this important initiative. Our community leaders and I invite you to Tampa and South St. Petersburg to view the investment opportunities that await funding and to learn about our CRA efforts. If you have any questions or comments, please feel free to contact me or my Legislative Assistant, Javier Gamboa at (202) 225-3376 or javier.gamboa@mail.house.gov.

Sincerely,

A handwritten signature in black ink that reads "Kathy Castor". The signature is written in a cursive, flowing style.

Kathy Castor
U.S. Representative
Florida-District 14

Hillsborough County Leaders:

- Miles Ballogg – Brownfields Practice Leader, Cardno TBE Group
- Hooshang Boostani – Hillsborough County Environmental Protection Commission
- Jeanette Fenton – West Tampa Community Redevelopment Area
- Dr. Richard Garrity – Hillsborough County Environmental Protection Commission
- Alphanette Jenkins – on behalf of Hillsborough County Commissioner Les Miller
- Ed Johnson – Manager, East Tampa Community Redevelopment Area
- Dewayne Mallory – on behalf of FL Rep. Ed Narain
- Cedric McCray – on behalf of Tampa City Councilman Frank Reddick
- Mario Nieto – on behalf of FL Senator Arthenia Joyner
- Paula Noblitt – Hillsborough County Environmental Protection Commission
- Carlo Ramos – on behalf of FL Rep. Janet Cruz
- Walter Smith – President of W.L. Smith & Associates Consulting Inc. and NAACP

St. Petersburg Leaders:

- Mario Farias – Farias Consulting Group
- Winnie Foster – Sojourner Truth Center
- Sandra Gadsden- Edible Peace Patch Project
- Coy LaSister- Executive Director of Assisted Living Community Gardens, Inc
- Tony Macon- President, Deuces Live
- Darden Rice – St. Petersburg City Council
- Frank Wells – World Power & Water
- Dr. Yvonne Scruggs-Leftwich- President/CEO, Center for Community & Economic Justice



Mail:



July 14, 2015

Charles Lee
Deputy Associate Assistant Administrator for Environmental Justice
USEPA, Office of Environmental Justice (2201A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Deputy Associate Assistant Administrator Lee:

Thank you for the opportunity to review and comment on the EJ 2020 Framework document, which builds on EPA's Plan EJ 2014.

EPA is correct in claiming progress on environmental justice during the last several years. These are worthy accomplishments.

- EPA has completed guidance and policy documents related to several areas including development of rules.
- EPA has considered how to use enforcement tools and actions to reduce exposures in highly impacted communities. Increased enforcement of existing statutes and rules is probably the fastest way to achieve actual gains in environmental quality for impacted communities. Such efforts should be continued and increased.
- EPA has also allocated resources to assist with community projects of different types in many areas. This reflects an understanding of the importance of place to health and the need to work on community needs and priorities.
- Finally, EPA has after many years released the EJ Screen tool.

At the same time, our understanding of the significance of the interaction of multiple environmental factors and conditions along with both susceptibility of individuals and groups and vulnerability of communities has only increased. Research studies and screening tools such as the Cal EnviroScreen show co-occurrence of multiple adverse environmental factors and conditions, enhanced vulnerability, as well as the lack of positive environmental attributes such as parks, open space, and even food stores in highly impacted communities. This demands a focused and integrated response from US EPA.

While the EJ2020 document has many positive themes, it does not seem to provide a strategy worthy of the challenge. It identifies topics and areas in very general ways and does not indicate how EPA will

move forward on issues that have been difficult for it to address in the past. There do not seem to be any conceptual or practical breakthroughs reflected in this document. Five areas of particular concern are noted here.

1. Systematic approaches are overdue –

Addressing environmental justice requires **systematic approaches** that allow the agency and the public to ascertain how much of the problem has been identified, how much has been addressed, and what is left to be done.

One important step would be the development and implementation of **metrics** that can allow the agency and the public to see where we stand, where progress has been achieved, and where it has not. EPA recognizes the significance of metrics with its clean air policies, for example, and produces documents and information sources that demonstrate the status of air quality, improvements that have been made, and the challenges that remain. This allows us to see where we stand and what results have been achieved from resources invested.

The new strategy does not seem to be offering any significant gains in developing a systematic approach to assessing, documenting, tracking, and addressing environmental justice issues. This is needed at this time and is feasible to do.

