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Paige Lieberman

Designated Federal Officer, EPA

July 6, 2022

Michael S. Regan, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Regan:

The Local Government Advisory Committee (LGAC) applauds the EPA in its elevation of environmental justice and equity issues, and how it has encouraged a whole-of-government approach to combatting historic practices of environmental injustices. Likewise, its development of resources like EJ Screen and the Climate & Economic Justice Screening Tool will provide a meaningful, data-driven way to support local governments working in their communities.

However, these steps are just the beginning. There is still much work to be done to bridge the gap between community-level environmental justice priorities and federal regulatory policies. The LGAC has identified five recommendations to address, which are further detailed below.

The LGAC recommends:

1. EPA should advise local governments working to implement initial zoning and land use policies that address environmental injustice by providing draft language that aids future enforcement. Where collaboration is needed to implement or revise such policies, EPA should play the role of the convener, to encourage collaboration among federal, state, and local authorities in housing, environmental and planning departments.
2. EPA should strongly encourage state governments to include environmental justice and equity principles in its permitting decisions, including meaningfully engaging with any parties impacted by a permit and considering cumulative impacts in any relevant calculations.
3. The LGAC recommends that EPA provide funding and technical assistance to build capacity to address environmental justice in communities across the country. This should include making technical experts readily available to work with communities, providing guidance on how to

prioritize projects using a tool like EJSCREEN, and developing a toolbox of environmentally just zoning codes, remapping policies, and permitting ordinances.

4. Where environmental injustice persists, EPA should provide funding and best practices to mitigate harmful effects to local water supply, airsheds, and other sensitive habitats. These practices should include options at various price points and levels of capacity within a local government.
5. The EPA should explore ways to expand programs like the Superfund Technical Assistance Grants (TAG) to other environmental programs, which integrate community groups into the decision-making process by funding an independent technical advisor to provide relevant analysis.

Zoning and Permitting

For decades, environmental hazards like fossil fuel storage and transportation sites, hazardous waste facilities, and other chemical factories were disproportionately sited in low-income communities and communities of color. The LGAC is supportive of industry overall, but this support is predicated on the agreement that industry is located a safe distance from residential areas, compliant with all regulations, and ensures adequate prevention of cumulative impacts.

One example is the Greater Houston area in Texas. As of 2019, 21 industrial and toxic waste facilities are located within three miles of the Harrisburg/Manchester neighborhood, which is 90 percent Hispanic. This includes waste treatment and disposal facilities and other large-quantity generators of hazardous waste.¹ Using satellite data, the Houston Health Department found in 2020 that levels of nitrogen dioxide (NO₂)—linked to higher rates of childhood asthma, increased hospitalizations, and the development of cardiovascular diseases—were 32% higher for Latino residents, 19% higher for Black residents, and between 15% to 28% higher for residents living below the poverty line.²

Another example is East Point, Georgia, a predominantly African American suburb of Atlanta. Within one-half mile of industrial factories are two schools, a recreation center, and dozens of homes. Residents have repeatedly complained of discolored water in the surrounding watersheds and respiratory irritation, caused by the fumes emitting from surrounding industrial operations.

While the local governments have tried to advocate for their resident in both instances, state regulators note that the companies are within their rights under relevant permits and laws. An important step in creating justice for these communities is revising the policies that allowed them to happen, which will require action from federal, state, and local authorities in housing, environmental, and planning departments. Ultimately zoning and land use decisions are made at the local level, but changes will occur more effectively and efficiently if there is strong intergovernmental collaboration. Local governments sometimes lack the leverage to convene state and federal partners, and the LGAC recommends that EPA step in to play this role where needed.

¹ Tessum, C. W., Apte, J. S., Goodkind, A. L., Muller, N. Z., Mullins, K. A., Paoletta, D. A., ... & Hill, J. D. (2019). Inequity in consumption of goods and services adds to racial-ethnic disparities in air pollution exposure. *Proceedings of the National Academy of Sciences*, 116(13), 6001-6006.

² Demetillo, Mary Angelique G. et al. *Observing Nitrogen Dioxide Air Pollution Inequality Using High-Spatial-Resolution Remote Sensing Measurements in Houston, Texas*. August 5, 2020. <https://pubs.acs.org/doi/10.1021/acs.est.0c01864>

When working with its federal, state, and local partners, the LGAC encourages EPA to focus on local zoning and land use policies/ordinances in a way that aids enforcement. While some local governments need support drafting language for initial zoning and land use policies/ordinances, throughout the country, local governments need a consistent, proactive enforcement of existing federal and state regulations. Within this challenge is an opportunity to explore ways that local zoning policies can be leveraged in a way that aids enforcement. The LGAC understands that EPA is working with the Environmental Council of States to address some of these issues and offers its expertise at the local government level to bolster this work.

