



Michael Regan, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
Docket ID No. EPA-HQ-OAR-2019-0055

Submitted via *regulations.gov*

January 15, 2024

Re: *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis*
(EJ Technical Guidance). No. EPA-HQ-OA-2013-0320

Dear Administrator Regan:

The Chesapeake Bay Foundation (CBF) is a 501(c)(3) non-profit organization with over 200,000 members, whose mission, carried out from offices in Maryland, Virginia, and Pennsylvania, is to restore and protect the ecological health of the Chesapeake Bay, the nation's largest and one of its most vital estuaries. The Chesapeake Bay watershed spans six states and the District of Columbia and is 64,000 square miles. The Chesapeake Bay Foundation is dedicated to saving the Chesapeake Bay. Success depends on people from widely diverse backgrounds, cultures, ethnicities, identities, and races taking collective action. Clean water, clean air, and a safe environment are rights we all share. Our vision is a thriving Bay that provides for the health, wellbeing, and quality of life of the more than 18 million people who call the Bay region home.

We support the Environmental Protection Agency's (EPA) efforts to advance evaluation and consideration of environmental justice (EJ) as a part of the rulemaking analytic process and the commitment to include updates from Executive Order 14096¹. Generations of racism and discriminatory policies have created a society where the burdens of an unhealthy environment are not borne equally. People with lower incomes and Black, Indigenous, and People of Color (BIPOC) are much more likely experiencing living in areas with higher pollution, limited green space, fewer trees, and other environmental factors that limit

¹ E.O. 14096 (April 26, 2023). *Revitalizing Our Nation's Commitment to Environmental Justice for All*.



opportunities to live healthy lives. Equitable decision-making for regulatory agencies requires the voices and input from the communities most impacted and analysis of cumulative impacts. We are pleased to see, and are supportive of, the EPA's updates to their technical guidance to ensure adequate assessment of environmental justice impacts in agency decisions and in response to the Request for Public Comments², offer the following:

Agency Responsibility

We support the emphasis on Agency responsibility “to protect the health and environment of all Americans, including those historically marginalized, overburdened, underserved, and living with the legacy of structural racism”³.

CBF is actively working to address environmental injustices in the Bay watershed that cause disproportionate pollution and harm to communities of color that are economically under-resourced. CBF aims to dismantle unfair systems and support communities to lead and participate in the decision-making processes that affect their environmental and social well-being. We support the Agency's guidance in both assessing regulatory options that maximize benefits to these communities and in early and meaningful engagement with those impacted. As recommended in the updated Guidance, early integration of EJ in the rulemaking process is critical.

Meaningful Involvement in Agency Decision-Making

Many communities in the Chesapeake Bay watershed have borne the brunt of rapid development and discriminatory policies and as a result are bearing a disproportionate burden of environmental harm and are less likely to live in areas with clean air, clean water, and adequate green space. These communities are still experiencing barriers that have made it hard or even barred them from participating in the federal decision-making process including exclusion throughout the regulatory process. Throughout the regulatory process these communities have been excluded due to a variety of factors, not limited to, a lack of transparency that a federal action is being considered, not being given a seat at the table during the decision-making process, and not being seen as a long-term partner once a project is completed.

² 88 Fed. Reg. 78358 (November 15, 2023)

³ Memo from EPA Administrator, [available here](#)



This updated Guidance, which expands on past discussions of meaningful engagement, is on the path to rectifying these barriers. We support the emphasis on long-term, two-way engagement that builds trust with communities so they can be engaged “early and often”. This should include extended public comment periods, well-advertised public meetings in the communities impacted, and providing adequate resources to assist in facilitating engagement.

Transparency and collaboration are key, especially in communities whose voices have too often been intentionally silenced and ignored. Before CBF takes any action, we first listen to residents to learn of their specific concerns and needs. For example, CBF worked with local partners and community members in Petersburg, Virginia where a proposed expansion of the Petersburg Gas Compressor Station, a component of the proposed “Virginia Reliability Project” and associated “Commonwealth Energy Connector” development. The proposed station would increase emissions of many harmful pollutants in a residential environmental justice community. CBF joined the Sierra Club, Chesapeake Climate Action Network, and the Southern Environmental Law center in submitting comments to the Federal Energy Regulatory Commission’s (FERC) in response to the agency’s draft environmental impact statement. The DEIS inadequately addressed environmental justice concerns, and failed to meaningfully assess potential air quality impacts from the proposed compressor station projects. Community members deserve a comprehensive assessment of the impacts from the development of this project. FERC’s resulting issuance of a Certificate of Public Convenience and Necessity for the projects evidences a detrimental dissonance with the goal of guidance documents like the one proposed here, and agency actions on the ground.

