

Before the Environmental Justice Technical Guidance Review Panel  
of the EPA Science Advisory Board

Statement of Michael W. Steinberg on Behalf of  
the Business Network for Environmental Justice  
for the Panel's January 30, 2014 Public Meeting  
Concerning the EPA's Draft Technical Guidance for  
Assessing Environmental Justice in Regulatory Analysis

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Dr. Shallal, and members of the Panel:

I'm pleased to be here this morning on behalf of the Business Network for Environmental Justice. The BNEJ is an organization of businesses, corporations, industry trade associations, industry service providers and business groups committed to fair treatment and good science in addressing risks to health and the environment.

Due to our strong interest in environmental justice, we've worked hard to understand the Draft Technical Guidance, and as we understand it, the point of the Draft Guidance is to show the EPA's regulatory analysts how to integrate environmental justice issues when analyzing potential regulatory action. The EPA has fallen well short of that goal. This is unfortunate, and was avoidable. Had the EPA sought greater input from stakeholders, the outcome would have been different.

We have four main areas of concern with the Draft Guidance, which I will summarize very briefly.

First, the Draft Guidance fails to provide a proper context for risk assessment, because it never acknowledges that the EPA's rules are already highly protective. The EPA's existing regulatory framework for air, water, waste, and chemicals reflects 40 years' of Agency findings that their current statutes, and the rules issued under them, are protective of human health. Most of these rules were based on conservative assumptions about exposure and toxicity, often with multiple safety factors used in the analysis. These rules were expressly designed to protect not only "typical" individuals, but to account for human variability in sensitivity. In fact, EPA rules that failed to protect sensitive sub-groups have been rejected by the courts and sent back to the agency.

Now that is not to say that the EPA rulemakings should ignore environmental justice concerns. Rather, our point is that when the EPA undertakes a rulemaking, it is usually starting from a baseline that already is highly protective. The EJ analysis should reflect this. While it is always possible that a potential exposure pathway did not receive adequate attention during the rulemaking, the EJ analysis should begin with this assumption that the existing regulatory scheme is highly protective. The focus of the EJ analysis should be on potential risks that might not have been considered along the way. Otherwise the EPA will end up endlessly re-evaluating its own rules from scratch, usually with little to show for the resources expended.

Our second concern is closely related to the first. The Draft Guidance leaves the reader confused and uncertain regarding the goal of the EJ analysis. Without a clear goal, the EJ analysis might well be redundant, of little use or irrelevant.

For example, if the EPA revises the New Source Performance Standards for a particular category of stationary sources under the Clean Air Act, then those who live downwind from such facilities are likely to be the primary beneficiaries of the rule – regardless of their demographics. In other words, an EPA rule that is completely non-discriminatory will often have benefits that are distributed unevenly along demographic lines, based upon such factors as prevailing land use, population distribution, and the like. What is the EPA program office supposed to do with this information? The Draft Guidance does not offer an explanation. And if the EJ analyst has no clear goal, then there is a good chance that their analysis will be of little value or completely irrelevant.

What would be a realistic goal? It is not reasonable or realistic to expect that the benefits of each EPA rule will be distributed evenly among all racial, ethnic, and income groups. What is more reasonable is to expect that the benefits of a risk reduction effort will accrue mainly to those persons – regardless of their demographics – who were exposed to the risk in the first place.

It may seem that this is a policy issue more than a technical issue. But the two cannot be separated so easily. Until the EPA articulates a clear distributional goal for risk reduction benefits, it is pointless to analyze the demographics of that distribution.

Our third concern is more technical. The Draft Guidance seems to urge that risk assessments be performed using a different and largely *ad hoc* set of rules when the focus is EJ analysis than its framework for human health risk assessment. This is very troubling, given the tremendous amount of work the EPA has already put into developing and refining this framework.

For example, the Draft Guidance states that the EPA's traditional default assumptions might not adequately reflect the demographic characteristics of minority or low-income population groups. Now it is always possible that in a particular case, some adjustment to the EPA's traditional default assumptions might be warranted. But given the highly conservative nature of those default values, it would be more useful to remind the EJ analyst to use the EPA's existing default values absent some particular reason to believe that they are inappropriate in a specific situation. Certainly it is inefficient and self-defeating to re-evaluate the EPA's default values in each EJ analysis.

Moreover, some differences between the frameworks for analysis are significant, and others are not. For example, the EPA sets national standards for contaminants in drinking water based on an assumed intake of two liters per day of drinking water over a 70-year lifetime. Even if a particular sub-population has somewhat different characteristics -- such as higher intake of drinking water -- this would not necessarily support calculating a tailored sub-population risk assessment each time a drinking water standard is issued or revised. So instead of encouraging the EJ analyst to search out potential differences, it would be more productive to remind him or her that the EPA has already developed highly conservative default values for most inputs to the exposure and risk assessments.

Our fourth and final point is also technical. The Draft Guidance seems to endorse the use of proximity as a surrogate for actual exposure in the context of human health risk assessment. It fails to mention the EPA's traditional preference for actual data in lieu of such surrogates. Again, no basis is offered for re-inventing the rules of the road for risk assessment simply because the assessment is performed in the EJ context.

We strongly recommend that the Draft Guidance be revised to state in the clearest possible language that the preference is always for actual data. Where data is not available, and cannot be obtained, then it might be appropriate to consider using proximity as a surrogate, if there is other evidence that indicates that there is a reasonable chance that a receptor will be exposed to the substance/activity. When proximity is used as a surrogate, the conclusions from the risk assessment should be qualified to reflect the data gap in order to avoid confusion and misinterpretation.

For all of these reasons, the Draft Guidance needs extensive revision before it is ready to be released as a final document. We urge the development of a new document, with a meaningful opportunity for public input during the development process in order to provide useful guidance on EJ analysis. For our part, we pledge to work cooperatively with the EPA and its contractor to help get the job done.

I'd be pleased to answer any questions the panel might have.

Thank You.