

Comments of the Business Network for Environmental Justice
on EPA's draft EJ 2020 Action Agenda

The Business Network for Environmental Justice (“BNEJ”) appreciates the opportunity to submit these comments on the Environmental Protection Agency’s (“EPA’s”) draft EJ 2020 Action Agenda (“EJ Agenda”). Based at the National Association of Manufacturers, the BNEJ is a voluntary organization of industry and trade associations interested in environmental justice (“EJ”) issues. The BNEJ believes that all people should be treated fairly under the laws and have the opportunity for meaningful participation in public processes, without discrimination based on race, color, or national origin.

OVERVIEW

On July 14, 2015, the BNEJ submitted comments on the EPA’s April 15, 2015 Draft EJ 2020 Action Agenda Framework (“Draft Framework”). The draft EJ Agenda constitutes the EPA’s revision of the Draft Framework after consideration of public comments and sets forth the EPA’s EJ strategic plan for the next five years. The BNEJ believes that the Draft Framework has been strengthened by consideration of public input. The BNEJ now offers the following comments on the draft EJ Agenda.

The BNEJ commends the EPA for the comprehensiveness of the draft EJ Agenda and for many of its features. In particular, the EPA’s vision statement in the draft EJ Agenda recognizes the importance of all members of our nation living in sustainable, healthy communities, and that “strong partnerships” provide the foundation for achieving this vision. The BNEJ fully supports these principles. Business and industry are important partners in efforts to improve the environmental and health conditions in all communities. As an organization comprised of business and industry members interested in cooperative engagement with other stakeholders, the BNEJ looks forward to participating as partners with the EPA in pursuit of the EJ Agenda’s laudable vision and the fair administration of environmental laws.

One impediment to providing useful substantive comments on the EJ Agenda is the lack of complete detail regarding how its ambitious goals will be implemented. The many concepts mentioned in the EJ Agenda, although clarified through actions, strategies and measures, frequently do not provide a sufficient blueprint to inform commenters how they will be applied. For example, steps appropriate for voluntary, cooperative decision-making may be inappropriate if embodied in mandatory rules, permit conditions or enforcement measures. Likewise, the resources and funding required may vary greatly depending on how the concepts in the Agenda will be applied. The absence of a detailed implementation plan, accompanied by an outline of the necessary staff resources and funding, hampers the ability of all stakeholders to provide fully the meaningful comment that the EPA seeks.

As is the case with most draft plans published for public comment, there are opportunities for improving the draft EJ Agenda to sharpen its focus and enhance its consistency, thereby increasing opportunities to achieve its mission. Since many of the BNEJ’s comments are

applicable to more than one section of the draft EJ Agenda, these comments are organized by topic.

Several themes appear in these comments, including the following: first, to be effective in advancing the EJ Agenda's goals, partnerships should include business and industry as essential partners and utilize collaborative processes. Second, the existing, robust community engagement strategies employed by some companies should be recognized and serve as a foundation for further efforts by those and other companies. Third, rigorous definitions and methodologies would aid the predictability and validity of an EJ analysis. Fourth, the EPA should only use sound science and high quality data. Fifth, public information concerning the regulatory compliance of facilities should be coupled with an effective and efficient process for correcting errors in the EPA's data bases. Sixth, the EPA's existing regulatory framework and standards that are protective of vulnerable communities should be utilized where applicable to the action or stressor at issue. These and other themes are emphasized in the specific comments below.

1. The EJ Agenda should consistently emphasize the value of including business and industry in partnerships to advance EJ goals.