Additionally, we applaud the emphasis on presenting analyses in plain language, therefore improving accessibility and transparency. However, analyses that simply recognize the existence of potential harms but fail to critically assess those impacts or implement measures to mitigate them, are effectively useless. In preparing relevant documents and studies Federal analysts seeking community input should provide information in multiple formats and languages, and provide ample time and multiple formats for comments.

Assessment of Cumulative Impacts and Multiple Stressors



Environmental justice communities often face multiple environmental stressors across multiple time scales. In the Bay watershed and nationwide, communities of color, low-income communities, and other marginalized populations are more likely to be exposed to harmful environmental impacts from toxic facilities. The legacy of racist housing policies compounds the problem by leaving environmental justice communities more vulnerable to excess heat, intense storms, regular flooding, and other hazards exacerbated by climate change. Portsmouth, VA, for instance, is a predominantly Black, low-income community and home to extreme concentrations of toxic waste and hazardous air pollutants from nine Superfund sites within a 15-mile radius. Consistent flooding only exacerbates this threat. CBF encourages EPA to ensure that cumulative and local environmental stressors are not simply identified but addressed, in order to ensure that regulatory decisions account for the full impact and prevent future harm.

We support the addition of analyzing the uneven distribution of climate change impacts, including floods, droughts, and extreme weather events in understanding environmental justice concerns. For example, rising temperatures on land may be one of the deadliest impacts of climate change. Even within the same city, certain neighborhoods are hotter—as much as 16 degrees Fahrenheit hotter, according to a 2019 study that looked at heat variations in Richmond, Baltimore, and Washington, D.C.⁴. The study found that the hottest neighborhoods today are the same neighborhoods once redlined under racially discriminatory home lending practices in the mid-1900s. These neighborhoods often remain populated by lower income and communities of color, with fewer trees and open spaces, exposing residents who walk or use public transportation, to dangerous heat. Federal actions and practices must adequately account for the uneven distribution of climate change impacts.

Expanded Analysis of Heterogeneity

Each population group within an area may experience varying impacts based on location, historical environmental injustices, and cumulative impacts. We applaud the Agency's recommendation to not just analyze based on average effects, but rather to characterize impacts within each group. Air quality and the related adverse health effects, as provided by example in the Guidance, can be variable based on proximity to multiple interacting sources of air toxics. In this recent study

⁴ <https://www.noaa.gov/education/stories/science-and-education-partners-reveal-hottest-places-in-washington-dc-and>



by University of Maryland⁵, groups of concern are exposed to air toxics at a higher cumulative concentration based on their proximity to roads, industrial facilities, and other emission sources in the area.

Decreasing air and water quality can have widespread economic impacts, particularly in communities that rely on the environment for their livelihood and may lack the means to relocate in the face of environmental degradation. These factors are critical in understanding the impact of Agency action in environmental justice communities. The health of our natural resources is critical to a vibrant economy, from recreation and tourism to fisheries and agriculture.

General Comments

We would recommend that the federal government lean on CBF and other partners who have been working on-the-ground with communities for decades to help disperse information regarding federal projects and opportunities for funding, training, technical assistance, etc., but more importantly that the federal government use existing partners to connect the administration with communities that do not typically have access to federal decision-makers. These communities need to have the opportunity to have their voice heard and be offered a seat at the table; one of the ways to make this connection is through existing partnerships. Additionally, the Agency should follow a mechanism for limiting regulatory actions with adverse impacts to EJ communities once analysis is complete. While thorough analysis is critical to understanding impacts as outlined in the Guidance, the Agency should institute a framework for accountability in final decision-making.

We are thankful for the opportunity to weigh in on this updated Environmental Justice Guidance and look forward to continuing to work with the Administration to advance principles of equity, inclusion, and justice throughout the Chesapeake Bay watershed.

Sincerely,

⁵ UMD Capstone Analysis: NOx Emissions in the Bay Watershed (2022)
<https://storymaps.arcgis.com/stories/3d825c25d2ef4df08b20db7a4989f99c>



CHESAPEAKE BAY FOUNDATION
Saving a National Treasure

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