February 19, 2025

Via Federal eRulemaking Portal: https://www.regulations.gov/

Re: Docket ID No. EPA-HQ-OLEM-2024-0360, Comments on the U.S. Environmental Protection Agency's Interim Framework for Advancing Consideration of Cumulative Impacts

On November 21, 2024, the U.S. Environmental Protection Agency ("EPA" or "Agency") published a notice requesting comments on the Agency's Interim Framework for Advancing Consideration of Cumulative Impacts (Docket ID No. EPA-HQ-OLEM-2024-0360) ("the Framework"). The Framework intends to provide EPA "with a foundation for developing approaches to incorporate analysis and consideration of cumulative impacts into their work, with the goal of achieving results that improve health and quality of life in America's communities."[1]

Conservation Law Foundation ("CLF") protects New England's environment for the benefit of all people. CLF uses the law, science, and the market to create solutions that preserve our natural resources, build healthy communities, and sustain a vibrant economy. Alternatives for Community and Environment ("ACE") is a community based environmental justice organization that builds the power of communities of color and low-income communities in Massachusetts to eradicate environmental racism and classism; create healthy, sustainable communities; and achieve environmental justice.

CLF and ACE appreciate the opportunity to provide these comments on the Framework. Cumulative impact assessments are a critical part of improving the health and quality of life for communities. This Framework is a good initial step and presents a solid foundation for EPA in developing and implementing the considerations of cumulative impacts in the Agency's work and operations. However, there are still ways that the Framework can be strengthened.

I. Introduction

As EPA notes in the Framework, "Identifying, assessing, and addressing cumulative impacts is central to achieving better human health and environmental protection and improving the performance of the EPA's mission . . . ."[2] To that end, the Framework helps move EPA toward ensuring that, regardless of where people live, they have equal access to a clean and healthy environment.

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[1] *Interim Framework for Advancing Consideration of Cumulative Impacts; Request for Comments*, 89 Fed. Reg. 92125 (Nov. 21, 2024), https://www.federalregister.gov/documents/2024/11/21/2024-27063/interim-framework-for-advancing-consideration-of-cumulative-impacts-request-for-comments.

[2] *Interim Framework for Advancing Consideration of Cumulative Impacts; Request for Comments*, ENV'T PROT. AGENCY 7 (Nov. 2024) [hereinafter Framework].

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Scientists have known for decades that it is the multiplicity of our exposures to both chemical and non-chemical (e.g., noise, excessive heat, etc.) stressors that can significantly impact our overall health and the quality of the environment in which we live.[3] The greater impacts of COVID-19 in communities experiencing higher levels of air pollution made clear what residents in historically marginalized communities live with every day: that environmental exposures, when combined with underlying health and socioeconomic vulnerabilities, can increase health risks and reduce quality of life for individuals and communities.[4] However, environmental laws and regulations, as well as industrial zoning and siting decisions, generally do not require consideration of these cumulative impacts, to the detriment of people's health and quality of life.

This Framework helps guide the Agency to ensure that the full set of threats to a person's health and quality of life will be considered, regardless of who that person is or where that person lives in the United States. Air and water pollution do not respect municipal, county or state lines; accordingly, as a federal agency, EPA is uniquely positioned to lead the efforts in developing guidelines for cumulative impact assessment. These guidelines will ensure consistency of the Agency's approaches to regulations and projects under its jurisdiction in every EPA region.

II. The Framework Moves EPA in the Right Direction in Protecting Communities.

Environmental laws typically only examine and regulate the impacts of one project or set of regulations at a time. Moreover, the regulations tend to focus solely on one or a limited number of environmental exposures to a community for the current project being considered. This is a flawed approach in evaluating impacts. The Framework clearly and fully lays out the scientific evidence showing that certain communities shoulder a disproportionate environmental burden from municipal and industrial facilities, transportation projects, and energy infrastructure that have broad benefits for society at large. To make matters worse, these same communities often have less access to health care and suffer from underlying health conditions that make them more vulnerable to environmental exposures and other stressors.[5] They also often lack access to green space and other benefits that can offset the harm caused by living in close proximity to pollution.[6] It is now well-known that "variations" in the distribution of burdens and benefits have led to

[3] Framework at 8; *see* Tulve, N. S. et al., *Challenges and opportunities for research supporting cumulative impact assessments at the United States environmental protection agency's office of research* and development, THE LANCET REGIONAL HEALTH–AMERICAS (2024); *see* Tulve, N. S. et al., *Redefining exposure science to advance research supporting cumulative impacts, environmental justice, and decision-making*, J. OF EXPOSURE SCI. & ENV'T EPIDEMIOLOGY (2023).

