



PUBLIC INTEREST LAW CENTER OF PHILADELPHIA

AFFILIATED WITH THE LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW

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Re: Comments of Public Interest Law Center on Draft Plan EJ 2014

The Public Interest Law Center of Philadelphia (the “Law Center”) respectfully submits the following comments in response to the Environmental Protection Agency’s request for comments on the Draft of Plan EJ 2014.

Background Information

The Law Center was founded in 1969 as the Philadelphia affiliate of the Lawyers’ Committee for Civil Rights Under Law and was incorporated as an independent non-profit in 1974 by the Philadelphia Bar Association. The Law Center is dedicated to advancing the Constitutional promise of equal citizenship to all persons irrespective of race, ethnicity, national origin, disability, gender or poverty. The Law Center uses public education, continuing education of clients and client organizations, research, negotiation and, when necessary, the courts to achieve systemic reforms that advance the central goals of self-advocacy, social justice and equal protection of the law for all members of society.

The mission of the Law Center’s Public Health and Environmental Justice Project (the “EJ Project”) is to provide legal and technical expertise and assistance to communities of color and poverty in Southeast Pennsylvania that seek to overcome disproportionately distributed burdens of environmental impacts. Through education and outreach, public advocacy and, where necessary, litigation, we seek to empower residents and other stakeholders in these overburdened communities to improve the environmental and socioeconomic conditions that affect their daily lives. The EJ Project has a long history of productive and results-based collaboration with environmental advocates in the City of Chester; in neighborhoods of color in the City of Philadelphia located near historic industrial uses and present-day waste recycling and processing facilities; and in the City of Hazleton, where a mine reclamation project proposes to use mixtures of fill materials, dredge spoils, and construction and demolition (C&D) fines. Further, the EJ Project frequently collaborates with other environmental advocacy organizations in the Southeast Pennsylvania region.

We greatly appreciate the opportunity to comment on Plan EJ 2014, and we welcome the Agency's renewed attention to EJ issues and EJ communities under the present Administration, including the Agency's commitment to ending the backlog of Title VI administrative complaints. We provide the following written comments to highlight a number of areas in which we believe Plan EJ 2014 could be improved and in which the Agency's intentions could be clarified in greater detail. We encourage the Agency to give strong consideration as well to the comments expressed by members of the National Environmental Justice Advisory Council (NEJAC) during last month's conference call to discuss the Plan.

I. The draft of Plan EJ 2014 lacks specificity and fails to describe precise actions the Agency plans to take to incorporate environmental justice into the Agency's agenda.

Although the draft of Plan EJ 2014 specifically delineates the five Cross-Agency focus areas where environmental justice is to be incorporated, Plan EJ 2014 does not describe with particularity the specific steps EPA plans to take to fulfill this goal. A more robust Plan EJ 2014 that articulated specific actions that EPA intends to take would help clarify the Agency's intent as well as provide affected EJ communities a more meaningful outline of how EPA plans to combat environmental justice concerns after the plan's implementation.

Plan EJ 2014's lack of specificity is palpable throughout the document. For example, on pages 4 and 5 (under the "Accelerating Compliance and Enforcement Initiatives" focus-area), Plan EJ 2014 states that EPA, the EPA Office of Enforcement and Compliance Assurance ("OECA"), and the Department of Justice are working to provide "remedies" through their enforcement actions that will help communities that have been "overburdened" by illegal pollution. However, Plan EJ 2014 fails to state what these "remedies" will be or which agency will be responsible for their development.

These pages also describe OECA's 2011-2013 enforcement initiatives; specifically actions against sewer overflows and concentrated animal feed operations. While these are important concerns to certain EJ communities, Plan EJ 2014 does not describe how OECA plans to target additional environmental justice enforcement initiatives. Furthermore, Plan EJ 2014 does not describe how OECA will take action to enforce the numerous existing violations that continue to negatively impact EJ communities every day. OECA's enforcement initiatives must be broadened to ensure that existing enforcement actions related to EJ communities are made a priority for EPA.

