

## Introduction

In recognition of the 20th anniversary of the Environmental Justice Executive Order, EPA Region 9 organized a "Teach-In" on March 6, 2014. Over 150 participants representing non profits, community organizations, academia, state and local government and the EPA Region 9 workforce provided input on three key themes: Sustainable Development and EJ; EJ and the Law; and Tools and Task Forces. Notes were taken by volunteers at each small group discussion table, compiled verbatim by EPA and reviewed for accuracy by all participants. Attribution was not captured unless a commenter included attribution in their edit.

The notes below do not necessarily reflect the views of US EPA.

### 1) What makes this issue compelling; why should we focus on this issue?

- In light of the 20<sup>th</sup> anniversary of the executive order, EJ communities thought they were progressing through EPA EJ and Presidential order.
- File Title VI complains with EPA, these stack up without any resolution, Lisa Jackson focus on resolving Title VI complaints.
- What is progress re processing Title VI complaints?
- How are the bad actors?—agencies that issue permits that increase causing Title VI issues
- In Federal and state funding actions can address it with CA-Gov code to address protected classes against discrimination.
- What is EPA process to correct/remedy increased burdens—take away funding from delegated agency.
- Prevent problem—permitting—green zones—CEQA progress.
- Don't wait to end of process after facility built.
- EPA authority in local/state law is minimal.
- CEQA doesn't have EJ component, AG says EJ is too broad.
- Feds look at Executive Order of EJ.
- Title VI—concern over lack of clear guidelines, so results are predictable
  - Settlement lesson learned
  - How to involve community more in settlement discussion
  - Ombudsman to facilitate Title VI resolution, more notice
- Discretion—EJ 2025 Toolkit.
- Interagency workgroup collaboration as a way to overcome institutional barriers.
- Sarah recommended movie "Fierce Green Fire" as required for EPA staff (history of EPA's genesis).
- How to use law to have conversations on EJ when we haven't historically had that conversation.

- Sarah mentioned how difficult it is to get various departments to talk to each other across media lines and feels EJ groups recommended we have enforcement division as opportunity to improve cross media focus on communities.
- Comments were made that permitting is media-focused and doesn't consider cumulative, multimedia impacts.
- Importance of strategically targeting limited enforcement resources where most needed and EJ communities are obvious criterion.
- EJ looks to EPA to carry out the law (e.g. maintaining adequate controls) need to make sure agency has capacity to do this.
- EPA process on new regulations often takes too long.
- EPA is the law, but various places for EJ to plug in: regs, enforcement, monitoring, spread out over various statutes.
- EJ can miss out on participation because it does not have the same resources as other stakeholders.
- Legal concerns/regulatory concerns that often come to EPA are of the local land use issues.
- EPA sometimes has to triage to go after biggest issues given resources.
- Office of Civil Rights never does anything. Use as a leverage with agencies.
- Concern about right time.
- Disparities are real.
- Enforcement and SEPs.
- What is our regulatory role? Telling community it is not within our authority.
- Are these great laws really working? If our communities weren't spotlighting issues, how much worse would it be? How many laws have "teeth"?
- Title VI Backlog. Some disconnect between filed complaints and permit writers. We don't know a complaint has been issued. Comparing demographics/oversight. Internal to EPA—more coordination around complaints.
- Public comment/petitioning process awareness.
- Checklist around EJ for permit writers. Higher oversight targets for permit oversight.
- Focus currently on urban areas. Rural areas get forgotten. But resources come from rural areas and nobody is speaking up for it.
- Tribal/EJ connection. Tribal/rural connection.
- Compliance assistance in Indian Country—use law to protect citizens—being careful to protect sovereignty, too.
- County/Fed: EPA's use of penalty money. More SEPs! More penalties should go into SEPs! Nexus requirement is too rigorous! EPA should be more flexible.
- Meaningful public engagement around permitting.
- There are good laws on the books, but if we don't have the resources to contest the ARB or a facility's action, we are lost.
- Enforcement is downstream.
- Regulatory "teeth" are really where things fall apart.