[4] *See* Wu, X., et al., *Air pollution and COVID-19 mortality in the United States: Strengths and limitations of an ecological regression analysis*, SCIENCE ADVANCES (2020).

[5] *See* Morello-Frosch, R., et al., *Understanding the cumulative impacts of inequalities in environmental health: implications for policy*, HEALTH AFFAIRS (2011).

[6] *See Community Engagement Brief*, WE ACT for Environmental Justice, https://www.weact.org/wp-content/uploads/2022/10/Community-Engagement-Brief-092322-FINAL.pdf.

disproportionate impacts on certain communities.[7] The Framework correctly states that EPA must holistically consider the compounding impacts that multiple stressors have on a community; otherwise, serious disparities in the environmental quality and health that these communities experience will continue to be exacerbated.

In addition, we commend EPA for recognizing the following in the Framework:

- The importance of taking into account people's lived experience in both characterizing adverse health and other outcomes in a community and in designing studies to understand the potential contributors to them;
- The past and current role of government in inequitably distributing environmental benefits and burdens;
- A thorough definition of meaningful engagement;
- The need to avoid a one-size-fits-all approach;
- The unique posture of Indigenous peoples and Tribes as sovereign nations; and
- The need to go beyond a traditional risk assessment framework (i.e., considering things like the social determinants of health and other types of stressors) to fully understand the impacts of a proposed project on any given community.

EPA's explicit inclusion of the above topics is encouraging and helps demonstrate the Agency's commitment to protecting the health and well-being of all communities in alignment with the best scientific knowledge.

III. Meaningful Community Engagement is an Integral Component of Each Step of the Process.

Effective community engagement is one of the most critical components of cumulative impact assessments. The Framework provides an initial definition for the Agency to identify what "meaningful community engagement" encompasses. In particular, it accurately emphasizes that every community is different and that one-size-fits-all approaches to community engagement are not adequate.[8] For the Framework to be truly equitable and just, EPA must embed meaningful community engagement at every step of the process, from initiation and scope to decision-making and implementation. It is not enough to provide residents of impacted communities with notice

[7] Brief for Massachusetts et al. as Amici Curiae, *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc*., 135 S. Ct. 2507, 2525 (2015) at 16 (citing Michelle Wilde Anderson & Victoria C. Plaut, *Property Law: Implicit Bias and the Resilience of Spatial Colorlines, in Implicit Racial Bias Across the Law* (Justin D. Levinson & Robert J. Smith, eds. 2012); Patrick Sharkey, *Stuck In Place: Urban Neighborhoods and the End of Progress Toward Racial Equality*, 25 (2013) (citing Douglas S. Massey & Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass*, HARVARD UNIVERSITY PRESS (1993)); *see also* Hope Landrine & Irma Corral, *Separate and Unequal: Residential Segregation and Black Health Disparities*, 19 Ethnicity & Disease 179, 180-82 (2009).
[8] Framework at 14.

and an opportunity to comment on a proposal or a "seat at the table"; meaningful engagement requires EPA, state and local agencies, and project proponents to treat impacted communities as active partners and to address the barriers that have historically prevented residents of host communities from engaging with and being heard by decision-makers.

EPA's guidelines should also include best practices on language access[9] and culturally accessible engagement of impacted groups (e.g., residents of environmental justice communities, community-based organizations, Indigenous and Native-led organizations, Tribes, people who speak a language other than English).