2. It's more than one rule –

The 2020 framework retains an emphasis on addressing environmental justice in each of the rule-making processes run by the agency. This is certainly important as far as it goes. However, as we know very well, one of the essential elements of environmental justice is to address the **cumulative burden** that falls on communities. This comes from a combination of all of the environmental factors and conditions, along with the susceptibilities and vulnerabilities of a community and its people. The agency does not seem to have advanced in its thinking about how to do this.

We need strategies that address **multiple pollutants and outcomes** rather than simply tinker with the rule for each pollutant one at a time.

3. We can work for multiple results or benefits –

Environmental health and quality policies in the time of sustainability are evolving toward actions that can improve multiple parameters. For example, emphasizing active transport strategies have multiple benefits that include reductions in combustion that improves air quality, reduction in greenhouse emissions, and positive benefits for health. Clean energy strategies that reduce use of combustion sources also have multiple benefits for the environment, health, and sustainability. Investment in such strategies in highly impacted communities can also bring greater economic resources to people who need them. Deeper consideration of **broader multi-benefit strategies** would bring significant gains to highly impacted communities.

4. EPA must update methods to match new science –

To address environmental justice through science related approaches, through a new research strategy for example, will require EPA to **update even some long-used approaches** to incorporate new science. This seems to be lagging at the agency in areas of rule making such as the rules for categories of air toxics.

5. Engagement with communities must continue to improve –

Finally, while the document emphasizes engagement with communities, we still see too many examples where communities are put through the ringer to achieve an outcome that protects or improves public health. All too often the state and federal agencies let the more politically powerful entities call the shots, leaving the communities to do all of the heavy lifting to get sound remedies or results.

EPA has made some improvements in this area, but greater attention to engaging with communities and working with them is needed and probably always will be. Metrics are important here as well so that EPA can better understand itself how much of the need for addressing environmental health and environmental justice issues in communities is being met.

In closing, I know that many dedicated people including you have worked tirelessly for many years to better understand and address environmental justice in the face of an institution that is not particularly responsive to these concerns. The fact that there is more to do does not dishonor the sincere efforts that have been made by many people over many years.

Yet, the needs of the people demand more from the agency.

Thank you for your consideration of these comments. They reflect my views and not those of any institution or funder.

Very truly yours,

Amy D. Kyle, PhD MPH
Associate Adjunct Professor

June 5, 2015

Re: Comments on the Draft EJ 2020 Action Agenda Framework

Sent via: ejstrategy@epa.gov

Dear whom it may concern at the US Environmental Protection Agency:

On behalf of the UCLA Luskin Center for Innovation, I am pleased to submit this comment letter regarding the Draft EJ 2020 Action Agenda Framework. This letter is a continuation of the University of California, Los Angeles' engagement with the US EPA around issues of environmental justice (EJ).

The UCLA Luskin Center commends the EPA for a solid Draft EJ 2020 Action Agenda Framework that contains many critical components. We recognize that it well designed to build upon Plan EJ 2014 and in general advance the progress that the agency has made since the Executive Order 12898 on environmental justice.

During development of Plan EJ 2014—a time when EPA was ramping up efforts to systematically incorporate EJ considerations into its core activities—UCLA received a grant from EPA to collaboratively organize “Closing the Environmental Justice Gap: A Workshop on Advancing Evaluation Methods.” This event held at UCLA in 2011 brought together approximately 100 researchers and environmental justice leaders from across the nation to develop the sub-field of EJ policy and program evaluation. The result of the workshop was the report [Pathways to Environmental Justice: Advancing a Framework for Evaluation](#). This report/tool lays out a framework for regulators, grantees, researchers, and community members interested in the effective design and implementation of EJ policies and programs. It built upon existing EPA tools, such as the [Guidelines for Evaluating an EPA Partnership Program](#), and tailored these tools for an EJ context.

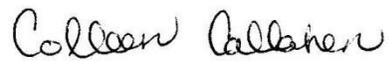
Now more than ever it is important to demonstrate EJ progress at both national and local levels. Thus, we were heartened to see that the Draft EJ 2020 Action Agenda Framework, Section III, focuses on accountability, developing indicators of success, and measuring and demonstrating outcomes. EJ 2020 should provide additional tools that EPA regional officers, grantees, researchers, and community stakeholders can use for planning, evaluating, and adjusting EJ programs and policies to ensure accountability and impact.

