

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

EJ 2020 Action Agenda, Environmental
Justice Strategic Plan 2016-2020 (May 2016)

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to ejstrategy@epa.gov

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The City Project * Earthjustice * Human Synergy Works * Jesus People Against Pollution
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Signatories submit the following Comments on Draft EJ 2020 Action Agenda (“Action Agenda”) to emphasize the need for the Environmental Protection Agency (“EPA”) to set specific goals, actions and metrics to assess the performance of EPA’s Title VI compliance and enforcement program and to improve coordination between the Office of Civil Rights (“OCR”) and the Office of Environmental Justice (“OEJ”).

Signatories appreciate that the Action Agenda acknowledges the relationship of environmental justice to Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d–2000d-7. Nonetheless, the section of the draft devoted to this relationship lacks any specificity: it contains neither goals nor action items, neither deliverables nor measures of performance. Signatories strongly urge EPA to set forth clear and measurable strategies and action items to strengthen EPA’s Title VI compliance and enforcement program and, critically, to guide EPA’s effort to integrate environmental justice with Title VI compliance and enforcement.¹

Enforcement of Title VI is not just “an important complement to the EJ program,” as the Action Agenda suggests. Title VI, along with the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.* (“NEPA”), served as the authority upon which Executive Order 12,898 was based and, indeed, the Executive Order was intended to strengthen federal enforcement of Title VI. In a Memorandum for the heads of all departments and agencies issued in tandem with the Executive Order, President Clinton stated that the Order was specifically “intended to promote nondiscrimination in Federal programs substantially affecting human health and the environment” and reiterated the mandate to enforce Title VI:

In accordance with Title VI of the Civil Rights Act of 1964, each Federal agency shall ensure that all programs or activities receiving Federal financial assistance that affect human health or the environment do not

¹ Many of the Signatories also submitted earlier comments on the Draft EJ 2020 Action Agenda Framework, which are incorporated here by reference. These comments called for “a strong and coordinated approach that identifies goals, actions, and metrics to assess performance” for EPA’s Title VI compliance and enforcement program. Comments of Environmental and Community Groups on Draft EJ 2020 Action Agenda Framework 36 (July 14, 2015). In addition, Signatories seek goals, actions, and metrics specifically to improve coordination between OCR and OEJ.

directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin.²

This statement, as well as similar language in the Executive Order itself, mirrors the text of Title VI, 42 U.S.C. § 2000d and EPA's implementing regulations, 40 C.F.R. § 7.35(a), (b). Moreover, Title VI compliance and enforcement are also critical to achieving the goals of environmental justice.

Although the Action Agenda recognizes that EPA can strengthen both its environmental justice and civil rights program "through a sharing of knowledge and past experiences in identifying and responding to community concerns," Action Agenda at 6, it utterly fails to provide any specifics that would create accountability. Signatories call on EPA to incorporate the following recommendations:

First, EPA should develop protocols detailing how the Office of Civil Rights and the Office of Environmental Justice will work together. The protocol should set forth clear triggers for the two offices to confer and ensure that job descriptions and work plans are adjusted accordingly.

Second, the Action Agenda should include clear steps to ensure that OCR will confer with OEJ on issues relating to community engagement. OCR's recent experience with organizing hearings around its Notice of Proposed Rulemaking³ strongly suggest that OCR can benefit from OEJ's knowledge and experience involving community stakeholders. Plans for the hearings failed to meet standards for ensuring meaningful involvement in rulemaking. *See* EPA, Guidance on Considering Environmental Justice During the Development of Regulatory Actions 32 (May 2015), <https://www.epa.gov/sites/production/files/2015-06/documents/considering-ej-in-rulemaking-guide-final.pdf>. As EPA's 2015 Guidance states:

Promoting meaningful involvement often requires special efforts to connect with populations that have been historically underrepresented in decision-making and that have a wide range of educational levels, literacy, or proficiency in English. It will likely be necessary to tailor outreach materials to be concise, understandable and readily accessible to the populations that rule-writers are trying to reach.

Id. at 33. EPA's Guidance recognizes that involving environmental justice communities in a meaningful way "presents challenges and opportunities that those presented by the general public" and offers a number of specific ways in which agency rule-makers should overcome barriers, such as disseminating information using local radio stations and newspapers, conveying issues in ways that are tailored to each population (e.g. through timing and location), and developing trust through various means. *Id.* at 33-34. To avoid continued problems with community engagement or wasting resources reinventing the wheel, the Action Agenda should include steps to improve integration of OEJ resources and expertise into the work of OCR.

² Memorandum on Environmental Justice, 1994 Pub. Papers 241, 242 (Feb. 11, 1994).

³ *See* EPA, *External Compliance (Title VI) – New Developments!* (last updated June 6, 2016), <https://www.epa.gov/ocr/external-compliance-title-vi-new-developments>.

To be clear, the protocol should recognize that OEJ involvement should be triggered not only when OCR is engaged in rulemaking or soliciting input on policy decisions but also in the civil rights external compliance and enforcement process. OCR's failure to engage complainants and stakeholders effectively in the complaint investigation and resolution process has created significant issues of trust between the OCR's External Compliance Program and overburdened environmental justice communities. See, e.g., Ctr. on Race, Poverty & the Env't, *A Right without a Remedy: How the EPA Failed to Protect the Civil Rights of Latino Schoolchildren* (2016), available at <http://www.crpe-ej.org/crpe/index.php/news/publications/396> (discussing how OCR's failure to consult with complainants compounded the harm of EPA's long-delayed investigation). The Action Agenda should require clear steps to ensure that OCR confers with OEJ, as well as EPA staff at the regional level who may have relationships with complainants and other community-based stakeholders, at key points in the investigation process such as during intake, the development of the investigative plan, and when OCR considers remedial options. In some cases, OEJ might also help to facilitate creative resolutions to civil rights complaints.

Third, the Action Agenda should require that EPA develop clear protocols authorizing and delineating when OEJ should make referrals to OCR, which has the authority to conduct compliance reviews. 40 C.F.R. §§ 7.85, 7.115. OEJ engages with overburdened communities across the country and should provide information to community stakeholders about the complaint and investigation process and, in turn, make referrals to OCR when there is reason to believe that a recipient is in non-compliance.⁴

Fourth, both offices should develop protocols to create transition memos and plans for staff departures and changes in administration. Too often, when key staff depart and when administrations change, new staff are not informed of the status and timelines with key stakeholders. These transition memos should be made public in order for external stakeholders and other agency staff to stay informed of OEJ and OCR developments.

Finally, the poor performance of OCR's civil rights compliance and enforcement activities, stretching back over many administrations, raise questions about whether structural changes might be helpful to elevate civil rights and environmental justice as priorities within EPA, and, particularly, might improve the integration and coordination of OCR and OEJ. The Action Agenda should include a wholesale review of the relationship between OCR and OEJ, including consideration of the possibility of reorganization within EPA.

Sincerely,



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⁴ Consistent with this proposal, Action 1.2 of the Action Agenda should be explicit that such actions will include Title VI compliance reviews. In turn, data on where complainants have filed complaints under Title VI of the Civil Rights Act should be considered in the process for identifying and prioritizing the 100 communities.

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