

V. Environmental Justice Guidance for Agency Staff

There is little doubt that government personnel across federal agencies addressing public health, environment, and safety intend to be fair and helpful in their actions. However, without proper guidance, training, and tools, the best of intentions can go awry. The reality is that EJ concerns touch on every aspect of agency rulemakings (from preliminary scoping through all the stages leading to promulgation and implementation), permitting decisions, and data collection efforts. However, EJ training and guidance often seem to be restricted to an office specialist meant to address EJ problems when they arise, often in isolation. Agencies need to fully integrate EJ considerations into the entire fabric of their activities to identify and avoid EJ issues before they become problems.

Guidance should require that agency staff and work groups meaningfully engage with and consider the impacts on minority, low-income, and indigenous populations. The EPA is developing a plan, *Plan EJ 2014*, to integrate environmental justice considerations throughout all agency activities.¹¹⁵ Reproducing similar guidance within other relevant agencies and achieving full implementation should be a priority.

V1. Develop Comprehensive Guidance on Environmental Justice

Agency environmental justice guidance should include a description of E.O. 12898 and its requirements. Guidance should address, at a minimum, how to incorporate EJ considerations into all rulemaking, permitting, and compliance and enforcement activities. EJ communities are frequently impacted as a result of non-compliance activities at industrial facilities. Regulatory agencies should consider impacts on EJ communities when issuing notices of violations and address impacts to EJ communities when issuing enforcement notices and compliance orders. Agencies should require environmental justice analyses to determine whether significant disproportionate adverse effects would be caused by an agency action. Training for agency staff and contractors to help them identify potential environmental justice problems should be provided. Agencies should include mechanisms for continuous community engagement and requirements to demonstrate how public recommendations and concerns are considered and integrated into final agency outcomes.

V2. Engage the Public in Development of Environmental Justice Guidance

Agencies should implement new and consistent opportunities for EJ communities to provide input into the development of agency guidance, as well as mechanisms to receive feedback from agency staff and contractors. Sufficient agency resources should be dedicated to the development and dissemination of the guidance and for providing answers to staff questions as necessary. Best practices and successful projects should be identified and shared with the public, stakeholders, and across government, including state and local agencies.

¹¹⁵ See <http://www.epa.gov/environmentaljustice/resources/policy/plan-ej-2014.html>.

V3. Address Environmental Justice Impacts in NEPA Guidance

The White House Council on Environmental Quality (CEQ) coordinates agency compliance with the National Environmental Policy Act (NEPA). The CEQ's current guidance regarding consideration of EJ during NEPA reviews was adopted in 1997.¹¹⁶ Agencies should review their compliance with CEQ's EJ guidance under NEPA and report regularly on their performance and specific plans for improving compliance. The CEQ should amend its NEPA regulations to expressly identify environmental justice as an issue in NEPA compliance documents.¹¹⁷

V4. Coordinate Environmental Justice Strategies throughout Government

Improved coordination and collaboration among multiple levels of government is needed to respond to the concerns of EJ communities. Federal, state, local, tribal, and territorial governments need an integrated system for identifying EJ issues and directing agency resources and attention to their resolution. For example, the EPA's Office of Environmental Justice and the CDC's National Center for Environmental Health should collaborate to create meaningful processes by which community comments regarding public health concerns can impact the pollution permitting process.¹¹⁸ Agencies should develop and conduct national and regional environmental justice trainings that address agency-specific needs and focus on interagency cooperation. The recent revival of the Interagency Working Group on Environmental Justice¹¹⁹ and White House coordinating actions¹²⁰ are positive steps, but much remains to be done.

W. Identifying and Engaging EJ Communities

Environmental justice community members are often not adequately represented at government-run events and meetings. Federal agencies must make a special effort to identify community stakeholders and reach out to them. The data collection efforts called for in Recommendations S2 and U2 above would provide the information needed by federal agencies to help identify community members who are disproportionately impacted by environmental degradation. Yet simply identifying community stakeholders is not adequate. In order to build

¹¹⁶ See <http://www.doi.gov/oepec/EJ%20under%20NEPA.pdf>.

¹¹⁷ *Ibid.* 102.

¹¹⁸ National Conversation on Public Health and Chemical Exposures, Serving Communities Work Group draft report, <http://resolv.org/site-nationalconversation/>.

¹¹⁹ See <http://www.epa.gov/environmentaljustice/interagency/index.html>.

¹²⁰ U.S. Environmental Protection Agency, "Obama Administration Convenes Environmental Leaders at Historic White House Environmental Justice Forum Featuring Five Cabinet Secretaries," Dec. 15, 2010, <http://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/d85d6575a572e913852577fa007bd1f3!OpenDocument>.

the trust of communities, serious, concerted, repeated efforts to reach out to, communicate with, and thoroughly engage community members are needed.

