

# NEJAC Comments to EPA Plan EJ 2014



APRIL 2011

**A Report of Advice and Recommendations  
of the  
National Environmental Justice Advisory Council**

## **ACKNOWLEDGEMENTS**

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The National Environmental Justice Advisory Council (NEJAC) acknowledges the efforts of the Plan EJ 2014 Subgroup in preparing the initial draft of this report. The members of the Subgroup are listed on page 1 of this letter. The NEJAC also acknowledges the staff of EPA's Office of Environmental Justice, especially Victoria Robinson, NEJAC Designated Federal Officer, and APEX Direct, Inc, which provided contractor support.

## **DISCLAIMER**

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This Report and recommendations have been written as part of the activities of the National Environmental Justice Advisory Council, a public advisory committee providing independent advice and recommendations on the issue of environmental justice to the Administrator and other officials of the United States Environmental Protection Agency (EPA or the Agency). In addition, the materials, opinions, findings, recommendations, and conclusions expressed herein, and in any study or other source referenced herein, should not be construed as adopted or endorsed by any organization with which any NEJAC member is affiliated.

This report has not been reviewed for approval by EPA, and hence, its contents and recommendations do not necessarily represent the views and the policies of the Agency, nor of other agencies in the Executive Branch of the Federal government.



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April 29, 2011

Lisa P. Jackson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Administrator Jackson,

On behalf of the National Environmental Justice Advisory Council (NEJAC or Council), this letter and its recommendations are provided at the request of the U.S. Environmental Protection Agency (EPA or the Agency) with respect to the Agency's Draft Plan EJ 2014 (Plan). NEJAC was asked to review the Plan, which encompasses five cross-Agency focus areas, and offer specific comments and recommendations to EPA. The Council's charge is appended to the end of this letter as Appendix A.

NEJAC would like to recognize the Administrator and the Agency for the priority that has been given to environmental justice and for the actions taken to advance it. We encourage the Administration and all other federal agencies to make further progress in adopting environmental justice into their work. Adopting a plan to move the Administration's initiatives forward is a positive step. We particularly appreciate the portions of the Plan that call for action on key elements of EPA's authority.

NEJAC's procedural process for arriving at its response was as follows: A NEJAC Subgroup (the Subgroup) was set up to quickly assess and initiate the task of providing comments and recommendations on the Plan in a draft work product, which would be ultimately reviewed and approved by the full Council. The Subgroup held several conference calls to discuss the Plan and the framework for formulating a response. There were two public calls regarding the Plan as well. Once the Subgroup reached consensus, a draft response was shared with the larger Council and opportunity was provided for comment and consensus among the Council. The full Council has considered the Plan and herein provides findings, comments, questions for further reflection and recommendations.

NEJAC's Plan EJ 2014 Subgroup was comprised of a cross-section of representatives of various stakeholder perspectives that comprise the NEJAC membership, including academia, business and industry, community-based organizations, non-governmental and environmental groups, state and local governments, tribal governments, and indigenous organizations. The recommendations presented herein reflect the perspectives of those stakeholder groups.

**NEJAC Plan EJ 2014 Subgroup  
Members**

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## Summary Recommendation

As discussed below, NEJAC's overall recommendation asks EPA to provide more specificity with respect to its Plan. Having a clear process for implementation with a timeline and expected outcomes is only meaningful if there is also clarity around what is being implemented. NEJAC makes some recommendations for improvements below in order to address identified deficiencies in the Plan and provide a unified approach as discussed in the Plan.

EPA's Plan EJ 2014 should provide explicit criteria and outcome measures by which implementation of the Plan will be assessed. The goals need to be operationalized and evaluated and people/entities need to be held accountable for progress toward the goals. Many of the goals will require high-level agency oversight and coordination of the Plan and its implementation. Environmental justice community involvement in operationalizing and implementing is critical. That said, the time and effort that this will take means that it will be essential that clear standard and expectations are laid out and which do not fall solely to the responsibility of any one stakeholder. The Agency must be accountable for the larger goals. A lot of the Plan focuses on environmentally-just processes. While this is certainly important, focusing on process alone is insufficient. An equally, if not more, important goal is to ensure environmentally-just outcomes.

