



Environmental Justice Leadership Forum on Climate Change

www.EJleadershipforum.org

Environmental Protection Agency
EPA Docket Center (EPA/DC)
Mailcode 28221T
1200 Pennsylvania Avenue, NW.
Washington, DC 20460

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Dear Administrator McCarthy:

Thank you for the opportunity to provide comments on EPA's Clean Power Plan - Docket ID No. **EPA-HQ-OAR-2013-0602. The Environmental Justice Leadership Forum on Climate Change (EJ Forum)** is led by racially diverse people who are community organizers, public health experts, healers, youth leaders, environmental and social scientists, lawyers, and policy advocates dedicated to a healthy and just environment and economy. Across the United States and tribal lands, Forum members live in and work with environmental justice communities, where residents are less likely to recover from extreme weather events, and where industrial facilities and transportation routes release pollution that heats up our planet and harms our health.

The Forum brings an essential perspective that is often missing from federal policymaking on climate change and environmental matters. This perspective is based on the *Principles of Environmental Justice*, the *Principles of Climate Justice*, and the human rights framework that includes the *American Declaration on the Rights & Duties of Man*, the *Declaration on the Rights of Indigenous Peoples*, and the *UN Guiding Principles on Internal Displacement*. As a national working group of environmental justice advocates, the Forum works, in part, to inform state and federal political and legislative action to achieve just policies and mechanisms that equitably reduce carbon emissions in all communities. **Our comments are also supported by many allies working on environmental and social justice that are concerned about the Clean Power Plan as well.**

Carbon pollution contributes to the climate change effects of extended periods of heat waves, stronger hurricanes and flooding, sea level rise, and droughts. Climate scientists and researchers recognize that the effects of climate change will be greater in areas of the US where the majority of residents are Indigenous peoples, people of color, and poor and have less capacity to recover.

Since the announcement of the President's Climate Action Plan in June 2013, members of the EJ Forum were concerned that environmental justice was not adequately mentioned or addressed with the President's CAP, specifically some of the potential justice and human rights issues that could arise from some of the mitigation and adaptation solutions presented. **We have this same**

concern with the proposed Clean Power Plan. The proposed Clean Power Plan acknowledges that “*there likely would also be some locations with more times during the year of relatively higher concentrations of pollutants with potential for effects on localized communities*”, and that the EPA “*concluded that it is not practical to determine whether there would be disproportionately high and adverse human health or environmental effects on minority, low income, or indigenous populations from this proposed rule.*” With these explicit statements, and the absence of equity or environmental justice in the preamble of the document, we want to offer specific recommendations related to each of the four building blocks, and the overall process moving forward to ensure that the final proposed CPP is one that is robust enough to protect the health of EJ communities across the country.

Our main demand is that the federal EPA include language in the final rule and the subsequent guidance that recognizes and considers potential disparate impacts the rule may have on environmental justice communities, and explicitly direct states to identify environmental justice communities and where there are potential disparate impacts, and take steps to avoid or mitigate those disparate impacts.

Recommendations by Building Block

For each of the building blocks, we have specific requests shown in bolded/italics for each building block below. **We believe that if the final rule explicitly has language that directs the states to identify potential disparate impacts, and create SIPs to address these concerns, that reductions of GHGs and co-pollutants will occur in the communities where they are most needed.**

BUILDING BLOCK #1: MAKING EXISTING COAL PLANTS MORE EFFICIENT

Absolute reductions of GHGs & co-pollutant emissions in EJ communities from existing coal plants despite the emission measuring system. Regardless if states decide to use a mass based or rate-based system to account for their reductions, it is important chosen mitigation strategies document reductions in emissions from the regulated EGUs in EJ communities.

The potentiality of using Carbon Capture & Sequestration (CCS) or other large scale ‘clean coal’ technology is not an answer. These false solutions include masking fossil fuel production as so-called “clean coal technologies” and “bridge fuels” that include natural gas extracted from shale rock through hydraulic fracturing or fracking, nuclear power, biofuels and the burning of biomass for fuel. False solutions such as “clean coal”, also known as carbon capture and sequestration, are designed to facilitate the continued use of fossil fuels. These false solutions to climate change can exacerbate and expand environmental injustice, particularly when disproportionate siting issues are also considered.

