



Manisha Patel

09/16/02 10:27 AM

To: Carl Edlund/R6/USEPA/US@EPA, David Gray/R6/USEPA/US@EPA, Michael Boydston/R6/USEPA/US@EPA, Ragan Tate/R6/USEPA/US@EPA, David Bary/R6/USEPA/US@EPA, Cynthia Fanning/R6/USEPA/US@EPA, Cheryl-m Scott/R6/USEPA/US@EPA, Thomas Diggs/R6/USEPA/US@EPA, Maria Martinez/R6/USEPA/US@EPA, Kevin McLean/DC/USEPA/US@EPA, Kendra Sagnoff/DC/USEPA/US@EPA, Cecilia Kim/DC/USEPA/US@EPA, Howard Hoffman/DC/USEPA/US@EPA, Merrit Nicewander/R6/USEPA/US@EPA, Laura Stankosky/R6/USEPA/US@EPA, David Neleigh/R6/USEPA/US@EPA, Charles Sheehan/R6/USEPA/US@EPA, Gregg Cooke/R6/USEPA/US@EPA, Lawrence Starfield/R6/USEPA/US@EPA, Lydia Wegman/RTPI/USEPA/US@EPA, Rebecca Weber/R6/USEPA/US@EPA, Carey Fitzmaurice/DC/USEPA/US@EPA

cc: Charles Sheehan/R6/USEPA/US@EPA, Gregg Cooke/R6/USEPA/US@EPA, Lawrence Starfield/R6/USEPA/US@EPA, Lydia Wegman/RTPI/USEPA/US@EPA, Rebecca Weber/R6/USEPA/US@EPA, Carey Fitzmaurice/DC/USEPA/US@EPA

Subject: Potential Press contacts re: Richard Grow memo (Environmental Justice)

ATTORNEY-CLIENT COMMUNICATION  
 PRIVILEGED & CONFIDENTIAL -- DO NOT RELEASE

Hi-

I've learned that Richard Grow has contacts at "Inside EPA" and other media sources. It is possible that we may receive press inquiries about Richard's allegations. As we are currently engaged in a rulemaking regarding the topics raised in Richard's memo, any discussions with individuals or entities external to EPA should be coordinated through 6PD and through 6BRC. Richard's memo assumes a lot of facts about Louisiana's emissions reduction credit rule and EPA's rulemaking, which is not yet complete. In short, as Carl's response to Richard indicates (see below), the issues Richard has raised are most appropriately addressed via the established regulatory notice and comment procedures. If you have any questions, please give me a call. Thanks.

-Manisha Patel  
 Assistant Regional Counsel  
 EPA Region 6  
 214.665.2770

----- Forwarded by Carl Edlund/R6/USEPA/US on 09/13/2002 05:07 PM -----

Carl Edlund  
 09/13/2002 05:07 PM

To: Richard Grow/R9/USEPA/US@EPA  
 cc: Thomas Diggs/R6/USEPA/US@EPA, Michael Boydston/R6/USEPA/US@EPA, Ragan Tate, Nicholas Targ/DC/USEPA/US@EPA, Ron Evans/RTPI/USEPA/US@EPA, David Neleigh, Bill Harnett, Wil Wilson/DC/USEPA/US@EPA, Chebryll Edwards/DC/USEPA/US@EPA, Shirley Augurson/R6/USEPA/US@EPA, Barry Hill/DC/USEPA/US@EPA, Jack Broadbent, Enrique Manzanilla/R9/USEPA/US@EPA, Ken

Bigos/R9/USEPA/US@EPA, Nancy Marvel/R9/USEPA/US@EPA, Paul  
Jalbert/OIG/USEPA/US@EPA, Jack Colbourn/R9/USEPA/US@EPA  
Subject: Re: Emissions Trading and Environmental Justice

Dear Mr. Grow-

As you can see by the circuitous route of this e-mail, your concerns about Region 6 have been given wide distribution before reaching us. The issues that you share with the Louisiana Environmental Action Network (LEAN) regarding proposed changes to the Baton Rouge State Implementation plan will be addressed by Region 6 as a response to their comments made during the public comment period. If you have continued concerns about Region 6, I would appreciate it if you would work through Jack Broadbent to resolve them.

Carl Edlund

Thomas Diggs

----- Forwarded by Thomas Diggs/R6/USEPA/US on 09/12/2002 03:03 PM -----



**Michael Boydston**  
09/12/2002 02:34 PM

To: Thomas Diggs/R6/USEPA/US@EPA  
cc:  
Subject: Emissions Trading and Environmental Justice

Tom -- Have you seen this? Would it be appropriate for you to talk to Ron Evans or Bill Harnett to see what their reaction is?

