



The Honorable Raúl Grijalva
Chairman House Committee on Natural
Resources
1324 Longworth House Office Building
Washington D.C. 20515

The Honorable McEachin
Member House Committee on Natural
Resources
1324 Longworth House Office Building
Washington D.C. 20515

Re: Draft Environmental Justice Principles Comment Letter 09-27-19

Dear Chairman Grijalva and Member McEachin:

The Moving Forward Network (MFN) thanks you for the opportunity to provide comments on Draft Environmental Justice Principles, and for extending the deadline for us to do so. We also thank you for hosting the Congressional Convening on Environmental Justice where our membership and other environmental justice leaders had the opportunity to provide critical input and engage in dynamic dialogue. The Congressional Convening on Environmental Justice and the House Committee on Natural Resources, Environmental Justice Working Group has proven to be an important process for identifying local community concerns through a national lens that will help to guide and frame environmental justice policy moving forward.

The Moving Forward Network is a national coalition of community-based organizations, advocates, scientists, researchers, faith-based organizations, and others committed to reducing the public health harms our country's freight transportation system creates. The Network is comprised of approximately 50 organizations and academics in 50 states, including New York, New Jersey, California, Illinois, Kansas and Georgia, Florida, Washington and Texas. Importantly, MFN members include frontline communities that are centered in environmental justice principles. Accordingly, the Network has a personal stake in the Environmental Justice Principles.

Below we have provided comment and recommendations to the Draft

Environmental Justice Principles. Our comments and recommendations are following each of the sections in the draft principles. We also include a recommendations that does not fit within the existing sections:

All people have the right to pure air, clean water, and all the richness and wonder nature can provide. For too many, those rights are still unrealized, and the injustice of that reality takes a daily toll. Across our nation, our air and water are being polluted with impunity, at great consequence to our health and environment. And too often, our government has turned a blind eye—more so in some communities than in others.

To help address these long-standing wrongs and promote justice, Congress must advance bold legislation for environmental justice, health equity, civil rights, and environmental quality.

At a minimum, this legislation must:

Strengthen the Civil Rights Act of 1964 to ensure that citizens can enforce their rights against environmental discrimination. Low-income communities, communities of color, indigenous communities, and other vulnerable populations are disproportionately burdened by environmental hazards in the United States. Too often, landfills, waste sites, and other harmful projects are placed in these communities and are operated in a manner that causes disproportionate environmental harm and risks to human health within them. This disproportionate impact discrimination is illegal under Title VI of the Civil Rights Act. Unfortunately, in the Alexander v. Sandoval decision, the Supreme Court overturned decades of precedent in order to prohibit private citizens from filing suit to enforce their Title VI rights in the face of disparate impact discrimination. Environmental justice legislation must strengthen Title VI to ensure that citizens can have their day in court when faced with disparate impact discrimination.

Comments:

In the effort to strengthen the Civil Rights Act, mechanisms should be established into law that allows for individuals and communities to enforce the Civil Rights Act and overrule the Supreme Court decision in *Alexander v. Sandoval*, thereby restoring the right of people to bring actions under the Civil Rights Act, against violators. In addition to strengthening the Civil Rights Act, Congress should require the deployment of community advocates within each relevant Federal agency charged with assisting and helping community members navigate the system and process for filing Civil Rights Act claims.

Ensure that project decisions fully reflect on-the-ground realities and cumulative impacts. Currently, federal and state governments often regulate pollution at the individual project level, and as a result, permitting decisions, including under the Clean Air Act and the Clean Water Act, do not necessarily contemplate an area's cumulative pollution levels, resulting in dangerous environmental and health outcomes. Congress should seek to require that federal and state decision-making consider proposed projects' impacts in the full, real-world context in which they would actually be constructed or carried out.

Comments:

Often time's language around "real-world" scenarios is used by anti-regulation proponents that aim to weaken protections. In the cases where "real-world" arguments have been made, the outcomes have been the evasion of accountability and as a result has allow for an increase of cumulative impacts. The Moving Forward Network recommends that when addressing cumulative impacts, Precautionary Principles are incorporated rather than suggest that the decisions reflect the "real-world". The Precautionary Principles find when we have a reasonable suspicion of harm, and uncertainty about cause and effect, we have a duty to take action to prevent that harm. In these cases, decisions makers should consider all reasonable alternatives and place the burden of assuring safety onto those whose activities raised the suspicion of harm in the first place. In making final decisions the people who will be directly affected should be at the center of decisions in a meaningful way. The Link below is an example of The World

Health Organization Precautionary Principles.

http://www.euro.who.int/_data/assets/pdf_file/0003/91173/E83079.pdf

We also agree that federal agencies should consider “cumulative impacts” in their decision-making. Such impacts include the risks and harmful effects caused by multiple pollutants (usually emitted by multiple sources) in isolation and by their interaction with each other, and with any social vulnerabilities that exist in a community. More specifically, federal agencies should be required to assess and consider cumulative impacts, and have the discretion to deny permits based on such impacts. In addition federal agencies should consider whether to issue air and water permits when there is a reasonable suspicion that a project could impose impacts that cause disparate and or cumulative burdens.

