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July 28, 2016

Charles Lee
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1200 Pennsylvania Avenue, NW
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Via email to: ejstrategy@epa.gov

Re: Draft Environmental Justice (EJ) 2020 Action Agenda

Dear Deputy Associate Administrator 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 Final Draft Environmental Justice (EJ) 2020 Action Agenda (hereinafter, “draft Agenda”) released on March 23, 2016. ECOS is the national, non-profit, non-partisan association of state and territorial environmental agency leaders. The meaningful and substantial involvement of state environmental agencies is critical to the successful development and implementation of federal environmental programs. ECOS appreciates EPA’s prior consideration in July 2015 of ECOS’ comments on the draft Framework. We are pleased to provide the following comments on the draft Agenda. ECOS’ comments do not supersede or alter the comments or opinions of any individual state, recognizing that state perspectives and approaches may vary on aspects of the draft Agenda.

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. State environmental agencies are committed to engaging all communities in environmental regulatory processes, to making decisions transparent, and to identifying solutions that promote healthy and economically vibrant outcomes.

ECOS supports the draft Agenda’s structure, which establishes general EJ goals, strategies and actions for EPA for the coming years. Since the final Agenda will cover a period of several years, we encourage the Agency to continue its practice of providing regular reports on its efforts. EPA’s statement in the 2015 draft Framework that “EJ 2020 is a strategy for advancing environmental justice...It is not a rule” is important and should be added to the final Agenda to clarify for readers the purpose of the Agenda.

We are encouraged by the draft Agenda’s commitment to ongoing improvement through continued partnerships with federal, state, local, and tribal governments, accountability measures, and training EPA staff on EJ.

Specific Comments on the Draft Agenda

ECOS' comments are offered consistent with the order and structure of the draft Agenda.

Chapter 1: Overview

Introduction

The Agency discusses working in “overburdened communities”¹ and provides a definition in the Appendix.² While this definition provides good guidance, many 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.

ECOS recommends that in the final Agenda, EPA state that the definition provided of an “overburdened community” is intended as EPA’s definition, not necessarily the definitions of overburdened communities that may be utilized by other federal agencies, states, and local entities. The definition of an overburdened community will vary from place to place, and that the Agency will work with states, other federal agencies, and local partners to identify these communities.

Chapter 2: Rulemaking

ECOS supports the Agency specifying more clearly that the rulemaking discussed in this Chapter refers to only EPA rulemaking by adding phrases including “EPA rule,” “EPA’s core rulemaking function,” and “EPA staff and managers.” We encourage including this language throughout the final Agenda.

Strategies and Actions

Strategy 4: Strengthen outreach and encourage meaningful community involvement.

The Agency includes in Action 4.1 the language, “each program office responsible for writing rules will consider...”³ but fails to specify this refers to an EPA program office. Since it is specified throughout the chapter, ECOS encourages the Agency to replace language with “each EPA program office.”

The Agency has collaborated with and learned from states on their best practices through ECOS’ Planning Committee and new Environmental Justice community of practice. ECOS appreciates these efforts, and suggests including language in the final Agenda that reflects continued cooperative actions in Action 4.2. In compiling best practices, we suggest the Agency collaborate with state and local communities in sharing and compiling best practices.

¹ Page 1

² Page 47, Overburdened Community is defined within the document as “minority, low-income, tribal, or indigenous populations or geographic locations in the United States that potentially experience disproportionate environmental harms and risks. This disproportionality can be as a result of greater vulnerability to environmental hazards, lack of opportunity for public participation, or other factors. Increased vulnerability may be attributable to an accumulation of negative or lack of positive environmental, health, economic, or social conditions within these populations or places. The term describes situations where multiple factors, including both environmental and socio-economic stressors, may act cumulatively to affect health and the environment and contribute to persistent environmental health disparities.

³ Page 10

Chapter 3: Permitting

ECOS appreciates the Agency specifying that permitting means EPA permitting throughout the chapter. ECOS supports the Agency recognizing when they are “unable to address community concerns,”⁴ they will seek assistance from federal, state, local, and other entities.