As such, we recommend that EPA leverage the report [Pathways to Environmental Justice: Advancing a Framework for Evaluation](#). It could be one of your foundational tools to help stakeholders develop indicators of success and measure outcomes as part of a systematic planning and evaluation approach involving logic models and performance management that will lead to results that can be documented in a rigorous way. We welcome the opportunity to help

EPA utilize this report in the EJ 2020 Action Agenda, and even update it if appropriate to best meet your needs moving forward.

In conclusion we again commend you on the release of the Draft EJ 2020 Action Agenda Framework and look forward to next steps.

Sincerely,

A handwritten signature in cursive script that reads "Colleen Callahan".

Colleen Callahan
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From: Vanessa Frazier <vfrazier_hcb@yahoo.com>
Sent: Thursday, June 11, 2015 12:05 PM
To: ejstrategy
Cc: Moses, Althea
Subject: EPA comment on EJ strategies 2020

Hello:

As an Environmental Justice Stakeholder, I am writing to provide feedback on EPA Extended Public Comment Period on the Draft EJ 2020 Action Agenda.

I have concerns about "meaningful involvement" within the process. The strategy is just a strategy that is used to a certain level and it falls off the radar.

I have attended many meetings and workshops, in which some were not EPA, but what I learned was that "quality of life" written in grant guidance is a buzzword that means, "it does not include African-Americans". This comment did not come from EPA or their partners, but I have read it in EPA documents - (quality of life) - This is disturbing. I do know of other buzzwords that cause me to be dismayed. I have been a member of EPA listserv for over 15 years. I take all of the information from EPA to heart and work hard to implement it. Through the EPA Brownfield Cleanup grant Cooperative agreement for the City of Howardville, which speaks of local source hiring, prevailing wage, and apprenticeship to "Ensure" the affected population would benefit, has been a struggle. I had to meet with the Attorney and new project officer, (not knowing that I was in trouble).

TAB - Region 7 was pulled into the meeting because they failed to "make me understand". When I became aware of what was going on, I advised my project officer and attorney that TAB did talk to me, but I was the one pushing it and I passed the attorney a paper and stated, this is where I got it from.

It talked about a strategy "Ensuring" the benefit of the affected people, that was used in the Job Training grants, but the strategy was upgraded to include ALL of EPA programs. (source: EPA,2008)

We quickly got on the same page and everything was fine. I felt bad because I was in trouble and I didn't know it. I explained to them that I would never do anything intentionally to hurt EPA or their programs, I love the organization and what it stands for.

On a personal and confidential note: I think I have more experience and knowledge of EPA and their programs, than some of the staff. (meaning some staff assigned to me, may not have been aboard in 2008, when that strategy was implemented.

This include concerns about grant reviewers, who not only do not know the region, but express doubt that a strategy that be accomplished, even when documentation was provided that it had been done before, and not only that, but they proceeded to deduct points, which if anything, according to the **guidelines**, it should have been a neutral score, and they made statements that were not true and deducted points for that. The rules for grievances state, the grievance cannot be based on points. I think that rule is an "embedded barrier" and the reviewer qualifications should be reviewed. Maybe I think too much, but I am giving an honest and heartfelt opinion.

One last bit of confidential information, I often get questions, and questions about hearing from Althea. These questions come from people from other Departments of EPA. Maybe that's a good thing, but it makes me feel like I am being investigated. Whatever I do comes from EPA, I tell them that I have known Althea since 1998, I saw and talked to her in 2005, 2008 and 2011. It has been 4 years. I would never do anything to hurt, harm or

compete at an unfair advantage to gain anything. Nor do I believe that Althea would do that and for the record, it has never happened. I am a giver and helper of the Environment, doing it EPA way.

With that being said, my comments below regarding EJ 2020 Action Agenda should be viewed with the above concerns in mind.

OF the 3 goals, number 1 is extremely important

1. "**Deepen** Environmental Justice **PRACTICE** - I am starting to feel that some of the documents are just "words on paper"

I feel the cooperative agreement that invokes EJ strategies should be **honored**. I also feel that problems, involving implementation of EJ strategies causes delays in scheduling and put us way off course of our targeted deadlines.

I believe in EPA and all of its programs, of which we can truly benefit if we are allowed to participate in a real and true "meaningful involvement". I am a person who take words and put them into action, they grow legs and walk off the paper. I like to see the outcomes of our efforts and goals. When we struggle with these issues, it causes depression and make you reluctant to apply for additional grants.