W1. Make Special Efforts to Identify Environmental Justice Communities

Agencies should develop methods for characterizing and identifying the EJ communities relevant to a particular action, identifying EJ stakeholders and their interests. Agencies should also work with non-environmental groups, community-based organizations, faith groups, and others to better reach EJ community members.

Government agencies must place additional emphasis on identifying tribal stakeholders and ensuring that relevant communications reach those who may be in remote regions and may not have reliable Internet access. Agencies should encourage states to deal with federally recognized native tribes on a government-to-government basis.

W2. Continually Engage Environmental Justice Communities

Agencies should develop methods for effectively engaging relevant stakeholders, adopting methods that go far beyond the minimum of “public notice and comment.”

- Use a diverse set of methods to interact with and engage the public. These methods should include community workshops, trainings, surveys, posters, and civic and community-based organization activities [see Recommendation AA3 and others in Chapter V].
- Establish a central point of contact to assist EJ community members. The agency point person will help with information access and will serve as a visible and accessible advocate of the public’s right to know about issues that affect health or the environment.
- Recognize and be sensitive to cultural characteristics of EJ communities. EJ communities need access to information in their languages and technical assistance to use the information to address their concerns. Agencies should provide document translations and translators at public meetings when necessary. Agencies must develop communication methods that are sensitive to cultural differences in EJ communities.

X. Capacity Building for Environmental Justice Communities

Often, the barrier to greater participation by EJ communities and individuals is not a lack of interest but a lack of capacity, either perceived or actual. Federal agencies should recognize EJ communities’ unique need for assistance accessing, understanding, and using environmental and public health information to achieve protection for their families, neighborhoods, workplaces, and ecosystems. Communities are also in need of expanded opportunities to participate in the decision making processes. Until agencies recognize and address these hurdles, EJ community participation will continue to languish.

X1. Provide Funding and Training to Build Capacity in EJ Communities

Agencies should determine to what extent EJ communities have the capacity to monitor federal actions, such as site clean ups, and provide capacity-building assistance where necessary.¹²¹

Agencies often struggle to gather local-level knowledge and learn what EJ communities need. Additional grant resources to allow EJ community groups to travel to and participate in meetings and advisory panels would help community members share ideas with policymakers.

X2. Prioritize Environmental Justice Communities to Receive Supplemental Environmental Programs Benefits

Enforcement settlements between EPA and violators of environmental laws may include Supplemental Environmental Programs (SEPs).¹²² SEPs are “actions taken by an individual or company that are in addition to what is required to return to compliance with environmental laws... They offer a unique opportunity to further our Nation’s goals of ensuring clean air and water, safe food, better waste management, and expanding the public’s right to know about their environment.”¹²³ Environmental justice communities should be priority recipients of SEP benefits and funding, but not in lieu of actual enforcement actions and civil and criminal penalties.

The development of SEPs should be used as an opportunity for greater community engagement. According to EPA’s SEP policy, “In appropriate cases, EPA should make special efforts to seek input on project proposals from the local community that may have been adversely impacted by the violations. Soliciting community input into the SEP development process can: result in SEPs that better address the needs of the impacted community; promote environmental justice; produce better community understanding of EPA enforcement; and improve relations between the community and the violating facility.”¹²⁴

X3. Expand and Provide Access to the Environmental Justice Strategic Enforcement Assessment Tool (EJSEAT)

The Environmental Justice Strategic Enforcement Assessment Tool (EJSEAT) is a draft tool being developed at EPA to identify areas with potentially disproportionately high and adverse environmental and public health burdens, using “18 select federally-recognized or managed

¹²¹ Excerpted from U.S. Environmental Protection Agency, *Environmental Justice and Federal Facilities: Recommendations for Improving Stakeholder Relations between Federal Facilities and Environmental Justice Communities*, October 2004, <http://www.epa.gov/compliance/ej/resources/publications/nejac/ffwg-final-rpt-102504.pdf>.

¹²² See <http://www.epa.gov/oecaerth/civil/seps/>.

¹²³ U.S. Environmental Protection Agency, *Beyond Compliance: Supplemental Environmental Projects*, <http://www.epa.gov/oecaerth/resources/publications/civil/programs/sebrochure.pdf>.

¹²⁴ See <http://www.epa.gov/oecaerth/resources/policies/civil/seps/fnl-sup-hermn-mem.pdf>.

databases and a simple algorithm to identify such areas.”¹²⁵ EJSEAT employs four indicator categories of datasets: 1) environmental, 2) human health, 3) compliance, and 4) social demographics.

