



NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

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October 22, 2008]

Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator Johnson:

I am writing this letter on behalf of the National Environmental Justice Advisory Council (NEJAC). This letter and its recommendations are provided to the EPA from the NEJAC. The recommendations concern EPA's proposal to initiate a new State Environmental Justice Cooperative Agreement Initiative for states (program). The NEJAC was asked¹ to review EPA's goals and approach for this program and offer recommendations to help it succeed. The Council's charge is appended to the end of this letter. As you may know, a temporary work group was set up to quickly address the task and make initial recommendations to the full NEJAC. The NEJAC has considered those findings and uses them as the basis for the following comments, concerns and recommendations.

Summary Recommendation

As you will see in the comments and concerns addressed below, the NEJAC generally recommends EPA go forward with the program as it has been outlined and presented². The NEJAC makes some recommendations for improvements below in order to address identified deficiencies in the program and to avoid building unrealistic expectations. The NEJAC urges EPA to pay close attention to these recommendations.

This cooperative agreement initiative should be part of a comprehensive effort by EPA and states to trigger measurable results. It's an opportunity for EPA, states, local governments and impacted communities to demonstrate better ways to address environmental justice problems – together. States need to be an active, constructive part of resolving environmental justice concerns in communities. This

¹ Charge to the NEJAC, U.S. EPA, Office of Environmental Justice, 28 March 2008.

² EPA staff delivered a preliminary outline of the proposed State EJ Grant program to the NEJAC in June 2008 as an agenda item. The Work Group's plan for developing these recommendations was also discussed in that session.

program can help those states that already have some capacity and are willing to make it work for identified communities. However, there's not enough funding available to help states that have limited capacity and commitment to resolve these concerns.

States have a key role and responsibility to tackle environmental justice challenges. In turn, states must support - directly and indirectly - local communities' needs to correct environmental justice problems and their associated risks. The NEJAC believes that with active management and a focus on local results, this program can make a positive, if limited, difference to help some states and local communities they serve. If it proves to be successful to one or more environmental justice communities, by *the communities'* standards - as much as by EPA's or a state's, it should be continued and considered for expansion.

Specific Recommendations, Comments and Concerns.

The following recommendations, comments and concerns provide the substance of the NEJAC's summary recommendations.

1. **This effort should target the more EJ proactive states.** In scoring applications, EPA should give extra weight to states that have sponsored or supported successful environmental justice projects. The limitation to five grants makes it imperative that each one be successful. That there are already 41 states with some kind of environmental justice capacity³ (and the number is growing), makes it less urgent to use this program as outreach. Instead, funds should be used to demonstrate, ideally in five different ways, how a state can support real results at the level that really counts—the community.

One of the award criteria might be the extent of a state's existing authorities, programs and resources. Another might be proven results from a project at the community level. These would both maximize the chances of selecting states that will be able to deliver real results over the three year period. This criterion would also provide an incentive to states with narrower authorities and less robust environmental justice programs to increase their commitments.

2. **Robust results depend on maximizing resources.** EPA's stated goal is to produce robust results. To be awarded a grant, a state should be able to show it will be able to aggressively leverage grant dollars to bring in additional funds and/or other catalyst-making resources that will trigger measurable reductions in environmental risks for communities. Applying states should be already poised for this opportunity. EPA should be clear that states having an environmental justice infrastructure and other capacity to add resources to a community project in a meaningful way will be favored over those that do not.

3. **Support on-the-ground, collaborative projects.** The NEJAC believes that a significant portion of each grant should be devoted to supporting on-the-ground projects that have a high potential to achieve measurable results. To the extent possible, these projects should involve active contributions from more than one state agency and have involvement from the Governor's

³ American Bar Association's 2006 report, *Environmental Justice for All: A Fifty State Survey of Legislation, Policies and Cases*, (3rd Ed, 2007), available at: http://www.uchastings.edu/site_files/plri/EJ2007.pdf

office. The Governor's cabinet and any relevant multiple agency sub-cabinets should likewise be involved to assure that agency leadership will be supportive.