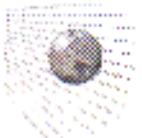
----- Forwarded by Michael Boydston/R6/USEPA/US on 09/12/02 02:31 PM -----



**Ragan Tate**  
09/12/02 02:12 PM

To: Michael Boydston/R6/USEPA/US@EPA  
cc: David Neleigh/R6/USEPA/US@EPA  
Subject: Emissions Trading and Environmental Justice

----- Forwarded by Ragan Tate/R6/USEPA/US on 09/12/2002 02:12 PM -----



**Nicholas Targ**  
09/12/2002 01:46 PM

To: Ron Evans/RTP/USEPA/US@EPA, Bill Harnett/RTP/USEPA/US@EPA  
cc: Wil Wilson/DC/USEPA/US@EPA, Chebryll  
Edwards/DC/USEPA/US@EPA, Shirley  
Augurson/R6/USEPA/US@EPA, Ragan Tate/R6/USEPA/US@EPA,  
Barry Hill/DC/USEPA/US@EPA, Richard Grow/R9/USEPA/US@EPA  
Subject: Emissions Trading and Environmental Justice

Ron and Bill,

I received the following note from Richard Grow of R-9, concerning the Baton Rouge proposal. This is the first I'm hearing of the proposals, so apologies if this is old ground. Can you let me know whether these proposals address the types of concerns that LEAN raised in the Borden Title V Petition, namely the quality of the Louisiana banking program. My recollection is that we found some real problems (i.e., expired credits, tracking issues, etc...). Also, from the email it sounds like the EJ provisions and HAP framework aren't being used. Should these provisions apply? And,

can we expect objections from the community folks who raised the issue in the trading context?

Regards,

Nicholas

----- Forwarded by Nicholas Targ/DC/USEPA/US on 09/12/2002 02:21 PM -----

**Richard Grow**  
09/11/2002 11:09 PM

To: Jack Broadbent/R9/USEPA/US@EPA  
cc: Barry Hill/DC/USEPA/US@EPA, Nicholas Targ/DC/USEPA/US@EPA, Enrique Manzanilla/R9/USEPA/US@EPA, Ken Bigos/R9/USEPA/US@EPA, Nancy Marvel/R9/USEPA/US@EPA, Paul Jalbert/OIG/USEPA/US@EPA, Jack Colbourn/R9/USEPA/US@EPA  
Subject: Emissions Trading and Environmental Justice

September 11, 2002

To: Jack Broadbent, Air Division Director, Region 9

From: Richard Grow, Grants and Program Integration Office

Re: Emissions Trading and Environmental Justice

The Agency is headed in a direction that is likely to undermine the effectiveness and credibility of both its emissions trading and environmental justice programs, both nationally and here in Region 9. This memo describes recent actions involving these issues, and recommends your immediate engagement of senior management here, at Headquarters and other Regional offices in order to avoid this result.

By way of background, the Agency's previous involvement ('97 - '01) at the national level in the intersection of these issues had its origins in Region 9, in the South Coast Air Quality Management District's allowance of the trading of VOC emission reduction credits from car scrappage (via Rule 1610) in place of federal SIP required reductions at stationary sources. The communities and their legal representatives filed Section 304 Clean Air Act citizen suits and a Title VI complaint, in response to which Region 9 engaged the issues at several levels. Ultimately Region 9 obtained some of its largest enforcement settlements ever, the National Environmental Justice Council (NEJAC) passed several resolutions on EJ and trading, and the Agency's national trading policies on Economic Incentive Programs (EIPs, proposed 1999, finalized 2001) included "equity principles" and an annex describing how to address EJ in trading programs (the "HAP framework"). SCAQMD also agreed informally to abstain from further use of Rule 1610 for compliance with federal requirements.

In Region 9 the nexus of trading and EJ remains active, with the recent attempt by the South Coast to rehabilitate Rule 1610, community objections to Bay Area trading programs (ref. front page headline story in the Contra Costa Times, August 6), and questions that have arisen

regarding diesel reductions in EJ communities. Lawsuits, petitions and other appeals also continue to be filed with our office. There is also recurring discussion of interpollutant trading in the context of NSR, most recently in the San Joaquin Valley. You and I have talked about our Division's management of those issues and I look forward to further discussions.

Nationally there has been an ongoing critique of the Agency's trading programs with regard to environmental justice, which the Agency has deflected with some success. Currently, however, Region 6 is preparing an action which brings the shortcomings of the Agency's approach into stark relief. To describe why, some historical background is needed.

In response to the Agency's expediting action on three open market trading (OMT) programs in early 2001, a national coalition of 20 environmental groups challenged the Agency's failure to address the EJ effects of these programs. In my view, the Agency's handling of the EJ issues in the three OMT packages was at best clever, disingenuous, nonresponsive on the issue of EJ, and failed to engage the critics in any meaningful way. This view was shared with Headquarters and other Regional offices at the time. Since then, one of the programs has been approved (Illinois), and the final approval package for another (Michigan) was held up in June.

Regarding the third, New Jersey's environmental director concluded, in an August 13 letter to Region 2, that the program should be terminated, citing its "failure to include safeguards that the program would in fact reduce emissions", allowing "credits to be based on emission reductions that occurred years before the credits are actually used (with the result) that long time lapse undermined the credibility of the program", the inappropriate "privatization" of a number of functions and other problems revealed by recent enforcement investigations. Thus the director confirms the substance of many of the objections raised by the critics of the OMT proposals. However, EPA's positions supporting those programs in early 2001 remain on the record, unmodified and uncorrected, and Region 5's approval of the Michigan program is still pending.