EPA should allow the public to access and use this screening tool. Public use and feedback will help the development of the tool. In addition, EPA and other agencies should adopt the recommendations submitted by the National Environmental Justice Advisory Council (NEJAC) in the May 2010 report, *Nationally Consistent Environmental Justice Screening Approaches*, which relate to the future development of EJSEAT.¹²⁶

¹²⁵ See <http://www.epa.gov/compliance/ej/resources/policy/ej-seat.html>.

¹²⁶ See <http://www.epa.gov/compliance/ej/resources/publications/nejac/ej-screening-approaches-rpt-2010.pdf>.

V. Empowering Communities

Providing high-quality environmental information to the public is a crucial first step toward a more open and accountable government. However, access to information goes beyond just posting databases online. Another key component is the provision of tools and opportunities that equip community members to play an active role in protecting environmental and public health. This includes providing access to planning and scoping meetings, holding informational hearings and public listening sessions, and providing training to build the capacity of community groups to effectively use government data.

For their own benefit, agencies must engage the public at all stages of policymaking and continually involve public stakeholders throughout the course of their regulatory processes. As the National Research Council discovered in a 2008 study, “When done correctly, public participation improves the quality of federal agencies’ decisions about the environment.”¹²⁷ Active public engagement in the policymaking process can improve policy outcomes while building trust in government – two consequences that make government more effective, efficient, and hopefully more rewarding for our public servants.

Y. Plain-Language Communications

The people of the United States are a diverse group, comprised of individuals with a broad range of educational backgrounds and experiences. However, threats to public health, workplaces, and ecosystems affect us all. It is crucial that the information we need to protect ourselves and the opportunities to petition government officials are clearly communicated to and understood by everyone, no matter what their background. One should not need a law degree to access government records, a Ph.D. in toxicology to understand the health threat of the cement plant across the river, or be an expert in public policy to know how to comment on an environmental impact statement.

Government systems and procedures often are complex and inscrutable to ordinary people, whereas regulated industries and political insiders often have the resources and expertise needed to navigate environmental policymaking processes. This disadvantage against everyday people can effectively shut out large sections of the public from the democratic processes that should be readily available to them.

Numerous intermediaries have arisen to help aggregate, disseminate, and interpret government data for community members. These individuals and organizations provide a crucial role, connecting people to the information they need in formats they can use. To continue to enable

¹²⁷ The National Research Council, “Public Participation in Environmental Assessment and Decision Making,” <http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=12434>.

these intermediaries, agencies must provide information along a full spectrum of formats, from complete, “raw” data sets in downloadable formats to brief summaries of agency proposals in the plain-language format described in this subsection, and various levels of detail between the two. All formats are needed and actively used by the public. Simple summaries and plain-language communications should not be viewed as a substitute for disclosing information in detailed, complete formats.

Y1. Provide Environmental and Public Health Information in Easy-to-Understand Language

Agencies should provide information in plain, easy-to-understand language that concisely interprets scientific, technological, legal, and bureaucratic language. Agencies should consider creating work groups to develop standards for plain-language communications so that all communities’ information needs are met. Such standards should include, but not be limited to, the following:

- Information should be presented in a context that explains what the information is, why it is important, and how it may be used.
- Agencies should clearly present information in a relevant context, explain how it affects the public, and suggest steps the public might take to protect public and environmental health.
- Summaries of documents should indicate where in the document key pieces of information may be found.

As agencies collaborate to develop standards and methods for easy-to-understand communications, special attention must be given to poor and minority communities who suffer disproportionately from environmental threats. Environmental justice community members should be consulted to help inform the process of identifying culturally appropriate communication styles. Moreover, attention must be given to cases where languages other than English should be used to communicate with the public. One good example is EPA’s use of Spanish and Vietnamese translations on the agency’s Gulf oil spill response website, reflecting the large Vietnamese-speaking and Spanish-speaking populations in the Gulf of Mexico who need the information.¹²⁸ Agencies must ensure that people with impaired vision or hearing have easy access to information, as well.

Plain-language communications are especially needed in the following cases:

- Permits. Permits allowing industrial activities are often hundreds of pages long and contain highly technical material. Public interest advocates confront these obstacles when trying to evaluate proposed permits and comment within the short time that agencies provide. Agencies must provide easy-to-understand summaries of permits that clearly explain what

¹²⁸ See <http://www.epa.gov/bpspill/>.

the proposed activity is, what the ecological and public health impacts might be, and what mitigation plans, if any, are proposed [see Recommendation A2].