In the BNEJ's view, the EJ Agenda's emphasis on cultivating strong partnerships provides a sound foundation for achieving its EJ goals. Embracing business and industry as an important stakeholder is vital to forming effective partnerships. Businesses play an essential role in the economic health of the community. A sustainable community is in part one that provides employment to its members and, in turn, supports the businesses providing jobs. Many businesses actively engage with the communities in which they are located and are part of the social as well as economic fabric of the community. The BNEJ believes that EPA's strategic plan should include facilitating and incentivizing even greater business participation in these partnerships wherever feasible.¹

To this end, where the goals, objectives and strategies listed in the draft EJ Agenda emphasize the importance of partnerships, in some instances business and industry are appropriately among the partners mentioned. For example, the objective for "permitting" includes collaboration with, among others, "permit applicants to identify and share tools, promising practices, and approaches." EJ Agenda at 2. Likewise, the strategy associated with community-based work includes "building stronger on-the-ground partnerships with communities and involving academia, business, philanthropy and other sectors." EJ Agenda at 3. The BNEJ strongly supports the inclusion of business and industry in these collaborative efforts. Ongoing and future partnerships that include the participation, perspective and resources of business and industry can help achieve the EJ Agenda's goals.

Although the references to business and industry cited above are very helpful, other portions of the draft EJ Agenda should be enhanced by noting the positive role business and industry can play in partnerships formed to further EJ goals. In particular, in both Goal II, EJ

¹ Providing public recognition to those businesses devoting resources to partner with communities and offering permit flexibility to businesses that address community concerns are two examples of useful incentives.

Agenda at iv (Work with Partners), and the paragraph on “Stakeholder Engagement,” EJ Agenda at 7, the EJ Agenda should add a reference to the important role of business. In designing best practices for outreach, EJ Agenda at 10, Action 4.2, the EPA should consider facilitating discussions among interested stakeholders, including business, in addition to conducting its separate outreach efforts.

In Chapter 3 (Permitting), little detail is offered on how the EPA will engage with permit applicants to share approaches for conducting enhanced outreach in communities. The EJ Agenda should reference the innovative and proactive approaches taken by some businesses to date and express the advantages of building on these lessons learned. *See, e.g.*, the EPA’s Environmental Justice Collaborative Problem-Solving Model, EPA-300-R-06-002 (June 2008) (Appendix) (describing example of business-community partnership).

Although a stated objective in Chapter 3 of the EJ Agenda is fostering collaboration in permitting, the EPA does not mention business and industry when discussing its collaboration with other stakeholders, such as the Environmental Council of the States (ECOS). *See* EJ Agenda at 12, Action 2.1. Collaboration between business and industry and state regulators provides a useful mechanism to identify or develop best or promising practices. State regulators have knowledge of how community engagement activities fit into the approaches to permitting and other activities that they conduct. Business has the experience and interest in helping to design voluntary, flexible measures for community engagement. These stakeholders working together can design voluntary measures with the flexibility necessary to adjust to the unique circumstances of each permit application and the potentially affected populations. The BNEJ recommends expressly including business in partnerships to design these measures.

Likewise, the discussion of “stakeholder partnerships” in Chapter 10, Significant National EJ Challenges, EJ Agenda at 38, would benefit from discussion of the collaborative role business has played and will continue to play in developing promising practices for community engagement and in addressing the “Challenges.”

2. The term “overburdened community” should be clarified.

The BNEJ supports the fair treatment of all people under all laws, including environmental laws, without discrimination based on race color or national origin. This is consistent with the requirements of Title VI of the Civil Rights Act of 1964, and with Executive Order 12898 (59 Fed. Reg. 7629, February 16, 1994), which emphasized that minority and low income populations should be fairly treated.

As defined in the EJ Agenda glossary, the term “overburdened community” creates confusion regarding whether the EJ Agenda seeks to address populations outside of those identified in Title VI and Executive Order 12898, and if so, whether the EPA intends to focus its rulemaking, permitting and enforcement authorities to restrict activities that may affect these populations. The BNEJ encourages the EPA to clarify the definition in order to create more certainty regarding whether a population affected by a stressor is an “overburdened community.” The following are some portions of the definition that merit revision:

- a. The EJ Agenda defines an “overburdened community” to include not only minority, low-income, tribal or indigenous populations, but also “geographic locations.” The proper focus under Executive Order 12898 is on certain “populations” affected by an activity, not on geographic locations. *See* Executive Order 12898, Section 1-1 (“[E]ach Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low income populations....”)
- b. An EJ analysis requires identification of an affected population. While the geographic location of persons exposed to a stressor may at times coincide with a “community,” at other times the potential effects may cut across communities. To assess whether “disproportionate effects” exist, *see* definition in Glossary, it is important to use scientific methodologies and rigorous exposure data gathered using sound science to identify only the affected population, not to assume that the effects of an action fall on all persons who reside within a community. Just as a “community” does not define an affected population, proximity to a source is also a poor surrogate. The Technical Guidance for Assessing Environmental Justice in Regulatory Analysis (EPA 2016) (the “EJ Technical Guidance”) states that “use of actual exposure data is generally preferred to proximity data.” EJ Technical Guidance at 50. The EJ Agenda should incorporate this principle.
- c. The draft EJ Agenda’s definition of “overburdened community” states that populations or geographic locations must “potentially experience” disproportionate environmental harms or risk. This language should be clarified to focus the analysis on exposure and actual risks, not just “potential” ones. Opening the door to “potential” risks introduces a measure of speculation and subjectivity that may lead different analysts to reach different results.
- d. The BNEJ believes that all members of the public should have a full opportunity to participate in decisions about a proposed activity. *See* definition of “meaningful involvement” in the Glossary. The definition of “overburdened community” should distinguish this interest in a fair, inclusive process, a procedural goal, from the concepts of vulnerability and susceptibility, which should be defined in the Glossary. Vulnerability involves differential exposures and preparedness of a population while susceptibility relates to the population’s biological response.² These attributes of a population, rather than procedural opportunities, determine the health and environmental effects of a stressor on that population. The definition also notes that disproportionate effects may result from “other factors” without elaborating what they may be, thereby diminishing the usefulness of the definition.
- e. Vulnerability, although undefined in the draft EJ Agenda, is a useful concept when evaluating the risk to a group of people from exposure to a stressor. However, the EPA should not automatically associate vulnerability with “lack of positive” conditions.

² *See* EJ Technical Guidance at 69.

- f. After citing to “disproportionate effects,” which is separately defined in the EJ Agenda Glossary, the definition of “overburdened community” then uses the term “disparities.” This term is not the same as “disproportionate effects” or “unequal treatment.” One purpose of analyzing an action for disproportionate effects is to determine whether a minority, low-income or indigenous population has suffered a significantly higher and more adverse health and environmental effect than a comparison (reference) group. This principle appears to be embodied in the defined term, “fair treatment.” Subject to point 8 below, the EPA may plan to consider disproportionate effects as one of many factors in evaluating the fairness of an action. In contrast, a comparison of any two populations will detect “disparities,” and be of little value in an EJ analysis. To be consistent with Executive Order 12898 and cogent EJ analysis, the EJ Agenda should employ the term “disproportionate effects” and maintain that focus throughout the EJ Agenda.
- g. The introduction of the concept of cumulative effects in the definition creates an impediment to applying it in a consistent, uniform manner. As the EPA has acknowledged, there are no established scientific methodologies for conducting cumulative risk assessments for multiple environmental stressors. *See* EJ Technical Guidance at § 4.2.4 (“The science supporting assessments of such cumulative impacts is evolving, however, and the data and analytical tools needed to develop informative, scientifically sound analyses of these effects may not be available in many cases.”). The analysis becomes even more difficult and removed from established scientific methods when attempting to assess how socioeconomic and environmental conditions interact. *See* EJ Agenda at 19.