- Targeted Enforcement means you miss great swaths of the Region.
- Legal action is often the only course of action that communities can take.
- Accountability of government—local, state, and federal.
- No EJ Law.
- EJ borrows from civil rights and Jesse explained Wilmington, came from background CEQA law, prepared some CEQA lawsuits.
- LA Largest container port
- Weak area—CEQA lawyers don't know the community, don't live there.
- NEW BNSF railyard approved, issue location over 2 million diesel trucks. SCIG project, EIR → EPA does assessment of EIR; traffic assessment was inaccurate (didn't account for truck routes)
- EPA provide oversight for assessments.
- Air regulation of port to LA air district, Title 5 permits—permit that the air district gives, EPA has same window of comment as public so doesn't get to see public's comments.
- Self-reported emissions means underreporting.
- EPA could request longer comment period (comments and public hearings).
- Health Risk assessment—flawed HIA.
- EPA should publish a letter supporting HIA as a tool.
- Community driven research is important.
- Hunter's Point, Bayview.
- Fairness, empowerment, a knowledge history in disadvantaged communities.
- Tribal boundaries are traditional boundaries.
- Difficult to request help, when, how, who.
- EJ is not globally known; those who live in an EJ community know, but those outside forget.
- State must use county environmental documents to make state permit decisions—unless state/some party sues on document quality.
- Industry has lots of influence over local government on permitting, siting, etc.
- Claim job growth from construction but often goes to specialized workers from other areas.
- Local NGOs struggle for resources for legal and technical support.
- How to create a level playing field?
- 2 types of legal approaches 1) Government created process, 2) lawsuits
- One of the quickest ways to change: opportunity to set precedent
- Some remaining contentious problems, including
  - Permits (Kettleman City)
  - Cumulative impacts
  - Civil rights and civil rights enforcement, responses not timely
  - Executive order
  - Language barrier
  - Tribal lands
  - Intimidation at public hearings
- Better—EPA staff now more diverse and linguistically varied.
- But process is still too narrow/ends up in the same place and the decisions are the same.

- In some smaller communities, the balance is tipped towards those with money or political power.
- Environmental Impact Report is the only tool (in Charles' community).
- Use strategic partnerships/link with people with political capital, "create a movement".
- Environmental Justice is a movement.
- Sometimes there's a credibility issue—big companies have \$ for scientists, lawyers, etc.
- EPA authority, what we can and cannot do.
- EPA knows about certain laws/where EJ and laws mix.
- Communities' civil rights Title VI importance.
- EPA is a complicated organization/how it works/long time to work with EPA not effective and needs to improve this coordination/communication.
- Community impacts.
- Number of individuals impacted, many may not realize EJ rights.
- EPA has basic rules (law and guidance) when calculating a penalty.
- EPA has limited jurisdiction.
- An opportunity to address EJ communities.
- A powerful tool.
- Law falls short.
- Issues of legal rights.
- Constraints of laws.
- Lack of holistic approach.
- Scale of how law applies.
- No new laws in a long time.
- You have to fail to get help.
- Focus on laws too large scale, not community scale.
- Public intervention in TIGER grants.
- Missing community roles in public processes.
- The **lack** of clarity is compelling. CA's permitting authority **prohibits** DTSC from considering location in permitting, contradicting EJ policy (eg Kettleman City).
- Narrowness of statute.
- EPA's broader discretion.
- Do you want to sue somebody or avoid getting sued?
- Results of EJ lawsuits are dubious and lack meaningful outcomes for the communities, though we sue again.
- Challenge is to get parties to understand that the EJ laws do apply.
- Litigation should be last resort. Laws are not on the side of EJ.
- Getting standing is very difficult.
- Tied up in courts for years, weakens the community engagement. No matter how well organized the community is, they struggle with engagement over years.
- Advantages for companies to drag their feet in courts, in carrying into compliance.