I have been accepted (very competitive) to a Community Research cohort, to help us with data gaps when we get ready to apply for a Federally Qualified Community Health Center, for the school. The class is in St. Louis, every thursday, through graduation, August 20. So I will be leaving in route to St. Louis around 2:30. I don't have to have a followup, I just want to make sure that I can tune in to EJ dialogue when the opportunity arise.

I am excited about the EJ meeting in Chicago, I plan on attending. I am not on the registration list right now. The city had to send a check for my registration, but I should be on the attendee list shortly. Ok, I gotta put on my productivity hat and get moving.

Be Blessed today and thank you for the opportunity to chime in.

Vannessa Frazier
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From: Piazza, Millie (ECY) <mpia461@ECY.WA.GOV>
Sent: Tuesday, July 14, 2015 8:10 PM
To: ejstrategy
Cc: Grass, Running
Subject: Public comment on the Environmental Protection Agency's draft EJ 2020 Action Agenda framework

Re: Public comment on the Environmental Protection Agency's draft EJ 2020 Action Agenda framework.

Dear Office of Civil Rights:

The Washington State Department of Ecology appreciates the opportunity to submit comments on the EPA's draft EJ 2020 Action Agenda framework. Ecology has a longstanding commitment to environmental justice, and continues to develop strategies and actions that support Title VI of the Civil Rights Act and advance environmental justice for Washington communities.

I want to thank you for developing a comprehensive framework that provides insight into the EPA's EJ next steps, and serves as a practical model for those outside of the EPA to consider. As the Action Agenda advances, I am especially interested in further dialogue and details on the following:

I. DEEPEN ENVIRONMENTAL JUSTICE PRACTICE WITHIN EPA PROGRAMS TO IMPROVE THE HEALTH AND ENVIRONMENT OF OVERBURDENED COMMUNITIES

- Ongoing efforts to share information on the EPA's internal EJ integration processes are greatly appreciated. As a state partner, opportunities to learn about the implementation successes and challenges are invaluable.
- Clarity about the opportunities and implications of the Action Agenda for state partners is anticipated (e.g., details on "engagement with states" when building EJ into EPA permitting).
- Clarification and development of a standardized method on how to "consider impacts on overburdened communities."

II. COLLABORATE WITH PARTNERS TO EXPAND OUR IMPACT WITHIN COMMUNITIES

- Continued and varied forms of knowledge dissemination to government partners and the public: The EPA's EJ Analysis Seminar Series is an excellent example of both improving transparency and broadening participation in a progressive EJ conversation. As a state agency EJ staff of one, I rely on communication, tools, and resources from my EPA Region 10 EJ colleagues. Insight into federal EJ work supports and advances local efforts. Possible topics to explore are training on NEPA EJ analysis, exploration of EJSCREEN and CDC's Tracking Network, other federal agency EJ steps and innovations.
- Increase opportunities to leverage resources and build community networks on national EJ challenges (e.g. CAFOs).

III. DEMONSTRATE PROGRESS ON OUTCOMES THAT MATTER TO COMMUNITIES

- Development of national metrics to demonstrate EJ and health equity progress. Federal movement to institute accountability will serve as a model for local and state decision-makers.

VI. RELATED EFFORTS

- We anticipate the publication of the long-term Office of Civil Rights Strategic Plan. Title VI compliance raises challenging questions on how recipients of federal financial assistance can implement actions to meet Title VI requirements and how compliance is determined. Ecology encourages and anticipates clarification, guidance, training, and capacity building from the EPA that will support meeting this federal requirement.

Thank you very much for your leadership on strategically addressing environmental injustice.

Sincerely,

Millie Piazza, Ph.D.
Environmental Justice Coordinator
WA State Department of Ecology
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West End Revitalization Association – WERA

PO Box 661, Mebane, NC 27302

Email: wera1usa@earthlink.net – Omega Wilson’s Cell: [REDACTED]

[Are you getting the basic amenities your taxes paid for?](#)

DATE: **April 15¹**, 2015

COMMENTS and RECOMMENDATIONS

RE: DRAFT EPA EJ-2015 to 2020 Framework

It positive to see that the new Environmental Justice Framework has reach President Obama’s Cabinet level support. In August 2011, President Barack Obama approved the Environmental Justice Memorandum of Understating (MOU) with the secretaries of 18 branches of the federal government signing this historic MOU.