Meaningful participation by a community in complex assessments often requires substantial time and expense to review and comment on key documents and to attend key meetings– adding barrier on top of barrier to community participation. We appreciate EPA's programs to fund community participation via its Environmental Justice and Collaborative Agreement Program as well as its support of high-quality investigator-community-based research through its competitive Science to Achieve Results grants. This funding must continue to support both sound decision making and ongoing improvements to the methods. However, we urge EPA to include in the Framework clear guidelines for states or municipalities on providing technical assistance and funding to communities to make it possible for them to participate in community engagement campaigns. Community engagement plans should include a budget for financial and technical assistance to compensate community members to ensure that meaningful involvement is not an additional burden.

Finally, the guidelines should provide specific recommendations for recognition of individuals and communities where they have participated in ongoing research studies related to a cumulative impact assessment. This recognition should include authorship on any publications related to studies in the community.

IV. The Framework Provides Important Leadership for Agencies at the State and Local Level.

While the Framework is explicit that it is intended for use by EPA, its influence will extend far beyond EPA projects. The Framework stands as an important resource for other Federal agencies as well as state and local decision makers. Accordingly, when implementing this

[9] S*ee e.g.*, 310 MASS. CODE REGS. 7.02(14)(b) ("At least 60 days prior to filing a comprehensive plan application for which a cumulative impact analysis is required . . . the applicant shall provide notice of the proposed project . . . The notice . . . shall include a fact sheet using a template provided by the Department that describes the proposed project, nearby environmental justice populations, and applicant contact information for submitting comments or requesting additional information or public involvement activities. The notice and Fact Sheet shall use plain language and be translated into any non-English language spoken by a significant percentage of nearby environmental justice populations.").

Framework, EPA should make sure that they have the staff and financial resources to critically review the scientific evidence, to develop detailed guidelines that reflect current science and to identify ways to address barriers that limit public participation in decision-making processes.[10]

V. EPA Must Continue Its Ongoing Research into the Development of Quantitative Methods that Can be Used to Evaluate and Predict How Multiple Risk Factors Interact to Affect Health.

The Framework envisions a largely qualitative approach to the consideration of cumulative impacts. While there are some quantitative methods for estimating cumulative risks of chemical exposures, the quantitative methods for understanding and estimating the combined influence of non-chemical stressors, vulnerabilities due to stage of life, underlying genetic conditions, and extrinsic social determinants of health (e.g., socioeconomic status, stress, nutrition, lifestyle, occupation, etc.) are still under development. We strongly encourage the development of stronger quantitative methods to better understand the potential magnitude and priorities for managing cumulative impacts. Congress and EPA must continue to fund the EPA's Office of Research and Development's recommendations for cumulative impact research for the FY2023–FY2026 strategic plan.[11]

VI. EPA Should Refer to the Recommendations Made by the National Environmental Justice Advisory Council for Other Ways the Framework Can be Improved.

On October 4, 2024, the National Environmental Justice Advisory Council ("NEJAC") made recommendations to EPA on reducing cumulative and disproportionate impacts and burdens in environmental justice communities.[12] As we have articulated above, though the Framework is a good first step in the consideration of cumulative impacts in EPA's work, there are more steps EPA should take to ensure that assessment of the totality of exposures on a community is accurately done. NEJAC's recommendations cover some of these steps that could be expanded on in the Framework.

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[10] *See Community Engagement Brief*, WE ACT FOR ENVIRONMENTAL JUSTICE, https://www.weact.org/wp-content/uploads/2022/10/Community-Engagement-Brief-092322-FINAL.pdf.

[11] U.S. Environmental Protection Agency, *Cumulative Impacts: Recommendations for ORD Research*, U.S. ENV'T PROT. AGENCY OFF. OF RESEARCH AND DEV. (Sept. 2022), *available at* https://cfpub.epa.gov/si/si_public_record_Report.cfm?Lab=ORD&dirEntryId=357832.

[12] National Environmental Justice Advisory Council, *Reducing Cumulative and Disproportionate Impacts and Burdens in Environmental Justice* Communities, ENV'T PROT. AGENCY (Oct. 4, 2024), https://www.epa.gov/system/files/documents/2024-11/nejac-recommendations-for-reducing-cumulative-and-disproportionate-impacts-and-burdens-in-environmental-justice-communities.pdf.

