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Charles Lee (ejstrategy@epa.gov)  
Deputy Associate Assistant Administrator for Environmental Justice  
USEPA, Office of Environmental Justice (2201-A)  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

RE: Comments on EJ 2020 Action Agenda  
Environmental Justice Strategic Plan 2016-2020

Dear Mr. Lee,

The comments below are submitted on behalf of WaterLegacy, a non-profit with approximately 9,000 members and supporters formed to protect Minnesota's water resources and the communities that rely on them. For the past six years, WaterLegacy has worked in partnership with Minnesota Bands of the Lake Superior Chippewa to oppose pollution and destruction that would result to tribal Ceded Territories and to downstream Reservation waters as well as to change permitting practices and affect federal and state rules that protect or fail to protect tribal resources both on reservations and on treaty lands.

The comments below are also informed by my experience as a public interest lawyer over the past three decades working to protect environmental health and environmental justice in the face of disparate impacts of pollutants (such as lead, arsenic, mercury, particulates, dioxin, and pesticides) resulting from power plants, energy infrastructure, industrial and corporate agricultural on tribal, ethnic minority and low-income communities in Minnesota.

Based on this broad perspective, the need for environmental justice strategy and action is clear. We applaud the U.S. Environmental Protection Agency (EPA) for recognizing that need and beginning to take steps to address the disparities in exposures to the burdens of our society that affect human health and well-being in environmental justice communities. We also recognize that the EPA has taken and is taking actions beyond the scope of the EJ 2020 Action Agenda that are having or will have in the future a significant impact on justice to tribal, minority and low-income communities. In addition to offering suggested changes to the EJ 2020 Action Agenda, our comments reference recent positive on-the-ground changes in EPA actions related to permits, rules and procedures that may have significant environmental justice implications.

WaterLegacy's initial request for the EJ 2020 Action Agenda would be that the form of the document be more accessible in its final form. We would recommend that the document's length be cut by half and that the language be direct and avoid jargon. For example, this sentence in the Executive Summary is both inaccessible and unclear. "EPA will: (1) deploy a suite of programs, actions and measures in these areas; and (2) evaluate progress, enhance measures as appropriate, and explore the development of a few additional national environmental justice measures and associated strategies." Plain English text might read, "EPA will measure our success and

improve our strategies as needed.” The question that is unanswered despite this elaborate text is how the EPA will involve environmental justice communities in either measuring success or improving strategies.

Overall, WaterLegacy would request that the EJ 2020 Action Agenda be rewritten to face outward to communities as well as inward to agency staff. In this revision, the roles of environmental justice communities in measuring success and recommending additional strategies and tactics should be specifically provided.

WaterLegacy has the following specific recommendations for the EJ 2020 Action Agenda:

### **Chapter 1: Overview**

- Include among the “key” areas in Goal III and the “complex national environmental justice issues,” environmental justice impacts critical to tribes such as preventing pollution and destruction of landscapes, habitats and surface waters and interconnected adverse impacts on health disparities. (pp. 4-5)
- Rephrase the “key results” to include measurement of states’ integration of environmental justice considerations and protections in permits and rules subject to EPA review. (pp. 4-5)
- State that EPA will approach tribes, migrant worker communities and other environmental justice communities<sup>1</sup> in non-urban areas where EJSCREEN may not be effective to focus attention on environmental justice priorities. (p. 6).
- State for cross-cutting environmental justice issues the requirement that environmental justice communities will not be disproportionately burdened with pollution and destruction resulting from energy generation and energy infrastructure, including mines, power plants, pipelines, rail transport and transmission lines. (p. 7)
- State for cross-cutting environmental justice issues that EPA will develop and promote adoption of best practices in location, selection, engineering and operation of facilities that adversely affect the environment to minimize impacts on lands, water, air and health affecting environmental justice communities. (p. 7)

### **Chapter 2: Rulemaking**

- Add a statement that EPA will enact rules and develop procedures that strengthen tribal authority to protect tribal water resources under the Clean Water Act. (Add to Strategy 4 the concept of community “efficacy” as well as community “involvement,” p. 10).<sup>2</sup>

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<sup>1</sup> In these comments, the term “environmental justice communities” includes tribes, ethnic minority communities and low-income communities, whether rural or urban.

<sup>2</sup> EPA draft rules granting tribes with Treatment as a State (TAS) the authority to restore impaired waters under the Clean Water Act Section 303(d) Impaired Water Listing and TMDL Program (81 FR 2791, Jan. 19, 2016) and recent EPA commitments to support Minnesota downstream tribal authority to exercise rights to object to federal permits under Clean Water Act Section 401(a)(2) are good examples of EPA’s progress in supporting community efficacy.

