



December 10, 2008

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On behalf of the thousands of communities across this country who are deeply engaged in the process of trying to sustain and build healthy and whole communities, we rejoice in your election as the 44<sup>th</sup> President of the United States.

We work in the field of environmental justice, which is the intersection of human rights, civil rights, environmental protection and the broader quest for more just and sustainable communities. Because sensitive populations are the bellwether for the harmful effects of environmental abuses, equity must underpin the policy discourse about how to reverse these practices and create more sustainable environments.<sup>1</sup>

Since 1994, when President Clinton issued Executive Order 12898, requiring all federal agencies to ensure that their policies and practices do not have a disproportionate or adverse environmental impact on low-income and minority populations. Great advances have been made as well as significant setbacks since the signing of this Executive Order. The scope of environmental justice is broad, encompassing health disparities and environmental impacts on the health of communities of color, transportation access, climate change and climate justice, protection of natural resources, green jobs, brownfields redevelopment, energy policy, infrastructure development as well as environmental protection.<sup>2</sup> Your Administration has the opportunity to reverse policies that continue to perpetuate environmental enforcement disparities and to advance policies that will address the disproportionate impacts of environmental damage including but not limited to disproportionate pollution burdens on human health from multiple, cumulative, and synergistic impacts of toxic chemicals on people of color and the poor.

More than nine million people are estimated to live in circular host neighborhoods within three kilometers of the nation's 413 commercial hazardous waste facilities. More than 5.1 million people of color, including 2.5 million Hispanics or Latinos, 1.8 million African Americans, 616,000 Asians and Pacific Islanders and 62,000 Native Americans live in neighborhoods with one or more commercial hazardous waste facilities. Poverty rates in the host neighborhoods are 1.5 times greater than non-host areas.<sup>3</sup> These exposures are just one dimension of the dire conditions that too many communities endure on a daily

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<sup>1</sup> See generally "Environmental Justice: Heck of a Job Ahead," Deeohn Ferris, *Shelterforce: The Journal of Affordable Housing and Community Building*, (Fall 2008).

<sup>2</sup> See generally J. Andrew Hoerner and Nia Robinson, *A Climate of Change: African Americans, Global Warming and a Just Climate Policy for the U.S.*, (2008).

<sup>3</sup> Robert Bullard, Paul Mohai, Robin Saha, Beverly Wright, *Toxic Waste and Race at Twenty* (2007) at x.



basis.

The signatories of this letter include a wide range of organizations and individuals committed to environmental protection, sound environmental health policies, and civil rights enforcement. The following recommendations result from advocacy efforts and research conducted during the past 15 years in the continuing effort to secure environmental sustainability and protection in America's most vulnerable communities. These recommendations are by no means the limit of what needs to be achieved; however, they do represent goals that can be successfully completed within the first 100 days of your Administration.

**1. Vigorously Support the Passage of and Sign the Environmental Justice Act of 2007 and the Environmental Justice Enforcement Act.**

The Environmental Justice Act of 2007 (S.642/H.R. 1103) is currently pending in the House and Senate. The Environmental Justice Act will codify Executive Order 12898 "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" which provides significant impetus to advance environmental justice at the federal level and in the states.

Enactment of the Environmental Justice Enforcement Act (S.2918/H.R. 5896), also currently pending in the House and Senate, will affirm and codify the legislative intent of Title VI of the Civil Rights Act of 1964, and provide a private cause of action in federal court for disparate impact claims.

**2. Appoint an Administrator of the U.S. Environmental Protection Administration Who Will Implement Agency's Office of Inspector General's 2004 and 2006 Recommendations, Protect Communities' Right to Know and Strengthen the Office of Environmental Justice.**

The U.S. Environmental Protection Agency (EPA) Inspector General (IG) found that the Agency has not developed a clear vision or a comprehensive strategic plan to achieve environmental justice. The EPA should fully implement the recommendations of the Inspector General's 2004 and 2006 reports for fulfilling the intent of Executive Order 12898.<sup>4</sup>

Reinstating the reporting requirements of releases and lower reporting thresholds to the Toxic Release Inventory (TRI) database on an annual basis is necessary to protect communities' *Right To Know* of the potential environmental threats to their communities. Additionally, chemical manufacturers and major users should be required to share copies

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<sup>4</sup> See Office of the Inspector General, Report No. 2004-P-00007, *EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice* (March 1, 2004); and Report No. 2006-P-00034, *EPA Needs to Conduct Environmental Justice Reviews of its Programs, Policies, and Activities* (Sept. 18, 2006).



of their Occupational Safety and Health Administration Material Safety Data Sheets (MSDS) with local governments.

The EPA and its Office of Environmental Justice must also clearly define the term "environmental justice" and the methodology used to identify impacted communities in order to address the disproportionate environmental burdens minority and low-income communities experience and shape its policies and practices to address these disparities.

**3. Ensure that the U.S. Attorney General will utilize all the tools available to the U.S. Department of Justice to Prosecute Environmental Violations in Minority and Low-Income Communities.**

The intersection of environmental and civil rights enforcement requires that not only the Environment and Natural Resources Division but also the Civil Rights Division aggressively enforce the laws which the U.S. Department of Justice is charged with upholding. The disproportionate number of facilities that generate or dispose of hazardous substances and wastes in minority and low-income communities necessitates the need for greater enforcement by the DOJ in these communities.