Neither the definition of “overburdened community” nor other parts of the EJ Agenda offer quantitative or qualitative measurements to determine the degree to which cumulative effects may burden a population. Likewise, they are unclear whether “overburden” can be determined by looking only at a single community or requires a comparison to a reference group to determine whether the burdens identified fall disproportionately on minority or low income populations. Indeed, in the absence of any quantitative thresholds such as those provided in the EJ Technical Guidance at § 2.2, members of the public using the definition may come to conflicting conclusions on such basic elements as whether a population is minority or low-income, let alone when the cumulative effect of environmental and social stressors creates “overburden.” Until the science is developed, use of the concept of “overburdened community” as defined by the cumulative effects of environmental, health, social and other factors will be ad hoc and subjective, leading to uncertainty for all affected stakeholders. Therefore, until that time, reference to cumulative effects in the definition of “overburdened community” should be removed.

If EPA does not modify the definition of “overburdened community” to promote more predictable and consistent outcomes, and certainty for those who will be impacted by the actions outlined in the EJ Agenda, the BNEJ suggests that the EJ Agenda note that the definition is primarily useful as a screening tool to begin an analysis of whether minority or low income

populations as identified in Executive Order 12898 are disproportionately affected. A clearer definition and much further analysis using rigorous data, risk assessment techniques, and other scientific methods to analyze for disproportionate effects is essential when EPA's rulemaking, permitting or enforcement tools are used.

3. The EJ Agenda should consistently require application of sound science to high quality data.

The BNEJ commends EPA on the principles articulated at the beginning of Chapter 5: Science. EPA importantly notes: "At the federal and state level, high quality data, rigorous risk assessment and state-of-the-science analytical tools provide a foundation for the legal, political, health and economic decisions to protect public health and the environment in these communities." EJ Agenda at 17. The BNEJ whole-heartedly agrees with this emphasis on sound science when conducting environmental justice analyses. The BNEJ notes that this principle applies not only to protecting the health of vulnerable populations, but also to protecting all persons benefited by federal or state environmental requirements.

The BNEJ is concerned, however, with the EJ Agenda's willingness to deviate from the rigorous scientific approach when offering tools to communities. In particular, the EJ Agenda notes: "Cumulative impact assessment may involve the use of more qualitative or semi-quantitative information, and may be particularly useful to communities for identifying and prioritizing problems." EJ Agenda at 17. In reality, cumulative impact assessments conducted without the scientific rigor of a risk assessment may result in mistaken conclusions concerning risk, demands for actions that are not directed to actual risks, misdirection of limited resources toward perceived but not actual risks, and disillusionment by community members when reductions in perceived risks do not result in actual health benefits. Tools such as next generation monitoring and citizen science may suffer from the same lack of scientific rigor when not undertaken by trained individuals following scientific protocols. While EPA tools under development such as the Community-Focused Exposure and Risk Screening Tool (C-FERST) may provide some information useful for assessing cumulative impacts, as discussed in item 2.g above, EPA has acknowledged that further scientific research is needed. Great caution should be taken in promoting use of tools that have not been shown to be scientifically valid for decision making by communities or others, and tool output should be clearly identified as screening results and not necessarily representative of risk.

4. Increased EPA compliance activity should be focused on activities that present a greater risk.

The EJ Agenda includes EPA's plan to increase compliance evaluations of facilities and activities that impact vulnerable populations. EJ Agenda at 14. The EJ Agenda does not, however, suggest how the compliance targets should be selected.

The BNEJ believes that EJ analysis should identify any disproportionate effects on vulnerable populations, not potential disparities. Current tools utilized by EPA do not focus on actual risk and therefore should be used only as starting points for an EJ analysis. For example, the BNEJ commends EPA on developing EJSCREEN as a publicly available tool that integrates various national data sets. By making multiple indicators available to define vulnerable and susceptible populations, EJSCREEN can serve as a useful tool to begin the process of identifying the demographics of populations who may be exposed to stressors. In places, however, the EJ Agenda appears to afford more weight to EJSCREEN than is appropriate for a screening tool. *See, e.g.*, EJ Agenda at 16, Actions 2.2 and 2.3 (using EJSCREEN for enforcement purposes) and at 45 (reports on RCRA Corrective Action Program and Superfund Remedial Program facilities based on EJSCREEN).

