



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

SUBJECT: Request for Recommendations on Plan EJ 2014 and Permitting Charge

FROM: Cynthia Giles, Assistant Administrator  
Office of Enforcement and Compliance Assurance *Cynthia Giles*

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Office of the Administrator *Lisa F. Garcia*

TO: National Environmental Justice Advisory Council Members

We are pleased to provide the National Environmental Justice Advisory Council (NEJAC) with EPA's Draft Plan EJ 2014 and the Draft Charge to the NEJAC on "Incorporating Environmental Justice Concerns into the EPA Permitting Processes." We look forward to a robust dialogue with the Council over the next several months and obtaining your advice regarding these important issues.

**Plan EJ 2014**

*Expanding the Conversation on Environmentalism and Working for Environmental Justice* is one of Administrator Lisa P. Jackson's top priorities for EPA. Plan EJ 2014, named in recognition of the 20<sup>th</sup> anniversary of the issuance of Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, is EPA's overarching strategy for carrying out the Administrator's priority. Over the next four years, EPA will implement and seek to strengthen efforts under the five Cross-Agency Focus Areas outlined in the plan: 1) Rulemaking; 2) Permitting; 3) Compliance; 4) Community-Based Action; and 5) Administration-Wide Action on Environmental Justice.

During the NEJAC meeting, we would like to establish a dialogue on the following questions:

- 1) Are the Cross-Agency Focus Areas the correct ones?
- 2) How can EPA strengthen specific actions within the five Cross-Agency Focus Areas?
- 3) How would you prioritize the five Cross-Agency Focus Areas?

We are also requesting that NEJAC provide written comments regarding Plan EJ 2014 by October 1, 2010. The agency is making Plan EJ 2014 available to the public and is also seeking comments from environmental justice organizations and members of the public.

## **Permitting Charge**

The Draft Charge to the NEJAC on “Incorporating Environmental Justice Concerns into the EPA Permitting Processes” represents EPA’s desire to improve its ability to consider both environmental justice concerns and the issue of cumulative impacts in the permitting process. We are committed to doing more to provide meaningful opportunities for community involvement in the permitting processes. During the NEJAC meeting, we would like you to discuss the best approach to answering the questions outlined in the permitting charge.

EPA is committed to engaging the NEJAC and the public on these important issues. We envision a continuous conversation with communities and all stakeholders about our efforts to integrate environmental justice into EPA policies and programs.

**U.S. ENVIRONMENTAL PROTECTION AGENCY**  
**PLAN EJ 2014**  
**JULY 27, 2010**  
**DRAFT FOR PUBLIC COMMENT**

**INTRODUCTION**

In January 2010, Administrator Lisa P. Jackson made *Expanding the Conversation on Environmentalism and Working for Environmental Justice* one of EPA's key priorities. For far too long, environmentalism has been viewed as a distant issue for many minority, low-income, and indigenous people. That view has persisted despite the fact that these same people often experience higher levels environmental pollution and other social and economic burdens that result in poorer health outcomes, and fewer financial or advocacy opportunities to spend on many activities, including "greening" their communities. This new priority challenges EPA to address the needs of overburdened communities by decreasing environmental burdens and increasing environmental benefits and to work alongside community stakeholders to build healthy and sustainable neighborhoods.

February 2014 will mark the 20<sup>th</sup> 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 20<sup>th</sup> 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.

EPA also incorporated Administrator Jackson's Environmental Justice priority in its Draft FY2011-FY2015 Strategic Plan, as the Cross-Cutting Fundamental Strategy "Working for Environmental Justice and Children's Health." That draft strategy describes the many ways in which EPA will work on environmental justice during the four year fiscal time frame, including regulatory work, scientific research, community engagement, and partnering with other federal agencies and external organizations. EPA envisions that the activities outlined in Plan EJ 2014 will align and will support EPA's commitments in the Cross-Cutting Fundamental Strategy for FY2011-FY2015.

**ACHIEVING EPA'S ENVIRONMENTAL JUSTICE PRIORITIES**

*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.

EPA will work to achieve these goals by using a combination of initiatives and efforts and will focus on and seek to be responsive to community concerns. Integrating environmental justice into EPA's day-to-day business is a big challenge. EPA's efforts consistently aim to protect human health and the environment, reduce pollution, enforce environmental regulations and permits, and bring new science and technology to assist and inform decision-making. As we move forward, EPA is committed to enhancing outreach efforts, working more closely with communities, diversifying activities, and utilizing multi-media strategies to bring about change in our nation's overburdened communities.

