

July 15, 2005

Mr. Barry E. Hill
Director, Office of Environmental Justice
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW, Mail Code 2201A
Ariel Rios South Building, Room 2226
Washington, DC 20460-0001

Re: Comments on U.S. EPA's Environmental Justice Strategic Plan Framework and Outline

Dear Mr. Hill:

The National Black Environmental Justice Network (NBEJN) submits this letter and comments on the U.S. Environmental Protection Agency's (EPA) Draft Environmental Justice Strategic Plan, the accompanying Framework for Integrating Environmental Justice," and Frequently Asked Questions on the Strategic Plan ("Draft Strategy/Framework").^[i]

NBEJN is a national nonprofit organization whose mission is to end racially discriminatory environmental decision-making, raising awareness in the Black community of the connection between exposure to pollution and poor health, and promoting healthy and sustainable communities. The Network represents African Descended grassroots activists, scholars, attorneys, researchers, health professionals, scientists and environmental justice organizations and institutions.

I. INTRODUCTION

The Draft Strategy/Framework fails to provide a clear and coherent framework for implementation of the Environmental Justice Executive Order 12898, Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations.^[ii] Pursuant to the Executive Order, each federal agency is required to develop an Agency wide environmental justice strategy "that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, or activities on minority populations and low-income populations."^[iii]

These Drafts vary significantly from the language and intent of the Executive Order, which will result in confusion and new impediments to full and consistent compliance with its requisites.

EPA's Draft Strategy/Framework fails to address the key environmental objectives of the Order, principally, addressing, reducing and eliminating existing environmental health threats that disproportionately affect low-income and minority populations. Moreover, the Draft Strategy/Framework falls well short of the conclusions and recommendations issued in a report last year by the Agency's watchdog, the Office of the Inspector General (OIG). As you know, this March 2004 OIG evaluation, entitled "EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice," ^[iv] critiques the Agency's lack of progress on ensuring equal environmental protection since the signing of the Order in 1994. The EPA OIG grades the Agency a failure on implementing this landmark eleven-year old mandate.

Instead of redefining the Executive Order, EPA should implement the Executive Order consistent with the Order, recommendations in the OIG report, and over a decade of education by environmental justice stakeholders and experts throughout the U.S. The Order is explicit regarding the appropriate focus of the Agency's environmental justice program. EPA can overcome this failure and speed compliance with the Order by developing a strategic plan and framework that addresses the targeted population sectors identified therein.

Accordingly, EPA's Draft Strategy/Framework must address these specified environmental justice populations, both minority low-income populations and the disproportionately high and adverse impacts they are experiencing. Equally important, instead of what appears to be a fundamental departure, these documents should establish leadership and build on precedents set by decades of effort at the federal, state and local levels that resulted in environmental justice directives, definitions, policies, and guidance which recognize the primacy of race and income in strategizing, identifying, assessing and remedying impacts.

II. RACE & INCOME DEFINE ENVIRONMENTAL JUSTICE

Scientific and legal literature is replete with documentation that demonstrates the significant correlation of race and environmental injustice. Clearly, income is key, while race correlates highest as a factor. Removing race and income

from the center of the Agency's strategy and analysis will not redress disproportionately high and adverse impacts in minority and low-income populations. This strategy is tantamount to the U.S. Department of Housing and Urban Development (HUD) trying to address fair housing without dealing with racial discrimination, racial redlining, or racial steering.

Similarly, this is the case if the U.S. Department of Health and Human Services (HHS) tried to address health disparities without confronting racial and income disparities. Adopting the logic of EPA's Draft Strategy/Framework, it is possible to address American apartheid and the nation's history of racist policies and programs without ever mentioning race or designing policies, procedures, and programs to address racism (individual, cultural, and institutional) and the disproportionate burden of environmental inequities borne by communities of color.