- **Risk and hazard communication.** Agencies must clearly explain topics of concern, such as risks from particular chemicals found in communities or what a measurement in “parts per billion” should mean to an average community member seeking guidance [see Recommendations L2, M1, and R1].
- **Worker safety.** All workers should have access to health and safety data in formats that they can easily understand, allowing them to make the decisions to protect their own health and that of their families. Non-English translations are needed for many workers, such as farm workers [see Recommendation M1].
- **Information for patients and health care professionals.** Doctors, nurses, and other health care providers have a unique and often urgent need for easy-to-understand information. Agencies should provide simple language fact sheets that describe chemical and workplace health hazards and what preventive and cautionary steps should be taken, especially by vulnerable populations such as children, the elderly, pregnant and nursing mothers, and immunocompromised individuals.
- **Emergency response instructions.** Emergency responders, many of whom are volunteers, must have clear, easy-to-understand instructions for dealing with emergencies [see Recommendation K1].

Y2. Explain Government Operations and Statutes

Agencies should be sure that, in addition to scientific and technological data, information on how agencies operate and the laws that govern their actions are explained in simple and accurate language so all people may be armed with the knowledge of how the wheels of government turn and what opportunities for involvement are available. Additional recommendations for communicating complex bureaucratic procedures are provided in the following section [see Section Z. Training Community Members].

Y3. Deliver Information through Diverse Modes

Agencies should consider how to get information to people where they live, work, learn, shop, play, and pray, using means that do not necessarily require Internet access. Information reaches people through a wide range of media. Government agencies should use as many avenues for communication as possible. During the aftermath of Hurricane Katrina, many homeowners lost personal computers or other access to the Internet. Federal agencies had information that they wanted to convey to homeowners regarding how to safely gut houses that had been flooded and could be growing harmful molds. Without computer access, important health and safety information was not available. Agencies should consider providing information through alternate means such as radio and television, printed posters and pamphlets, telephone hotlines, face-to-face meetings, and information kiosks.

Z. Training Community Members

Government data are of less use to communities that do not have enough capacity to process and use the data. Although numerous public interest organizations have painstakingly cultivated the knowledge and skills to exploit data, tools, and government systems, many smaller organizations and community members are stymied. Complicated bureaucratic procedures and highly technical subject matter can dissuade citizens from exercising their right to know and participating in our democracy. To make effective use of government resources, some capacity building is needed to train citizens and activists how to use these resources.

Funding for much of the activities outlined below will be difficult to secure considering current budget constraints. Where agencies have the authority, the regulated industry should be compelled to fund these accountability measures through fees levied during the permitting and leasing processes and during compliance enforcement actions.

Z1. Provide Training on Environmental Databases

As the government makes progress increasing the quantity and quality of databases available to the public, the need for training on how to access, process, and understand the data grows.

- Consult the public to identify priority databases for training. Agencies, in consultation with public stakeholder groups, should identify priority data sets for which community members would benefit most from training. Beyond instructions on how to access the database and conduct searches, community trainings should explain the significance of the information, the significance of the data in terms of public health and ecosystems, and how to interpret potential health and safety risks.
- Use a wide range of tools to conduct trainings. The use of online tools such as webinars, listservs, and wikis are excellent opportunities to efficiently instruct interested stakeholders at low cost. Tutorials using video or computer graphics can also get users started on their own analyses of government data. A database that lacks such instructions on how to use and understand the data can be unusable for segments of the public.
- Make GIS software and training widely available. To facilitate public use of data, agencies should provide Geographic Information Systems (GIS) software and data layers free to the public, especially to schools and libraries, as well as training in the use of GIS.

Z2. Provide Training to the Public on FOIA Process

Instructions for citizens seeking to submit Freedom of Information Act (FOIA) requests should be easy to access on agency websites and should clearly explain the requirements and procedures involved. Information on the process for requesting a FOIA fee waiver should be readily available and simple to understand. Submitting a FOIA request and requesting a fee waiver should be a straightforward and easy task, accomplishable by any interested citizen. Any response to a FOIA request must include specific information on how the records search was conducted, i.e., who

conducted the search, where, and for how long. Responses must also clearly explain options for appealing a denial [see Section E. Freedom of Information Act (FOIA)].

Z3. Enable Community Monitoring of Ecosystems, Workplaces, and Public Health

As federal and local budgets continue to suffer in the aftermath of the economic crisis, adequate resources for monitoring the quality of air, drinking water, and soil, as well as workplaces and public health, are uncertain. Exploiting the cadres of dedicated citizens wanting to track the health of their local ecosystems would make strides toward filling crucial data gaps. Many community groups around the nation have trained volunteers to take air and water samples, monitor wildlife, and even take human hair and tissue samples for biomonitoring. These concerned community members are seeking baseline data and data to measure the decline or progress of drinking water wells, streams, the air outside refineries, and numerous other systems.