## 2) What are we (collectively) doing well in regard to this issue; what can we do better?

- Fed EPA plays helpful role in facilitating between EJ communities and state agencies (e.g. DPH).
- Helpful to call EJ Program and have ally there.
- EJ 2014--How will resulting policies and guidance be implemented to effectively address Environmental Justice Communities (e.g. risk assessment for rule making).
- What are opportunities to influence other agencies that don't have EJ policy to develop one.
- EJ 2014 exists—new policy and guidance. Bring folks together like an inter-agency task force and Teach-In.
- Challenges—limitations for Exec Order in making changes in rules/regs.
- Good—use of EJSCREEN (brownfields)/grants.
- EJ Initiatives, i.e. I-710, SJV Valley.
- Ensuring cumulative impacts are better addressed in permitting actions.
- Communicating with EJ communities was non-existent at beginning of EPA's history (we focused on engineering/science instead of communities) Now Jared has weekly calls/conversations with EJ communities.
- EJ leaders are involved in enough—Teach-In is welcome rarity.
- Informational divide Agency-wide, this trickles into community impact, information takes too long.
- Inequities occur in the process. Process also has language that doesn't always connect with communities.
- There are often gaps in the law that allow EJ issue to fall through.
- A challenge to direct people to the right place to give their input.
- Sometimes a thought that EPA has a big stick when they do not, or that stick is resource-intensive.
- This event itself is an example of reaching out and listening.
- Often a need to get work out more widely.
- EJ community has been getting more patient and better at working in government structure.
- Fisher Sand and Gravel.
- Screening.
- Tools like CalEnviroScreen are great, but if you don't have data, you're not represented.
- In permitting, OCR has an ability to examine broad public health issues we cannot even examine in the permit review process.
- Maps are great! But we can be so focused on maps they forget to think more deeply about data gaps, interpretation, etc.
- EJ within enforcement division puts the issues more front and center rather than leaving them on the outside. Inspectors, etc., within the same division. EPA does recognize the importance of EJ.
- Need to have language that members of different communities can understand, public comment process that people can navigate.

- Sometimes [there is] disconnect between local government and the people.
- EJ teach-in.
- Regional Tribal Operations Committee.
- R9 having today's caucus—good.
- Check regular shipments prior to crossing state lines (e.g. petroleum cars) mislabeled cars from N. Dakota—corrosive/explosive risks.
  - Old/out of date train cars
  - Train crash risks
  - 1<sup>st</sup> responders need more knowledge to deal with fires/accidents
- Need to make industry “Pay to Play” on hazardous material/energy processes.
- Enforcement is an option but are there enough government resources to do an adequate job?
- Use SEPs.
- EIR—we rely on for Kettleman and other places that are flawed, continues to be used for future actions, EPA might or might not rely on these.
- Need better enforcement.
- Focusing inspection in areas of high cumulative impacts or EJ areas.
- Need better crosswalk between enforcement and future permits (how are permits approved after continuing enforcement problems).
- Technology based standards in CAA make it difficult to consider exposure-related issues.
- Follow Executive Order.
- Civil rights—timelines, enforcement.
- Should assess cumulative impacts across programs (permitting, air, DTSC)—has been historically weak.
- CARE—great program to empower community and for community to know/learn the law.
- Problems—access to the law; lack of representation; not knowing the community—How do we change this?
- EPA implementing laws—Looking at issues w/2 lenses, EJ and Enforcement.
- Cap and trade—the problem is that companies are buying trees/land that have no impact on the affected communities.
- TRI Inventory.
- Increasing funding for technical assistance.
- Making the database more user friendly.
- Lack of money.
- Compliance order on Safe Drinking Water Act SRF.
- Media coverage and attention.
- EJ Small grants.
- EPA doesn't have EJ considerations in calculating penalties.
- Disconnect between enforcement and follow-up.
- How do we use EJ order to evaluate compliance with environmental laws.
- Enforcement targeting.
- Do volunteer incentives help or hurt?
- Expedite small communities' complaints.
- Better law enforcement.

- Better funding.
- Multilingual.
- More efficient inter-agency task forces.
  - Some work done internally in past but can be better enforced
  - “Civil Enforcement Task Force”
- Better processes to prioritize how to divert agency resources (human/capital/infrastructure).
- Communities need a say in listing their expectation and ideas, ability to assess if these are met
- Kettleman Landfill (Hazmat) example:
  - Community opportunity for feedback (process) v. Effect (risk of cynicism grows over time).
  - Newspaper notices of public hearings/community workshops.
  - Perception that “public meetings are just talking about an approach that’s already decided”.
  - EJ implementation feels like a discretionary action.
- Do better: multi-media integration and ways to measure/compare priorities and choose actions beyond the specific statute/media currently targeted, e.g. what would be possible under WST/Superfund authority; can we bring that authority in?
- At the public hearing it is too late to find out that a community’s biggest problem is in a medium your law/program doesn’t regulate. Need to do more outreach before a meeting/hearing to ensure people who can make the relevant decisions are actually in attendance.
- There are isolated successes (with qualifications) of EJ cases, but sometimes
  - EJ cases/standing have gotten worse
  - Sandoval case eroded private cause of action
- Now pursuing more process-based suit because EJ cases are harder to achieve the objectives of the committee.
- Conservative movement has framed racism as “inherent but it’s the system built problems a function of the market & framework.
- Ask the right questions. Get the right data.
- Be aware of unconscious biases. Bring some thought to this and work to change the structure.