## **PLAN EJ 2014**

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 cross-cutting 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.

### **I. 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

EPA recognizes that these issues are cross-cutting in nature and require the participation of all programs. They require a unified Agency approach toward policy and guidance development. In this way, EPA's environmental justice work will become more efficient and coordinated and

ultimately more effective. Some issues also require coordination among multiple federal agencies, as evidenced in the Cross-Agency Focus Areas on Administration-Wide Action. Lastly, continuous community engagement and empowerment, with input from communities and all stakeholders, will help shape the planning and implementation of Plan EJ 2014 initiatives.

**Incorporating Environmental Justice Into Rulemaking:** EPA's authority to develop regulations that put our nation's environmental laws into effect is one of the Agency's most important tools for protecting human health and the environment. EPA's regulatory authority combined with the mandates of Executive Order 12898 charge EPA with responsibility to ensure that, as we develop Agency actions, we consider communities that are disproportionately impacted by pollution. By incorporating environmental justice into its rulemaking process, EPA will more effectively protect overburdened minority, low-income, and indigenous populations. Plan EJ 2014 calls upon EPA to integrate environmental justice into the fabric of its rulemaking process.

The Agency achieved a significant milestone in this effort in July 2010 by issuing the Interim Guidance on Incorporating Environmental Justice During the Development of an Action. This guidance calls upon Agency rule writers and decision-makers to consider environmental justice throughout all phases of a rule's development – known as the Action Development Process (ADP) – from the point of its inception through all the stages leading to promulgation and implementation. In addition, EPA created the Regulatory Gateway, a web-based portal that houses information on all rules under development. The portal enables the user to identify rules with significant EJ concerns (<http://yosemite.epa.gov/opei/rulegate.nsf>) and to track the development of the rule throughout the ADP.

EPA is also developing substantive technical guidance to assist rule writers and decision-makers in determining how to analyze and incorporate environmental justice into its various rulemaking processes. This guidance is expected to be completed in 2011. EPA's efforts to incorporate environmental justice in its rulemaking must be supported by a strong foundation of science, the rule of law, transparency, and continuous community engagement. The work needed to develop these tools is described under, "Tools Development" in Section II.

**Considering Environmental Justice Concerns in EPA's Permitting Process:** Many federal environmental statutes rely heavily on permits to deliver the environmental protection results that are the goal of our federal environmental laws. For example, the Resource Conservation and Recovery Act (RCRA) relies on permits to ensure that hazardous waste treatment, storage, and disposal facilities take effective measures to protect the surrounding community from exposure to the hazardous waste handled at those facilities. The Clean Water Act relies on permits to control discharges of pollutants into surface waters to protect water quality and communities' health and welfare. The Clean Air Act uses permits to restrict emissions of air pollutants from facilities to ensure that air quality standards are met and public health is protected from air pollution. These permits are a key to providing effective protection of public health and the environment in communities, given their role in addressing exposure to pollutants and preventing adverse environmental and public health impacts.

Building upon the work to incorporate environmental justice concerns in rules, Plan EJ 2014 calls upon EPA to consider environmental justice concerns during the permitting process. The goal is to ensure that environmental justice concerns are given as full consideration as possible in the decision to issue a permit and the terms of the permits issued under federal environmental laws.

The initial focus of this work will be on EPA-issued permits that are important to the public health and welfare of overburdened communities and that have criteria and permit processes that provide the best current opportunities for taking environmental justice concerns into consideration. This will provide the best opportunity for making short-term progress and providing valuable lessons for further efforts.

Overburdened minority, low-income, and indigenous communities often experience cumulative impacts on their health and welfare from pollution from many sources at the same time. A longer-term aspect to this work will be a focus on permits issued pursuant to federal environmental laws (i.e, federal, state, or tribal) that enable EPA to address the complex issue of cumulative impacts from exposure to multiple sources and existing conditions that are critical to the effective consideration of environmental justice in permitting.

EPA's work on environmental justice in permitting will require strong and close cooperation between the Agency's program and regional offices, states, and community stakeholders. EPA National Program Managers (NPM) will need to provide guidance on how to incorporate environmental justice into the various types of permit programs they oversee with input from the EPA Regional Offices, states, and community stakeholders. The EPA Regional Offices will need to implement the guidance as they make decisions on individual permits and work with the states to strengthen their permitting programs.