- Train volunteer monitors and validate community science. Federal and state agencies should provide the training, funding, and certification of results needed to ensure the information gathered by these volunteers meets rigorous scientific standards. Where applicable, monitoring equipment and supplies should be provided at low or no cost to volunteer monitors, along with training in their proper use and how to post monitoring data online. The data collected by volunteer monitors can then be trusted and used to track pollution levels, the impact of environmental remediation projects, changes in wildlife populations, and countless other environmental and public health trends.
- Use traditional knowledge as an information resource. Native peoples and other groups maintain generations' worth of often detailed data concerning environmental quality and the dynamics of ecosystems. Federal agencies could benefit greatly from drawing on this knowledge as a resource.
- Use Community-Based Participatory Research (CBPR). CBPR is “an approach to health and environmental research meant to increase the value of studies for both researchers and the community being studied.”¹²⁹ Agencies should use such research models to fill important data gaps regarding disproportionate adverse environmental and public health impacts on environmental justice communities and other vulnerable populations while serving to engage and educate communities and strengthen collaborations among communities, agencies, and academics.
- Agencies should leverage NGO capacity. Agencies should expand the use of Memoranda of Understanding (MOUs) between government entities and NGOs, labor groups, or

¹²⁹ RTI–University of North Carolina (for the U.S. Department of Health and Human Services), *Community-Based Participatory Research: Assessing the Evidence*, July 2004, <http://www.ahrq.gov/downloads/pub/evidence/pdf/cbpr/cbpr.pdf>.

community-based organizations for the purpose of collecting data in exchange for watershed or habitat protections or other community benefits.

- Community monitoring should inform permitting and lease processes. Pollution permits and resource extraction permits and leases should incorporate the use of community-designed and/or community-operated monitoring systems.

Z4. Expand Grants for Technical Assistance and Training

Grants provide funding for communities to analyze scientific and technical data, allowing them to fully participate in policy discussions or to train others on technical issues. One example of a technical assistance and training grant is included in EPA's Superfund program.¹³⁰ Agencies should:

- Prioritize technical assistance and training grants during budget planning. Agencies should make funding for community training and technical assistance grant programs a priority and seek additional revenues for such programs. Agencies should evaluate opportunities to levy fees on regulated industries to fund capacity building at NGOs and community-based organizations (i.e., the Polluter Pays principle)
- Identify areas for expanded grants. Agencies that provide community capacity building grants should place an emphasis on identifying stakeholders in environmental justice communities most disproportionately impacted by pollution. Input from community groups should be weighted heavily when identifying grant priorities.
- Improve access to grants by smaller community-based organizations. Many small NGOs and community-based organizations do not have the resources or capacity to apply for highly competitive federal grants. As a result, many worthy but small organizations find themselves shut out of these valuable funding opportunities. Agencies should identify ways to simplify and streamline the application and grant disbursement processes. New uniform federal standards for awarding grants should ensure that such organizations, which often enjoy direct ties to impacted communities, can successfully compete for grant funding.

¹³⁰ See <http://www.epa.gov/superfund/community/tag/>. Also, EPA's Community Action for a Renewed Environment (CARE) Program has been mentioned as an example of successful community engagement, providing support to the community, especially when dealing with local officials on brownfields redevelopment. This is a competitive grant program providing technical assistance and money for collaborations to reduce toxics exposures. See <http://www.epa.gov/care/> for more information. See also the C-FERST community risk assessment tool mentioned earlier in this report.

Z5. Provide Educational Materials about Government Operations

A lack of knowledge about agency functions and their authorizing environmental and health statutes interferes with the ability of the public to engage the government and seek solutions to environmental and public health problems.

- Provide training on how to negotiate government systems. Training should cover how to engage with political and regulatory decision makers, work with government agencies to obtain environmental and public health information, and build partnerships with government, academia, and public health officials.¹³¹ Similar to compliance assistance offered to the regulated community, agencies should have an advocate on staff for community groups and the general public who will assist them, or, at the least, provide a curriculum that can be accessed online and downloaded. [see Recommendation Y2]

AA. Community Engagement

The recommendations above dealing with plain-language communications and training community members could improve communications between government and the public and build the capacity of citizens to play an active role solving environmental and public health problems. To make the most of an informed, capable public, agencies must engage communities by providing forums and tools for meaningful public participation in policymaking. As one federal regulator aptly describes, “By providing the opportunity for stakeholders to provide information, raise concerns, and suggest improvements, a regulator can strengthen its policymaking process and reach better, more well-informed decisions.”¹³² Although the recommendations in this subsection are directed at federal agencies, because state and local governments are frequently the entities administering environmental and public health programs, federal agencies should require these policies, partnerships, and standards be adopted and implemented by state and local governments as part of memoranda of understanding or delegations of authority [see Recommendation G1].