Weight / credit should be given to applications which include projects that use well designed collaborative approaches. The projects should involve leadership and participation from local environmental justice organizations with a history and track record of measurable outcomes. The projects need to maximize the involvement of all levels of government, businesses, community and other non-profit organizations, citizens, academic institutions, and foundations that will add in-kind/pro-bono and funding resources to maintain sustainability and environmental justice policy implementation. These organizations have positive contributions to make to the solutions selected to avoid or resolve environmental justice issues.

Extra weight / credit should be given to projects that employ a decision team approach, convened by the governor or other recognized leader - and local leaders of community-based environmental justice organizations. That approach must allow for as much of the decision-making as possible to be made by the team itself, with agencies playing a cooperative and supportive role, using their legal authorities as much as legally possible to implement the decisions of the group.

4. **EPA should require deliverables from cooperative agreement recipients in this program.** EPA ought to include in its grant solicitation requirements that positive results need to be replicable. The state or community should produce clear, helpful manuals or other support materials that document what worked and what didn't. Results and developed resources should be posted to the Internet and/or made widely available to other communities and states. Cooperative agreement recipients should identify experienced community-based environmental justice leaders to serve as paid community level experts and consultants.

5. **EPA should consider including Tribes as potential recipients of the cooperative agreements.** The NEJAC is concerned that there is no provision made in this grant program for tribes. Therefore, state applications with engaging, coordinating and open government-to-government components across tribal / state cultures and agencies should be scored higher for award potential.

EPA should consider companion initiatives to provide resources for tribes, or clarify where else support for environmental justice and related concerns for tribes are available. Likewise, states are challenged to leverage their own resources to support state/tribal collaboration, both within this program and elsewhere.

6. **EPA should support collaboration and/or training for local city/county planners, zoning boards, etc.** This traditional and often unaddressed component of the environmental justice continuum between communities and EPA can be better addressed by states than by EPA. States are in a better position with local governments and agencies on this front. While the focus of the grants should be on specific community based projects, opportunities for training or other capacity building at the local government level, as part of a community project, should be encouraged as a way for states to develop and deliver creative and appropriate collaborative tools.

Once the tools have been demonstrated to help, the state could assist other local governments to duplicate the results elsewhere.

A training opportunity could be tied to a local EJ-based project. This could include an element to train members of planning and zoning boards, local legislative bodies and municipal planners and lawyers on the intersection of environmental justice and local land use planning and decision making. A model was tested several years ago with four trainings funded by the Ford Foundation held in Chicago, San Francisco, Albany and Albuquerque, which could provide additional guidance and lessons learned to EPA, states and others.

Such training should have community input and paid leadership and expertise of environmental justice community organizations in its development and delivery. As part of a match for the EPA grant, states can (and should) bring such training resources to its local entities to be applied in a local decision-making process to foster environmental justice benefits for the community.

7. **EPA should involve universities in this initiative.** State universities should be actively considered as potential collaborators in the program, if not recipients of the grant monies. State universities may have relevant expertise and/or resources germane to the program's objectives. Both undergraduate and graduate students represent a relatively low cost labor pool. Growing trends in service learning experiences may attract motivated students considering careers in environmental health.

As faculty promotion criteria generally include community service, some state university departments may be looking for opportunities to collaborate with non-academics. Sometimes universities can provide neutral forums that make it easier for agencies, businesses and community representatives to reach agreements.

Faculty/staff can serve as impartial arbiters in contested and charged debates. They can help avoid conflict by focusing participants on opportunities for agreement on larger issues of concern. However, some universities have their own legacy of neglect, paternalism and/or opportunism vis-à-vis environmental justice communities.

Extra application weight should be given to university programs that actively recruit low-income minorities and Native Americans in order to promote career development by people from environmental justice impact areas in fields of public health and environmental justice policy, law, research, etc.

EPA should also consider a writing competition on environmental justice for graduate students in different disciplines as well as for faculty. This would produce better scholarship and provide a mechanism for the products to be widely disseminated through EPA.