Cumulative Impacts

Another underlying driver of environmental injustice is cumulative impacts. The LGAC supports the EPA's working definition of cumulative impacts referring to, "the total burden from chemical and non-chemical stressors and their interactions that affect the health, well-being, and quality of life of an individual, community, or population at a given point in time or over a period of time."

LGAC members have seen the issue of cumulative impacts arise in a range of permitting decisions. Typically, a permit includes a maximum level of allowable air and/or water pollution by an individual entity. However, there is no mechanism in place to track the cumulative pollution being deposited in a community from the various approved permits. Again, an example can be found in Texas. The Houston area has had tremendous growth in recent years, leading to a steady stream of permits for concrete batch plants, and a significant, resulting air pollution of silica dust. Persistent inhalation of silica dust is shown to cause respiratory damage including lung cancer, chronic obstructive pulmonary disease, kidney disease, autoimmune disease, and silicosis. Many community members have organized to address this problem, but since each individual permit is within the allowable threshold, they are told that nothing can be done.

The LGAC recommends that EPA work with state governments to alter how permits are reviewed. Most important is to implement maximum pollution allowances for a given area. This calculation should include the fact that many overburdened communities have historical pollution already in their environment. Other options include requiring the use of health assessments to determine the impact on minority and low-income populations and requiring meaningful engagement with impacted communities before an environmental permit is issued. This kind of action is not without precedent. The State of New Jersey [enacted such a policy](#) in 2020, which requires the Department of Environmental Protection to assess the public health and environmental risks created for overburdened communities when making any permitting decisions. In April 2022, the State of New York passed a similar law. While the LGAC understands the limitations of guidance, we recommend that EPA work with states to strongly encourage the inclusion of environmental justice and equity principles in its permitting decisions in any way possible. As EPA builds out programs under the BIL, there is an opportunity to integrate these measures from the start.

While the laws in New Jersey and New York are considered a success for environmentalists, they are not without risk. Some communities in New Jersey are concerned about being sued for denying a permit

under Title 5 of the Civil Rights Act. The LGAC recommends that EPA engage with these communities, along with its federal partners, to support them as they strive to protect overburdened communities.

Technical Assistance and Funding

For both issues detailed above, EPA can support local governments by providing targeted technical assistance and funding. Much of the work will fall on local governments, and there are significant funding and knowledge gaps to address. The LGAC recommends that EPA provide funding and technical assistance to build this capacity in communities across the country, with an emphasis on overburdened communities. The work of the Justice 40 initiative and the Bipartisan Infrastructure Law (BIL) to target at least 40 percent of funding to such communities is a step in the right direction. However, EPA needs to ensure that these goals are closely tracked and met.

The LGAC also recommends that EPA make technical experts on environmental justice readily available to work with communities on complex issues. Where this isn't feasible, the LGAC recommends that EPA develop a toolbox of environmentally just zoning codes, remapping policies, permitting ordinances, and examples on when a community may want to pursue each. For example, EPA could offer guidance to help municipalities prioritize projects using a zoning and remapping process or a tool like EJSCREEN. Support with communications is also needed, especially helping both local government staff and the public to connect the role of zoning and land use decisions in promoting environmental justice. The EPA should understand that the information available for this work is complex and decentralized, and it can be hard for a community to navigate – especially if they are a small, disadvantaged community. Providing support would help interested communities overcome the administrative hurdle of making these changes.

At the same time, communities need support remediating the impacts of environmental injustice. The LGAC recommends that EPA provide best practices to mitigate harmful effects to local water supply, airsheds, and other sensitive habitats. These practices should include options at various price points and levels of capacity within a local government. Additionally, EPA should provide funding for buffer zones and other remediation and mitigation strategies to protect residents.

While technical assistance from the federal government is often provided to local governments, with environmental justice there is also a need to support community groups. The Superfund program provides a model for supporting this type of involvement. Technical Assistance Grants (TAG) help communities participate in Superfund cleanup decision-making by funding community groups, who then contract their own technical advisor to interpret and explain technical reports, site conditions, and EPA's proposed actions. The LGAC recommends exploring ways to extend this kind of support on other environmental programs.

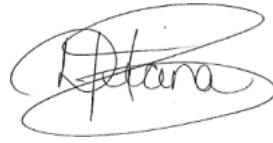
Conclusion

The LGAC appreciates the opportunity to work with EPA on this important work, and to develop policies and programs that support meaningful and long-term change. It is critical to the well-being of a community that local, state, and federal government work collaboratively with industry to dismantle systemic environmental injustices and prioritize safety in communities overburdened by pollution.

Sincerely,

A handwritten signature in black ink that reads "Leirion Gaylor Baird". The signature is written in a cursive style with a large, looping initial "L".

Leirion Gaylor Baird, LGAC Chair

A handwritten signature in black ink that reads "Deana". The signature is written in a cursive style with a large, looping initial "D".

Deana Holiday Ingraham, LGAC Environmental
Justice Workgroup Chair