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July 14, 2015

Dr. Charles Lee
Deputy Associate Assistant Administrator for Environmental Justice
U.S. Environmental Protection Agency
Office of Environmental Justice (2201-A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Via email to: ejstrategy@epa.gov

**Re: Draft Environmental Justice (EJ) 2020 Action Agenda
Framework**

Dear Dr. Lee:

The Environmental Council of the States (ECOS) is pleased to submit this letter to the U.S. Environmental Protection Agency (EPA or Agency) on the Draft EJ 2020 Action Agenda Framework (draft Framework) released on April 15, 2015. ECOS is the national, non-profit, non-partisan association of state and territorial environmental agency leaders. The meaningful and substantial involvement of the state environmental agencies is critical to the successful development and implementation of federal environmental programs. ECOS appreciates the opportunity to provide suggestions which we believe will improve EPA's final Framework.

ECOS shares EPA's commitment to have a robust dialogue around EJ issues and has been collaborating in various ways with the Agency in its EJ work since before the signature of Executive Order 12898 on EJ. States also are serious about engaging with all affected communities and people in environmental decision-making, making decisions transparent, and finding solutions that promote healthy and economically vibrant outcomes.

ECOS supports the draft Framework's structure, which establishes general EJ goals for EPA for the coming years. Since the final Framework will cover several years, we urge the Agency to continue its practice of providing regular reports on its efforts. EPA's statement regarding the draft Framework that "EJ 2020 is a strategy for advancing environmental justice ... It is not a rule"¹ is important. This statement should be incorporated in the final Framework.

¹ <http://www.epa.gov/environmentaljustice/ej2020/>

We also recommend that the final Framework reflect a commitment to continuous improvement. The Agency and many states have made commitments to evaluate key processes and approaches to identify ways to make them more effective and efficient. EPA's final Framework to advance environmental justice should integrate continuous improvement principles.

Please note, ECOS' input does not supersede or alter the comments or opinions of any individual state, as state perspectives and approaches may vary on different aspects of the draft Framework.

Specific Input on the draft Framework

I. Deepen environmental justice practice within EPA programs to improve the health and environment of overburdened communities

A. Incorporate environmental justice in rulemaking

The Agency has developed a guidance document on how to incorporate EJ into its own rulemaking efforts, which should be referenced here unless another guidance is contemplated.² The final Framework must make clear that this goal refers to *EPA* rulemaking, as states have their own processes for considering environmental justice issues in their own rule development and related activities.

B. Consider environmental justice in EPA permitting

Here, the draft Framework makes clear that the Agency is referring to its *own* permitting processes. ECOS members are already serving as resources to EPA on how states have found ways to meaningfully incorporate EJ issues into the permitting process. These processes have been documented in a number of ways.³ States are supportive of EPA's commitment and efforts to incorporate EJ into its permitting activities and appreciate EPA's intention to enable overburdened communities to have full and meaningful access to the permitting process and to develop permits that address EJ issues to the greatest extent practicable.

Public participation is one of the cornerstones of EJ and many states have made public participation a priority for their Agencies and/or implemented their own approaches to consider EJ in permitting through policy, guidance or statutes. Some states have made significant progress in meaningful involvement of overburdened communities and continue to focus on communicating, collaborating and addressing issues presented by these communities.

States value public interests and concerns, and are working directly with stakeholders in communities to provide public involvement. We support the current efforts made to develop and implement regional plans that describe how and when regional offices will engage in enhanced outreach to overburdened communities for EPA-issued permits.

² <http://www.epa.gov/environmentaljustice/resources/policy/considering-ej-in-rulemaking-guide-final.pdf>

³ <http://gov.uchastings.edu/public-law/docs/ejreport-fourthedition.pdf>; see also Dunn & Weiss, *Environmental Justice in Permitting: State Innovations to Advance Accountability*, 81 Miss. L.J. 747 (2012).

C. Advance environmental justice through compliance and enforcement

Since states bring a significant portion (figures range to near 90 percent) of compliance and enforcement actions, this portion of the draft Framework must also specify that EPA is referring only to its compliance and enforcement efforts, and not those of state environmental agencies. There can be much overlap between EPA's chosen compliance and enforcement cases and state activities. Thus, in this part of the final Framework, we encourage EPA to specify that it will work closely with states in the compliance and enforcement area on opportunities to leverage limited resources through coordinated efforts in identified communities. EPA also should note that it will consult with state environmental agencies and other stakeholders to identify overburdened communities, as states and community organizations may in many cases already have done the groundwork to make such identifications.

D. Enhance science tools for considering environmental justice in decision-making

ECOS recommends that in the final Framework this provision refer to “science *and other*” tools for considering EJ in decision-making. We recommend that EPA add language to refer to “decision-making and other analyses.” EPA has developed a number of resources, some of which are science-based tools, some of which are decisional tools, and some of which are screening tools (e.g., EJSCREEN).