Strategies and Actions

Strategy 1: Establish a framework and set of tools for considering environmental justice concerns in EPA permitting.

Action 1.2 provides no guidelines on how to interpret “appropriate permit terms and conditions.”⁵ Since EPA has objection authority on permits through delegated and authorized programs, reference to “appropriate permit terms and conditions” is subjective and puts the determination of what meets the term “appropriate” in EPA’s discretion. ECOS encourages the Agency to recognize that any question about appropriate terms and conditions on state delegated programs should be discussed with state, and if related, local permitting authority.

Strategy 2: Collaborate with state, tribal, and local co-regulatory partners, communities, and permit applicants to share and promote the use of tools, best practices and approaches.

ECOS appreciates and stresses the importance of Action 2.1 discussing implementation of “joint learning” with state, tribal, and local regulatory partners. ECOS plays a critical role in facilitating cooperation among federal and state environmental agencies, and fostering sharing and discovery among parties in regard to permitting reflects ECOS’ mission.

ECOS suggests the Agency clarify in Action 2.3 whether “EPA will engage with permit applicants...”⁶ means EPA permit applicants or state permit applicants as well. Throughout the chapter, the language specifies “EPA” permits or permit applicants and since this language is in the co-regulators section, it is unclear the scope of applicants the EPA is including.

Chapter 4: Compliance and Enforcement

ECOS appreciates the Agency clarifying compliance and enforcement is EPA compliance and enforcement.

In the Chapter Overview, EPA states, “Because states, federally recognized tribes (tribes) and local governments play a vital role in addressing violations that affect overburdened communities, EPA will also build environmental justice into our work with these co-regulators.”⁷ ECOS supports the Agency’s recognition of the role states and local governments play in compliance and enforcement efforts. However, the latter part of the sentence suggests EPA will build their own environmental justice programs separate from state and local government efforts. ECOS suggests rewording to make clear EPA will leverage resources with co-regulators and expand upon practices already used in states to build environmental justice into the Agency’s work.

⁴ Page 11

⁵ Page 12

⁶ Page 13

⁷ Page 14

Strategies and Actions

Strategy 1: Direct more EPA enforcement resources to the most overburdened communities.

The Agency will develop more holistic compliance and enforcement efforts in “at least 100 of the most overburdened communities.”⁸ As states have the best knowledge and understanding of the communities within each state, ECOS encourages the Agency to state in the final Agenda that it will work with states to identify these 100 most overburdened communities. Also, EPA should clarify that there will not be an actual list of 100 so identified communities, as placement of a community on such a public list would require procedures and checks and balances on the selection process.

Strategy 2: Work with federal, state, tribal, and local governmental partners to pursue vigorous enforcement for violations in overburdened communities and leverage limited compliance resources by improving joint planning and targeting of enforcement activities.

ECOS appreciates recognition given to the states by the Agency on their “significant portion”⁹ of work on compliance and enforcement. Following this, the Agency mentions that EPA and states have “shared accountability” in advancing environmental justice through compliance and enforcement. The term “shared accountability” is unclear, particularly as it relates to the states’ lead role in the majority of compliance and enforcement efforts. As this same language is repeated in Chapter 6, Strategy 1, it is very important to make clear what EPA means by “shared accountability” and how it would be measured.

ECOS stresses that the Agency should, when planning and targeting enforcement activities within states, coordinate with states on their compliance and enforcement priorities since states are in the best position to understand their own compliance and enforcement efforts. This will allow EPA and states to augment current compliance and enforcement efforts.

Strategy 3: Strengthen communication so enforcement cases can benefit from the knowledge of local communities, and empower communities with information about pollution and violations that affect them.

The Action 3.1 heading (“EPA will empower communities with information about pollution and violations that affect them”)¹⁰ is unclear on what information about pollution and violations will be provided to communities and how it will empower them. ECOS suggests the heading to state, “EPA will notify communities with information about permit violations and EPA’s response strategies to combat them.” The current heading and explanatory paragraph shows disconnect, where the heading suggests empowerment of communities but the explanatory paragraph does not indicate how. The suggested heading alleviates this problem.