As currently drafted, the enforcement portion of Plan EJ 2014 is lacking. This section merely calls on OECA to accelerate their enforcement efforts to assist "overburdened communities." It also asks that OECA provide information to these communities regarding enforcement actions in their area so that they may provide input regarding potential "remedies." Both the enforcement efforts and remedies initiatives are left very vague and without any designated "plan of attack." Effective enforcement is a crucial step in ensuring regulatory compliance and prohibiting polluters from continuing to harm EJ communities.

Another example of the flaws of the Draft of Plan EJ 2014 can be found on page 5, where Plan EJ 2014 describes the importance of “Supporting Community-Based Action Programs.” Although Plan EJ 2014 states that EPA will provide more resources to communities combating environmental justice issues, it fails to illuminate any specific steps that EPA will be taking. Plan EJ 2014 outlines the funding programs which the Agency already engages in (i.e., Small Grants Program and CARE [Community Action for a Renewed Environment] grants program), but does not describe any plans for additional funding to support community organizations or other grassroots efforts. With all due respect and gratitude for the existing funding of EJ Small Grants, CARE Grants, and other EJ oriented grant programs, EJ communities need more funding, more technical resources (including advice on how to seek and apply for federal grants), and more well-trained personnel in OECA and OEJ to focus exclusively on EJ issues. Similarly, Plan EJ 2014 describes how the Agency will work towards greater coordination of programs and tools to help affected communities, but again does not describe what these efforts will involve. Plan EJ 2014 is unclear on what efforts EPA will specifically take to assist communities dealing with environmental justice concerns.

Plan EJ 2014 is again imprecise on pages 5 and 6 under the “Fostering Administration-Wide Action on Environmental Justice” focus area. Under that section, Plan EJ 2014 describes how EPA will develop joint initiatives with other federal agencies to address environmental justice concerns. Plan EJ 2014 does not provide any examples of what these joint initiatives will be or when they will be implemented. However, Plan EJ 2014 does state that every federal agency “should be responsible for integrating EJ as part of their missions and ensuring that their programs address disproportionately high and adverse effects of their program’s actions on minority, low-income, and indigenous populations.” This is once again a missed opportunity to express EPA’s exact strategy for providing assistance to communities traditionally burdened by adverse environmental conditions.

Regarding the incorporation of environmental justice into the EPA permitting process, the Agency’s plan to focus on EPA-issued permits is an important step in ensuring that EJ communities are not bearing the brunt of pollution-causing industry expansions. To guarantee that EPA is effectively dealing with these concerns, EPA should incorporate environmental justice into the permitting process in a more substantive way. This may include the use of more cumulative impact and risk assessments in making permitting decisions that could impact EJ communities. Incorporating environmental justice into the issuance of EPA permits should be a long term process that allows the EPA to take a more focused look at how cumulative impacts affect EJ communities, and how even newly permitted activities that, in a vacuum, might meet EPA permit limitations nevertheless can send these communities beyond the tipping point to adverse public health and environmental consequences.

The ambiguity of the five Cross-Agency Focus Areas should be resolved by specifically identifying what steps EPA plans to take to support “community-based action,” to accelerate “compliance and enforcement initiatives,” and to foster “administration-wide action on environmental justice.” Again, though we commend EPA for recognizing the need for more emphasis on addressing EJ issues, the Agency owes these communities far more than an

aspirational plan promising to “consider” environmental justice in its actions. What the draft of Plan EJ 2014 is lacking are project metrics that clearly identify the steps EPA will take to make environmental justice issues a priority and how EPA will measure the success of those steps. Only through a firm commitment to take direct action to assist EJ communities can the Agency fulfill the aims of E.O. 12898.

II. The Interim Guidance on Considering Environmental Justice During the Development of an Action document should be refined to reduce the arduous nature of the guidelines and provide regulators with functional guidelines.

