

Subcommittee on Environment and Climate Change
Hearing on
“Building a 100 Percent Clean Economy: The Challenges Facing Frontline Communities”
November 20, 2019

Ms. Lilian Sotolongo Dorka, Esq.
Director, External Civil Rights Compliance Office
U.S. Environmental Protection Agency

The Honorable John Shimkus (R-IL)

1. This Administration has elevated the Office of Environmental Justice within the Office of Policy to ensure that environmental justice considerations are no longer siloed, and more integrated across EPA’s broad policy-making responsibilities.

- a. Can you describe how this reorganization is benefitting the work you do to promote environmental justice?

RESPONSE: EPA remains committed to advancing environmental justice for communities across the United States. This Administration elevated the Office of Environmental Justice (OEJ) within EPA’s Office of Policy to ensure that environmental justice considerations are integrated into EPA’s decision-making process. EPA elevated OEJ, along with the National Environmental Policy Act Division and Permitting Policy Division, to the Office of Policy within the Office of the Administrator to enhance collaboration within the Agency, including with EPA’s External Civil Rights Compliance Office (ECRCO).

- b. How does elevation of the office into EPA’s office of policy affect consideration of environmental justice by other program offices?

RESPONSE: ECRCO is responsible for enforcing several federal civil rights laws that together prohibit discrimination on the bases of race, color, national origin (including limited English proficiency), disability, sex, and age, in programs or activities that apply for or receive financial assistance from EPA.

The Office of Policy works with all offices, including ECRCO, and is engaged in all aspects of EPA planning. By elevating OEJ into the Office of Policy, the office is more closely aligned with several other offices which cut across all of the Agency’s programs. For example, location with the Office of Policy has increased OEJ’s ability to work more closely and collaborate with the Office of Community Revitalization on EPA’s community-driven work and amplify the resources available for both offices.

2. Critics of the EPA have suggested that EPA’s Environmental Justice Program and the External Civil Rights Program have not coordinated well in the past.

- a. What has this Administration done to improve upon the prior Administration's handling of issues that require coordination among the two programs?

RESPONSE: OEJ and ECRCO have built a solid foundation of cooperation and collaboration over the past several years, including regular updates and information sharing between two programs. In addition, OEJ and ECRCO partner and coordinate with respect to the investigation of complaints filed with EPA pursuant to Title VI of the Civil Rights Act of 1964 and other federal nondiscrimination laws enforced by EPA, when complaints have the potential to include both environmental justice and civil rights issues. OEJ and ECRCO have also partnered and coordinated on training and technical assistance to approximately 40 state agencies and organizations, as well as local agencies and tribes, across all ten EPA regions. This training and technical assistance consists of a variety of proactive measures, including how to address their civil rights obligations and environmental justice issues.

For example, in FY 2019, ECRCO partnered with EPA's Region 1 (New England) Office, bringing together ECRCO, Regional Counsel and environmental justice staff, along with state civil rights and environmental justice representatives from the six New England states, for training and discussions. From this partnership, EPA has identified replicable promising practices for building strong and effective nondiscrimination programs that it can share with states and local agencies in other EPA regions across the nation.

- b. What progress has been made to reduce the case backlog?

RESPONSE: For years, ECRCO had a significant number of overaged cases filed pursuant to Title VI of the Civil Rights Act of 1964 and other federal nondiscrimination laws enforced by the Agency. By the end of 2016, there were 61 cases pending in various stages—most of which had missed all of the regulatory deadlines. In 2017, the Agency received 24 additional complaints, further increasing the significant number of unresolved cases. To effectively meet EPA's civil rights mission and regulatory obligations (see 40 C.F.R. Parts 5 and 7), the Agency initiated a process to address overaged cases in a prompt and effective manner. Accordingly, ECRCO has developed foundational accountability tools, critical for any federal civil rights office, and a first for the office. In FY 2017, the Agency finalized three critical documents: (1) a strategic plan for ECRCO that includes measurable goals, including strategic docket management; (2) a case resolution manual that provides clear guidance to staff about how to process a complaint from start to finish; and (3) a compliance toolkit which explains the application of the federal civil rights laws and the civil rights legal standards used in investigating and resolving civil rights complaints.