In developing details under the Plan, EPA and NEJAC should draw upon reports and resources of the past. Specifically, the NEJAC authored a report in December 2004 titled "*Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts*" (the "2004 Report"). The 2004 Report, in a broad sense, addresses many concepts implicit in the Plan and thoughtfully includes the unique concerns of tribal communities. It also provides a series of recommendations that should be incorporated into the Plan as a matter of confirming that the process is moving forward as recommended.

## ADVICE AND RECOMMENDATIONS

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

### **Charge Question 1: Are The Cross-Agency Focus Areas The Correct Ones?**

All of the cross-Agency focus areas identified in the Plan appear appropriate as a means to further integration of environmental justice. However there are some limitations and suggested additions as discussed below.

**Incorporating Environmental Justice into Rulemaking.** NEJAC recommends that EPA

1. Recognize that the goal for this focus area should not only incorporate environmental justice in the rulemaking process. Rather, the overarching goal should be to have environmentally just rules. In order to have environmental rules that are just and reasonable, EPA should evaluate existing rules and regulations to determine the extent to which they may currently undermine the overarching goals for achieving environmental justice. NEJAC suggests it would be better to inventory or reassess what is currently available and effective before adding to the regulatory regime.

**Considering Environmental Justice Concerns in EPA's Permitting Process.** NEJAC recommends EPA:

2. Rephrase this cross-Agency focus area as “Ensure environmentally just permitting decisions.” The concern is that environmental justice is a standard/obligation, not something simply to consider. As such, analysis and strategic thinking should include the application of environmental justice in obtaining permits in communities with the potential for environmental justice concerns. Specifically, EPA should adequately weigh the pros and cons, ensure timeliness and fairness in the permitting process to all the relevant stakeholders, including the entity seeking to be permitted. Permits should protect all people, regardless of race or socio-economic status. Consistent State guidance will be needed on incorporating environmental justice principals in permit actions. The longer-term focus around cumulative impacts leads the NEJAC to have follow-up questions: What will this process look like? How much longer term is it?
3. NEJAC requests a work plan and timeline be developed for this objective.

**Accelerating Compliance and Enforcement Initiatives.** NEJAC generally supports this focus area as an important component of the Agency's overall strategy. To further refine our understanding and guide EPA in the execution of this concept, NEJAC requests that EPA:

4. Develop the necessary details to address the following questions and concerns by the November 2010 meeting of the NEJAC:
  - How does EPA assess what actions will yield the most benefit or reduce risk to the greatest extent?
  - What criteria are used?
  - Once chosen, are there standards by which actions are evaluated?
  - To what extent and in what ways are “environmental justice concerns” identified, defined, and considered?
  - To what extent are compliance and enforcement actions and resources being targeted at overburdened communities?
  - What is EPA doing to proactively enforce its regulations under Title VI of the Civil Rights Act (Title VI)?
  - What is EPA doing to deal with the backlog of Title VI complaints and address new complaints that may arise?
  - Is every enforcement action expected to have an environmental justice component?
  - In what ways are Office of Enforcement and Compliance (OECA) and Regions pursuing the three enumerated actions under the Plan?
5. Ensure environmental justice concerns in selecting national priorities for enforcement and compliance assurance attention. The Plan does not currently identify areas of non-compliance, but only areas where EPA feels their limited resources will have the most benefit. EPA should consider whether this is an appropriate venue to invoke environmental justice.
6. Target specific compliance strategies and enforcement actions to address problems that affect overburdened communities. NEJAC recommends that EPA evaluate how “specific compliance strategies” differ from what is required under current regulations/statute. If an enforcement action does not involve/affect an “overburdened community,” perhaps environmental justice is not a factor.