Plan EJ 2014 describes how, through regulator adherence to the recently issued “Interim Guidance on Considering Environmental Justice During the Development of an Action” document (hereinafter, “Interim Guidance”), environmental justice concerns will be considered throughout the Action Development Process (“ADP”). This Interim Guidance thus fulfills Plan EJ 2014’s promise “to ensure that, as [EPA develops] Agency actions, [EPA] consider[s] communities that are disproportionately impacted by pollution.”

The major concern the Interim Guidance presents is its burdensome nature. The Interim Guidance is very long, difficult to follow, and not likely to provide effective assistance to a regulator grappling with an environmental justice issue. Additionally, the multi-step ADP process does not allow regulators much discretion concerning the evaluation of potential environmental justice concerns within an action. A regulator must take all decisions to his/her supervisor who will then determine all aspects of the ADP (such as methods for identifying environmental justice concerns, outreach methods, resources to be used, and the final action to be taken). This evaluation process will not only limit a regulator’s own ability to address environmental justice concerns, but will also take much longer to conclude (with varying degrees of success). Because the permitting process itself may not be compatible with the lengthy EJ review process proposed, we are concerned that the latter will give way to the former when conflicts arise. Accordingly, this long process could wind up hurting both communities who are in need of more immediate action to address environmental issues that are affecting their health, and communities who require a more thorough degree of study during a permit’s pendency. We are also concerned that ambiguity and complexity in the Guidance may interact to lead to asymmetrical action by regulators who do not adequately understand the nature of EJ communities and are provided little comprehensible guidance on how to assist them.

The Interim Guidance should be revised to make the instructions more concise and easier for EPA regulators to understand. EPA should condense and refine the Interim Guidance as well as provide in-house trainings to regulators who may work with EJ communities. Such trainings would help to explain the issues these communities are facing and how regulators might incorporate these issues into the ADP. Additionally, the supervisor approval process should be streamlined to allow regulators to make the ADP more efficient.

The Interim Guidance suggests that in Plan EJ 2014, EPA is putting more emphasis on the process than on the outcomes. Instead of encasing environmental justice in a confusing

regulatory rubric, EPA should concentrate on the impact its actions will have on already disadvantaged EJ communities and how they can prevent further harm.

CONCLUSION

The Law Center appreciates this opportunity to comment on EPA's Draft Plan EJ 2014 and supports EPA's initiative to more thoroughly consider the impacts of EPA actions on EJ communities. But the mere consideration of EJ during the permitting process is not sufficient. To ensure real protection for affected EJ communities, the EPA permitting process must become more substantively incorporated into and intertwined with Plan EJ 2014 as this process provides one of the best opportunities for EPA to evaluate particular environmental justice concerns and protect specific EJ communities from further disparate environmental harms. Plan EJ 2014 must be carefully refined to include the specific measures that EPA will be undertaking. Currently, Plan EJ 2014 provides only vague descriptions of the ends EPA hopes to achieve without providing the means the Agency will use to achieve them. A revised Plan EJ 2014 should also explain how EPA will be measuring successes after its implementation (i.e., quantitative, measurable changes versus qualitative, process-based changes) so that the public may hold EPA accountable to its commitment to achieving equality for EJ communities. Moreover, EPA's Interim Guidance should be similarly revised to make it more accessible to regulators dealing with important issues affecting EJ communities. To make Plan EJ 2014 truly "dynamic," EPA must undertake to revise both the Plan and the Interim Guidance making them easier to comprehend and explicitly describing the steps that are to be taken.

Thank you for considering our comments. We commend EPA for taking these initial steps in making environmental justice an Agency-wide focus and hope that this signals the Agency's recognition that that it must provide real assistance – and real results – to historically overburdened EJ communities. We look forward to a revised, more robust version of Plan EJ 2014 and to a fair and just response from EPA should the Agency determine that substantial changes to the Interim Guidance must be made.

Sincerely,



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