Therefore, the members of the EJ Forum strongly object to any carbon trading mechanism being presented as an option to achieve BSER in the CPP. The Clean Power Plan spends a significant amount of time explaining the benefits and viability of states expanding and/or initiating a market based CO2 emission reduction program (i.e. a cap and trade program) as an option to adequately demonstrate the best system of emissions reductions (BSER). While there are currently two active market-based CO2 emission reduction programs operating in the United

States (the Regional Greenhouse Gas Initiative (RGGI), a market-based CO₂ emission reduction program established in 2009 in 10 Northeast states is currently active, and California's market-based GHG emissions trading program established under the authority of the 2006 Global Warming Solutions Act, known as Assembly Bill 32), market based CO₂ emission trading programs like Cap and Trade will not guaranty that states achieve absolute reductions of GHG and co-pollutant emissions in communities that are already pollution-burdened.

While the language in the proposed CPP describes how the investments of both RGGI and California's cap and trade program have been used to support energy efficiency programs and provide general benefits to energy customers, to our knowledge, there has been no analysis to examine if the dividends actually reached 'disadvantaged communities', and targeted at specific communities to provide technology and resources to improve public health. Specifically, have these dividends been used to improve the operation of coal-fired, and natural gas facilities to reduce fugitive emissions that impact overburdened environmental justice communities? Has a network of pollutant monitors been established or enhanced to quantify the amount of GHGs and co-pollutants at the community level in EJ neighborhoods? Have financial resources and investments been pushed into communities to increase the availability, access and affordability of renewable energy, and make homes (single, multi-family housing units, and high-rise) in EJ communities more 'energy efficiency ready'? **These are just some of our remaining questions and concerns that support why we firmly believe cap and trade and/or carbon trading mechanisms are not the answer to achieve the reductions in CO₂ that we are all looking for.** The CPP states that funds produced by these cap and trade programs have been used to support energy efficiency programs but there is little evidence showing to what extent these funds have specifically benefitted EJ communities. And if they do benefit EJ neighborhoods to some extent we do not find this an adequate trade-off for a failure to guaranty emissions reductions that will improve health in these areas. Hence, it is critical that the EPA require states to perform an analysis to evaluate the direct and indirect costs and benefits of specific carbon reduction strategies on EJ communities, and most importantly comply with Executive Order 12898 and Title VI of the Civil Rights Act of 1964. We join the legal arguments raised by the Center on Race, Poverty & the Environment on the issues of (1) EPA's authority under Title VI of the Civil Rights Act to prevent racial discrimination in implementing the Clean Power Plan; and (2) that section 111(d) does not allow cap and trade.

The EJ Forum's position on cap and trade has not changed and we are not supportive of any carbon trading mechanism. In light of new, recent efforts in the US Congress and NGO efforts to re-ignite the conversation on carbon pricing, we are currently re-evaluating our position on the benefits of a carbon price and/or a cap and dividend approach, and would be happy to provide a more detailed response to the Agency and States during the SIP process to underscore more protective solutions – beyond cap and trade – that should be equally represented in the final CPP, as a more equitable and just method to achieve absolute reductions and improve public health in EJ communities.

BUILDING BLOCK #2: USING EXISTING GAS PLANTS MORE EFFECTIVELY

Absolute reductions of GHG & co-pollutants emissions in EJ communities from existing and new Natural Gas Combined Cycle plants. Absolute reductions of emissions must be guaranteed in our communities, even as the shift will occur in some communities from coal-fired power

plant electricity generation, to natural gas. If the solution is simply shifting more energy use to the existing natural gas infrastructure this could actually result in an increase in emissions from some natural gas plants, which, of course, is exactly opposite to the decreased emissions needed in EJ communities. In addition to the health impacts that would be associated with these increased emissions we are also concerned with the shale extraction process that can result in additional negative environmental impacts, such as methane emissions and increased flaring, potential groundwater contamination, and the generation of toxic waste water streams. More priority should be placed on renewable energy and energy efficient measures.

BUILDING BLOCK #3: INCREASE RENEWABLE AND NUCLEAR ENERGY

Renewable energy should be prioritized in EJ communities. Solar, wind, hydro and geothermal are the only types of renewable energy that should be considered as clean energy. There is an emerging, renewable energy divide that we want to avoid – which is creating a stratification of the renewable energy “haves and have-nots”. The funding for the deployment of clean energy should be focused on EJ communities, especially those that will be undergoing a major transition from a predominately coal producing economy to a clean energy economy. Ensuring a just-transition – by providing job training and availability for residents, should be a critical part of planning the new energy landscape at the local and state level.