This will require a strong foundation of science and the rule of law, as well as transparency and meaningful community engagement. The work needed to develop these tools is described under, "Tools Development" in Section II.

**Accelerating Compliance and Enforcement Initiatives:** Compliance and enforcement is an integral part of environmental protection. EPA pursues enforcement and provides compliance assistance to areas that yield the most environmental benefit or reduce risk to human health. Plan EJ 2014 calls upon EPA's enforcement and compliance program to give full consideration to environmental justice issues and communities when developing and implementing program strategies. The Office of Enforcement and Compliance Assurance (OECA) and the Regions are taking steps in this direction. OECA and the Regions: (1) consider EJ concerns in selecting national priorities for enforcement and compliance assurance attention, (2) target specific compliance strategies and enforcement actions to address problems that affect overburdened communities, and (3) seek remedies in enforcement actions that benefit overburdened communities affected by the non-compliance.

For example, OECA selected National Enforcement Initiatives for 2011-2013 that include taking action against sewer overflows, Concentrated Animal Feeding Operations (CAFO) that discharge manure to surface or ground waters, and facilities that emit excessive amounts of air toxics.

These types of facilities and pollution problems tend to have a disproportionate impact on minority, low-income, and indigenous communities.

OECA and the Regions, working with the Department of Justice (DOJ), are also pressing for remedies in enforcement cases that benefit communities overburdened by illegal pollution.

Plan EJ 2014 calls upon OECA to accelerate these efforts. OECA will also make additional efforts to provide information to overburdened communities about enforcement actions that affect those communities, and to provide meaningful opportunities for community input to the remedies sought in those enforcement actions

**Supporting Community-Based Action Programs:** EPA is committed to supporting efforts in overburdened minority, low-income, and indigenous communities. EPA seeks to achieve this goal by focusing on environmental issues that matter to these communities and by empowering citizens and community groups to take action to improve their health and environment. EPA has a number of on-going initiatives that support community-based action. For example, EPA's National Enforcement Air Toxics and Concentrated Animal Feeding Operations (CAFO) Initiatives, Brownfields redevelopment, and Goods Movement Initiative all reflect a focus on issues that have been conveyed to EPA from communities who have suffered from the legacy of pollution and socioeconomic discrimination. Second, EPA seeks to empower overburdened communities to take action to improve their health and environment. Grant and technical assistance programs such as EPA's EJ Small Grants program, Community Action for a Renewed Environment (CARE), and EJ Showcase Community Pilots provide funding and other resources for communities to take action to improve community health. The Agency has developed an array of effective programs and tools, such as funding mechanisms, training, technical assistance, and information and analytical resources to help communities address their environmental problems.

EPA will promote greater coordination in the use of programs and tools<sup>1</sup> to support community empowerment at all levels, from basic educational and leadership development to comprehensive approaches to achieving healthy, sustainable, and green communities. Through these efforts, EPA will make the Agency's resources more accessible to communities, while achieving greater internal efficiency. EPA will also work with other federal agencies to produce holistic approaches and coordinate efforts to provide resources and technical assistance to communities. The Agency will also support continued engagement with overburdened communities and partnerships among all stakeholders.

**Fostering Administration-Wide Action on Environmental Justice:** E.O. 12898 recognizes that EJ concerns must be addressed in a holistic way. It calls upon many federal agencies to make EJ part of their missions and to identify and address environmental and health impacts relevant to their programs and policies.

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<sup>1</sup> Ongoing EPA grants and technical assistance programs which provide significant resources to overburdened communities include: EJ Small Grants, EJ Collaborative Problem-Solving Cooperative Agreements, EJ State Cooperative Agreements, Community Action for a Renewed Environment (CARE) Cooperative Agreements, Brownfields Job Training Grants, EJ Showcase Community Pilots, and EJ Green Development Pilots.

E.O. 12898 also called for the establishment of an Interagency Working Group on Environmental Justice (IWG), which is chaired by the EPA Administrator. EPA is working with the White House Council on Environmental Quality (CEQ) to reconvene the IWG in the Fall of 2010 as the first step in reinvigorating federal agency and Administration-wide efforts to advance environmental justice.