### 3) What specifically can EPA do in this area within the next two years?

#### 1. OVERARCHING COMMENTS

- 1.1. Power is about democratic practice—organizing/legislating/voting—not about regulations.
- 1.2. Democracy—right to know; transparency; resources to participate; legislation and voting change laws.
- 1.3. Teeth re EJ: law not just regulation and strategy.
- 1.4. Cracks—how those w/least power are treated; rural and tribal communities fall through cracks.
- 1.5. Need to better identify who has the power to enforce jurisdiction.

- 1.6. Need to have clear understanding of the problem/identify proper mechanism to enforce.
- 1.7. Disconnect between law and what the law does.
- 1.8. Decisions based on law and reality.
- 1.9. Think about implementing existing laws—penalty policies; injunctive relief.
- 1.10. Guidance or laws on how to incorporate new cumulative impact tools in current regulatory programs like permitting and enforcement.
- 1.11. Evaluate each proposed approach/alternatives with a conscious screen of how will this impact communities by race, ethnicity, income, education, etc.

## 2. EPA NATIONAL RULEMAKING OR LEGISLATIVE ACTION

- 2.1. Adopt an inhalation standard on diesel.
- 2.2. Reform TSCA, it is outdated and from the 1970s.
- 2.3. Need more authority around enforcement and working with environmental justice.
- 2.4. Address via FACA-- look at national freight strategy due in 2015.

## 3. STATUTE-SPECIFIC

- 3.1. Create opportunity to have robust data management with regard to SDWA via a central publicly accessible database (**SDWA**)
- 3.2. Consider crude oil by train movement, how to regulate (??)  
COMMENT: This is a complex multijurisdictional area, EPA could play a convening role here.
- 3.3. EPA should focus on fracking.  
COMMENT: Fracking is primarily a groundwater contamination issue/concern under SDWA.  
COMMENT: Need to take a more multi media approach until impacts from this activity are better understood.
- 3.4. Communicate EJ impacts of nebulous environmental impacts (**NEPA**).
- 3.5. Get product information available to the public (**TSCA**).
- 3.6. Diesel Emission Reduction Act gets points for getting benefits to EJ community (**CAA**).
- 3.7. Big gap on the land use side, disproportionate impacts caused by land use decisions (local land use authorities).

## 4. PERMITTING

- 4.1. Apply different standards in EJ areas, for instance enhanced enforcement and compliance.
- 4.2. Make use of health impact assessments (HIAs).
- 4.3. Address EJ by bringing facility siting into the process. This is recognized in the Clean Air Act as well as the T6 public involvement guidance (2006).
- 4.4. Develop political will to take affirmative approaches.
- 4.5. EPA can be more supportive of EJ comments in permit process and public comments.
- 4.6. EPA can provide greater research and information; more information helps change political and public perception.
- 4.7. For side accords/mitigation, work those into permits formally.



- 4.8. Identify potential connections and coordination possibilities between federal agencies around significant issues (not just to get permit through).
- 4.9. Cohesion between all local, state, and federal agencies and laws regulatory action on permitting.
- 4.10. Cohesive regulatory approach on permitting.
- 4.11. Change notification requirements.
- 4.12. Community involvement in processes such as granting of permit to specific businesses/authorities at all levels (permits from local to federal level).
- 4.13. Cal EPA is relooking at their permit processes, try to address earlier to avoid need for lawsuits.
- 4.14. Grandfathered facilities in EJ areas should/could be un-grandfathered and have significant tangible benefits.
- 4.15. Require a hearing to be on an element of any permits – not just a comment period, especially if it's a permit with EJ implications.