In addition, ECRCO has made full use of the resolution tools available to us, such as the informal resolution of complaints specifically authorized in our regulation.

EPA's regulation requires that the Agency seek the cooperation of EPA recipients in securing compliance with the federal civil rights laws and that the Agency attempt to resolve complaints informally whenever possible. To that end, EPA has vigorously pursued voluntary informal resolution agreements with recipient agencies as quickly and effectively as possible. The Agency has been able to resolve many of the overage cases through informal resolution. Additionally, the Agency has invested considerable resources in resolving cases through Alternative Dispute Resolution (ADR), which yielded comprehensive ADR Settlement Agreements between complainants and recipients and has helped to bring communities together.

As a result, EPA has seen these transformational efforts yield real and impactful outcomes. By December 2018, EPA had completely cleared its docket of all overdue jurisdictional determinations, and as of November 2019, the Agency resolved all overaged complaints that required preliminary findings.

3. Has your office has improved its response rate under this Administration?
 - a. If so, to what do you ascribe the improvement?

RESPONSE: Yes. ECRCO has implemented stringent accountability measures for all of the Agency's processes, including tracking critical process points that provide guidelines for achieving timely and effective processing of complaints within regulatory timeframes and ensure that informal resolution occurs promptly and without undue delay. EPA's progress in meeting its stated goal of becoming a model civil rights agency is noteworthy. For example, in FY 2017, EPA issued jurisdictional review decisions within the 20 days required by the regulation in only 12 percent of our complaints; however, now the Agency is meeting this requirement in 100 percent of complaints. Since clearing the overaged cases, all of EPA's new cases are meeting or exceeding our internal performance measures on timeliness.

4. How does your office coordinate environmental justice practices across the federal agencies?

RESPONSE: As mentioned above, ECRCO coordinates with OEJ and has built a solid foundation of cooperation and collaboration on environmental justice practices. OEJ and ECRCO partner and coordinate with respect to the investigation of complaints filed with EPA pursuant to Title VI of the Civil Rights Act of 1964 and other federal nondiscrimination laws enforced by EPA, when complaints have the potential to include both environmental justice and civil rights issues. OEJ and ECRCO have also partnered and coordinated on training and technical assistance to approximately 40 state agencies and organizations, as well as local agencies and tribes, across all ten EPA regions. This training and technical assistance consists of a variety of proactive measures, including on how to address their civil rights obligations and environmental justice issues.

- a. What are your plans for strengthening this work?

RESPONSE: EPA coordinates environmental justice practices across the federal government through the Federal Interagency Working Group on Environmental Justice (EJ IWG). The EJ IWG is chaired by the EPA Administrator and comprised of 17 federal agencies and White House offices to carry out responsibilities outlined by Executive Order 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (EO). The EJ IWG convenes monthly to facilitate the active involvement of federal agencies to implement the EO, which directs that federal agencies covered by the EO must identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations.

Established through the EO, the EJ IWG provides a forum for federal agencies to collectively advance EJ principles and increase local community capacity to promote and implement innovative and comprehensive solutions to EJ issues. In early 2020, the EJ IWG began work on the development of a strategic framework. The framework will establish clear strategic goals, activities, and milestones to ensure full implementation of the responsibilities outlined in the EO. EPA expects to complete this work by the end of the calendar year.

5. What is the Environmental Justice and Community Revitalization Council?

RESPONSE: ECRCO is responsible for enforcing several federal civil rights laws that together prohibit discrimination on the bases of race, color, national origin (including limited English proficiency), disability, sex, and age, in programs or activities that apply for or receive financial assistance from EPA. ECRCO defers to the Office of Policy, Office of Environmental Justice, which has provided the information below to respond to this question.

- a. How does this council harness resources that may be applied to address environmental justice issues?

RESPONSE: EPA created the Environmental Justice Community Revitalization Council (EJCRC) in 2018 as a senior leadership decision-making body on environmental justice and community revitalization programs' strategic priorities and guiding implementation. The EJCRC provides a forum for EPA senior leadership to raise issues regarding environmental justice and community revitalization programs, to share best practices across the agency, and to receive updates on ongoing work. EJCRC focuses on its resources on efforts that directly impact communities, including those located within Opportunity Zones, such as the ongoing work on the Community-Driven Solutions (CDS) initiative, coordinating locally led technical assistance to communities, and the Environmental Justice and States initiative.