- State that EPA will develop regional standards that protect water resources affecting environmental justice communities who may be underrepresented in state or local decision-making. (Add to Strategy 4 community “efficacy” as well as “involvement,” p. 10)
- State that EPA will set priorities for development of rules pertaining to specific pollutants and practices based on threats to environmental justice communities and requests made by environmental justice communities for action. (Add to Strategy 4 community “efficacy” as well as community “involvement,” p. 10)
- State that EPA will develop a process for communities to engage EPA to enact regional standards pertaining to specific pollutants and environmental threats to environmental justice communities. (Add to Strategy 4 community “efficacy” as well as community “involvement,” p. 10)
- Measure progress in enacting rules and standards supported by and protective of environmental justice communities. (p. 10)

### **Chapter 3: Permitting**

- Rather than a framework for “considering” environmental justice concerns in EPA permitting, propose establishment of a framework to avoid disproportionate burdens on environmental communities and to minimize and mitigate any adverse impacts to already overburdened communities. (p. 11)
- Require that EPA provide online public access to all Agency permit information, including permit applications, draft permits and technical reports. (pp. 12-13)
- Require that, as a condition for EPA permit approval, that state regulators demonstrate to EPA that the state permit process has provided environmental justice analysis and public access to information comparable to that provided by the Agency. (pp. 12-13).
- Include in measures for success whether meaningful consideration of environmental justice protections and public access has been provided for state permits subject to EPA approval. (p. 13)

### **Chapter 4: Compliance and Enforcement**

- Strategy 1 in Chapter 4 is a particularly strong section of the EJ 2020 Action Agenda. Enhance this Strategy by providing a process for EPA to meet with environmental justice communities at their request to assist in prioritizing compliance and enforcement. (pp. 14-15)
- State that EPA will develop rules that allow the Agency to set priorities and ensure control of pollutants affecting environmental justice communities where state permits have expired or have not been enforced.<sup>3</sup> (p.15).

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<sup>3</sup> EPA draft NPDES Program Updates rules (81 FR 31343, May 16, 2016) to allow Agency review and reissuance of expired wastewater discharge permits could improve compliance with water quality standards in environmental justice communities where dischargers often have undue political influence over local regulators.

## Chapter 5: Science

- State that EPA will provide financial and technical support for monitoring and scientific analysis in and by environmental justice communities. (p. 18)
- Make more explicit that the Agency has a strategy to *apply* new EPA and community-based scientific knowledge regarding health risks and stressors in tribal and other environmental justice communities in EPA rulemaking and review of state rules.<sup>4</sup> (p. 18).

## Chapter 6: States and Local Governments

- Replace the vague language in much of this Chapter with text specifying actions within EPA authority that would ensure state protection of environmental justice communities in rules and permitting activities. (See specific bullet points for Chapters 2, 3 and 4 above).
- State that EPA will consider state commitments and practices to consult with tribes and engage and protect environmental justice communities in any requests for program funding and technical support from the Agency. (p. 22)
- State that EPA will consider impacts on tribal resources and other environmental justice consequences in evaluating the Agency's response to state failures to discharge delegated duties and failures to follow through on commitments made in Performance Partnerships Agreements or State/EPA workplans.<sup>5</sup> (p. 24)

## Chapter 7: Federal Agencies

- Replace indefinite or self-congratulatory language in this Chapter referring to process within the “federal family” with specific strategies and actions.
- State that EPA will develop standards for Agency review of federal environmental impact statements (EIS) pertaining to environmental justice assessments, tribal consultation and participation, and access and engagement of environmental justice communities. (pp. 28-29).
- State that where EPA has no direct authority to disapprove an EIS, but tribes or other environmental justice communities have provided substantial evidence that environmental justice assessments, tribal consultation or participation as a cooperating agency, or community access has been inadequate, EPA will support or initiate referral of the EIS to the Council on Environmental Quality. (pp. 28-29).

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<sup>4</sup> EPA has applied such science in recent review of state rules (Maine, Washington) pertaining to mercury contamination of fish to ensure that standards reflect health risks to subsistence consumers of fish.

<sup>5</sup> WaterLegacy's Petition to Withdraw NPDES Authority from Minnesota, on the basis of which EPA has launched an investigation of State permitting, enforcement and compliance, was based on failure to regulate mining pollution affecting tribal resources in Ceded Territories. The Petition, supporting documents and EPA responses are available at <https://www.epa.gov/mn/npdes-petition-program-withdrawal-minnesota>.

### **Chapter 8: Community-Based Work**

- State that EPA will ensure that Agency staff from environmental justice communities and/or with environmental justice expertise and community relationships have direct decision-making authority and ability to influence rulemaking, permitting, review of state rules and permits, environmental review and funding. (pp. 30-31)
- State that EPA will develop practices and procedures for community-based work that include face-to-face meetings in affected communities and resource support (child care, refreshments, reimbursement of costs) that facilitate access and participation. (p. 31)

### **Chapter 9: Tribes and Indigenous Peoples**

- Include protection of tribal treaty resources in Ceded Territories as well as the lands and resources defined as “Indian Country” (see p. 47) in the objectives, strategies and actions in Chapter 9. (p. 34)
- Provide active links for easy reference to EPA’s policies and practice pertaining to tribes, such as the *EPA Policy on Consultation and Coordination with Indian Tribes*. (p. 34)

In summary, on behalf of WaterLegacy and based on several decades of experience advocating for environmental health, human rights and environmental justice, I commend the EPA for the positive steps taken thus far in drafting the EJ 2020 Action Agenda. WaterLegacy also recognizes that other efforts the EPA has taken recently in rulemaking, review of state rules and practices, and in policies and commitments for tribal consultation and authority have the potential to address disparities and protect environmental resources affecting environmental justice communities.

We would urge the EPA to adopt the provisions we’ve recommended above in its EJ 2020 Action Agenda and to make the document as direct and action-oriented as possible. We would also invite the EPA to treat the Action Agenda as a living document and to engage communities more directly in understanding and improving proposed strategies and actions to address environmental burdens and environmental health disparities facing tribal an indigenous people, minority communities and low-income communities.

Please feel free to contact me if you have any questions related to these comments.

Sincerely yours,



Paula Goodman Maccabee  
Advocacy Director and Counsel for WaterLegacy