## **5. ENFORCEMENT**

- 5.1. SEPs.
- 5.2. Can we get community input on SEPs?
- 5.3. Supplemental Environmental Projects--find a way to include community input for what the projects may be.
- 5.4. Tie fines and fees back to community for investment.
- 5.5. Increase incentive for supplemental environmental projects (SEP) for enforcement cases.
- 5.6. Settlements and SEP should take EJ into consideration.
- 5.7. Community engagement—need coordinators for enforcement cases.
- 5.8. Continue targeting limited enforcement resources to EJ communities.
- 5.9. Target facilities within EJ zones.
- 5.10. Improve our targeting.
- 5.11. Evening inspections.
- 5.12. Proactive approach by EPA for federal facility inspections.
- 5.13. Increased inspection of hazardous materials via rail.
- 5.14. More inspection and enforcement resources.
- 5.15. More resources for inspections for enforcement.

## **6. TITLE VI OF THE CIVIL RIGHTS ACT**

- 6.1. Apply available tools: implement the new grant terms and conditions for T6 (January, 2013).
- 6.2. Grants specialists need education and training on T6.
- 6.3. Develop useful guidance.
- 6.4. Provide more guidance on Title VI to the state counterparts: when can you run into problems? Case Studies?

- 6.5. Break down the HQ Office of Civil Rights isolation, make it part of the Agency, working with the Office of EJ. Reduce centralization, make the Regions more part of the program.
- 6.6. Take a proactive and affirmative approach (rather than complaint driven and reactive)
- 6.7. Learn from examples of other agencies who have been effective with T6 (Dept. of Education, HHS, DOT/FTA).
- 6.8. Look at the FTA T6 guidance as a template for EPA's guidance.
- 6.9. Find the political will to implement T6 (the problem is not the law).
- 6.10. Fill the gap left by the 2001 Supreme Court decision taking away the citizen right to sue for discrimination unless it is shown to be "intentional." Intention is not the issue.
- 6.11. Figure out how to make T6 work given the current regulatory framework of environmental laws.
- 6.12. Not a strong connection between Title VI and environmental laws.
- 6.13. Figure out how to bring cumulative impacts into the picture since this is the core issue of T6.
- 6.14. Recognize that T6 and environmental laws are separate and both apply; compliance with one does not equate with compliance with the other. (It was noted that EPA issued a [draft] white paper to this effect in January of 2013).
- 6.15. Develop EPA-state agreements on T6.
- 6.16. Be willing to withhold funding (if other approaches don't work).
- 6.17. Be willing to refer T6 cases to DOJ when EPA is unable/unwilling to resolve a complaint.
- 6.18. Apply T6 broadly to state or local recipient programs, in addition to specific (i.e. RCRA permitting) programs; this can bring about more comprehensive remedies.
- 6.19. Limited basis for litigation (intent is a high standard).
- 6.20. Only one finding of disproportionate impact.
- 6.21. Publish relevant Federal Register info in Spanish, etc. --> EPA might require this?
- 6.22. Title VI back log.
- 6.23. More timely processing of civil rights complaints.
- 6.24. Implement existing civil rights laws better, including addressing systemic problems.
- 6.25. Greenaction pushed bilingual fact sheets by local Air District through settlement of a Title VI complaint.

## **7. EPA OVERSIGHT OF STATES and LOCALS**

- 7.1. Consultation and communication between EPA/ADOT (feds and states) has to be better.
- 7.2. RCRA delegation should include a grant requirement with consistent, measureable EJ requirements as a condition for funding.
- 7.3. Greater EPA oversight can spur state and local action.
- 7.4. If a county not doing what they should be on environmental protection take away federal funding—would need criteria to evaluate county programs.
- 7.5. Get authority (be less dependent on discharger's goodwill) and pursue legal consistency between state jurisdictions because otherwise polluting industries will just send their waste elsewhere, or relocate entirely.

- 7.6. Ensure no intimidating behavior at public hearings and equal time given to all groups of commenters.
- 7.7. Police presence scared community members (undocumented workers) from participating; even though Agencies can feel a need for protection from some small contingent of the community (police dogs at county hearings are scary).
- 7.8. DTSC tells police to avoid meetings.

## **8. WORKING WITH TRIBAL GOVERNMENTS**

- 8.1. Help tribes develop their own EJ programs and structures—who can help them develop these structures?
- 8.2. Different types of outreach—maybe directly to communities, rather than through local governments (like Navajo) where there might be a disconnect with the community.
- 8.3. Outreach and connect to NGO (tribal) and community.