The EJ Agenda should explicitly note the limitations of EJSCREEN. As the EPA has recognized in the context of explaining the tool, EJSCREEN does not perform a comprehensive risk assessment, does not purport to identify EJ communities, uses screening indicators that may not show actual exposure, uses data that may not be current and is limited by the availability of national data sets that may not examine the route of exposure at issue for a particular population such as drinking water quality. *See* EPA EJSCREEN Webinar. In addition, depending on the thresholds that the user of the tool selects for each of the indicators, EJSCREEN may be over-inclusive in defining an affected population, thereby misdirecting attention and resources away from the most vulnerable populations. EJSCREEN can be most useful as a screening tool to examine demographic information and whether a risk assessment or other scientifically valid evaluation should be performed to determine actual exposures and effects.

The absence of tools that provide more than a screening function presents an obstacle to EPA's plan to identify the 100 most overburdened communities. In part because EJSCREEN does not validly measure actual risks, it is not capable of prioritizing sites in a scientifically valid and reproducible manner. Community advocates as well as other stakeholders are likely to identify different communities as priorities. Absent a valid scientific methodology for selecting the 100 most overburdened communities, the selection process may become politicized. Risk assessments would provide a better basis for prioritization, but as discussed above, even they cannot account for the cumulative relationship of all environmental and social stressors.

The BNEJ recommends that when discussing EPA compliance activities, the EJ Agenda note that the EPA's Office of Enforcement and Compliance Assurance has flexibility to assist companies in meeting the requirements of complex regulatory programs, not merely to pursue enforcement actions when violations allegedly occur. Particularly when alleged violations have caused little if any adverse effect, the EPA should carefully examine whether appropriate allocation of resources favors use of compliance assistance tools.

Chapter 4, Action 1.3 in the draft EJ Agenda states a “goal of increasing the number of SEPs [supplemental environmental projects] and mitigation projects affecting overburdened communities.” The BNEJ agrees that in appropriate circumstances, voluntary SEPs can play a helpful role in addressing conditions to which vulnerable populations are exposed. In many instances, the most effective actions that can be taken to improve the health and environmental conditions in communities are those identified through collaborative efforts of stakeholders. For example, communities may benefit most from services and programs tailored to that community’s specific needs. Actions such as these, when not required by law, depend upon voluntary participation by stakeholders. Under some circumstances, companies may view a SEP as an opportunity to improve community conditions, enhance relationships with community members and improve the company’s reputation while resolving an enforcement matter. The BNEJ encourages the EPA to work with targets of enforcement actions and communities to identify and promote SEPs when appropriate in the context of a particular proceeding and ensure that the SEPs selected benefit communities.

5. The EJ Agenda would be enhanced by citing and conforming to certain portions of the EJ Technical Guidance.

In June, 2016, the EPA issued the final EJ Technical Guidance. The draft EJ Agenda, developed before the final EJ Technical Guidance was issued, cites to and notes the importance of completing the EJ Technical Guidance. The final EJ Technical Guidance incorporates some of the comments submitted by the BNEJ and other members of the public and EPA’s Science Advisory Board on the draft EJ Technical Guidance. The EJ Agenda would be improved by adherence to certain portions of the EJ Technical Guidance, notwithstanding the BNEJ’s concerns regarding other portions.

In particular, the EJ Technical Guidance appropriately rejected a “one-size-fits-all” approach to EJ analysis. Instead, it recommended utilizing a screening analysis to identify the extent to which a regulatory action may raise potential EJ concerns and what level of analysis is feasible and appropriate. EJ Technical Guidance at 1. The EJ Technical Guidance discusses “feasible” in terms of the availability and quality of data, and “appropriate” in terms of relevant policy, budgetary and statutory considerations. EJ Technical Guidance at 3.2. This principle should be extended to all actions contemplated by the EJ Agenda.

