



NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL



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December 14, 2007

Mr. Granta Y. Nakayama
Assistant Administrator for Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC2201A)
Washington, D.C. 20460

Dear Mr. Nakayama:

The National Environmental Justice Advisory Council (NEJAC) appreciated receiving an initial briefing about the “Environmental Justice Strategic Enforcement Assessment Tool” (EJ SEAT) at our Council meeting on September 18–20, 2007. Your work to develop an approach to identifying environmental justice communities represents an important effort to provide a uniform process to further environmental justice in EPA’s enforcement program. We realize that EJ SEAT is in its final phase of development and testing for quality assurance, accuracy and precision. We encourage EPA to continue seeking technical advice to improve the tool’s efficacy, accuracy, and precision. It is notable that the Office of Enforcement and Compliance Assurance (OECA) has requested stakeholder advice about this aspect of its enforcement program, and that this spirit of openness occurs in consideration of the vital issue of enhancing environmental justice.

To assist OECA’s development of this tool, we will form a Work Group to provide detailed advice and comments as internal deliberations about EJ SEAT and other issues of environmental justice program integration continue.

We intend to provide candid and thoughtful advice about the crafting and use of EJ SEAT. In particular, we will articulate our thoughts with regard to:

- The need to describe clearly the intended use of the tool;
- The considerations that must be anticipated to assure the tool does not have unintended adverse consequences (e.g., potential use of the tool in a manner that encourages misrepresentation of community impacts, or limits rather than enhancing the resources allocated to assuring environmental justice);
- Sources of expertise who can provide technical review of this data-intensive and complex tool;
- The appropriateness and the methodology for including various factors in the tool, the adequacy of the data inputs to the tool, and potential interaction among those factors;
- Means to assure that tribal issues are adequately covered in EPA’s

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- enforcement initiatives and the efforts by the American Indian Environmental Office are integrated with other enforcement activities; and
 - Use of the tool in a manner consistent with NEJAC’s strong support for “bias for action.”¹

We have attached an Appendix to this letter briefly listing questions and issues that need to be considered as OECA moves forward in refining the EJ SEAT. These emerged from individual NEJAC members during our initial discussion of EJ SEAT. This is not offered as our consensus recommendations on the tool – that awaits further study and discussion – but instead is offered to express our interest in advancing this effort and reflect the breadth of our perspectives in approaching this topic.

Again, we appreciate EPA’s and OECA’s willingness to work with the NEJAC. Our September meeting was notable in highlighting a number of important and developing EJ activities at both EPA Headquarters and the Regions. The obvious commitment, substance and enthusiasm demonstrated by the Deputy Assistant Administrators and Deputy Regional Administrators in showcasing their efforts to advance environmental justice was commendable. We will continue our support for EPA’s efforts to achieve our mutual goal of accelerating the programmatic integration of environmental justice.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Moore". The signature is fluid and cursive, with a long horizontal stroke at the end.

Richard Moore
Chair

cc: NEJAC Members
Charles Lee, Acting Director, OEJ
Victoria Robinson, NEJAC Program Manager, OEJ

¹ Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts [December 2004], pages 16 and 44

APPENDIX

Questions Raised by Individual NEJAC Members in the Initial Discussion of EJ SEAT

- How will this be used? Will it be limited to informing EPA's internal enforcement discussions to assure that environmental justice communities receive adequate attention, or will there be additional uses? If it is appropriate in only limited uses, how can inappropriate use of the tool be avoided?
- Should this tool be public, both in terms of availability of the tool to be used by others (states, local government, businesses, communities) and availability of the rankings generated by EPA when it employs the tool?
- How will potential negative impacts be avoided (e.g., use of the tool for red-lining by insurers or financiers; use of the tool to exclude from EJ dialogue communities that "fall out" of the characterization of EJ community that are inherent in a tool that defines EJ by distance)?
- What kind of additional peer review would be optimal, and how can it be conducted in order to be helpful and at the same time avoid delay? NEJAC members can be important resources to identify experts familiar with analysis of complex data sets and with the kinds and sources of information important to community members.
- How resource intensive (and expensive) will it be to use the tool?
- How will this tool intersect with state and EPA regional initiatives that already have employ their own tools?
- Given the disjunct between information employed in EJ SEAT and that available for tribal lands, how will the purposes of enhancing enforcement be accomplished for tribes and their communities? Data are particularly lacking with regard to census and health, and these shortcomings must be overcome. We understand that EPA's American Indian Environmental Office may be working on a comparable effort to provide information on environmental impacts in tribal communities, and integration of those efforts will be important.
- Are there other populations inadequately addressed by EJ SEAT (e.g., migrant workers)?
- Are the factors listed adequate, is sufficient information available for each, and how does availability of information/importance of a factor influence the proposed scoring method? How can the system compensate for missing or potentially misleading data?
- Should the scoring be a single target or range?
- If the tool is used to show accomplishment in EJ enforcement, how will the limitations in a uniform method be addressed (e.g., is it more important to address the largest number of impacted people, or those most adversely impacted)?
- How can the nature and use of EJ SEAT be communicated such that it is more transparent than assessment tools used by EPA that historically have been criticized as "black boxes" (e.g., risk assessments)?
- How can EJ SEAT be communicated such that its relative use, in the context of other useful EJ tools, can be appreciated? How can the limits on using EJ SEAT be effectively communicated?
- Since this is intended as an enforcement tool, how will it work within EPA's authorities delegated to the states?