8. **EPA should consider involving national nonprofit organizations.** Organizations such as, the American Planning Association, International Municipal Lawyers Association, the National League of Cities, the National Association of Counties, and the U.S. Conference of Mayors should at least be notified of and engaged in the cooperative agreement program because

of their existing and potential role to support environmental justice and the kinds of projects likely to be part of this program. They can help states leverage resources as well as help catalyze results. Their engagement could be a key part of the EPA's 'be robust' approach. EPA is also advised to market this program through these and similar organizations.

These organizations have nationally circulated publications that reach thousands of readers who work within or along with institutions that influence environmental justice (for better or worse). They have national and regional workshops as part of their infrastructure. They work across traditional agency boundaries and can help states do the same. If EPA could entice these organizations to support this program and environmental justice in general, in a policy / training initiative, collectively, we could build and more likely maintain new collaborative inroads.

9. **Media training is needed.** Community environmental justice representatives need the media to focus on injustices; reporters need a better understanding of environmental justice. Again, such training must be folded into a tangible, ground-based, project with measurable results to ensure the funds are leveraged to their fullest ability.

10. **EPA should support strong coordination with all EPA EJ region leads.** – regardless of where the funds are awarded. From an infrastructure standpoint, the NEJAC believes this program will ultimately fail to achieve lasting results if this networked support is not integral to the program's delivery and management. Every one of EPA's regional environmental justice leaders and staff should actively help carry this program. They need to aggressively market it and support states to apply. Once awarded, all regions need to embrace the funded projects as their collective opportunities to learn and replicate successes elsewhere, across all regions.

11. **Cross-state collaboration should be leveraged by recipients.** Regardless of EPA regional structure, states should work with other states to collaborate in developing and implementing smart, effective environmental justice opportunities that generate results. Whether contiguous or half way across the country from each other, states need to work together learn from the good lessons as well as the bad. States can build on one another's work for effective environmental justice policies, legislation, and funding to support limited environmental justice resources. State applications that leverage this type of coordination should be given extra scoring weight in deciding awards.

Further, recommendations 10 and 11 are fundamentally tied together. EPA's regional environmental justice leaders need to foster the kind of networking that both recommendations address.

12. **The cooperative agreement funding level is inadequate.** EPA proposes to award a total of \$800,000 to five states, averaging \$160,000 per award. Although the NEJAC believes this is better than none, it advises that this amount is barely enough to make a difference, particularly if based on EPA funds alone.

EPA and the recipient states will be challenged to leverage the money for tangible results. And yet, this is precisely what will have to happen; the money must be used in a creative, well

coordinated manner. Funds will have to be used by states in very efficient and strategically managed ways if those who really need environmental justice assistance are going to benefit from this effort.

Most of the EPA monies should go directly toward projects that produce community services or benefits and resolve environmental justice concerns; a limited amount should go for training, evaluation and publications; and as little as possible should go to indirect expenses. States should demonstrate this balanced use of funding in their applications and in reports on the projects.

CONCLUSION

In closing, the NEJAC reaffirms that this type of grant support is important for EPA, states, and most other environmental justice interests. We urge EPA to carefully consider our recommendations. NEJAC advises that this effort should not detract or take away from continued direct support to environmental justice communities and organizations. We would like to thank EPA for the opportunity to review and comment on this important work. We appreciate your serious consideration and incorporation of these recommendations.

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
Charles Lee, Director, Office of Environmental Justice (OEJ)
Victoria Robinson, NEJAC DFO, EPA OEJ
Kent Benjamin, Work Group DFO, EPA OSWER

APPENDIX

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL CHARGE ON STATE ENVIRONMENTAL JUSTICE GRANT PROGRAM

Background

In recent years the EPA's environmental justice (EJ) program has grown and evolved in several ways. These advances include: the commitment of all Headquarter Offices and Regions to develop EJ Action Plans⁴ with measurable results, the advent of EJ Collaborative Problem-Solving Grants, and the development of Protocols to conduct program reviews regarding the integration of environmental justice considerations in Agency decision making. To build on the ability of these efforts to address the issues of communities disproportionately exposed to environmental harms and risks, EPA must work to strengthen strategic partnerships among multiple groups. In recent years, new opportunities have emerged for EPA to strengthen its partnerships with one such group, i.e., State governments.