Nuclear energy should not be considered a form of clean energy, it should not be expanded, and no scheduled shut-downs of existing nuclear facilities should be extended. The definition of clean energy does not involve nuclear power. Until the massive legacy of pollution from the last round of nuclear power plants is addressed, and nuclear energy generation no longer produces a waste product that is almost uniquely toxic, no new nuclear generation should be expanded, and no EJ communities should be the host of waste sites.

BUILDING BLOCK #4: INCREASED END-USER ENERGY EFFICIENCY

Energy efficiency benefits and economic justice must be prioritized for EJ communities. The deployment of energy audits, subsidies, installation, utility scale programs, improving transmission system efficiency, and even updating building codes, should be targeted to help build the stability of EJ communities. Insuring that communities are kept ‘in the loop’ for grants, and other funding opportunities that could provide these types of end-user services should be delineated in State’s Implementation Plans. **States should conduct an evidence-based analysis of the costs to ratepayers should be used to create safeguards, discounts and other measures to reduce the burden of any increases to consumer bills that are predicted, as to maintain affordable electricity to low income consumers.**

Equity needs to be a part of energy efficiency programs and deployment. Priority needs to be placed on making communities energy efficiency ready. At this time, many EJ communities are not energy efficiency ready – states must be required to make a commitment to fund projects that will create the infrastructure (i.e. homes, multi-family dwellings) in EJ communities that can be retrofitted to meet baseline standards for weatherization, as well as the financial support to own and operate clean energy sources, like solar power. And as communities that have been heavily dependent on fossil-fuel fired power plants to provide the majority of economic stimulus for local economies, we need to insure that clean energy training and job opportunities, and

other innovative ways to stimulate the local economy are considered in the SIP planning process to help create a thoughtful, just transition for plant-dependent communities

THE PROCESS MOVING FORWARD

We are also charging the Agency to require that an Environmental Justice Analysis must be completed for each state as one of the components of approval in the State Implementation Planning (SIP) process. As proposed, the CPP states that a qualitative environmental justice analysis was performed to meet the requirements set forth by Executive Order 12898. Unfortunately, this analysis was deficient and unacceptable as it described the potential for disproportionate impacts, but did not go any farther to require states to address the potential disproportionate impacts. With that said, a more robust EJ Analysis should be required for State SIP approval that will require the states to create a process that identifies possible EJ concerns, creates a plan for meaningful involvement and compares how options under the Building Blocks might impact the environmental and public health of EJ populations. Using the methodology described in the guidance document *Incorporating Environmental Justice into Rulemaking Guidance* or the *Draft Solid Waste Rule* – might constitute a good first step. EPA should also mandate that States use whatever tools at their disposal, and their best science to identify the regulated entities in their state, understand the socio-demographic make-up of the communities around those facilities, take stock of the other environmental pollution sources within the defined community (addressing cumulative impacts), and analyze the cost and benefits to EJ communities of potential mitigation strategies, including the state plans developed pursuant to EPA's Clean power Plan. Most importantly, environmental justice groups should be a part of the state engagement process throughout the entire rulemaking process and work with state agencies to develop an EJ process to meet the unique needs of each State.

OUR SPECIFIC ASKS

We, the members of the Environmental Justice Leadership Forum on Climate Change, respectfully ask that in the final rule and the accompanying EPA guidance, that the EPA

- include language that recognizes and considers potential disparate impacts the rule may have on environmental justice communities, and
- directs states to identify environmental justice communities and where there are potential disparate impacts, and take steps to avoid or mitigate those disparate impacts.

Failure to include language and recognize the potential for disparate impacts is not meeting the goal of Executive Order 12898 on Environmental Justice, EJ Plan 2014, Title VI of the Civil Rights Act, or reflecting the content of the EPAs Interim Guidance on Considering Environmental Justice during the development of an Action. Through these actions, it is our hope that states are able to demonstrate in their SIPs how suggested mitigation strategies – and how they use the building blocks - would impact EJ communities, as well as target efforts for energy efficiency and renewable energy in EJ communities. In order to leverage health benefits from the rule, the rule must target actions directly in the vulnerable communities.

We look forward to continuing this dialogue over the next couple of years through the implementation of the Clean Power Plan to make sure EJ is integrated into the federal and state rule making processes.

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