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Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., NW
Washington, DC 20460

Dear Administrator Jackson:

The National Environmental Justice Advisory Council (NEJAC) is pleased to transmit the following recommendations to you in response to your charge of October 5, 2011. In that charge, you asked the NEJAC to provide input on the U.S. Environmental Protection Agency's (EPA/Agency) draft policy for addressing tribal and indigenous peoples environmental justice concerns. The Agency provided the NEJAC a copy of its Working Draft of the *EPA Policy on Environmental Justice for Tribes and Indigenous Peoples* for review to provide advice and recommendation. The Working Draft includes a set of questions to solicit input on the draft. Below is the NEJAC's recommendations in response to these questions:

Do the introduction and background sections clearly explain the rationale for creating the Policy on Environmental Justice for Tribes and Indigenous Peoples? (Question 1)

- 1. In the Introduction (paragraph 2, last line), recommend adding either (1) the word "evaluation" to read: ". . . the Agency intends to develop an implementation plan and policy evaluation strategy based on these principles, . . ." or (2) an additional sentence about the Agency's commitment to evaluation in order to measure progress.**

Rationale:

In order to have "effective" implementation, evaluation is important.

What, if any, change to the proposed principles and sub-principles should be considered? (Question 3)

- 2. For Principle 2 and sub-principle 2a, regarding EPA's Direct Implementation, recommend including the word "delegating," revising the sections as follows:**

- "2. The EPA incorporates environmental justice principles when directly implementing and delegating federal environmental laws . . ."
- "2a. The EPA incorporates environmental justice principles when developing, directly implementing, and delegating federal environmental and human health programs inside and outside of Indian country."

Rationale:

As currently stated, Principle 2 seems to specifically avoid speaking about EPA's responsibility when "indirectly implementing" *per se* through oversight duties when delegating major federal environmental programs to the states. Thus, it is

suggested that the word “directly” be included with “delegating.” More could be recommended once the NEJAC has the opportunity to provide advice and recommendations about the implementation plan. For instance, one clear implementation strategy could be to include provisions within the EPA-State MOU’s to include relevant and applicable federal laws and actions to protect tribal treaty rights, cultural resources, sacred sites, etc., that regularly gets overlooked when the EPA delegates to the states.

- 3. For Principle 5c, clarity is needed. Does it mean at any time, a tribe or indigenous organization may reach out to the EPA to intervene and facilitate discussion with the state about an environmental justice issue, even if it involves delegated programs?** Perhaps the language should be adjusted to read: *“The EPA encourages and helps facilitate discussions among and between tribes, states, and indigenous stakeholders when environmental justice issues are identified during the direct implementation and oversight of EPA approved and delegated environmental programs.”*

What recommendations do you have on how to best implement these principles and sub-principles [those in the Working Draft]? (Question 4)

- 4. The NEJAC recently completed its full report for the Agency on how EPA can best work with federally recognized tribes’ and other indigenous peoples’ to address environmental justice concerns. The NEJAC asks that the Agency review and seriously consider adopting the recommendations in the report "Fostering EJ for Tribes and Indigenous Peoples."**

Rationale:

This document was developed by tribal representation with much thought and consideration on how the Agency can incorporate and develop Agency program(s); program implementation strategies to ensure meaningful involvement and engagement with tribes and indigenous peoples to ensure environmental justice principles are applied.

- 5. Consider including under Principle 7, a fourth sub-principle: “The EPA provides outreach and training to enhance the tribes’ and indigenous stakeholders’ understanding of the roles, responsibilities, and ‘corporate culture’ of the Agency.”**

Rationale:

Currently, sub-principle 7b addresses only one of the two necessary cultural-competency components for this policy to be effective, which is enhancing EPA’s understanding and awareness of tribal and indigenous issues. Cross cultural competency is more inclusive and effective when both groups learn from each other. Therefore outreach and training of tribes and indigenous stakeholders to enhance their understanding of EPA’s roles, responsibilities, and corporate culture is needed.

How should we [EPA] measure progress and success under this policy? (Question 5)

- 6. Consider developing a Memorandum of Understanding (MOU) with other federal agencies to delineate how the federal agencies intend to coordinate and collaborate to address tribal and indigenous peoples EJ concerns.**

Rationale:

Several federal agencies have developed an MOU regarding sacred sites. http://www.fs.fed.us/spf/tribalrelations/documents/sacredsites/SacredSitesMOU_Dec2012.pdf. Developing a federal interagency MOU for addressing tribal and indigenous stakeholders EJ issues could prove to be a useful tool for EPA to effectively implementing Principle 6.

7. **Once EPA's "Implementation Plan" for this Policy is developed, the NEJAC can better answer this question. It's hard to provide a response when we don't know what specific actions the Agency intends to take to implement this Policy.** However, here are some suggestions on measuring the effectiveness of EPA's implementation of the policy:
- Use current Agency policy measuring tools and tailor to tribal and indigenous peoples needs and considerations. Look at how EPA currently measures progress and success on their other policies.
 - Develop an "EJ" checklist for all major decision making processes; negotiations with states, contractors that will be conducting any activity that might affect tribal or indigenous peoples.
 - Develop an "EJ" checklist when the Agency might have the opportunity to educate, conduct outreach to tribes, other indigenous peoples and indigenous stakeholders about EJ during travel, consultation events, etc.
 - Include a checkbox in travel or consultation reports that include statements on how "EJ Principles" were applied.

Rationale:

If EPA wants to have EJ become a fabric in the Agency's operations, it should be incorporated into all aspects of the EPA work and operations, such as a checkbox in a travel report form and all other forms that indicate some communication and/or activity has occurred between EPA and tribal or indigenous peoples.

8. **In addition to checklists** (suggested under recommendation 7), **additional implementation and qualitative measures of progress and success should be developed.** For instance, sometimes during consultation with EPA staff it can feel as though a decision is already clearly pre-determined and that "tribal consultation" is merely a necessary box to check before moving forward with approval. Are there examples of other public policy evaluation strategies that were effective?

Once again, thank you for this opportunity to provide recommendations for enhancing environmental justice in EPA's programs, particularly the tribal program and Agency's work with indigenous stakeholders.

Sincerely,



Elizabeth C. Yeampierre
Chair

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