Institute *for*
Policy Integrity
NEW YORK UNIVERSITY SCHOOL OF LAW

February 12, 2025

To: Environmental Protection Agency (EPA)

Re: Comments on EPA's Interim Framework for Advancing Consideration of Cumulative Impacts (EPA-HQ-OLEM-2024-0360)

The Institute for Policy Integrity at New York University School of Law (Policy Integrity)[1] respectfully submits the following comments to EPA regarding its *Interim Framework for Advancing Consideration of Cumulative Impacts* (Framework).[2] Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy.

EPA issued the Framework to provide a foundation for developing approaches to incorporate analysis and consideration of cumulative impacts into agency decisions, with the goal of achieving results that improve health and quality of life in our nation's. communities.

Policy Integrity makes the following comments:

- **Consistently analyzing and quantifying cumulative impacts is critical to performing a robust environmental justice analysis.** A data-driven, systematic approach to analyzing cumulative impacts improves the quality of EPA's decisionmaking by providing science-based justifications and transparency on the potential positive and adverse environmental justice impacts of its decisions.
- **EPA should clarify in the "Process for Considering Cumulative Impacts" section's chapter on "Informing Decisions" the importance of staff documenting the steps taken to evaluate the feasibility of performing a cumulative impacts assessment, with a specific focus on the roles of data availability and methodological approaches in the evaluation.** Specifically, in cases where it is determined that a cumulative impact assessment should not be performed, documenting the justification for this decision serves to promote transparency, as well as to signal what additional data or tools would be needed in the future to perform and improve the assessment.

[1] This document does not purport to present the views, if any, of New York University School of Law.
[2] 89 Fed. Reg. 92,125 (November 21, 2024).

Background

The Framework provides a shared reference point to EPA staff and decisionmakers as they determine when and how to analyze and consider cumulative impacts in their work. It does not provide detailed instructions on how to consider cumulative impacts in specific contexts, nor does it set the expectation that the principles and approaches to considering cumulative impacts that are discussed in the document will be applied in every programmatic context.[3] Instead, EPA states that the Framework should be considered only a "resource" for staff and decisionmakers.[4]

The Framework sets out the principles for EPA to consider cumulative impacts in its decisions and includes examples of EPA actions that have engaged the principles set out in the framework.[5] Accompanying the Framework, EPA also released several tools, including a report on cumulative impacts research from EPA's Office of Research and Development containing recommendations for improving cumulative impacts research.[6]

Comments

I. Analyzing and Quantifying Cumulative Impacts Is Critical to Performing a Robust Environmental Justice Analysis

The Framework has the potential to provide consistency to EPA's consideration of cumulative impacts in environmental justice analysis in rulemaking. Currently environmental justice analyses tend to use various definitions and methodological approaches, leading to inconsistent approaches and lack of clarity by staff on best practices. Generally, it is best practice to perform a robust and systematic evaluation of both quantitative and qualitative data, when appropriate and in the right contexts, to better understand how a government decision or set of decisions may result in cumulative impacts that disproportionately expose populations to environmental hazards, increased health risks and impacts, and adverse effects on quality of life. A more data-driven, systematic approach to analyzing cumulative impacts will improve the quality of EPA's decisionmaking by providing science-based justifications and transparency on the potential positive and adverse environmental justice impacts of its decisions.

To this end, the Framework provides key definitions for "cumulative impacts," "cumulative assessments," and "cumulative risk assessment" in a glossary that provides clarity, so staff and decisionmakers can consider cumulative impacts consistently. The Framework also provides

[3] *Interim Framework for Advancing Consideration of Cumulative Impacts* at 3, EPA-HQ-OLEM-2024-0360 (Nov. 2024).
[4] *Id.*
[5] *Id.*
[6] *Cumulative Impacts Research: Recommendations for EPA's Office of Research and Development*, EPA/600/R-22/014a (September 30, 2022).

guidance in the "Principles and Process" section that assists in outlining how staff might approach cumulative impacts analysis in an analytical fashion.

The Framework defines "cumulative impacts" as the "totality of exposures to combinations of chemical and nonchemical stressors and their effects on health and quality-of-life outcomes."[7] It defines a "cumulative impacts analysis" as a "process of accounting for cumulative impacts in the context of problem identification and decisionmaking" that "considers exposures to environmental (chemical and nonchemical) stressors at each stage of a person's life, which include both contemporary exposures to multiple stressors and exposures throughout a person's lifetime, which are referred to as the total environmental burden."[8] Finally, it defines a "cumulative risk assessment" as "an analysis, characterization, and possible quantification of the combined risks to human health or the environment from multiple agents or stressors (both chemical and nonchemical)."

Recent analysis by Resources for the Future and Policy Integrity of 68 economically significant final rules issued by EPA between 2012 and 2024 found that "there is no standard approach to analyzing cumulative impacts or even a common understanding of what constitutes a 'cumulative' impact: whether it is the joint impacts of multiple pollutants, multiple policies, or covered and noncovered sources."[9] Moreover, the analysis also found that the reviewed rules lacked "developed methods for integrating the role of chemical and nonchemical stressors into cumulative risk assessment."[10]Therefore, the glossary, as well as the additional research tools and examples of approaches and methodologies to consider cumulative impacts that are provided in the Framework, will go a long way to ensuring a more consistent and analytical approach to considering cumulative impacts in environmental justice analyses, resulting in higher-quality decisions by EPA.

II. EPA should emphasize the importance of staff documenting the steps taken to evaluate the feasibility of performing a cumulative impacts analysis, with a specific focus on the roles of data availability and methodological approaches in their evaluation.

EPA should consider adding in the "Process for Considering Cumulative Impacts" section's chapter on "Informing Decisions" some guidance on what to do if it is determined that a cumulative impact analysis cannot or should not be performed. Documenting the justification for

[7] *Supra* note 3 at 32.
[8] *Id.*
[9] *Consideration of Environmental Justice in EPA's Regulatory Analysis: A Review and Assessment* at 22 (Resources for the Future & Institute for Policy Integrity at NYU School of Law, Working Paper 24-22, Dec. 2024). Available at https://policyintegrity.org/files/publications/WP_24-22.pdf.
[10] *Id.*

this decision serves to promote transparency, as well as signal what is needed in the future to perform and improve the analysis.

Specifically, EPA should recommend that staff document the status of available data and methods in as much detail as possible when initiating the cumulative impacts analysis evaluation. This documentation includes, but is not limited to, whether the data are missing or incomplete; available but not of the desired granularity (spatially or temporally); and/or available for only subsets of the population (e.g., more data available for urban regions compared to rural ones). EPA should also recommend that staff document whether the scientific literature falls short methodologically, and what data and methodology would be needed to perform a cumulative impacts analysis in the future. Moreover, EPA should recommend that staff disclose when and why they chose a particular approach, method, or dataset over another in the analyses and/or provide a concrete justification when they decide that a particular analysis is either not required or does not offer additional insights.

Conclusion

Overall, the Framework is an important step towards providing a roadmap to staff and decisionmakers on when and how to consider cumulative impacts in an action. The Framework will improve the consistency of EPA's approach to considering cumulative impacts in various contexts. Environmental justice analyses with robust cumulative impacts analyses will go a long way in improving the health, environment, and quality of life of communities, especially those that experience disproportionate and adverse burdens.

Sincerely,

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