Based upon a recommendation by the EPA’s Science Advisory Board for clearer use of defined terms, the EJ Technical Guidance sets forth clearer definitions and uses them throughout the guidance. The EJ Agenda would likewise benefit from greater definitional clarity. For example, the definitions of “population group of concern highlighted in E.O. 12898,” EJ Technical Guidance at § 2.2, and glossary terms such as “vulnerability” and “susceptibility,” *id.* at 69, promote consistency in identifying populations that are the focus of Executive Order 12898. Even if the EPA chooses to modify the thresholds or other features of these definitions, they can guide the EPA in revising the EJ Agenda Glossary to allow more predictable outcomes when evaluating when an action may raise EJ concerns.

As discussed above in paragraph 2.g., the EJ Technical Guidance also recognizes the data and methodology limitations in applying cumulative risk assessment discussed above. *See, e.g., id.* at §§ 4.2.4 and 5.2.3. The BNEJ recommends that the EJ Agenda cite to the Technical Guidance as a reason to put a “placeholder” on routine use of cumulative risk in EJ analysis until the science is sufficiently developed.

A shortcoming of both the EJ Technical Guidance and the EJ Agenda is the absence of consideration of the EPA’s decades of standard-setting activity during which the EPA has considered the risk to human health, including vulnerable populations. The EPA has established a protective regulatory framework for many pollutants using conservative assumptions and safety factors, and businesses have taken aggressive steps to comply with these standard for several decades. In considering impacts of pollutants on vulnerable populations, the EJ Agenda should emphasize the utility of relying on standards EPA has already established through rulemaking.

Likewise, neither the EJ Technical Guidance nor the EJ Agenda explains how social or personal responsibility factors should be considered when defining a population affected by an activity or evaluating the degree of risk to the exposed population. The draft EJ Agenda would benefit from consistently emphasizing that regulatory decisions must be based on scientifically valid data and methods.

6. The BNEJ recommends that EPA provide opportunities to correct any errors in information that EPA discloses to the public.

The BNEJ favors transparency and recognizes that at times information concerning emissions and discharges from a facility, and the facility’s compliance history, may assist persons to assess the potential risk posed by the facility. The EPA’s Enforcement and Compliance History Online (ECHO) database is an example. *See* EJ Agenda at 16, action 3.2. However, inputs to the ECHO database are at times incorrect or incomplete, and requests to correct erroneous information are sometimes met with bureaucratic inertia. Misinformation is unfair to and damages the regulated entity and may do community members more harm than good. Accordingly, the BNEJ recommends that the EJ Agenda expressly recognize that a mechanism to correct errors in publicly available data base information is an important component of any public dissemination policy. The EJ Agenda should specify as a measure of success of public disclosure the promptness in which errors in the database are corrected when brought to EPA’s attention.

7. The BNEJ supports efforts to build the capacity of communities and promote community engagement.

The BNEJ supports community capacity building and urges the EPA to note industry leadership in community engagement. As an organization committed to informed dialogue among citizens, the BNEJ supports the application of available resources to build the capacity of vulnerable populations. Outreach, technical assistance and grants, and training are all important components of a capacity-building program that will enable vulnerable populations to

meaningfully participate in EPA decision making processes and collaborative efforts with business and industry and others to build and sustain healthy communities.

The draft EJ Agenda should note industry leadership in community engagement. EPA has elsewhere stated:

Industrial facilities are important members of the communities in which they are located. In addition to their important role as a source of employment and economic stability within a community, facilities play other roles. Many facilities, for example, have robust community engagement strategies that recognize the value of community outreach. Pursuant to these strategies, facilities engage actively with the community through environmental initiatives, neighborhood beautification projects, education programs and charitable giving, civic programs and the arts, youth activities, and other investments in communities. Indeed, many companies and public authorities embody these principles in their mission statements, using words and phrases like collaboration, respect, and building mutually beneficial relationships. Some even aspire to measure their own success by the success of their customers, shareholders, employees and communities. In short, a corporate culture has emerged in this Nation that values and actively promotes community partnerships.³

The BNEJ requests that a similar description of the proactive role taken by many businesses to work closely with communities be expressed in the EJ Agenda.