Moreover, the U.S. Department of Justice should be the focal point of federal efforts to fully enforce Title VI of the Civil Rights Act of 1964, particularly as the law applies to the utilization of federal dollars by states and municipalities in delegated federal environmental programs.

**4. Prioritize Homeland Security for Residential Populations Located Near Industrial Facilities.**

The EPA and the U.S. Department of Homeland Security should adopt site location standards requiring a safe distance between a residential population and an industrial facility. Additionally, the development of locally administered *Fenceline Community Performance Bonds* should be required to provide for the recovery of residents impacted by industrial accidents or natural disasters that result in industrial accidents. The U.S. Department of Homeland Security must require that local industries have an approved hazardous communication plan which immediately notifies local officials and the affected community of a release. State and local governments should be mandated by the Department of Homeland Security to develop and distribute emergency preparedness and evacuation plans for communities located near or adjacent to the nation's largest chemical and petrochemical facilities. Therefore, the U.S. Department of Homeland Security must require that state and local plans provide for the immediate notification and the safe evacuation of the affected communities in the case of an industrial accident, terrorist attack, or natural disaster.<sup>5</sup>

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<sup>5</sup> Lawyers' Committee for Civil Rights Under Law, *Protecting Vulnerable Coastal Communities: Meaningful Political Action and Strategies for Environmental Justice After Hurricanes Katrina and Rita* (2008).



## 5. Affirm Support for the Reinstatement of the Superfund Tax.

The 1% tax levied on chemical and petrochemical industries that paid for Superfund hazardous site cleanups expired in December 1995. According to a 1998 report by the U.S. Public Interest Research Group, \$4 million for cleaning up hazardous waste sites goes uncollected every day the tax is not restored.<sup>6</sup> Since 1996, these clean-up costs have been passed to the general fund of the U.S. Treasury, thereby creating an additional tax burden on American taxpayers (as opposed to the polluters who created these hazardous waste sites). Over the last eight years in particular, this shift has resulted in fewer sites cleaned up by EPA contractors, more communities left in harms way, and more natural resources left unprotected because the Superfund has been allowed to run out of dollars.

## 6. Enact Legislation Promoting Clean Production and Waste Reduction.

Incentivize and require industry to use clean production technologies and support necessary research and development for toxic use reduction and closed loop production systems. Create incentives and buyback programs to achieve full recovery, reuse, recycling of waste and product design that enhances waste material recovery and reduction. Policies must include material restrictions for highly toxic and carcinogenic materials.

In addition, government can show leadership in reducing the demand for products produced using unsustainable technologies that harm human health and the environment. Government must use its buying power and tax dollars ethically by supporting clean production systems. Ecological tax reform can assure that public money goes to safer materials and promotes pollution prevention.<sup>7</sup>

These are preliminary suggestions regarding the many efforts that the Administration can undertake to advance environmental protection and environmental justice within the first one hundred days of the President assuming office. There is a significant body of published data and reports including the 1996 memorandum prepared by the National Environmental Justice Advisory Council to EPA on utilizing its legal authority through the breadth of existing laws, statutes, regulations and rules to advance environmental justice. This Administration can act quickly to address many of the longstanding environmental justice matters made more urgent by lack of action by previous Administrations.

In the coming weeks, we will provide a more in depth set of recommendations and a comprehensive analysis of the opportunities available to advance environmental justice across the full expanse of the executive branch of the federal government. While this letter highlights immediate actions that could be undertaken by

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<sup>6</sup> U.S. PIRG, *Super Polluters: The Top 25 Superfund Polluters and their Toxic Waste Sites*, (1998), <http://www.pirg.org/reports/enviro/super25/page1.htm>, accessed Dec. 2, 2008.

<sup>7</sup> Bullard, et al., *Toxic Waste and Race at Twenty* at 150.



U.S. EPA, the U.S. Department of Justice and the U.S. Department of Homeland Security, environmental justice concerns also impact the full range of federal agencies and their missions, including but not limited to the following:

- U.S. Department of the Interior (protection of natural resources, co-management of Native lands, oversight of extractive industries),
- U.S. Department of Energy (alternative energy, nuclear wastes reduction),
- U.S. Department of Transportation (green transit, bailout of auto manufacturers, infrastructure stimulus package, reauthorization of SAFETEA-LU, and green cars),
- U.S. Department of Housing and Urban Development (sustainable and affordable community development),
- U.S. Department of Labor (green jobs, workforce development),
- Federal Emergency Management Agency (FEMA) (disaster response),
- U.S. Department of Defense (Army Corps of Engineers, coastal restoration, etc.),
- U.S. Department of Health and Human Services and Centers for Disease Control (CDC response to address health impacts of climate change on vulnerable populations).

We applaud the President-elect’s commitment to strengthening environmental justice programs, creating a Green Job Corps, supporting livable and sustainable communities and enforcing existing clean air and clean water laws. It has been eight years since we were last able to engage with the administration about collaborative efforts to advance the critical issues of environmental justice, it is a welcome opportunity to be able to begin that conversation again. We look forward to working together to advance these critical concerns. If you would like us to provide additional information or if you have any questions, please contact Daria E. Neal, Senior Counsel for Environmental Justice, at [dneal@lawyerscommittee.org](mailto:dneal@lawyerscommittee.org) or (202) 662-8307.

Most sincerely,

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