



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 9 2005

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

The Honorable Hilda L. Solis
U. S. House of Representatives
Washington, D.C. 20515

Dear Representative Solis:


Thank you for your letter of July 19, 2005 regarding the United States Environmental Protection Agency's (EPA's) June 22, 2005 draft "Environmental Justice Strategic Plan Outline" and "Framework for Integrating Environmental Justice" (which your letter collectively identified as the "Strategic Plan"). I appreciate your interest in this issue.

EPA's Environmental Justice Strategic Plan, when finalized, will represent the primary national environmental justice program planning instrument for incorporating environmental justice into EPA's programs and operations. The Environmental Justice Strategic Plan will link applicable portions of the headquarters program and regional offices' environmental justice activities to EPA's Fiscal Years 2006-2011 Strategic Plan through the use of Environmental Justice Strategic Targets.

In your letter, you express concern that the Strategic Plan fails to address the real environmental justice problems facing our nation's most polluted communities and that the Strategic Plan violates Executive Order 12898 by disregarding race as a consideration for determining environmental justice. In the enclosed "Environmental Justice Strategic Plan Frequently Asked Questions," we address the main concerns you expressed in your letter, along with some additional questions that have arisen in the process of drafting the Environmental Justice Strategic Plan. I hope that the enclosed will provide you a more thorough understanding of the EPA's approach to environmental justice, both at headquarters and in our regional offices.

The public comment period for the Environmental Justice Strategic Plan closed on August 15, 2005, and we have begun reviewing the comments. Again, thank you for your letter and support of EPA's environmental justice program. If you have further questions, please contact me, or your staff may contact Josh Lewis in EPA's Office of Congressional and Intergovernmental Relations at (202)564-2095.

Sincerely,

A handwritten signature in black ink that reads "Granta Y. Nakayama". The signature is written in a cursive, flowing style.

Granta Y. Nakayama
Assistant Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

ENVIRONMENTAL JUSTICE STRATEGIC PLAN

FREQUENTLY ASKED QUESTIONS

1. ***Question: What is the Environmental Justice Strategic Plan?***

Answer: The Environmental Justice Strategic Plan will be the primary national environmental justice program planning instrument for incorporating environmental justice into EPA's programs and operations, including its 5-year planning and budgeting process. The Environmental Justice Strategic Plan will link applicable portions of the headquarters program and regional offices' environmental justice activities to the Agency's Strategic Plan through the use of Environmental Justice Strategic Targets – specific, measurable commitments that address critical environmental and health issues in areas with disproportionate environmental risks or burdens. The Environmental Justice Strategic Plan will also articulate the Agency's National Environmental Justice Priorities and discuss how the Agency will measure its progress towards achieving them.

2. ***Question: Is EPA permitted by law to use racial classifications, e.g., minority composition, as a basis for making decisions to address environmental justice concerns?***

Answer: EPA's use of racial classifications as a basis for making decisions would raise significant legal issues. Several Supreme Court decisions, such as Adarand Constructors, Inc. v. Peña, 515 U.S. 200, 227 (1995), and Grutter v. Bollinger, 539 U.S. 306, 326 (2003), provide that, whenever a racial classification is used as a basis for any federal, state, or local government

decision, courts must apply a strict scrutiny standard of review. To survive strict scrutiny, the government must demonstrate that it uses the racial classification to achieve a compelling governmental interest and that the use of the racial classification is narrowly tailored to serve that interest.

The compelling governmental interests for most EPA decisions are protecting human health and the environment and achieving the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. To pass the narrow-tailoring test, the Agency would have to show that no race-neutral alternative is available to achieve those compelling interests. However, in general, EPA has race-neutral alternatives for achieving its compelling governmental interests.

3. ***Question: Does Executive Order 12898 permit EPA to base decisions on race?***

Answer: No. Executive Order 12898 is not an additional source of authority that would permit the Agency to base decisions on racial criteria. Section 6-609 of the Executive Order directs federal agencies to implement its provisions “consistent with, and to the extent permitted by, existing law.” The Presidential Memorandum that accompanied the Executive Order “underscores certain provisions of existing law that can help ensure that all communities and persons across this Nation live in a safe and healthful environment.” It specifies that environmental and civil rights statutes provide opportunities to help prevent minority and/or low-income communities from being subject to disproportionately high and adverse environmental effects.