In addition, EPA has a number of federal partnerships established and initiatives underway that support a holistic approach to addressing the environmental, social, and economic burdens that impact communities. For example, EPA, the U.S. Department of Housing and Urban Development, and the U.S. Department of Transportation joined together to form the Partnership for Sustainable Communities, an unprecedented agreement to coordinate federal housing, transportation, and environmental investments; protect public health and the environment; promote equitable development; and help address the challenges of climate change. Other partnerships that benefit overburdened communities, include the Brownfields Federal Interagency Partnership, the Urban Waters Federal Partnership and America's Great Outdoors Initiative.

In the short term, EPA will focus on bridging relationships among different agencies and begin developing joint initiatives. Every federal agency should be responsible for integrating EJ as part their missions and ensuring that their programs address disproportionately high and adverse effects of their programs actions on minority, low-income, and indigenous populations. For example, all federal agencies are responsible for considering environmental justice issues in National Environmental Policy Act (NEPA) environmental impact assessments and enforcing Title VI of the Civil Rights Act.

## **II. Tools Development**

**Science:** The Office of Research and Development is building a strong scientific foundation for conducting disproportionate impact analysis, particularly methods to appropriately characterize and assess cumulative impacts. These efforts help to ensure that EPA brings the best science to decision-making around environmental justice issues. These efforts will build upon work from the Science of Disproportionate Impacts Analysis Symposium (March 17-19, 2010) and an EJ regulatory analysis technical workshop (June 9-10, 2010).

**Law:** The Office of General Counsel is working with the programs and regions to identify opportunities to utilize EPA's statutory authorities to advance environmental justice. Developing legal tools to advance environmental justice is based on EPA's commitment to the rule of law.

**Information:** EPA is working to develop a common mapping platform and nationally consistent screening and targeting tool to enhance EJ analysis and decision-making. EPA's efforts will enhance efforts to provide accessible information to communities and foster transparency.

**Resources:** EPA is working to achieve better coordination among its multiple grant programs, to enable communities to better access Agency grant resources and to foster greater efficiency in program implementation. These efforts will support the Agency's commitment to empowering communities to take action to improve their health and environment.



### **III. Program Initiatives**

Plan EJ 2014 asks that each EPA National Program Manager identify relevant programmatic items that could benefit communities with environmental justice concerns. Examples of such initiatives are: Community Engagement Initiative (Office of Solid Waste and Emergency Response), Urban Waters (Office of Water), DOJ-EPA Environmental Justice Enforcement Pilot (Office of Enforcement and Compliance Assurance), Air Toxics Rules (Office of Air and Radiation) and Pesticide Spray and Dust Drift initiatives (Office of Chemical Safety and Pollution Prevention), and the U.S. Mexico Border Program (Office of International and Tribal Affairs). Also, many of the efforts or initiatives developed to implement the Administrator's other 2010 priorities could be tailored to better integrate environmental justice or otherwise work towards environmental justice.

#### **IMPLEMENTATION**

Plan EJ 2014 is designed to integrate environmental justice into EPA's programs. It is put forward as a draft for a 60-day public review and comment period. It is also being provided to the NEJAC for their input. EPA seeks feedback on the following questions:

- 1) Are the five Cross-Agency Focus Areas outlined above the correct ones?
- 2) What are some ways EPA can strengthen specific actions within the five Cross-Agency Focus Areas?
- 3) How would you prioritize the five Cross-Agency Focus Areas?

Comments are due October 1, 2010, and they can be submitted to EPA via:

- the web (<http://www.epa.gov/environmentaljustice/resources/policy/plan-ej-2014.html>)
- e-mail to Charles Lee, Director of the Office of Environmental Justice (OEJ), at [lee.charles@epa.gov](mailto:lee.charles@epa.gov), or
- mail to Charles Lee at USEPA Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Mail Code: 2201A, Washington, DC 20460

EPA will finalize Plan EJ 2014 within 90 days of the close of the comment period. EPA will also develop an agenda or plan for each of the five Cross Agency Focus Areas, with a scope of work, outreach plans, and milestones. Thereafter, EPA will issue periodic status reports on the web, by email, and quarterly conference calls to interested parties. Finally, an annual progress report by the end of each fiscal year will be provided.

The Plan will be a dynamic document. Throughout the implementation of Plan EJ 2014, EPA will seek community and stakeholder participation as early and often as possible. Progress will be reviewed and reported annually. Eighteen months after the plan is finalized, EPA will update it with new initiatives, as appropriate.

A final report on Plan EJ 2014 will be prepared for release on the 20<sup>th</sup> anniversary of the E.O. 12898 in the Spring of 2014.