Despite significant improvements in environmental protection over the past several decades, millions of Americans continue to live, work, play, and go to school in unsafe and unhealthy physical environments.[v] Since its federal Public Health Service days, EPA has not always recognized that many government and industry programs and practices (whether intended or unintended) cause adverse impacts on people with low incomes and people of color. Institutional racism results in unequal environmental protection and discriminatory differences in environmental quality between black and white communities.

(a) Race, Income & Environmental Justice Impacts

Inexplicably, the Draft Strategy/Framework abandons crucial benchmarks such as studies produced over decades that unequivocally link environmental hazards, race/class health disparities, and unequal protection. Dating back to the seventies, studies reveal that people of color bear greater health and environmental risk burdens than the society at large.[vi]

In 1999, for example, the Institute of Medicine (in a study partially funded by EPA) issued *Toward Environmental Justice: Research, Education, and Health Policy Needs* and concluded that low-income and people of color communities are exposed to higher levels of pollution than the rest of the nation and that these same populations experience certain diseases in greater number than more affluent white communities.[vii] The report cited that, among the range of differential impacts, low-income and people of color communities are subjected to elevated health risks from contaminated fish consumption[viii], location of municipal landfills and incinerators,[ix] toxic waste dumps,[x] toxic schools,[xi] toxic housing,[xii] and toxic air releases.[xiii]

A 2001 Center for Health, Environment, and Justice study, *Poisoned Schools: Invisible Threats, Visible Action*, reports that more than 600,000 students in Massachusetts, New York, New Jersey, Michigan and California were attending nearly 1,200 public schools, mostly populated by low-income and students of color, that are located within a half mile of federal Superfund or state-identified contaminated sites.[xiv]

In January and February 2003, the U.S. Commission on Civil Rights (USCCR) held hearings on environmental justice. Experts presented evidence of environmental inequities in communities of color, including disproportionate incidences of environmentally related disease, lead paint exposure in homes, hazardous waste sites, toxic playgrounds, and schools located near Superfund sites and facilities that release toxic chemicals.

In its 2003 report, *Not in My Backyard: Executive Order and Title VI as Tools for Achieving Environmental Justice*, the USCCR concluded, "Minority and low-income communities are most often exposed to multiple pollutants and from multiple sources There is no presumption of adverse health risk from multiple exposures, and no policy on cumulative risk assessment that considers the roles of social, economic, and behavioral factors when assessing risk." [xv]

(b) Remedying Environmental Injustice

The Draft Strategy/Framework will not aid the Agency's efforts to achieve environmental justice. As drafted, these documents are not designed to address environmental policies and practices that result in unfair, unjust, and inequitable outcomes in low-income and minority populations. It does not address the challenges or ask the hard questions that go to the heart of environmental injustice and unequal protection under law: What groups are most affected? Why are they affected? Who did it? What can be done to remedy the problem? How can communities be justly compensated and reparations restitution paid to individuals harmed by industry and government actions? How can the problem be prevented? Vulnerable communities, populations, and individuals often are invisible and fall between the regulatory cracks.

The Executive Order, though not perfect, served to make the environmental "hot spots" in disenfranchised minority and low-income communities visible for focused and targeted action. Air pollution is not randomly distributed across communities and the landscape. Some populations are at greater risk from dirty air. Researchers at the National

Argonne Laboratory discovered that 57 percent of whites, 65 percent of African Americans, and 80 percent of Latinos lived in the 437 counties that failed to meet at least one of the EPA ambient air quality standards.[xvi]

A 2000 study from the American Lung Association shows that children of color are disproportionately represented in areas with high ozone levels.[xvii] Additionally, 61.3 percent of Black children, 69.2 percent of Hispanic children and 67.7 percent of Asian-American children live in areas that exceed the 0.08 ppm ozone standard, while only 50.8 percent of white children live in such areas.