8. A collaborative process is the best mechanism to address most civil rights complaints.

The draft EJ Agenda states: “Where possible, EPA seeks to address the concerns of the affected communities outside of the civil rights enforcement process as an important component of the Agency’s efforts to make a prompt and visible difference in communities.” EJ Agenda at 6. The BNEJ supports this statement and EPA’s focus on developing tools that may bring people together to reach long-term solutions to civil rights problems. The BNEJ believes that EPA’s Environmental Justice Collaborative Problem-Solving Model cited above provides a useful approach to collaborative decision making and suggests that EPA emphasize the usefulness of this Model in the EJ Agenda.

The goals of Title VI and other federal civil rights statutes are consistent with the principle that the BNEJ supports: all people should be treated fairly under all laws, including environmental laws, without discrimination based on race, color or national origin. As discussed above, determining whether an impact is harmful and disproportionately affects vulnerable populations requires sufficient valid data and a scientifically-valid methodology for assessing risk, defining the affected community and comparing the demographics of affected and

³ “EPA Activities to Promote Environmental Justice in the Permit Application Process,” 78 Fed. Reg. 27220, 27228 (May 9, 2013).

comparison (reference) communities. In addition, disparate impact alone is not proof of discrimination – Title VI requires equal treatment, not equal environmental results.⁴ Under these circumstances, resolving civil rights concerns in the first instance through use of the collaborative problem-solving model with full participation of vulnerable populations, government, business and industry and other affected persons would best serve the purposes of civil rights laws.

9. Building community capacity to adapt to any changes in climate conditions should focus on building knowledge and resiliency.

The draft EJ Agenda appropriately focuses on building sustainable and resilient communities as a response to stressors, including any that may result from increases in atmospheric greenhouse gas concentrations. *See, e.g.*, EJ Agenda at 7. Working toward healthy communities for all populations is an important goal. One specific element of concern, however, is the provision in the draft EJ Agenda for “training the next generation of young climate justice leaders.” It is unclear whether the EPA intends to target this effort on capacity building to participate in environmental decision making, or to inappropriately enter the realm of political advocacy. The BNEJ suggests that this goal be clarified to avoid any implication that the EPA intends to train youth to become political advocates rather than knowledgeable community participants in collaborative efforts to reduce or adapt to stressors.

10. Informal communications may provide valuable community input, but serve as an enhancement of, not substitute for, the rulemaking process.

The BNEJ supports the EPA exploring informal ways to promote meaningful community involvement in rulemaking. *See* EJ Agenda at 10, Action 4.1. It is important for the EJ Agenda to note, however, that informal communications do not substitute for the submission of comments into the rulemaking administrative record upon which agency decisions are made and reviewed. The EJ Agenda should emphasize the importance of all stakeholders submitting formal comments through the rulemaking process and encourage community members to do so regardless of any informal communications in which they may have participated.

11. Environmental monitors are appropriate enforcement objectives only in limited circumstances.

The draft EJ Agenda views environmental monitors as an important component of enforcement settlements. EJ Agenda at 16. The EJ Agenda establishes as a measure of its success the annual number of EPA enforcement settlements that incorporate environmental monitors. *Id.* Although environmental monitors may be appropriate as part of enforcement settlements in limited circumstances, the BNEJ believes that these monitors are inappropriate in many other situations. Where monitors are unlikely to provide meaningful, accurate data, they can mislead rather than improve community members’ understanding of their environments. In addition, to be of use to potentially affected populations, accurate monitoring data must be coupled with resources to educate the affected population regarding the overall context of the monitoring and

⁴ *Alexander v. Sandoval*, 532 U.S. 275 (2001).

the specific relationship of the monitoring results to community health or environmental quality. Those resources are not always available or correctly deployed. As such, the number of times monitors are required in settlements is not a useful measure of success of an EJ enforcement program.

Thank you for the opportunity to submit these comments.