

EPA Official Predicts Big 2015 For Enviro Justice Effort

By Juan Carlos Rodriguez

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The U.S. Environmental Protection Agency plans to finalize guidelines on how to incorporate the controversial concept of environmental justice into its rulemaking in 2015, the director of the program told Law360, marking progress in a long, slow effort to address the concerns of communities surrounded by polluting industries that critics say has produced few results.

Matthew Tejada, who leads the EPA's Office of Environmental Justice, said the agency plans to move forward in the coming year, while acknowledging that integrating environmental justice into the business of the federal government and the EPA has been difficult.

"People talk EJ, and people want to do EJ, but it wasn't clear or obvious how to do that when folks were looking at a permit or writing a rule or looking at grants or looking at outreach around a particular site we were involved in," Tejada said.



Matthew Tejada

Since President Bill Clinton in 1994 issued an executive order designed to focus federal attention on the environmental and human health conditions in minority and low-income communities, the question of how to apply environmental justice principles has confused industry, communities and the government alike.

Many so-called environmental justice communities say concentrations of industrial facilities around their locations threaten their health, but the EPA has struggled to find legal authority to address that type of situation outside of pollution standards set by the Clean Air Act, the Clean Water Act and other laws that give the agency its backbone.

However, since President Barack Obama took office, the initiative has received more attention, and there have been several attempts to move it out of the realm of theory and into practice.

December saw two such milestones, with the EPA finalizing a rule applying hazardous waste restrictions to recycling activities and finalizing a Superfund cleanup plan in Washington state, both of which

incorporated environmental justice analyses — firsts for the agency and its 20-person environmental justice office.

And Tejada said the agency plans to take further steps during 2015. The agency will finalize two guidance documents on incorporating environmental justice into the EPA's rulemaking — the so-called Environmental Justice Process Guide, which will provide guidance on considering environmental justice during the development of an action, and the Environmental Justice Technical Guide, which will offer guidelines for environmental justice assessments in national rules.

He said the guides would instruct rule makers on when, during their process, they should incorporate an environmental justice analysis, as well as which rules would call for such a thing.

"We are really going to make sure we do the outreach inside the agency so that folks know that you're supposed to do EJ in this rule, here are the documents, here are the instructions, and here is the training you need to make that actually happen," he said.

Also this year, Tejada said, the EPA will publicly release a tool that will allow it, as well as state and local agencies that are inclined to use it, to screen communities and determine whether they have demographic or environmental characteristics that may qualify them for environmental justice outreach.

Tejada said that up until now, the agency has faced significant roadblocks in identifying which communities across the country had these characteristics. He said there were about 15 different tools within the agency to screen for environmental justice, created by individual regions and national programs, and sometimes, there were multiple tools within those areas.

"One office would be doing it one way, and another office would be doing it another. They might be looking at different data or looking at data in different ways and getting different results," he said.

The new "EJScreen" pulls from a range of existing data sets, including census data, EPA data, a traffic proximity indicator from the U.S. Department of Transportation, a lead paint indicator that looks at age of housing stock and others, Tejada said.

The tool will provide consistency across the agency and give communities, businesses and local governments confidence that the EPA has a single playbook for environmental justice issues. Tejada said the agency is not defining environmental justice communities but rather assessing which ones have certain characteristics.

"We look at communities that are overburdened or vulnerable — populations that are high-minority, low-income, with vulnerable age groups, children and the elderly. There is a wealth of data and research about how minority, low-income and vulnerable populations are more vulnerable to environmental risk," Tejada said.

The Office of Environmental Justice is housed within the Office of Enforcement and Compliance Assurance, and Tejada said enforcement actions are one area where the EPA has been successful in implementing environmental justice measures.

He pointed to a March settlement between the agency and Flint Hills Resources, which agreed to control air pollution from industrial flares and leaking equipment at the company's chemical plant in Port

Arthur, Texas, as an example in which the EPA pursued environmental justice goals through a settlement.

Mark Ter Molen, a partner at Mayer Brown LLP, said the agency's 2013 settlement with the Illinois Environmental Protection Agency over a civil rights complaint was a means of giving the state agency more authority to pursue environmental justice objectives than it has under state law and regulations.

"I think the federal EPA may try to enter into more settlements like they did with the Illinois EPA," Ter Molen said. "Environmental justice has clearly been a focus for this administration, and trying to enter into other, similar settlements with other states would certainly be in line with this administration's policy objectives."

This is Part 1 in a two-part series. Part 2 will appear Friday.

--Editing by Kat Laskowski and Christine Chun.

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