Air pollution from vehicle emissions causes significant amounts of illness, hospitalization, and premature death. A 2002 study in Lancet reports a strong causal link between ozone and asthma.[xviii] Ground-level ozone may exacerbate health problems such as asthma, nasal congestions, throat irritation, respiratory tract inflammation, reduced resistance to infection, changes in cell function, loss of lung elasticity, chest pains, lung scarring, formation of lesions within the lungs, and premature aging of lung tissues.[xix]

Although it is difficult to put a single price tag on the cost of air pollution, estimates range from \$10 billion to \$200 billion a year.[xx] Asthma is the number one reason for childhood emergency room visits in most major cities in the country. The hospitalization rate for African Americans and Latinos is 3 to 4 times the rate for whites. In 2003, the CDC reported that African Americans had an asthma death rate 200 percent higher than whites.[xxi]

The question of environmental justice is not anchored in a debate about whether or not decision makers should tinker with risk assessment, risk management, and risk ranking schemes. Communities of color and low-income communities know too well when risks are ranked on a national level, which the likely "winners" and "losers" are. Environmental justice "hot spots" often do not rise to the level of national priority. This is not thermodynamic dynamics, it's political science. The environmental justice framework seeks to prevent environmental threats before they occur.[xxii] The environmental justice framework incorporates a preventive approach -- the precautionary principle that would eliminate harmful practices.

(c) Title VI Enforcement & Environmental Justice

Regrettably, the fifteen business days of the public comment period on the Draft Strategy/Framework impedes NBEJN's ability to provide a thorough analysis of the negative effect of the lack of civil rights enforcement by EPA to date under Title VI of the 1964 Civil Rights Act. However, EPA appears to be evading its responsibilities under Title VI.[xxiii] Furthermore, it is likely that these Drafts will cause confusion in the governmental and private sectors and compound the delay in ensuring compliance.

EPA is obligated by Title VI to ensure that recipients of federal funds do not discriminate in their actions, practices and programs. The Draft Strategy/Framework must explicitly incorporate a plan for ensuring both implementation and compliance with Title VI as envisioned by the Presidential Memorandum that accompanies Executive Order 12898.

(d) The Public Comment Period is Inadequate

Fifteen business days is an inadequately short period for public comment on EPA's draft Strategy/Framework. Clearly, the Agency deems these Drafts sufficiently important to warrant public notice via publication in the Federal Register. The public merits a meaningful opportunity to respond. Essentially, however, the limited period for public comment abrogates public involvement and input.

The timing is a hardship; in particular, for grassroots communities and organizations whose stake in the Agency's environmental justice program is considerable but their capacity to access the EPA materials and respond to this immediacy are limited. . In the mid-1990s, EPA provided federal leadership by adopting the "Model Plan for Public Participation" developed by the National Environmental Justice Advisory Council (NEJAC). The Model Plan articulates the importance of extensive outreach to affected constituencies and appropriate timing of public comment periods.

Although recent actions by EPA's Office of Environmental Justice and the Agency signal that the function of NEJAC is diminished, this multi-stakeholder federal advisory committee is a critical element of the Agency's progress at Headquarters and in the Regions.

III. CONCLUSION

The EPA Draft Strategy/Framework must provide a clear and coherent framework for implementing the Environmental Justice Executive Order 12898, Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations. Pursuant to the Executive Order, each federal agency is required to develop an Agency wide

environmental justice strategy "that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, or activities on minority populations and low-income populations."

The Draft Strategy/Framework avoids the mandate of the Executive Order and the Agency's responsibility for addressing environmental injustice and disproportionately high and adverse impacts in minority and low-income populations. It appears that this approach will divert crucial resources from implementing the Executive Order, which will further delay achieving equal protection and environmental justice. .

The Executive Order is explicit about the targets: Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations. . Accordingly, EPA's Draft Strategy/Framework must focus on this target population in implementing it.

EPA's Draft Strategy/Framework is the wrong message to governmental agencies and the private sector. Race and income (i.e., minority and low-income population that are disproportionately and adversely affected by environmental hazards) cannot be eliminated from "environmental justice considerations." The Draft Framework and Strategy documents must be revisited and rewritten in keeping with the Constitutional mandate of equal protection under law, Title VI of the 1964 Civil Rights Act and Executive Order 12898.