In recent years, States have emerged as an important group in efforts to address environmental justice. At least forty-two States and the District of Columbia have adopted environmental justice statutes, executive orders, or policies.⁵ These states have been pioneering, and resourceful, in their approaches. States have the ability to understand and address EJ issues in multiple communities in ways far beyond the reach of the Federal government. States are often the most appropriate governmental entity to identify opportunities for improving community health, leveraging local resources and providing broad-based activity across a wide geographic area. Additional funds applied to their efforts can have a tremendous leveraging effect and foster significant and measurable advances in policy and practice.

EPA is proposing to provide grant funding to States in support of activities which are robust, results oriented, collaborative partnerships, and which can be linked to Regional EJ Action Plan activities. By linking to the Government Performance Results Act (GPRA) strategic plans and goals,⁶ the Agency's EJ Action Plans are using various activities to address goals which will lead to measurable environmental and public health outcomes.

The purpose of this charge is gain insight and recommendations from the NEJAC that will enhance the structure of this proposed State EJ grant program to select, fund, and implement Cooperative Agreement⁷ projects that will result in meaningful and measurable environmental

⁴ The EJ Action Plans are an important tool used to implement the Administrator's directive to integrate environmental justice into all of the Agency's policies, programs, and activities. The EJ Action Plans establish measurable commitments that address the Agency's national and regional environmental justice priorities.

⁵ See ABA, *Environmental Justice for All: A Fifty State Survey of Legislation, Policies and Cases* (3rd Ed, 2007), available at http://www.uchastings.edu/site_files/plri/EJ2007.pdf.

⁶ The 2006-2011 EPA Strategic Plan sets forth five goals: Clean Air and Global Climate Change, Clean and Safe Water, Land Preservation and Restoration, Healthy Communities and Ecosystems, and Compliance and Environmental Stewardship.

⁷ Cooperative agreements provide financial assistance to the recipient under the same "principal public purpose" legal standard as grants and may not be used to obtain goods or services for the "mutual benefit" of the Agency and the recipient. Cooperative Agreements are appropriate when EPA anticipates "substantial involvement" of Agency personnel to assist the recipient in carrying out its project. Because these Cooperative Agreement projects are collaborations involving the States, EPA, and communities, they contribute towards meeting the EPA 2006-2011 Strategic Plan Goal 4.2.2, which has targets of significant measurable environmental and/or public health improvement in communities using collaborative problem solving. See <http://www.epa.gov/ocfo/plan/plan.htm>.

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and/or public health improvements in communities disproportionately exposed to environmental harms and risks.

Proposed Goals of State EJ Grant Program

To provide funding to State governments to support their efforts to understand, promote and integrate approaches and activities that result in meaningful and measurable environmental and/or public health improvements in communities disproportionately exposed to environmental harms and risks. The goals of this program include, but are not limited to, the following:

- Achieve significant measurable environmental and/or public health results;
- Build broad, robust, results-oriented partnerships, particularly with community organizations within the affected area(s);
- Demonstrate a connection to EPA Regional EJ Action Plans and the State's participation in the design and implementation of EPA EJ Action Plan activities; and
- Implement a strategy to integrate environmental justice considerations pertinent to the project within the programs, policies, and activities of the appropriate State agency or agencies.

Charge Questions

- How can EPA more effectively communicate its goal of fostering the development of robust, multi-stakeholder, collaborative, environmental and public health results-oriented projects?
- What performance measures should be used for these projects?
- What activities should be funded?
- Can you suggest examples of projects that EPA may seek to foster?
- What activities should EPA conduct to conduct outreach and build strategic partnerships around the grant program?