In their recommendations, NEJAC highlighted the need for innovative approaches when it comes to cumulative impacts implementation.[13] Specifically, NEJAC recommended that the Agency can invest in expanding and connecting monitoring to improve multi-source assessments as EPA begins to regularly assess cumulative impacts.[14] Moreover, EPA should focus on expanding multi-source standard attainment methods (i.e., total maximum daily loads, State Implementation Plans) to incorporate multiple pollutants and advance cumulative impacts practice.[15]

NEJAC has also emphasized that EPA should enhance polluter accountability and transparency, by providing the public access to key data, especially for air emissions and effluent discharges.[16] This recommendation especially highlights the important intersection of high-quality data collection and community engagement. Also related to data, NEJAC recommended that EPA use existing health condition data to inform assessments regardless of cause and clean up level determinations.[17] Access to data is critical for transparency of communications and for identification of the key factors that may drive risk in particular communities.[18]

VII. EPA is in Good Company: Multiple States Are Already Leading the Way in Implementing Cumulative Impact Analyses.

Several states have taken the leadership to require and implement cumulative impact assessment regulations, providing important examples for other states and the federal government to learn from. In Massachusetts, promulgated cumulative impact analysis regulations related to air permit applications for facilities located in or near environmental justice populations.[19] And, as part of the application for an air permit, the regulations require an applicant to engage in enhanced public outreach to and involvement of environmental justice populations; assess the existing community conditions; and analyze the cumulative impacts of a proposed project.[20] New Jersey passed an environmental justice law that requires an applicant who is applying for a permit for a facility located in an overburdened community to conduct a cumulative stressors analysis.[21] Minnesota also passed a cumulative impacts analysis law requiring analyses for certain proposed permit actions when it substantially impacts the environment or health of residents in an environmental justice area.[22] New York signed into law an environmental justice law, which requires the State to take into account cumulative impacts for "environmental permitting processes

[13] *Id.* at 4, 13
[14] *Id.* at 4, 14.
[15] *Id.* at 4, 17.
[16] *Id.* at 4, 15–16.
[17] *Id.* at 4, 22, 23–24.
[18] *Id.* at 4, 21–22
[19] *See* 310 C.M.R. 7.02(14).
[20] *Id.*
[21] *See* N.J.A.C. 13:1D-157, et seq.
[22] *See* Minn Stat. 116.065.

when potentially polluting facilities seek permits in disadvantaged communities."[23] The Framework's vision for "continuous improvement" by ongoing evaluation of federal and state programs like these must be implemented. It will provide critical insights for ways to improve methods and implementation of cumulative impact assessments and to evaluate their benefits to public health and the environment.

VIII. Data Tools are a Critical Component of Cumulative Impact Assessments.

Cumulative impact assessments are most needed in those communities that already shoulder disproportionate burdens of poor health, lower economic status, and environmental exposures. Identification of those communities requires data. EPA invested substantial resources in its Environmental Justice Mapping and Screening Tool ("EJScreen") to provide consistent, high-quality data drawn from respected national databases for use by scientists and communities. It provided transparent access to powerful data and user-friendly mapping capabilities to characterize environmental, health, and demographic information at the Census block level across the entire country. Unfortunately, EJScreen has been removed from EPA websites. The removal of this important resource, coupled with the removal of related tools like the White House Council on Environmental Quality's Climate and Economic Justice Screening Tool, is a loss to communities, regulators, and scientists who created and advocated for them. EPA should restore EJScreen and continue to update and support its use, as tools like EJScreen are critical to furthering cumulative impact assessments

IX. Conclusion

CLF and ACE appreciate the opportunity to comment on the Framework. We look forward to EPA's continued commitment to the assessment of cumulative impacts and to the provision of a healthy environment for all.

[23] *Governor Hochul Signs Landmark Environmental Justice Legislation Reducing the Cumulative Impacts of Pollution on Disadvantaged Communities*, WE ACT FOR ENVIRONMENTAL JUSTICE (Dec. 31, 2022), https://www.weact.org/2022/12/governor-hochul-signs-landmark-environmental-justice-legislation-reducing-the-cumulative-impacts-of-pollution-on-disadvantaged-communities/.

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