While the OMT packages paid nominal homage to the EIP's HAP framework policies, by way of contrast the Agency's latest actions in Louisiana achieve levels of obfuscation that would make an Enron attorney proud. A federal register package of three proposals dated July 23, 2002 (67 FR 48083 - 48098) proposes approval of Louisiana's banking, NSR and RACT rules. Among the highlights are rationales that the banking rules are not in fact banks, provisions for interpollutant trading (NOx reductions for VOC increases) and rescission of a section 182(f) NOx exemption, suddenly allowing funding of the NOx "bank" and enabling VOC increases. Some of the most obscure maneuvering in the package is the rationale for not applying the EIP's HAP framework. Among the rationales is that the rulemaking deals with permitting, not trading, even though the Agency's trading policies have consistently acknowledged that permitting has a strong trading component.

Even more interesting are the August 26, 2002 comments on these packages submitted by the Tulane Environmental Law Clinic on behalf of the Louisiana Environmental Action Network (LEAN), which frankly I feel have correctly challenged the Agency on a number of issues, among them the failure to apply the EJ safeguards of the EIP policies.

Meanwhile, as you are aware and as noted in the LEAN comments, the IG is currently investigating the interaction of trading and EJ. The investigation flows directly out of the OMT programs described earlier and petitions from the Sierra Club and Public Employees for Environmental Responsibility (PEER). In an earlier phase the IG reviewed the OMT programs outside the context of EJ, with a draft of that report due to be released to HQ offices this week. At this point we don't know whether the IG confirmed the flaws which the director of the New Jersey program has acknowledged.

## **RECOMMENDED ACTIONS**

There are a number of decisions and opportunities in front of the Agency. Senior management at Region 9 should work with OAR, OEJ, Region 6 and the IG to bring attention to the following three areas.

**1. Response to LEAN.** The Agency has to decide whether to give the LEAN challenge more than a pro forma legalistic/defensive response, in other words a response based on public health, environmental justice and civil rights policies and goals. To posture that interpollutant trading for new source review is not trading and therefore not subject to the EIP's EJ safeguards is disingenuous at best, and contrary to the understanding that at least some of us who developed the EIP had at the time. These actions will be precedent setting and therefore demand wider review and discussion. The Agency's EJ offices should be involved in these discussions, both Headquarters and Regional. Senior management at OAR and Region 6 should be contacted immediately to put a hold on the final approval until the necessary discussions have been held.

**2. IG investigation.** The Agency program offices (Air and EJ) should engage the Inspector General's current investigation of EJ and trading in order to ensure constructive results. Thus far Region 9 has been reactive, and program experts on these issues remain uninvolved, by either the IG or the EJ program. Among the areas needing investigation are whether (1) the EIP's EJ safeguards have been correctly applied, (2) the safeguards have been effective, (3) the safeguards have been inappropriately evaded, (4) EPA has provided effective oversight of the EJ/equity requirements of the EIP, and (5) the safeguards need improvement.

The OMT and Baton Rouge actions should provide relevant grist for the investigation. Along these same lines, LEAN's request that action on the Louisiana rules await conclusion of the IG investigation, which as noted above was first requested more than a year and a half ago, should also be given serious consideration and response.

**3. Oversight of the EJ/ET nexus.** The issue of EJ and trading has been squarely on the table for the EJ movement since 1997, was quite controversial at the NEJAC, and has resulted in several Title VI complaints and petitions to the Administrator. Yet there remains no assigned responsibility to track or coordinate engagement of the intersection of these issues. The Agency needs to move from a posture of defensiveness and promotion (of trading and market-based programs) to integration of EJ into those programs. Coordination is needed between OEJ and OAR and their Regional counterparts, and there should also be inter-regional peer review including Regional EJ and trading experts. These process changes are needed to compensate for

the air program's chronic avoidance of EJ issues and offices. Achievement of environmental justice should not depend on the Region in which the public lives.

In conclusion, at a time when the Agency is promoting more than ever an emissions trading approach to regulation of air quality (e.g. Clear Skies), it would be extremely unfortunate for the Agency to unnecessarily sever one agency priority - market based solutions - from another priority - environmental justice. In light of the Whitman EJ directive of August 9, 2001 on meaningful public involvement and integration of EJ into core programs, the Agency's lack of engagement of this issue is shortsighted and contrary to Agency guidance and policies.

Each of the three recommended area of engagement require immediate attention. I will be glad to arrange briefings on any of these issues, provide relevant documents as needed, and otherwise assist in developing a constructive resolution for these issues.

cc:

Barry Hill, Director, OEJ  
Nicholas Targ, Counsel, OEJ  
Enrique Manzanilla, Director, Cross Media Division, Region 9  
Ken Bigos, Region 9, Air Division  
Nancy Marvel, Counsel, Region 9  
Paul Jalbert, OIG



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