AA1. Establish Formal Policies and Mechanisms for Community Engagement

Agencies should establish policies that formalize mechanisms for substantive community engagement in government decision making, beginning at the earliest possible stages and continuing throughout environmental policymaking processes. Government agencies should develop and document a community engagement plan and evaluate agency progress yearly. The plan should provide guidance on outreach to the broadest range of impacted community

¹³¹ *Ibid.* 117.

¹³² Gregory B. Jaczko, Chairman, U.S. Nuclear Regulatory Commission, “Stakeholders and the Public: An Integral Part of Effective Regulation,” Oct. 12, 2010, <http://www.nrc.gov/reading-rm/doc-collections/commission/speeches/2010/s-10-039.pdf>.

members. In addition to the information access and capacity-building policies described throughout this report, an effective community engagement plan should include access to dispute resolution processes and consider diverse cultural issues among communities such as language differences and distinctions among socioeconomic groups. Agencies should incorporate into the plan communications systems to regularly collect feedback from communities and address the feedback in subsequent revisions to the engagement plan.¹³³

Agencies should develop internal guidance for implementing community engagement plans and for improving community partnerships. Guidance should stress how greater transparency and public participation can help the office reach its goals more effectively and efficiently. The benefits of early community engagement outweigh the initial costs. Such benefits include preventing lawsuits and community anger and distrust; preventing bad policy; and reducing inefficiencies and unintended consequences that would otherwise result from a less informed policy. EPA's recent Community Engagement Initiative¹³⁴ from the Office of Solid Waste and Emergency Response offers a number of valuable ideas.

- Develop community engagement training programs. A trained staff can better understand the needs and perspectives of community members and can more effectively communicate with stakeholders. Training and resources for agency personnel, contractors, and especially field staff and others who work directly with the public should include:¹³⁵
 - Translations of technical and scientific materials into formats that are easy for laypeople to understand
 - Methods for identifying stakeholders and techniques for public outreach and communication
 - Techniques for facilitating meetings and managing dialogue
 - Dispute resolution techniques
- Address intra- and interagency communications. Agency guidance should identify ways to bridge the various roles of agency staff, improving interoffice communication. Citizens have often encountered obstacles working with government agencies as a result of one office not being aware of what another office was doing.
- Develop guidance on communicating with EJ communities. Agencies should coordinate to identify successful methods of outreach to environmental justice communities. Guidance for agency staff should emphasize the value of building trust with community stakeholders and

¹³³ *Ibid.* 117.

¹³⁴ See http://www.epa.gov/oswer/docs/cei_imp_plan_0510.pdf.

¹³⁵ Marina Psaros and Lindsay Campbell, *Results from NEPA Public Involvement Study*, June 2, 2006, <http://web.mit.edu/dusp/epp/music/pdf/NEPA06.pdf>.

highlight cases where cultural misunderstandings have been overcome, allowing improved communication and collaboration [see Chapter IV: Environmental Justice].

AA2. Engage NGOs and Community-Based Organizations (CBOs) through Partnerships

Agencies should identify partner nonprofit public interest organizations that have the capacity to provide valuable services to all members of the public, especially services that agencies are unable to provide for budgetary reasons or other logistical obstacles. NGOs and CBOs have long served as intermediaries between government and the public, providing such services as searchable access to environmental databases,¹³⁶ clear descriptions of health hazards in consumer goods,¹³⁷ and interpretations of complex policies.¹³⁸

Agencies should work to establish NGO and CBO partnerships that bring together community organizations around particular issues, such as setting pesticide tolerance standards, or regional interests, such as natural gas drilling in the Marcellus Shale. Agencies should facilitate communication and collaboration among these public interest groups and the public, connecting people to NGOs and CBOs that can provide services that government cannot provide. EPA's Community Action for a Renewed Environment (CARE) program is well respected and could serve as a model for other offices and agencies.¹³⁹

Partners should meet regularly, have frequent communications, and agree to clear timetables, objectives, and goals. Such groups would nurture strong and complementary relationships between government and public stakeholders. The interactions between the agency and the NGOs and CBOs should be transparent, with meetings, minutes, and reports readily available to the public.

AA3. Set Minimum Standards for Public Participation in Meetings

Agencies should develop clear standards for accommodating public participation in public hearings, meetings, forums, listening sessions, and other events. Such standards should address how and when events are held so that community members have ample opportunities to attend. The standards should include mechanisms for including public input on meeting agendas, goals, objectives, and the scheduling of follow-up meetings, as well as mechanisms for making supporting materials and data accessible to participants. Accommodations should be made to

¹³⁶ The Right-to-Know Network, <http://www.rtknet.org/>.