## **9. SUPPORT COMMUNITIES**

- 9.1. Hiring a 3<sup>rd</sup> party for the community for technical adviser.
- 9.2. EJ Grants.
- 9.3. Start CARE funding again with new, more accurate parameters so that it's a better program than it was.
- 9.4. Shift back to funding community-based programs (rather than state program), seems like more funding is flowing to the states than directly to the communities.
- 9.5. More support/funding to go to community efforts.
- 9.6. Money for community monitoring.
- 9.7. Problem-solvers in community (State of CA has this in Imperial Valley tracking system/website).
- 9.8. EJ Task force involvement.
- 9.9. Maybe a delegate assigned to a community.
- 9.10. Put resources into communities along with enforcement initiatives. Stop bad, but help with good.
- 9.11. Improving communication by getting people involved earlier in the process.
- 9.12. Have an EJ community strategy that says “Here’s what we want EPA to focus on”; have an annual meeting where EJ groups can come together and say “here’s what’s important to us this year”.
- 9.13. Communities need more support in understanding public processes, especially CEQA and EIR.
- 9.14. Go from screening to action (not just grants and focused personnel but actual criteria—to be held accountable.)
- 9.15. EJ needs teeth—maps to action.
- 9.16. CalEnviroScreen identifies or prioritizes some communities with low exposure (La Jolla). It also doesn’t help inform mitigation and resolution of communities isn’t small enough.
- 9.17. CEQA can be a barrier to new, relatively clean project; communities that are truly overburdened often don’t want any additional exposure.

- 9.18. Cumulative impact analysis under CEQA isn't up to the task.
- 9.19. Fresno—created water technology/conservation initiative in attempt to bring jobs to the area.

## **10. REACH OUT TO LOCAL DECISION-MAKERS RE EJ (TRAINING, PARTNERSHIP AND COORDINATION)**

- 10.1. Education and outreach for local decision makers is needed, for example, some local agencies, (Richmond) adopt EJ ordinance, but don't understand their own ordinances.
- 10.2. Have a global framework for EJ so other localities (not just Feds) can know how to deal with EJ and how to coordinate among legally responsible entities.
- 10.3. Because EJ issues pop-up in all topics, there's a need for all to be conversant on the issues.
- 10.4. Improving interagency communication to play a sort of first responder role, to, at minimum, direct the question/issue to the right place.
- 10.5. EPA has historically been able to work as a facilitator.

## **11. EPA COMMUNICATION WITH PUBLIC**

- 11.1. Leadership should encourage early advance engagement with affected communities – at the public meetings, it's too late!
- 11.2. Tailor communication and outreach to all members of community—use pictures/graphs/etc. to explain issues.
- 11.3. More direct and clear communication on what the laws/regulations mean and are going to be used for. Then have simple instructions for how citizens can provide comments or feedback.
- 11.4. Increased availability in different languages.
- 11.5. Continue to improve amount and method for meaningful community involvement in regulatory process.
- 11.6. Helpful for communities to know where authority ends.
- 11.7. Make clear what EJ groups can expect from EPA.
- 11.8. Better information channels to the public.
- 11.9. Effective lines of communication re who is most responsible to deal with this.
- 11.10. Provide public/community information of key contacts for specific issues.
- 11.11. Greater collaboration between EPA and community is needed, for example, take advantage of grass root organizations and work with them to spotlight problems.
- 11.12. There are issues—toxic sites right within local travel to EPA San Francisco, we want EPA to be present, come view the sites. Be present. See it.
- 11.13. Set up a “virtual comment box” to allow more ideas to come forward from EPA staff and then take them seriously.
- 11.14. Evaluation process of a grant → go beyond.
- 11.15. EJ advisory committee—adopt those recommendations, more follow up.
- 11.16. More discussion/analysis to get at root causes—broader conversation.
- 11.17. Actionable EJ elements policy (not just a how to do outreach process), but “you are pre-approved to do X, Y and Z” authority, not just a “what you have to do” process.

- 11.18. Online—learn about laws, E-training.
- 11.19. Have conversations more often; need more communication. It's hard for agency staff to understand the challenges when they are only in an office.
- 11.20. Not connecting to the community/seems the issues aren't grounded.