Codify and Bolster Executive Order 12898 on Environmental Justice. The 1994 Executive Order on Environmental Justice directed each federal agency to identify and address the “disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations” to the greatest extent practicable and permitted by law. The Executive Order must be strengthened and codified into law so that the current and future administrations cannot weaken or rescind it.

Comments:

In the process of codifying the Executive Order 12898 on Environmental Justice and Health Equity, the Moving Forward Network recommends that the order be codified as is with no changes to its purpose and meaning.

Strengthen the National Environmental Policy Act to promote environmental justice. The National Environmental Policy Act (NEPA) requires federal agencies to analyze the potential environmental consequences of major federal actions and consider public input before any major actions are taken. When used effectively, NEPA can help prevent a disproportionate share of polluting projects from being sited in vulnerable communities. The existing NEPA process should be strengthened to expand opportunities for public involvement in the federal

decision-making process. Federal agencies must be required to increase public comment periods, conduct public hearings, and translate information about proposed projects into languages other than English when major polluting projects are being contemplated in these communities.

Comments:

NEPA should be fortified; it is currently a minimum threshold and should be strengthened by 1) improving community engagement and access 2) increases the information gathering and analysis 3) increases the public's ability to provide review and comments 4) and better protect environmental justice communities. Specifically, sections II and III of the Council on Environmental Quality's guidance entitled "Environmental Justice Guidance Under the National Environmental Policy Act," dated December 10, 1997, should be enacted into law.

Direct federal agencies to develop and enact a comprehensive agency-wide environmental justice strategy. All federal agencies must be required to develop effective environmental justice strategies that identify and address any disproportionately high or adverse environmental effects of their programs and practices on low-income communities, communities of color, indigenous communities, and other vulnerable populations. Furthermore, incentives and enforcement measures must be robust in order to ensure that agencies properly manage their environmental justice responsibilities.

Comments:

Congress should, by law require all Federal agencies to develop and enact a comprehensive agency-wide environmental justice strategy that incorporates the Environmental Justice Compliance and Enforcement Working Group into the agency-wide process and strategy.

Establish a Working Group on Environmental Justice Compliance and Enforcement. An Environmental Justice Compliance and Enforcement Working Group should advise and assist federal agencies in identifying and addressing environmental justice issues, provide direct guidance and technical assistance to local communities and environmental justice organizations, and engage with state, tribal, and local governments to address pollution and public health burdens in affected communities.

Comments:

A Federal Working Group on Environmental Justice and Health Equity Compliance and Enforcement body must include community representation and environmental justice stakeholders. This body should consult on a regular and routine bases with local communities, environmental justice organizations, state, tribal, and local governments to increase engagement and address local, state, regional and federal pollution and public health impacts. This Working Group should also be charged with guiding the work of the federal agencies comprehensive agency-wide environmental justice strategy, mentioned in the principle above.

Help environmental justice organizations build capacity through federal community grants. Robust federal community grants should be available to help environmental justice groups identify and implement projects to address environmental and public health concerns. Grants should also help provide scientific and technical assistance so that vulnerable communities have a detailed understanding of the potential environmental and public health threats they face when federal, state, and local decisions are being made about whether to permit a dangerous activity or where to site a hazardous project.

Comments:

Congress should increase and expand the Environmental Justice Grants Programs. With the right amounts of money's appropriated by Congress, the Environmental Justice Grants Programs can successfully support communities working on

solutions to addressing environmental justice, public health and climate impacts. When appropriating funds Congress can impose conditions and uses of those funds. When expanding programs beyond the EJ Small Grants, programs should be developed and designed to provide resources that will assist communities addressing exposure to multiple environmental harms, the climate crisis and developing local environmental justice and climate justice solutions. It is without a doubt that frontline communities across the country, both in freight impacted areas and otherwise need more resources to promote local solutions to address environmental justice and the climate crisis.

Direct federal agencies to offer training in environmental justice to the federal workforce. A federal training program should ensure that agency staff are best prepared to incorporate environmental justice concepts into their work.

Comments:

Congress should go beyond directing federal agencies to offer environmental justice trainings to their workforce. Environmental justice trainings should be required. At minimum all the agencies that are part of the Federal Interagency Working Group on Environmental Justice (EJ IWG) should be required to complete environmental justice trainings. These environmental justice trainings must be developed in consultation with community expert representatives, environmental justice stakeholders and the Working Group on Environmental Justice and Health Equity Compliance and Enforcement. These workshops should also be co-facilitated by community expert representatives, environmental justice stakeholders.

In Addition to the Draft Environmental Justice Principles, MFN would like to recommend that the following be included:

Codify into law the National Environmental Justice Advisory Council with the intent to fulfill its responsibilities and duties. Resources and authority should be given to the National Environmental Justice Advisory Council.