



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

March 23, 2022

DEPUTY ADMINISTRATOR

Director Liesl Eichler Clark
Michigan Department of Environment,
Great Lakes, and Energy
Constitution Hall
525 West Allegan Street
P.O. Box 30473
Lansing, Michigan 48909-7973

Dear Director Clark:

I write on behalf of U.S. Environmental Protection Agency Administrator Michael Regan in response to your letter of November 15, 2021, knowing that we share a commitment to advancing environmental justice and equity as fundamental to how the EPA and the Michigan Department of Environment, Great Lakes and Energy carry out our missions. We know that for far too long communities of color and low-income communities have been disproportionately burdened by environmental pollution and the negative health impacts that result from such pollution.

President Joe Biden and Administrator Regan have charged our agency to act with urgency in addressing this legacy and to work with our state, local, Tribal and territorial partners for transformative progress – not just in Michigan but across the nation. As the Administrator said in his remarks during the state of Michigan’s first environmental justice conference in 2021, we “have a lot of ground to make up at EPA and across this country to uplift the communities who’ve long suffered at the hands of indifference, of neglect, of inaction.”

There are no easy fixes to injustice across our nation’s various environmental programs, and the EPA cannot solve these challenges alone. This work requires thoughtful, deliberate and transparent collaboration across all levels of government in partnership with local communities. In particular, the EPA understands that we must deepen our partnership with state environmental agencies – our co-regulators that share our responsibility to implement federal environmental and civil rights law. We appreciate EGLE’s commitment to partnering with the EPA on this hard but critically important work. Together, we can address the systemic factors that drive disproportionate burdens, strengthen the science and practice of cumulative and disproportionate impact analysis, and better leverage rules and policies that guide our environmental programs.

The call to further action in your letter proposes important next steps in this partnership, and I want to update you on the EPA’s progress in addressing them. First, you asked that the EPA review the state’s permitting process for the Ajax Materials Corporation facility in Genesee

Township, Michigan, and provide further guidance on EGLE's authority and obligations under federal laws and regulations. As you know, the EPA's External Civil Rights Compliance Office recently accepted for investigation two Title VI civil rights complaints regarding the Ajax permit and is eager to work collaboratively with EGLE and the impacted communities to resolve these and other pending complaints consistent with federal civil rights requirements. Acceptance of a complaint for investigation in no way amounts to a decision on the merits. Rather, it means the complaint has met the jurisdictional criteria. We look forward to further discussions with EGLE regarding the applicability of federal laws and regulations as part of this process.

We agree that it is also important to better understand risks from air toxics and to improve air monitoring, particularly in overburdened and underserved communities. Under the American Rescue Plan, the EPA is proud to be awarding \$50 million to invest in air monitoring and improve air quality in communities overburdened by high levels of pollution. These funds will help states, tribes and communities across the country better understand local air-quality issues. The opportunities include the following:

- In December 2021 the EPA launched a \$20 million grant competition for nonprofit community-based organizations, state, Tribal and local air agencies – individually or in partnerships – to monitor pollutants of greatest concern in communities with health outcome disparities. We understand that EGLE has applied for these funds.
- The EPA will soon distribute \$22.5 million in direct awards to state, Tribal and local air agencies for enhanced air monitoring in and near communities with environmental justice concerns. While primarily intended to support continuous PM_{2.5} monitoring and monitoring for other National Ambient Air Quality Standards pollutants, we expect to fund new sites and additional highly valued measurements at existing sites in areas with environmental justice concerns. EGLE will receive an award from these funds.
- The EPA is investing \$5 million to purchase additional advanced mobile air-monitoring tools and air sensors. This investment will help the EPA meet needs for short-term monitoring and additional air-quality information in communities with environmental justice concerns. The EPA's Region 5 office has received more than \$1 million to support additional mobile-monitoring capability to measure the impacts of metals and volatile organic compounds on air quality, and Region 5 will continue to provide technical assistance to EGLE when short-term monitoring needs arise.

Additionally, the EPA is taking steps to improve federal air-toxics data to help support our state partners. In early March the agency released new national air-toxics risk information, based on 2017 emissions data, and is working on providing a more systematic annual update of this information going forward. This annual data and risk analysis will provide communities with more timely, transparent and complete information about their air quality, while helping the EPA and our state co-regulator partners better identify communities facing disproportionately high and adverse risk.