The following areas of national concern were quoted in the President Obama’s EJ MOU August 2011:

- (1) implementation of the National Environmental Policy Act (NEPA);*
- (2) implementation of Title VI of the Civil Rights Act of 1964, as amended;*
- (3) impacts from climate change; and*
- (4) impacts from commercial transportation and supporting infrastructure (“goods movement”).*

These efforts will include interagency collaboration. At least every three (3) years, the Interagency Working Group will, based in part on public recommendations identified in Annual Implementation Progress Reports, identify important areas for Federal agencies to consider and address, as appropriate, in environmental justice strategies, annual implementation progress reports and other efforts.

- A. Since August 2011, many dedicated and long suffering community and tribal leaders, and their collaborating legal and research partners, have pushed for stronger implementation of environmental justice in NEPA as its relates to Environmental Impact Statements (EIS) that support permitting for land use, zoning, and site construction of government and industrial facilities that distribute and/or emit air/water/soil pollutants. **Recommendation: Include and address this glaring omission in the EJ-2020 Framework to strengthen implementation of environmental justice in NEPA as its relates to Environmental Impact Statements (EIS) that support permitting for land use, zoning, and site construction of government and industrial facilities that distribute and/or emit air/water/soil pollutants.**

- B. Since, August 2011, the Title VI Alliance for Accountability and Transparency (collaborative of EJ community leaders, attorneys, researchers, and more) has pushed for a “real” response to Title VI compliance to the EPA’s Office of Civil Rights. It still appears that EPA’s Office of Environmental Justice is several steps ahead of EPA’s Office of Civil Rights in addressing Title VI complaints filed by and on behalf of environmental justice communities and tribal areas that have long overdue in redress and corrective action at the federal, regional, and state levels. **Recommendation:** The reference of Title VI in the Draft EJ-2020 Framework must include more than just “words”. **Include measurable outcomes at the federal, regional, and state level on “Interagency and Intergovernmental Solutions” basis. Move Interagency Working Group (IWG) activities from “listening sessions” to “solutions workshops” with federal and state agencies at various level of government providing the necessary resources and corrective actions measured at the community and tribal levels.**
- C. April 2015, it was great to hear President Barack Obama push climate change issues as infrastructure and public health concerns on national and international news. **Recommendation: Include in the EJ-2020 Framework President Obama’s commitment to have press conferences that the push for compliance and enforcement of civil rights, public health, and environmental laws that support compliance and enforcement for environmental justice. A specific would be sanctions on states’ funding when there is not full compliance, enforcement, and transparency before or after releasing billions in federal taxpayers’ money to “recipients”.**
- D. Presidents Obama’s 2011 EJ Memorandum of Understanding highlights “goods movement” (*impacts from commercial transportation and supporting infrastructure*). Yet, there is not one single mention of Goods Movement in the Draft EJ-2020 Framework! I, Omega Wilson, was one the community perspective members of EPA National Environmental Justice Advisory Council (NEJAC) that worked on Goods Movement Recommendations from 2007 to 2010. **Recommendation: In respect for President Barack Obama’ Environmental Justice Memorandum of Understanding – August-2011 and the 18 federal branch secretaries who signed on, include in the EJ-2020 Framework a timeline and interagency appropriations for implementation and enforcement of the EPA NEJAC Goods Movement Recommendations – 2009. Include regional and state staffing with operating guidelines for compliance and responses to local complaints.**
- E. The EPA EJ 2020-Framework is missing so many of the necessary structural components that support the long-term protection and corrections related to air, water, and soil quality that improve quality of life. The national and international growth model has to address risky and hazardous ways economies and populations grow. **Recommendation: Include in the EPA EJ 2020-Framework language and strategies that address impacts that EPA’s National**

Environmental Justice Advisory Council(s) have worked on for two decades:

- 1) Goods Movement (air, marine, rail, and highway corridors),**
- 2) Agribusiness (confined animal feeding operations, pesticides, land / watershed / wetland preservation, and water resources),**
- 3) Energy (coal mining industry, coal ash, hydraulic fracking)**
- 4) Solid Waste (landfills, recycling, ground water contamination)**

It is regrettable and un-excusable for millions of dollars and thousands of paid and volunteer human hours to have been invested on EPA NEJAC recommendations and they are subsequently still being disregarded in the present and for future years.

I trust that these renewed recommendations find their way in the new EJ 2020-Framework.