¹³⁷ *Ibid.* 63.

¹³⁸ Reporters Committee for Freedom of the Press, Federal Open Government Guide, <http://www.rcfp.org/fogg/index.php?i=pt1>.

¹³⁹ The CARE program is a competitive grant program providing money and technical assistance to community partnerships interested in reducing toxic pollution in their local areas. See Note 129.

ensure that materials and translators are available for the languages spoken by affected communities.¹⁴⁰

- Communicate beyond “Public Notice and Comment.” Agency communications with the public should include but extend beyond the traditional notice in the *Federal Register*. Outreach efforts should be expanded to include local print media and websites and draw on the communications abilities of local organizations that maintain their own memberships, listservs, websites, newsletters, and social networks. All public comments delivered at meetings should be transcribed and posted in the docket and made accessible to those without computer access through written transcripts available at local libraries. Records and documents generated from previous, related public meetings should also be provided to participants.
- Identify stakeholders. Agencies should identify and reach out to stakeholders and community members, including environmental, health, labor, religious, political, community-based, and other organizations, as well as students, youth, and groups and individuals who may not have historically participated in decision making processes. Notices of public meetings and other communications should be sent via multiple modes to all residents and businesses potentially impacted by an action. Impacted areas may be defined by geographic boundaries, geological or hydrological boundaries (such as aquifers), socioeconomic criteria, or other criteria. The agencies should disclose what efforts were taken to reach out to communities and to which communities and stakeholder groups.
- Hold public meetings at accessible locations and times. Venues for public hearings, meetings, listening sessions, and other events should be accessible to community members. Meeting schedules should consider travel times, shift-work schedules, and schedule conflicts such as holidays and agricultural harvests/plantings. Agencies should schedule enough meetings to accommodate the largest feasible number of community members. Agencies should webcast events or at least record meetings and make video and audio recordings accessible immediately following the event.
- Use online technologies to increase participation. Greater use of interactive online technologies such as webcasts, webinars, and wikis will help level the playing field for participation by stakeholders who cannot afford or manage to travel to meetings.

¹⁴⁰ Some ideas in this section draw from the National Conversation on Public Health and Chemical Exposures, Monitoring Work Group draft report, <http://resolv.org/site-nationalconversation/>.

BB. Workers' Right to Participate

Workers frequently endure the greatest potential risk of chemical exposure and other environmental hazards given their proximity to hazards and their exposure over protracted periods. Workers have a clear interest in and right to participate in a variety of government functions related to health and safety at workplaces – from refineries to factories, from farm fields to hospitals. Workers provide unique perspectives and expertise often not available from the general public. By ensuring full worker participation during environmental health and safety planning and inspections, these unique and invaluable perspectives can drive improvements and efficiencies that otherwise may never happen.

BB1. Identify Opportunities for Worker Participation in Inspections and Planning

The EPA's recent move to enforce the long-neglected requirement for worker participation in Clean Air Act inspections at facilities required to undertake Risk Management Planning is a step in the right direction.¹⁴¹ Agencies that regulate workplaces, such as the EPA and OSHA, should identify additional opportunities where labor participation is possible, for both union and non-union workers.

BB2. Issue a Comprehensive Health and Safety Program Standard That Includes Employee Involvement

This new standard should require management to find and fix workplace hazards, even in the absence of conditions regulated by specific OSHA standards. The highest level of management should certify these plans. Plans should prohibit management practices that discourage reporting of injuries, illnesses, hazards (including releases to the environment), and “near-misses.” The standard should include employee training to address potential hazards, including those specific and unique to particular workplaces. The standard should require an annual training plan, with training provided in languages understood by employees. Other means for meaningful employee participation should also be adopted, which could include active joint labor/management safety and health committees as one means to ensure such worker involvement. Violation of the Program Standard would result in citations and penalties.

BB3. Improve Access to and Quality of Safety Data

The reporting of workplace illnesses and nonfatal injuries and incidents in private industry is rife with underreporting problems. Reports are often erroneous, incomplete, or distorted. Moreover, the widespread existence of incentive and discipline programs discourages workers from reporting injuries and illnesses. Unfortunately, OSHA inspections are triggered by these data and consequently, OSHA may never visit a facility with an inaccurately low injury and illness rate.

¹⁴¹ New Jersey Work Environmental Council and the BlueGreen Alliance, “Workers to Help EPA Prevent Chemical Accidents,” June 23, 2010, http://www.njwec.org/PDF/Press/6.23.10_EPA_Policy_PRelease_Final.pdf.