Rather than adapting existing strategic planning boilerplate, EPA should develop a comprehensive plan and framework that effectively identifies the targets and provides a blueprint for regulators (and others) who must address disproportionate impacts.

Finally, it should be noted that EPA's Draft Strategy/Framework conflicts with two environmental justice bills passed in the U.S. House of Representatives (lead sponsors, Rep. Alcee Hastings and Rep. Hilda Solis) and the U.S. Senate (lead sponsor, Minority Whip Richard Durbin). As you may know, these bills, riders on the recently passed EPA Appropriations bill, reinforce the race and class analysis of disproportionately high and adverse environmental impacts.

We look forward to the opportunity to work with the Agency on development of the Draft Strategy/Framework as well as (i) revised draft documents consistent with achieving environmental justice and (ii) a public comment period sufficient to provide opportunity for such comment...

Sincerely,

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On Behalf of
The National Black Environmental Justice Network

cc:Administrator Stephen Johnson
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[i] See EPA Environmental Justice Strategic Plan Framework and Outline (Working Draft), 70 Fed. Reg. 36167 (June 22, 2005) ("Strategic Plan").

[ii] See generally Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Exec. Order No. 12,898, 3 C.F.R. 859 (1995), reprinted as amended in 42 U.S.C. §4321 (1994 & Supp. VI 1998) (the "Executive Order.").

[iii] Ibid, p. 1-103.

[iv] U.S. EPA, Office of Inspector General, EPA Needs to Consistently Implement the Intent of the Executive order on Environmental Justice. Washington, DC: Office of Inspector General, Report No. 2004-P-00007, (March 1, 2004).

[v] Paul Mohai and Bunyan Bryant, "Race, Poverty, and the Environment," EPA Journal 18 (March/April, 1992): 1-8; R.D. Bullard, "In Our Backyards," EPA Journal 18 (March/April, 1993): 11-12; D.R. Wernette and L.A. Nieves, "Breathing Polluted Air," EPA Journal 18 (March/April, 1992): 16-17; Patrick C. West, "Health Concerns for Fish-Eating Tribes?" EPA Journal 18 (March/April, 1992): 15-16.

[vi] See W. J. Kravant, "People, Energy, and Pollution." Pp. 125-167 in D. K. Newman and Dawn Day, eds., The American Energy Consumer. Cambridge, Mass.: Ballinger, 1975; Robert D. Bullard, "Solid Waste Sites and the Black Houston Community." Sociological Inquiry 53 (Spring, 1983): 273-288; United Church of Christ Commission for Racial Justice, Toxic Wastes and Race in the United States. New York: Commission for Racial Justice, 1987; Dick Russell, "Environmental Racism." The Amicus Journal 11 (Spring, 1989): 22-32; Eric Mann, L.A.'s Lethal Air: New Strategies for Policy, Organizing, and Action. Los Angeles: Labor/Community Strategy Center, 1991; D. R. Wernette and L. A. Nieves, "Breathing Polluted Air: Minorities are Disproportionately Exposed." EPA Journal 18 (March/April, 1992): 16-17; Bryant and Mohai, Race and the Incidence of Environmental Hazards; Benjamin Goldman and Laura J. Fitton, Toxic Wastes and Race Revisited. Washington, DC: Center for Policy Alternatives, NAACP, and United Church of Christ, 1994.

[vii] Institute of Medicine, Toward Environmental Justice: Research, Education, and Health Policy Needs. Washington, DC: National Academy of Sciences, 1999, Chapter 1.

[viii] Patrick C. West, J. Mark Fly, and Robert Marans, "Minority Anglers and Toxic Fish Consumption: Evidence from a State-Wide Survey in Michigan." In Bryant and Mohai, Race and the Incidence of Environmental Hazards, pp. 100-113.

[ix] Robert D. Bullard, "Solid Waste Sites and the Black Houston Community." Sociological Inquiry 53 (Spring 1983): 273-288; Robert D. Bullard, Invisible Houston: The Black Experience in Boom and Bust. College Station, TX: Texas A&M University Press, 1987, chapter 6; Robert D. Bullard, "Environmental Racism and Land Use." Land Use Forum: A Journal of Law, Policy & Practice 2 (Spring, 1993): 6-11.