We also urge the final Framework to discuss in this section how EPA will coordinate with states on setting research priorities and on training on the various tools, so that states can obtain the most benefit from them and consider how the tools interact with one another. States request that they be a part of the development process of new EJ tools so that the learning and knowledge curve is less steep and tool development may leverage state experiences. EPA's final Framework must make clear that states' use of EJSCREEN and any other EJ tools is optional. EPA also should note that not all tools are appropriate for all settings (e.g., not all tools work in urban and rural areas).

ECOS suggests that the final Framework state that EPA's Office of Research and Development (ORD) will continue its collaboration with the Environmental Research Institute of the States (ERIS) to obtain input on the types of new tools that would be helpful with states, and to obtain state input on science-based tools.

II. Collaborate with partners to expand our impact within overburdened communities

As noted above, states are already working closely with communities facing a variety of environmental, socioeconomic, and health challenges. Addressing the needs of these communities is often not the exclusive purview of the environmental regulator. Accordingly, we recommend that in the final Framework, EPA acknowledge that the definition of an “overburdened community” will vary from place to place, and that the Agency will work with states, other federal agencies (see next point), and local partners to identify these communities.

The federal definition of “overburdened community” articulated in *Plan EJ 2014* is broad and provides good guidance for states,⁴ but in some states overburdened communities may fall outside this definition.⁵

- A. Collaborate with states, tribes, local governments and other co-regulators to share and develop environmental justice tools and practices

ECOS supports this draft Framework goal. It is well-drafted to put a focus on the joint nature of training, sharing, and tool development. ECOS appreciates the reference in the draft Framework to E-Enterprise for the Environment, which embodies a joint governance approach to decision-making so frequently referenced herein. States are pleased to see the reference to local governments, as some decisions of concern to communities are the result of local government authority and choices, and not within EPA or state agency jurisdiction.

- B. Work with other federal agencies to advance environmental justice through the Interagency Working Group on Environmental Justice

ECOS supports this element of the draft Framework as it encourages important cross-federal agency coordination on EJ issues. Environmental regulators are unlikely to be the sole source of support for overburdened communities. Coordination with education, housing, energy, disaster response and emergency preparedness, and other federal agencies will be critical to developing the most effective approaches to directing resources to communities in need.

Notably, this portion of the draft Framework mentions for the first time collaboration with the business and industrial sectors. ECOS encourages other portions of the final Framework also to reference the important, proactive role of business and industry to reduce impacts on overburdened communities and to help EPA and states achieve EJ goals.

III. Demonstrate progress on outcomes that matter to overburdened communities

This portion of the draft Framework discusses measurement and metrics, and also calls for the possible identification of national programmatic efforts. ECOS appreciates that EPA plans to work with states and others to develop these measures and programs, and urges that such language be retained and emphasized in the final Framework.

⁴ “Overburdened community” is used to describe the minority, low-income, tribal and indigenous populations or communities in the United States that potentially experience disproportionate environmental harms and risks due to exposures or cumulative impacts or greater vulnerability to environmental hazards. This increased vulnerability may be attributable to an accumulation of negative and lack of positive environmental, health, economic, or social conditions within these populations or communities. (<http://epa.gov/environmentaljustice/resources/policy/plan-ej-2014/plan-ej-progress-report-2014.pdf>)

⁵ <http://compliance.supportportal.com/link/portal/23002/23009/Article/34316/What-is-the-definition-of-overburdened-community-that-is-relevant-for-EPA-Actions-and-Promising-Practices>

IV. Related efforts: Climate and Title VI

The two “related efforts” listed in the draft Framework - climate and Title VI – appear out of place at the end of the document. There are many related efforts that address the needs of overburdened communities beyond these culled out, including those in the areas of drinking water protection, sewer overflow reduction, toxics and pesticide control, and waste management – just to name a few.

The two short points also do not provide any context for the extensive activity ongoing in these areas. For example, ECOS has been working on Title VI issues for many years, from submitting comments to the state-EPA Title VI Compliance Workgroup, and has provided input to the Office of Civil Rights on the strategic plan it is developing. ECOS is working on resilience and adaptation efforts with other parts of the Agency.

ECOS recommends EPA delete the “related efforts” from the final Framework.

Conclusion

ECOS appreciates the opportunity to provide input to the Agency on the draft Framework. Please do not hesitate to contact me to follow up on any of our points at adunn@ecos.org or 202-266-4929. We look forward to further conversation with you and to seeing the final Framework.

Sincerely,



Alexandra Dapolito Dunn
ECOS Executive Director and General Counsel

Cc: ECOS Officers & Executive Committee
Bill Ehm (IA), Chair, ECOS Planning Committee
John Stine (MN), Vice Chair, ECOS Planning Committee