In implementing the Executive Order, the basis for taking the action authorized by law is the human health or environmental impacts on minority and/or low-income communities, not the

racial makeup or economic status of a community. Therefore, the Agency, consistent with existing law, assesses the human health and environmental impacts upon which actions may be taken and then analyzes the demographic information related to the racial makeup or economic status of a community.

4. ***Question: How does EPA implement Executive Order 12898?***

Answer: To ensure environmental justice for all, EPA will continue to fully implement the Executive Order by focusing attention on whether its actions may disproportionately affect minority and/or low-income communities. Likewise, the Agency continues to develop tools to achieve the goals of Executive Order 12898. For example, EPA will use Environmental Justice Indicators (*e.g.*, social, health, economic, and environmental factors), as reflected in the “Toolkit for Assessing Allegations of Environmental Injustice,” to help ensure that its resources reach, and decisions do not adversely affect, populations with critical environmental and public health issues. In addition, for the enforcement program, the Agency is developing an “Environmental Justice Smart Enforcement Assessment Tool” that will identify disproportionately high and adversely affected areas and analyze impacts on minority and/or low income populations.

5. ***Question: Will EPA’s Environmental Justice program continue to address local issues after it establishes the Environmental Justice Strategic Plan, which has a national scope?***

Answer: Yes. EPA will continue to take action on a wide range of environmental justice issues, at a local or regional level, that focus attention on critical human health and environmental issues faced by minority and/or low-income communities with disproportionate environmental and public health issues (*e.g.*, asthma reduction, healthy schools, safe drinking water). In addition to the Environmental Justice Strategic Plan for Fiscal Years 2006-2011, the headquarters program

offices and regions will continue to identify environmental justice activities in, or through: (1) Environmental Justice Action Plans; (2) periodic regional listening sessions and/or other local outreach; and (3) information that is brought to the Agency's attention or which the Agency identifies (e.g., through the permitting process) on an ongoing basis.

The Environmental Justice Action Plans, in particular, describe: (1) the activities that EPA's regional and headquarters program offices are undertaking to address environmental justice; and (2) how the results will be measured. The regional Environmental Justice Action Plans are tailored to issues that local populations face. After the Environmental Justice Strategic Plan is developed and the Action Plans are revised, the Action Plans will identify how each region and headquarters program office will help achieve the Agency's overall Environmental Justice Strategic Targets and National Environmental Justice Priorities. In addition, the Action Plans will continue to identify how more tailored activities will be carried out.

6. ***Question: Why has EPA proposed such broad National Environmental Justice Priorities?***

Answer: The proposed National Environmental Justice Priorities are intended to create an Agency-wide focus on issues, such as reduction of asthma attacks, that have relevance nationwide and which environmental justice advocates and others have identified as critical environmental justice issues. The Environmental Justice Strategic Plan will likely identify 5 to 7 National Environmental Justice Priorities for heightened attention. However, EPA's regional offices will continue to maintain priorities that are more locally-tailored. For example, EPA Region 1, in New England, will continue to address lead poisoning and urban environmental problems as regional environmental justice priorities, while Region 9, which includes the Pacific Southwest, will continue to address environmental and public health issues along the border, among other issues, as a priority matter.

7. ***Question: How is this Environmental Justice Strategic Plan different from the 1995 “Environmental Justice Strategy: Executive Order 12898?”***

Answer: This Environmental Justice Strategic Plan will help better integrate environmental justice into EPA’s programs and operations, including its existing 5-year planning and budgeting process. The 1995 document, “Environmental Justice Strategy: Executive Order 12898,” identified actions to implement the Executive Order that was issued on February 11, 1994 and was not integrated into the Agency’s planning and budgeting process. While the purposes of the two Strategic Plans are different, the Environmental Justice Strategic Plan presently under development will be consistent with Executive Order 12898.

8. ***Question: When will EPA adopt the Environmental Justice Strategic Plan and make it available for use?***

Answer: EPA will adopt the Environmental Justice Strategic Plan in September 2006, in concert with the development of the overall Strategic Plan for Fiscal Years 2006-2011. Once EPA’s overall Strategic Plan has been adopted, the Environmental Justice Strategic Plan will be implemented.