- b. And would advancement of these environmental justice issues also help advance economic growth in these communities?

RESPONSE: Yes. EPA's work to implement Executive Order 13853 related to Opportunity Zones has helped leverage private investment in economically distressed communities, bringing both economic revitalization and environmental improvement. EPA's Office of Community Revitalization (OCR), which works with the Office of Environmental Justice to co-lead the EJCRC, works with other federal agencies as well as state and local officials, community-based organizations and private sector partners to deliver technical assistance to communities across the nation. OCR's work includes developing action plans and identifying strategies to support reinvestment and reuse of existing community assets (brownfields, open space, main streets, *etc.*) and infrastructure (water, sewer, road). These efforts support inclusive economic growth along with environmental and public health protection.

6. Please briefly describe a few examples, where EPA has made improvements to the way it targets enforcement based on environmental problems and public health risks?

RESPONSE: ECRCO is responsible for enforcing several federal civil rights laws that together prohibit discrimination on the bases of race, color, national origin (including limited English proficiency), disability, sex, and age, in programs or activities that apply for or receive financial assistance from EPA. For further information about environmental enforcement at EPA, ECRCO defers to EPA's Office of Enforcement and Compliance Assurance program, which has provided the information below to assist ECRCO in responding to this question.

When establishing its 2020-2023 National Compliance Initiatives (NCIs), addressing environmental problems and reducing public health risks in communities were key factors that the Agency considered. Those NCIs, listed below, focus enforcement and compliance resources on protecting public health, protecting our air and water, and protecting communities from chemical and pollutant risks.

- The *Creating Cleaner Air for Communities by Reducing Excess Emissions of Harmful Pollutants from Stationary Sources (CCAC)* NCI focuses on reducing emissions of both volatile organic compounds (VOCs) and hazardous air pollutants (HAPs). For VOC emissions, the NCI will focus on significant sources of VOCs that have a substantial impact on air quality and: (1) may adversely affect an area's attainment of National Ambient Air Quality Standards (NAAQS); or (2) may adversely affect vulnerable populations. For HAPs, this NCI will focus on sources that have a significant impact on air quality and health in communities. By focusing on VOCs and HAPs, this NCI will address the adverse health and environmental effects from exceedances of the NAAQS to which sources of VOCs contribute, as well as VOC- and HAP-related health impacts on communities.

- The *Reducing Hazardous Air Emissions from Hazardous Waste Facilities* NCI focuses on releases from hazardous waste facilities, which can include releases of constituents known or suspected to cause cancer or birth defects. In addition, leaks from these facilities can contribute to non-attainment with the NAAQS. Many of these facilities are located close to residential neighborhoods.
- The *Stopping Aftermarket Defeat Devices for Vehicles and Engines* NCI addresses illegally modified vehicles and engines. These modifications can contribute substantial excess pollution that harms public health and impedes efforts by EPA, tribes, states, and local agencies to plan for and attain air quality standards.
- The *Reducing Significant Noncompliance with National Pollutant Discharge Elimination System (NPDES) Permits* NCI addresses compliance with NPDES permits, which is critical to protecting our nation's waters.
- The *Reducing Noncompliance with Drinking Water Standards at Community Water Systems* NCI is focused on protecting public health by increasing compliance with drinking water standards.
- The *Reducing Risks of Accidental Releases at Industrial and Chemical Facilities* NCI focuses on reducing risk to human health and the environment by decreasing the likelihood of chemical accidents.

Finally, EPA's enforcement and compliance assurance program places a priority on reducing children's exposure to lead. In implementing the Agency's *Federal Action Plan to Reduce Childhood Lead Exposures and Associated Health Impacts*, multiple regions have adopted a community-based approach to addressing high blood lead levels, which includes enforcement. For example, in FY 2019, EPA Region 8 conducted 61 lead inspections in the Denver Place-Based Initiative area that resulted in 32 enforcement actions. These priorities resulted in 619 enforcement actions in FY 2019 in communities with potential environmental justice concerns.