In the near term, building on the guidance already available,¹ it is the perspective of the EPA that we must use all available tools and authorities to advance justice and equity for the communities we serve. Your letter rightly points out the need for additional guidance from the EPA and highlights the importance of dialogue with states as integral partners to this work. Over the years, the EPA has built strong collaborative relationships to advance environmental justice through the Environmental Council of the States and other organizations. Under the Biden-Harris Administration, we have made significant strides to deepen our engagement with states on these issues, and we are committed to continuing this dialogue and mutual learning as we develop additional guidance and tools to make further progress. These activities include:

- The EPA will soon finalize its Equity Action Plan per Executive Order 13985, “Advancing Racial Equity and Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.” Among other things, this plan commits our agency to developing a framework to consider cumulative impacts across a wide range of agency decision contexts, including permitting.
- The EPA will soon finalize *EPA Legal Tools to Advance Environmental Justice and Equity*, which updates *Plan EJ 2014 Legal Tools*² and expands upon the analysis in it. This document is a compendium of statutory and regulatory authorities under federal environmental and civil rights laws for the EPA and our state co-regulators to consider as opportunities to address environmental justice concerns.
- The EPA will soon finalize a frequently-asked-questions document on environmental justice and civil rights in permitting, which will be shared with states and made available online.
- The EPA’s External Civil Rights Compliance Office has committed to issuing additional guidance this year to clarify the legal standards applied under federal civil rights laws, including Title VI and the EPA’s implementing regulation, with respect to disparate impacts and disparate treatment.
- The EPA’s Office of Research and Development hosted a series of listening sessions and research planning workshops during which state, Tribal and local government agencies, academic experts, and community leaders shared with the EPA their perspectives on research and policy needs related to cumulative impacts. This resulted in release of an

¹ For example, current EPA policy and relevant guidance addressing environmental justice and civil rights in permitting includes: EJ Legal Tools (2014), <https://www.epa.gov/sites/default/files/2015-02/documents/ej-legal-tools.pdf>, which identifies key legal authorities to consider in advancing environmental justice; EPA Activities to Promote Environmental Justice in the Permit Application Process (2013), <https://www.federalregister.gov/documents/2013/05/09/2013-10945/epa-activities-to-promote-environmental-justice-in-the-permit-application-process>; the DOJ Title VI Legal Manual (Updated), <https://www.justice.gov/crt/book/file/1364106/download>; EPA’s Title VI Materials, including Title VI Coordination Regulations, 40 CFR Part 7, <https://www.epa.gov/sites/default/files/2013-09/documents/40p0007.pdf> (see, particularly, Subpart B – Discrimination Prohibited on the Basis of Race, Color, National Origin or Sex); ECRCO’s Toolkit Chapter I (2017), https://www.epa.gov/sites/default/files/2017-01/documents/toolkit-chapter1-transmittal_letter-faqs.pdf; “Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons” (2004), <https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi>; Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (2006), https://www.epa.gov/sites/default/files/2013-09/documents/title6_public_involvement_guidance.3.13.13.pdf; and current EPA policy addressing environmental justice in enforcement and compliance assurance, <https://www.epa.gov/enforcement/environmental-justice-enforcement-and-compliance-assurance-initiative>.

² EJ Legal Tools (2014), <https://www.epa.gov/sites/default/files/2015-02/documents/ej-legal-tools.pdf>.

external review draft of the paper, “Cumulative Impacts: Recommendations for ORD Research,” and a Science Advisory Board consultation.

As the EPA continues to advance additional tools and guidance, we will also keep working to identify and share existing information that can be used immediately to address disproportionate and cumulative impacts. For example, the EPA and ECOS are currently collaborating on a series of workshops on implementation of Title VI that are occurring in March and April – part of the EPA’s commitment to increasing proactive efforts with states to ensure compliance with the nation’s civil rights laws.

We also appreciate your suggestion to convene a meeting between state and federal leaders to discuss these policies and look forward to the April 4, 2022, meeting between the EPA and state leaders of the ECOS Environmental Justice Workgroup in Asheville, North Carolina, where we will have an opportunity to continue the dialogue on our shared environmental justice efforts. The EPA is grateful for your leadership in prompting this discussion and helping organize it.

Thank you for your letter and your partnership as we work together to advance environmental justice. Please do not hesitate to contact me, or you may always contact Region 5 Administrator Debra Shore at shore.debra@epa.gov or Deputy Associate Administrator for Intergovernmental Relations Casey Katims at katims.casey@epa.gov.

Sincerely,



Janet G. McCabe