7. Seek remedies in enforcement actions that benefit overburdened communities affected by the non-compliance. NEJAC recommends that EPA evaluate whether the existing enforcement structure provides benefits for affected communities and whether there are specific ways in which the SEP policy can be enhanced to aid the overall goal of environmental justice allowing greater flexibility for environmental justice projects.
- How does EPA determine appropriate remedies?
  - To what extent are stakeholders involved in this determination?
  - To what extent do existing enforcement practices prioritize benefits for overburdened communities?
  - Is this simply a re-branding of Supplemental Environmental Projects (SEP)?
  - Are there specific ways in which the SEP policy can be enhanced to aid the overall goal of environmental justice?
  - Should SEP policy reform be considered to allow greater flexibility for environmental justice projects?

**Supporting Community-Based Action Programs.** Building on past NEJAC recommendations, most recently in the Report, *Reducing Air Emissions Associated With Goods Movement: Working Towards Environmental Justice*, NEJAC requests that EPA”

8. Work with other Federal agencies, State and tribal governments, businesses, nonprofit organizations, universities, foundations and others, to provide support for community-based organizations to participate in community or government convened collaborative processes that afford meaningful and substantive participation in decision-making on permits, public investments, and other activities affecting communities. Further, specific attention should be given to indigenous/tribal community-based and grassroots organizations. That is, EPA should develop a tribal/indigenous community-based and grassroots organizations environmental network to enhance EPA’s coordination and collaboration with these organizations to ensure the Agency not only effectively communicates its programs, policies and activities, but also provides a mechanism for the Agency to obtain information from these stakeholders on their environmental justice issues. Support is most effective if it increases the knowledge of community based groups, assures them a powerful seat at the table, and offers neutral convening and facilitation.

**Fostering Administration-Wide Action on Environmental Justice.** EPA and other federal agencies invest billions of dollars in transportation, housing and environmental infrastructure and programs that affect communities suffering from disproportionate impacts. Some of these programs incorporate environmental justice considerations to some degree, but all these investments should go through an appropriate process to identify and, if necessary, eliminate or mitigate them. The National Environmental Policy Act (NEPA) affords one screening tool; other investment screens may be useful as well. The NEJAC recommends that EPA:

9. Assure that Clean Water and Safe Drinking Water revolving fund capitalization grants are accompanied by assurance that State grantees and local borrowers go through a NEPA type process that adequately avoids disproportionate impacts. In addition, the aforementioned activities should be conducted in tandem with enforcing Title VI regulations. Furthermore, the NEJAC recommends that EPA develop effective mechanisms for fostering administration-wide action on environmental justice in Indian Country and throughout Alaska.

**Proposed Additional Cross-Agency Focus Areas:** An important way to assure that progress on reducing disproportionate impacts is steady is to strengthen the science of identifying these impacts and measuring their increase or decrease. While science ought to, by default, be inclusive in all areas, sound science that includes all of the quality of life variables should be a core objective. In other words, a discussion of science must go beyond environmental justice and look at the full range of potential drivers, causes, and effects in overburdened or disadvantaged communities. While the language in the Plan recognizes the work of the Office of Research and Development (ORD) is encouraging, the Plan should include some specific work to be accomplished to take the sound science of disproportionate impacts to a level that can drive policy and implementation.

Specifically, in regard to indigenous/tribal people, the Environmental Justice Program needs to recognize and affirm the importance of climate change and adaptation as critical issues facing this group of people. Information on climate policy and its link to renewable energy, green jobs, and water and food policy needs to be readily available to tribes, not just at the federal government to tribal government level, but also at the community level, for the inherent rights of tribal sovereignty reside within its own people.

Therefore, NEJAC recommends EPA:

10. Add a sixth cross-Agency focus area: Ensuring Environmentally Just Investment of Capital and other funding. The focus would be to assure that investments of federal dollars in infrastructure and local programs do not create or exacerbate existing disproportionate impacts and where possible eliminate existing ones. EPA should assure that investments in Superfund, brownfields revitalization, water, etc., meet the same objective and are made in tandem with the enforcement of Title VI regulations
11. Make science a seventh cross-Agency focus area or add an objective that ORD produce by 2014 or sooner, some robust results that will drive policy and implementation. EPA could convene the federal, state, tribal, community, business, academic and NGO representatives to develop scientifically valid, understandable, and practicable outcome measures for populations and geographic areas disproportionately impacted by government actions, including permitted activities. Drawing on past NEJAC reports and independent academic and other work, this group could come up with objectives and priorities for ORD and other national and non-governmental research organizations.
12. Include climate adaptation as an additional cross-Agency focus area.

