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August 14, 2019

Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: National Environmental Policy Act (NEPA) and Environmental Justice

Dear Administrator Wheeler:

The National Environmental Justice Advisory Council's (NEJAC) diverse membership reflects a wide range of views. Further, most NEJAC members have a wealth of ground-level experiences in the use and misuse of NEPA. Thus, recommendations from the body have been subject to a broad, inquiring discussion before they are submitted. Therefore, it is meaningful when the NEJAC puts forth the reminder that NEPA's role is to advance the most informed decisions. The NEJAC strongly believes that "*Ultimately, ... it is not better documents, but better decisions that count.*"

NEPA continues to receive a great amount of political and policy attention. Despite concerns about the time and cost of reviews, most NEPA reviews do not include comprehensive environmental justice analyses. However, as the Act points out; we must use *high quality* information to develop *better decisions*. With this in mind, the National Environmental Justice Advisory Council firmly believes and recommends that all NEPA reviews include more and higher quality data related to environmental justice.

To that end, to strengthen the validity and integrity of environmental justice analysis and considerations in the NEPA process, the NEJAC has identified several concerns and areas that need a closer look, including the need to:

- Assess and mitigate the human environment (i.e., human health and well-being including cultural, social, economic, aesthetic, and archaeological aspects) by giving projects priority ratings or points for environmental justice factors when evaluating them for federal grants and funding.

- Stress the importance and use of Health Impact Assessments (HIAs) by:
 - Requiring that health impact assessments be a part of NEPA studies.
 - Providing funding and administrative support for the conduct of HIAs.
 - Encouraging inclusion of health experts, such as health economists, on NEPA study teams.

- Identify and measure the cumulative and synergistic impacts on a community over time, from multiple sources existing inside and outside the project area. This would be done in part by ensuring the measurement and inclusion of specific baseline data for the immediate community being affected, and further by ensuring meaningful community involvement in the entire NEPA process.

- Certify that questions raised during the NEPA process are addressed in meaningful, substantive ways by requiring an external review of the proposed responses to questions that have been raised. To properly address questions and concerns raised during the NEPA process by citizens, the EPA should:
 - Use its community involvement staff to review questions and responses to ensure the information and responses are given in plain language and address the questions at hand.
 - Consider another partnership with technical assistance grantees and academia where they would serve in a liaison role between the EPA and the concerned citizens and would be tasked with assisting to properly address the questions and concerns on the NEPA issue or process.
 - Work closely with both the citizens and EPA to ensure that:
 - Each has a better understanding of the concerns being raised.
 - Communities gain a better understanding of NEPA so they can provide more meaningful input into the process.

- Stress to the Council on Environmental Quality (CEQ) the importance of increasing the health and well-being of communities by consistently integrating environmental justice and health analyses and considerations in NEPA reviews.

- Work with the CEQ and NEPA leadership in other agencies and departments to ensure the full application of **Promising Practices for EJ Methodologies in NEPA Reviews** and its supporting materials and encourage its adoption and consistent use by other agencies through the work of the Federal Interagency Working Group on Environmental Justice (EJ IWG).

- Establish NEPA Community Action Groups for inviting and gathering input, similar to [Superfund CAGs](#).
- Ensure that all documents prepared as part of the NEPA process are written in plain, understandable language, to ensure that members of the affected communities can fully understand them and that there is transparency throughout the process.
- Ensure the linkage between Environmental Justice and Title VI compliance is preserved by specifically addressing Title VI concerns as part of the NEPA process, especially in the review of environmental justice.

To the extent that analysts now address environmental justice at all, they often do it in a sanitized, checklist-driven manner. Thus, findings often consist of information gleaned from programs such as EJSCREEN with little study of the potential effects on the people in the impacted community. For example, rather than examining the cumulative impacts on a community and developing responsible alternatives, the exercise often consists of an evaluation of one situation in time using faceless tabular data. Such approaches devalue the work and effort put into such studies and add little if any value to the resulting documents.

Perhaps most disconcerting is that while NEPA intends for an examination of reasonable alternatives, analysts often go into their work with a predetermined preferred alternative. As a result, the effort devolves into an exercise to justify that *preferred* alternative and discount any others. Analysts therefore have an incentive to make their selected alternative look the best while relegating others as clearly unworkable. Such an approach undermines the fundamental intent of NEPA – “to look before you leap” rather than simply pick what seems to be the least environmentally impactful alternative.

Another example concerns the economic impact analysis that NEPA requires. Rarely do analysts consider the hard connection between the economic benefit of an action and the health and welfare of workers, especially those in environmental justice communities. They often fail to remember, or worse ignore, the connection between healthy environments, healthy people, a vibrant economy, and a vigorous community. While NEPA intends that we identify health impacts on residents of environmental justice communities, the findings often fall short because of this disconnect. This is disconcerting, because without healthy workers it is impossible to maximize economic benefits for all.

Such approaches suggest the NEPA process may be broken. As a result, we are failing in carrying out one of the primary intents of the law, that is, to ensure the best

decisions are made about economic development, the natural environment, and the health and welfare of people.

Currently, environmental justice is a small and underemphasized part of the NEPA process. Thus, it is not surprising that negative impacts still disproportionately burden certain populations and communities such as low wealth communities, people of color, and indigenous peoples. We must raise both the quality and quantity of environmental justice analyses so the impacts affecting environmental justice communities are front and center. NEJAC members are available to provide compelling case examples as a basis for starting a discussion on renewing the emphasis on genuinely considering environmental justice and health issues in the NEPA process.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Moore". The signature is fluid and cursive, with a long horizontal stroke at the end.

Richard Moore, Chair

cc: NEJAC Members
Brittany Bolen, Associate Administrator for the Office of Policy
Matthew Tejada, Director for the Office of Environmental Justice
Karen L. Martin, Designated Federal Officer and NEJAC Program Manager

