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June 11, 2013

VIA ELECTRONIC MAIL

TO goo.michael@epa.gov

And shallal.suhair@epa.gov

Michael L. Goo
Associate Administrator for Policy
Office of the Administrator
U.S. Environmental Protection Agency
Room 3513A
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460-4164

Suhair Shallal, Ph.D
Designated Federal Official
Environmental Justice Technical
Guidance Review Panel
U.S. Environmental Protection Agency
(Mail Code 1400R)
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460-4164

Re: Request for an extension of the Public Comment Period and to
Postpone Initial Panel Meeting on EPA's Draft Technical
Guidance for Assessing Environmental Justice in Regulatory Analysis

Dear Associate Administrator Goo and Dr. Shallal:

The Business Network for Environmental Justice (BNEJ) requests that the EPA extend the public comment period for 60 days on the Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis (Draft Guidance), and postpone the initial meeting -- currently scheduled for June 19-20 -- of the Science Advisory Board (SAB) Environmental Justice Technical Guidance Review Panel until 30 days after the public comment period is concluded. This brief postponement will permit the panel members to consider all public comments on the guidance. This extension of the comment period will give the public sufficient time to review and comment on the Draft Guidance and for the EPA to assure that the panel itself is sufficiently representative. The postponement of the panel meeting will enable the EPA to consider the balance and fair distribution of expertise on the panel, whether changes to the panel are warranted, and give panel

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members themselves sufficient time to consider the public comments carefully before the meeting. Currently public comments on the Draft Guidance are not due until July 8, nearly three weeks after the panel meets. This relatively brief extension and postponement are urgently needed in order to conform to the EPA's standard process for coordinating SAB review and public comments.

About the BNEJ

The Business Network for Environmental Justice (BNEJ), based at the National Association of Manufacturers, was formed in 1995. It is a voluntary organization of businesses, corporations, industry trade associations, industry service providers and business groups interested in environmental justice issues. The BNEJ believes that all people should be treated fairly under all laws, including environmental laws, without discrimination based on race, color or national origin.

We support open and informed dialogue with citizens about environmental decisions that affect local communities. We also support continued systematic, objective scientific research into factors affecting human health and the environment, and the use of scientifically sound risk assessments in evaluating and prioritizing health and environmental risks.

Background

In February 2011, the EPA announced that it was developing a new document entitled "Technical Guidance for Incorporating Environmental Justice into Rulemaking Activities (Environmental Justice Technical Guidance or EJTG)," and seeking "SAB review of the draft EJTG document to assess the appropriateness and scientific soundness of the technical guidance."¹ The EPA thus called for nominations for the new SAB panel.

On May 9 of this year, the EPA released its draft EJTG document,² calling it "an important step toward insuring that Agency regulatory actions appropriately consider EJ issues."³ During the two-year internal development and review process, EPA received nearly 800 comments from across the Agency and the ten regions. The resulting draft EJTG is over sixty pages long and cites some 150 technical references. EPA established a sixty-day public comment period, which ends on July 8.

On June 4, the EPA announced the formation of the "Science Advisory Board JTG Review Panel." This June 4 memo revealed for the first time the names of the seventeen panel members. The panel includes two representatives of state regulatory agencies, a Tribal representative, and a representative of an environmental organization, but no representative of the regulated community. In particular, none of the panel members is described as being affiliated with any type of business or manufacturing organization.

¹ 76 Fed. Reg. 8366 (Feb. 14, 2011).

² 78 Fed. Reg. 27,235-36

³ Draft EJTG at page v.

Also on June 4 -- less than half-way through the sixty-day public comment period -- the EPA also announced that the EJTG panel would meet for two days on June 19-20.⁴ Anyone wishing to speak at the meeting, or provide written comments, was told to do so by June 12 – just eight days from the publication of Federal Register notice.⁵

Need for an extension of the Public Comment Period

The EPA has spent two years developing and reviewing the EJTG. This draft is over sixty pages in length, very detailed and designed to provide technical guidance and direction to analysts that are assessing and writing regulations in every EPA program. This document will guide the analysts as to the role of environmental justice in all future regulatory initiatives and will have a significant impact on all stakeholders, including businesses, manufacturers and the public sector. Close scrutiny of the EJTB is necessary to understand all of the implications of the Guidance, and to prepare informed comments. 60 days is simply inadequate for the task. The comment period should be extended by an additional 60 days.

Need for Postponement of Initial Panel Meeting

The EPA's insufficiently coordinated actions in May and early June have created a major procedural problem. The BNEJ is extremely concerned that the EJTG does not include a member that can bring to bear the experience and perspectives of the regulated community (particularly the business and manufacturing community). The BNEJ also is concerned that the EJTG will not have the opportunity to review all public comments before it meets and begins to reach conclusions about the Guidance. Like many other interested parties, we plan to submit detailed written comments on the draft EJTG by the July 8 deadline. Obviously, if the panel meets three weeks before that deadline, members will start forming opinions before they have reviewed the materials that will be submitted on July 8.

This is not the way the SAB usually operates, and it should not do so here. As the EPA explained in a public booklet on the role of public comment in the SAB process:

“Members of the [SAB] committee, sub-committee, or panel (including the chair) consider Agency presentations, public comments, and background material on the subject and then deliberate and provide advice.”⁶

The orderly and appropriate step here is for the EPA to extend the public comment period and to also postpone the panel meeting until at least 30 days after the public comment period is concluded. This will allow the public comment period to run its course, and the panel to consider information generated and submitted during that

⁴ 78 Fed. Reg. at 33,416-17.

⁵ 78 Fed. Reg. at 33,417.

⁶ Advisory Committee Meetings and Report Development: Process for Public Involvement 5-6 (EPA/SAB 2004) (emphasis added).

public comment process. Anything less would deprive the panel of important information, elevating speed over thoughtful deliberation.

Conclusion

In closing, the BNEJ urges the EPA to extend the public comment period and postpone the EJTG panel's initial meeting until 30 days after public comment period is concluded. This will allow time for the close of the public comment period and for the panel to review and consider the materials submitted to the EPA as part of that comment period. The issues at stake in the draft EJTG are extremely important and deserve to be addressed with deliberation and the opportunity for extensive, broad-based public assessment.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ross Eisenberg", is placed on a light green rectangular background.

Ross Eisenberg
Vice President
Energy and Resources Policy
National Association of Manufacturers

cc (via E-mail): Dr. Christopher Zarba, the Director of the SAB Staff Office.
Dr. H. Keith Moo-Young, Panel Chair
Dr. Charles Lee, EPA Office of Environmental Justice