### **Charge Question 2: How EPA Can Strengthen Specific Actions Within The Five Cross-Agency Focus Areas**

The Plan is extremely general at this point and thus it is difficult to provide very specific feedback. Given its status, it is critical that EPA lay out a clear process for implementation with a timeline and expected outcomes. It will be critical for EPA to focus on explicit criteria/outcome measures by which implementation of the Plan will be assessed. Too often, these types of plans/efforts lack a coherent overarching set of goals to which the Agency is held accountable. Instead, implementation efforts end up becoming a 'hodge-podge' of initiatives and actions of uncertain impact.

It is worth noting that a discussion about improving economic opportunities within the environmental justice community seems absent from the Plan. Economic opportunity and vitality within the

environmental justice community is an important contributor to the improvement of quality of life. EPA should consider how it will balance the goal of improving the quality of life in environmental justice communities given the reality of the need for access to certain ports, rail, markets and infrastructure for urban and industry growth. For example, caution should be used to ensure that the competing interest of Brownfields development and similar programs do not become an “economic death threat” for environmental justice communities.

Given the complexity of the issues, how will EPA encourage or incentivize its collaborative partners and industry to voluntarily invest in the community (i.e. go beyond regulatory compliance to tangibly improving community health and quality of life)? OSHA’s Voluntary Protection Program (VPP) is a good example of such an agency built incentive program.

As part of fleshing out the Plan and evaluating performance, the NEJAC recommends that EPA:

13. Evaluate the extent to which current practices and policies actually are contributing to poor environmental quality and health outcomes in certain communities (e.g. the extent to which EPA is aiding and abetting overburdening).
14. Evaluate the extent to which existing legal and regulatory authority that could achieve these goals is being underutilized. The Plan acknowledges that “federal agencies are responsible for considering environmental justice issues in NEPA environmental impact assessments and enforcing Title VI of the Civil Rights Act.” Putting aside that these requirements go beyond simply “considering” environmental justice, what is EPA doing to ensure that it maximizes the potential of these specific statutes for achieving the environmental justice goals?
15. EPA should explore in a cross-Agency fashion whether there exist in environmental justice communities opportunity to remove or reduce impacts of the zoning practices of the past. Finally, the role of local government and historical zoning practices cannot be ignored. Since states have primacy, and land use planning is controlled by local governments, communities need a tool to address these "legal" injustices.

Specific recommendations about how EPA can strengthen specific actions within the cross-Agency focus areas include:

16. *Considering Environmental Justice Concerns in EPA’s Permitting Process:* Consistent State guidance will be needed on incorporating environmental justice principals in permit actions.
17. *Accelerating Compliance and Enforcement Initiatives:* There should be more emphasis on enforcement and compliance activities being coordinated with each other and with other efforts to reduce disproportionate impacts in individual communities selected for agency attention through the use of Environmental Justice Strategic Enforcement Assessment Tool (EJSEAT) and other tools.
18. *Supporting Community-Based Action Programs:* The programs or policies that EPA will implement to empower and involve communities are planned, in some instances, to go “beyond the minimum in regulation.” This will require planning, and ultimately, funding. Due consideration should be given to who should be involved to ensure that the requirements under this focus area are not too onerous, and that financial responsibility for these programs does not fall exclusively to any one stakeholder.



19. Fostering Administration-Wide Action on Environmental Justice: The Agency should use its role to contribute to removing environmental justice concerns. EPA also should recognize through guidance and legal precedent that not every environmental action, enforcement or otherwise, will have an environmental justice component. EPA should consider whether there are any tax policy and incentives that can be utilized for environmental justice purposes. The focus should be on improving life within the environmental justice communities as opposed to preventing growth and development.
20. Reconstitute the Indigenous Peoples Subcommittee or create an Indigenous People Work Group for the NEJAC to ensure the inclusion of a tribal perspective in the cross-Agency focus areas.