Respectfully Submitted,

Omega R. Wilson

Omega R. Wilson, President / Project Manager - Founding Board Chair – 1994
West End Revitalization Association (WERA)

Background:

- ✓ President Barack Obama-Elect's Environmental Justice Forum – December 2008
- ✓ U.S. EPA's National Environmental Justice Advisory Council (NEJAC) 2007-2010
- ✓ U.S. EPA's Environmental Justice Achievement Award – 2008
- ✓ National Title VI Alliance for Accountability and Transparency 2011-Present
- ✓ North Carolina Environmental Justice Network 2000-Present
- ✓ Environmental Justice Advisor, Haw River Assembly Riverkeeper-NC 2010-Present

¹ **April 15**, 1889, Asa Philip Randolph was born. Randolph received numerous awards for decades of leadership in the civil rights, labor rights, and political rights movements. His contributions to what we call "goods movement" was documented as early as 1919 with the organization of African-American shipyard and dock workers at rail and marine ports and that connected to expanding highway corridors. One of Randolph's greatest railroad successes came in 1925 when he was elected a President of the Brotherhood of Sleeping Car Porters. In his senior years, Asa Philip Randolph was one of the close confidants, mentors, and strategists for Rev. Martin Luther King, Jr.'s efforts that resulted in the March on Washington of August 28, 1963, Civil Rights Act of 1964, and Voting Right Act of 1965. Amtrak named one of their best sleeping cars, Superliner II Deluxe Sleeper 32503, the "**A. Philip Randolph**" in his honor. "**A. Philip Randolph Pullman Porter Museum**" is in Chicago's Pullman Historic District.

From: William Geary <[REDACTED]>
Sent: Monday, June 15, 2015 5:25 PM
To: ejstrategy
Subject: Comments regarding the DRAFT EJ 2020 Action Agenda Framework

To The Environmental Justice Work Group at EPA re: the Framework for the EJ 2020 Action Agenda:

As the EPA structures the Framework for its EJ 2020 Action Agenda as the EPA's next overarching strategic plan for environmental justice and I would strenuously recommend that there is an urgent need for EPA to review its present policies concerning the imminent health risks posed by uncontrolled burning of used oil in space heaters within areas where blue collar employees are working. Because of the nature and economics of the automotive and industrial workplaces where this practice is employed and the general demographic of the lower income employees who are employed in those settings, these workplaces are generally in environmentally overburdened, underserved and economically-distressed communities and in lower income neighborhoods where the bulk of those workers reside.

The current EPA policy enabling the combustion of used oil in small space heaters – developed originally in the 1980's and 1990's – results in the emissions of toxic heavy metals such as zinc, cadmium, chromium and other harmful GHG's. With little or no emission controls, these space heaters produce nearly 90% more emissions than would occur if the used oil were re-refined for sustainable use, and often expose workers to other harmful carcinogens due to a lack of proper ventilation. EPA estimates this practice burns approximately 150 million gallons of used oil per year (EPA/625/R-94/010). Furthermore, with no way to police what other harmful materials may also be incinerated in those workplace space heaters, it is difficult to determine the compounded environmental and health impacts of such emissions on the blue collar employees working there and on the residents living nearby.

This practice is inconsistent with the technological and regulatory advances we have made in the United States since the 1980's- and 1990's and essentially constitutes an outdated Third World Practice in America at a time when we have been called to action to deter global warming. As far back as the Regan Administration, EPA Assistant Administrator Winston Porter expressed concern about the risks of space heaters and stated in part on September 22, 1988 – ***"...we are concerned about the risks posed by improperly maintained or operated spaces heaters"*** and he suggested a need to develop technical standards and regulatory measures to deal with those risks – ***"...and further evaluate regulatory options to address risks posed by space heaters."*** (RCRA Permit Policy Compendium, EPA/530-SW-91-0621, pp137-138).

As EPA moves its next plan toward environmental justice over the next 5 years it is time to give consideration to those economically distressed workers who have been denied environmental justice by toiling in workplaces that contain noxious emissions from space heaters at a time when it is no longer necessary to use those heaters as a source of heat when our energy resources are expanding to cleaner, safer and healthier options. Certainly, nearly 30 years after the EPA expressed legitimate concerns about this practice, these economically underprivileged workers deserve to be better protected than they have been and as well protected as those of us who work in offices. This issue should certainly be part of the framework for EJ 2020.

Thank you for your consideration.

William J. Geary, Esq.
Attorney at Law
Massachusetts and Washington, DC
[REDACTED]