- Issue citations for underreporting workplace injuries. OSHA should seek to identify and investigate underreporting of workplace issues, aggressively issuing citations and levying substantial penalties to those employers found to be intentionally underreporting. Policy changes are needed that encourage, rather than discourage, workers to report injuries and illnesses, as well as unsafe working conditions.
- Improve access to investigation and violation data. Currently, the OSHA website allows users to access only “open” cases regarding investigations and violations. Once a case is “closed” (settled), all details about the investigation – including the violations – become unavailable. This system does not allow workers or the general public to know the historical compliance record of a facility, nor does it allow the user to determine whether there is a pattern of noncompliance for the same violations. Currently, workers have access to copies of OSHA 300 logs,¹⁴² (including 300a and 301 logs). The general public should also have access to this information, with personal information redacted.

CC. Ombudsman Offices and Complaint Hotlines

Agencies would benefit from active and well resourced ombudsman offices to receive complaints from public stakeholders and investigate agency actions. The GAO concluded that ombudsmen who handle concerns and inquiries from the public “help agencies be more responsive to the public through impartial and independent investigation of citizens’ complaints, including those of people who believe their concerns have not been dealt with fairly and fully through normal channels.”¹⁴³ Despite these benefits, the EPA’s ombudsman¹⁴⁴ was eliminated in 2002.¹⁴⁵

CC1. Create or Strengthen Ombudsman Offices

An ombudsman office should respond to all complaints in a timely manner, explaining what subsequent actions will be taken and how the complainant may follow up with the office. The office should assist the public in gaining access to agency documents and data and establish procedures by which a community can petition an agency to commence an enforcement action. The office should regularly report on the agency’s progress addressing public complaints and resolving legitimate concerns.

¹⁴² OSHA Forms for Recording Work-Related Injuries and Illnesses, <http://www.osha.gov/recordkeeping/new-osh300form1-1-04.pdf>.

¹⁴³ U.S. Department of Agriculture Recommendations and Options Available to the New Administration and Congress to Address Long-Standing Civil Rights Issues, <http://www.gao.gov/new.items/d09650t.pdf>.

¹⁴⁴ EPA Ombudsman Office Background, <http://www.pogo.org/pogo-files/alerts/natural-resources/nr-epa-20010101.html>.

¹⁴⁵ Environment News Service, “Whistleblower Seeks Restoration of Independent EPA Ombudsman,” Jan. 8, 2008, <http://www.ens-newswire.com/ens/jan2008/2008-01-08-095.html>.

Ombudsman offices must be impartial and autonomous and have operational and administrative independence. The ombudsman should only be terminated “for-cause” and should not be subject to at-will employment. The ombudsman should receive complaints directly without intermediaries. When requested, reasonable efforts must be taken to assure the anonymity of people seeking the ombudsman’s assistance. The ombudsman must have access to all information necessary for responsible resolution of the disputed issue.

CC2. Provide Public Enforcement Hotlines

In addition to an ombudsman office, agencies should provide toll-free hotlines and websites to receive complaints regarding violations of environmental statutes, such as the Endangered Species Act and the Federal Land Policy and Management Act. All messages received should be recorded and documented in a publicly available, searchable database. Any follow up actions and results of investigations regarding the complaint must also be disclosed via the same searchable website, along with the identities and locations of alleged incidents and violations. Complaints may be submitted anonymously. If the caller chooses to provide a mailing address, e-mail address, or phone number, the agency must provide a response that the complaint was received, a contact name for further questions, and a follow-up message announcing the status of the investigation.

DD. Whistleblower Protections

Whistleblowers have played vital roles in protecting environmental and public health by exposing waste, fraud, or abuse within the government and at industrial facilities. Whistleblowers have defended agency science from political distortions, raised alarms over pesticide safety, disclosed shoddy inspections of oil rigs, and revealed numerous other activities that threaten health and the environment. The Whistleblower Protection Act of 1989, which was enacted to protect federal employees against reprisals for the exposure of government inadequacies, has been weakened by judicial decisions and administrative policies. Although new legislation is needed to permanently establish increased protections and new whistleblower rights, such as a right to jury trials, much can also be done administratively.¹⁴⁶

DD1. Make Whistleblower Protections a Priority

The administration should issue new directives to clarify to all agencies the expectation that whistleblowers be robustly defended from reprisals, that whistleblower claims be dealt with quickly and fairly, and that there will be zero tolerance for whistleblower harassment. Punitive processes for managers who retaliate against whistleblowers in their performance reviews should be established. Moreover, the Labor Department should improve its communication to local and

¹⁴⁶ For additional details, see *Moving Toward a 21st Century Right-to-Know Agenda*, <http://www.ombwatch.org/files/21strtkreccs.pdf>.