**Charge Question 3: Setting Priorities Among The Five Cross-Agency Focus Areas**

Each area is critical and it is impossible, given the generality of the Plan, to set priorities among them. Prioritization may be more feasible when specific action items are identified. EPA should recognize that the focus areas are interdependent; from the perspective of a community, any one or a combination of the focus areas might have the highest priority. Having said that, NEJAC recommends that EPA:

21. Raise the level of attention given to focus areas 4 - Supporting Community-Based Action Programs, and 5 - Fostering Administration-Wide Action on Environmental Justice, to at least the level of priority given to the first three focus areas.

Once again, thank you for this opportunity to provide comment to the Agency's Plan EJ 2014.

Sincerely,



Elizabeth Yeampiere  
Chair

cc: NEJAC Members  
Cynthia Giles, EPA Assistant Administrator for Enforcement and Compliance Assurance  
Lisa Garcia, EPA Associate Assistant Administrator for Environmental Justice  
Charles Lee, EPA Deputy Associate Assistant Administrator for Environmental Justice  
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## APPENDIX A

### EPA'S CHARGE TO NEJAC ON PLAN EJ 2014

#### Background

February 2014 will mark the 20th anniversary of the Clinton Administration's issuance of Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*. The Order calls on federal agencies to "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 ..." EPA has made progress in implementing its Environmental Justice (EJ) program and has been a government leader in working to incorporate environmental justice into its programs and policies, but EPA also recognizes that it can do more. To reach this 20th anniversary milestone, EPA has developed Plan EJ 2014. This four-year plan will help EPA move forward to develop a stronger relationship with communities and increase the Agency's effort to improve the environmental conditions and public health in overburdened communities.

*Expanding the Conversation on Environmentalism and Working for Environmental Justice* encourages EPA to identify better ways to address the issues facing many minority, low-income, and indigenous people with environmental justice burdens and concerns. To help meet this challenge, EPA has identified three goals in Plan EJ 2014 to shape work on environmental justice:

- Protect the environment and health in overburdened communities,
- Empower communities to take action to improve their health and environment, and
- Establish partnerships with local, state, tribal, and federal governments and organizations to achieve healthy and sustainable communities.

Plan EJ 2014 is a roadmap to help EPA integrate environmental justice into its programs. The Plan is divided into three sections: Cross-Agency Focus Areas, Tools Development, and Program Initiatives. The organization of the Plan and the work outlined in it reflect many years of experience working with a wide variety of stakeholders to identify and address environmental justice concerns.

The cross-Agency focus areas address crosscutting issues or functions that require work by all programs or agencies and serve to advance environmental justice across EPA and the federal government. The Tools Development efforts focus on developing the scientific, legal, and data and information foundation that support environmental justice analysis, community work, and communications and stakeholder engagement. Program Initiatives focus on specific EPA programs, mainly the national programs. Some of the work outlined below is underway and other environmental justice work is currently in development. EPA will develop an agenda for each of the five cross-Agency focus areas, with a scope of work, outreach plans, and milestones to advance EPA's environmental justice priority.

#### Cross-Agency Focus Areas

The Plan outlines five cross-Agency focus areas:

1. Incorporating Environmental Justice Into Rulemaking,
2. Considering Environmental Justice Concerns in EPA's Permitting Process,
3. Accelerating Compliance and Enforcement Initiatives,
4. Supporting Community-Based Action Programs, and
5. Fostering Administration-Wide Action on Environmental Justice

For reference, EPA defines "environmental justice" as 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 has this goal for all communities and persons across this Nation. It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.

#### Charge Questions

- Are the five cross-Agency focus areas outlined above the correct ones?
- What are some ways EPA can strengthen specific actions within the five cross-Agency focus areas?
- How would you prioritize the five cross-Agency focus areas?