7. Please explain what environmental justice screenings are, how they work, and how many are performed annually?

RESPONSE: EPA has used a variety of information resources to help the Agency address civil rights and environmental justice concerns for populations across the United States. Several mapping tools have been developed and used by EPA, and the Agency has made several of these available for public use.

EJSCREEN, released to the public in 2015, is a mapping and screening tool that provides the Agency with a nationally consistent dataset and approach for combining environmental and demographic indicators. EJSCREEN users choose a geographic area; the tool then provides demographic and environmental information for that area. All of the EJSCREEN indicators are based on publicly available data. EJSCREEN simply

provides a way to display this information and includes a method for combining environmental and demographic indicators into environmental justice-related indexes. EJSCREEN includes 11 environmental indicators, six demographic indicators, one demographic index, and 11 environmental justice-related indexes. Additional information is available on the Agency's EJSCREEN website: <https://www.epa.gov/ejscreen/what-ejscreen>.

EPA's enforcement program uses EJSCREEN to review new cases to determine whether they may affect overburdened communities. In FY 2019, EPA performed 868 environmental justice reviews using EJSCREEN. These reviews serve two purposes—ensuring that EPA enforcement personnel working on a case are aware of the potential environmental justice concerns in a community, and then allowing for opportunities to address those concerns, as appropriate. This also allows the Agency to gauge how much of its enforcement work is being done in areas with potential environmental justice concerns.

8. Congress established Opportunity Zone incentives under the Tax Cuts and Jobs Act of 2017. Many of the areas designated are plagued by high poverty, failing schools, and a scarcity of jobs.
 - a. How has EPA helped leverage private investment in these Opportunity Zones to bring economic revitalization and environmental cleanup?

RESPONSE: Opportunity Zone redevelopment can spur capital investment in economically distressed areas, leading to diversified economies, improved job opportunities, and restored fiscal health in communities allowing for a greater capacity to solve environmental problems. EPA provides technical assistance and meaningful engagement to economically distressed communities, including those within Opportunity Zones, thereby fostering economic growth and environmental protection. Opportunity Zones are an important tool that environmental justice communities could use to leverage private investment in economically distressed communities, bringing both economic revitalization and environmental improvement.

In 2019, EPA's Office of Community Revitalization conducted technical workshops in thirteen communities with Opportunity Zones to help communities identify policy options and actions that advance local economic, community, and environmental goals and that potentially could be funded via the Opportunity Zone Tax Incentive and/or other private and public sector sources of funding.

EPA's Brownfields Assessment, Revolving Loan Fund, and Cleanup Grant Programs support community revitalization in under-served and economically disadvantaged communities. Leveraging brownfields work in Opportunity Zones can help attract public and private capital to further advance economic, environmental, and public health gains. Of the more than \$65 million in Brownfields grants awarded on May 6, 2020 to communities and tribes, 118 (78

percent) of selected communities were within Opportunity Zones, supporting environmental justice for all Americans.

Additionally, in October 2019, EPA announced the selection of 26 organizations to receive a total of \$5.1 million in Brownfields grants for environmental job training programs across the country. All 26 organizations will serve communities located in Opportunity Zones. In November 2019, EPA awarded \$1.5 million in grants to 50 organizations across the country working to address environmental justice challenges in their communities, with 50 percent of those grants supporting communities located in Opportunity Zones.

9. What is EPA doing to help build the capacity of local communities to deal with the complex scientific and regulatory issues involved with environmental justice?
 - a. Can you talk more about the technical assistance, training, and environmental education that EPA offers?

RESPONSE: EPA provides technical assistance, training, and environmental education to help build the capacity of communities to better understand the science, regulations, and policies of environmental issues and EPA actions. For instance, the Technical Assistance Services for Communities (TASC) program within OEJ provides this independent assistance to communities through scientists, engineers, and other professionals who explain technical findings to the community and answers their questions. TASC-supported efforts assist communities in working with government agencies and other stakeholders and in participating meaningfully in environmental decision-making processes. These services are provided in response to a community's request—at no cost to the community—and are determined on a project-specific basis. More information about Environmental Justice grant programs is available on EPA's website: <https://www.epa.gov/environmentaljustice/environmental-justice-grants-funding-and-technical-assistance>.