ECOS is concerned with the use of Enforcement and Compliance History Online (ECHO) data tool considering its history of frequent data errors. ECOS encourages the Agency to explain in the final Agenda how ECHO’s limitations will be addressed and the timing of these activities.

Chapter 5: Science

ECOS supports the objective, replacing “science and other” tools from the draft Framework to “decision making through research on decision support tools, cumulative impacts and risks, innovative monitoring

⁸ Page 15

⁹ Page 15

¹⁰ Page 16

and solution technologies.”¹¹ This is more inclusive and provides a greater understanding of the Agency’s goals and focus.

The Agency does not mention states’ role in researching and developing technologies. We urge the final Agenda 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 environmental justice tools so that the learning and knowledge curve is less steep and tool development may leverage state experiences. EPA’s final Agenda must make clear that states’ use of EJSCREEN and any other environmental justice tools is optional. EPA also should note that not all tools are appropriate for use in all settings (e.g., not all tools work in urban and rural areas).

ECOS also suggests that the final Agenda 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 to states, and to obtain state input on science.

Chapter 6: States and Local Governments

ECOS supports this draft Agenda goal, with minor suggestions. 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 Agenda 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.

Strategies and Actions

Strategy 1: Work with co-regulators to reduce adverse impacts and promote meaningful involvement in overburdened communities through our regulatory work.

ECOS supports the Agency explicitly stating co-regulators are “invited” to work with EPA on identifying overburdened communities but “will not be required to participate in these activities.”¹² As discussed in Chapter 4, ECOS urges the Agency to provide an explanation of “shared accountability” when discussing compliance and enforcement. As mentioned in Chapter 5, the Agency must stress that a state’s use of EJSCREEN and any other environmental justice tool is optional.

Strategy 2: Support peer-to-peer learning to identify best practices on how to address environmental justice concerns.

The Agency states the “EPA will summarize the best practices and lessons learned.”¹³ ECOS suggests the final Agenda indicate the states’ role in providing best practices, especially since this falls under the “peer-to-peer” learning strategy. ECOS supports the Agency’s commitment to providing the public with the most updated and successful approaches.

Strategy 4: Work with co-regulators to establish shared program expectations and performance criteria and hold ourselves accountable to drive improvement where needed.

¹¹ Page 17

¹² Page 22

¹³ Page 23

ECOS urges the Agency to specify “EPA program performance” during evaluation as they cannot evaluate states’ environmental justice programs without also considering EPA program performance.

Chapter 7: Federal Agencies

ECOS supports this element of the draft Agenda 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.

This portion of the draft Agenda no longer mentions collaboration with the business and industrial sectors, as it did in the draft Framework. ECOS encourages other portions of the final Agenda 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.

Chapter 10: Significant National Environmental Justice Challenges

The structure of this chapter addressing lead, drinking water, air quality, and hazardous waste sites is different than the previous chapters. The other chapters provide explicit, detailed guidelines of an issue and how EPA is going to address and fix these issues. The sections discussing the “four key areas” provide good background but mere suggestions on how each issue will be handled. Moreover, these key areas are already priorities in most states. As described in the Draft Agenda, it is unclear how EPA intends for states to further prioritize these issues in overburdened communities with limited resources available. As such, some states are concerned that prioritizing non-regulatory efforts in overburdened communities will be difficult given existing regulatory requirements and timelines that apply to all communities regardless of economic status. The final Agenda should include more detailed guidelines, similar to the rest of the draft Agenda, for federal, state, tribal, and local agencies to have more understanding and direction of their role.

Conclusion

ECOS appreciates the opportunity to provide input to the Agency on the draft Agenda. 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 Agenda.

Sincerely,



Alexandra Dapolito Dunn
ECOS Executive Director and General Counsel

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