[x] United Church of Christ Commission for Racial Justice, Toxic Wastes and Race; Paul Mohai and Bunyan Bryant, "Environmental Racism: Reviewing the Evidence." in Bryant and Mohai, Race and the Incidence of Environmental Hazards; Paul Stretesky and Michael J. Hogan, "Environmental Justice: An Analysis of Superfund Sites in Florida," Social Problems 45 (May, 1998): 268-287.

[xi] Center for Health and Environmental Justice, Poisoned Schools: Invisible Threats, Visible Actions. Falls Church, VA: Child Proofing Our Communities - Poisoned School Campaign, Center for Health, Environment and Justice, March 2001. Also found at <http://www.childproofing.org/mapindex.html>.

[xiii] "Study: Public Housing is too Often Located Near Toxic Sites." Dallas Morning News, October 3, 2000. See <http://www.cnn.com/2000/NATURE/10/03/toxicneighbors.ap/>.

[xiii] J. Sadd and M. Pastor, "Every Breath You Take . . .: The Demographics of Toxic Air Releases in Southern California," *Economic Development Quarterly* 13 (1999): 107-123.

[xiv] See the Center for Health, Environment, and Justice, *Poisoned Schools* report at http://www.bredl.org/press/2001/poisoned_schools.htm. Accessed December 10, 2002.

[xv] U.S. Commission on Civil Rights, *Not in My Backyard: Executive Order 12898 and Title VI as Tools for Achieving Environmental Justice*. Washington, DC: U.S. Commission on Civil Rights, 2003, p. 27.

[xvi] Dee R. Wernette and Leslie A. Nieves, "Breathing polluted air: Minorities are disproportionately exposed," *EPA Journal* 18 (March/April, 1992): 16-17.

[xvii] American Lung Association, "Fact Sheet: Children and Air Pollution," (September 2000) found at http://www.lungusa.org/air/children_factsheet99.html. Accessed December 1, 2002.

[xviii] McConnell, R, Berhane, K, Gilliland, F, London, SJ, Islam, T, Gauderman, WJ, Avol, E, Margolis, HG, and Peters, JM, "Asthma in Exercising Children Exposed to Ozone: A Cohort Study. *The Lancet*, 359 (2002): 386-391.

[xix] U.S. EPA, "Review of National Ambient Air Quality Standards for Ozone, Assessment of Scientific and Technical Information," OAQPS Staff Paper. Research Triangle Park, NC: EPA, 1996; Ozkaynk, H, Spengler, JD, O'Neil, M, Xue, J, Zhou, H, Gilbert, K, and Ramstrom, S. "Ambient Ozone Exposure and Emergency Hospital Admissions and Emergency Room Visits for Respiratory Problems in Thirteen U.S. Cities," in American Lung Association, *Breathless: Air Pollution and Hospital Admissions/Emergency Room Visits in 13 Cities*. Washington, DC: American Lung Association, 1996; American Lung Association, *Out of Breath: Populations-at-Risk to Alternative Ozone Levels*. Washington, DC: American Lung Association, 1995.

[xx] D. Bollier. *How smart growth can stop sprawl: A briefing guide for funders*. Washington, DC: Essential Books, 1998.

[xxi] Centers for Disease Control and Prevention, "Asthma Prevalence, Health Care Use and Mortality 2000-2001," <http://www.cdc.gov/nchs/products/pubs/pubd/hestats/asthma/asthma.htm>. Accessed on September 19, 2004.

[xxii] Robert D. Bullard, "Race and Environmental Justice in the United States," *Yale Journal of International Law* 18 (Winter, 1993): 319-335; Robert D. Bullard, "The Threat of Environmental Racism." *Natural Resources & Environment* 7 (Winter, 1993): 23-26, 55-56.

[xxiii] 42 U.S.C. Subsection 2000d et seq.