



40 Environmental Justice Groups Offer “Call to Action” Plan to New EPA Region 4 Administrator

by Robert D. Bullard / November 13th, 2010

More than two dozen environmental justice leaders from EPA [Region 4](#), which includes eight southern states, Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and 6 Tribal Nations, met on Wednesday November 10 with the [Gwen Keyes Fleming](#), the first African American to head Region 4 in Atlanta. The Atlanta gathering was a follow up to a meeting convened this past October with the acting Region 4 administrator to discuss pressing EJ issues and possible solutions to environmental racism, environmental injustice, and unequal protection accorded low-income and people of color communities in the region.

As part of the larger push to jump-start EJ in the region with the new region administrator, 40 leaders from [poisoned communities](#), environmental justice, civil rights, faith, and community based organizations delivered a “Call to Action” for Region 4 reform that demanded fundamental change, a new culture, and a new enforcement framework at EPA—one that actually protects the environment and public health; equal protection and equal enforcement of environmental laws, something that has been lacking in the southern states for decades; end to the collusion between EPA Region 4, state environmental agencies, and polluting industry; halt to the “[look-the-other-way](#)” approach that has been a trademark of Region 4 which has led to higher health costs and degraded environments; and bold leadership and an uncompromising dedication to equal protection, environmental justice, and public health as top priorities in the region.

Given the dire circumstances many environmental justice communities find themselves in today, the leaders called for transparency, accountability, and trust building in the new administration. Working together with this shared vision and with impacted communities, the leaders are hopeful that the new region administrator can make environmental justice a top priority. The major elements of their “Call to Action” include the following:

1. Reverse the deadly impact of environmental racism and establish accountability by implementing a “[polluter pays](#)” policy. Environmental hazards in low-income and people of color communities must be made a Region 4 priority. EPA Region 4 has been working from a flawed protection model that appears to value good relations with state environmental regulators over enforcing the laws — allowing polluters to walk away in many cases unpunished. A polluter-pays policy should be enacted and communicated clearly to industries in Region
2. Establish leadership roles for people who prioritize health and environmental justice. Many people currently in senior level management in the Region made decisions in the past 10 years that have directly harmed communities in our states. EJ residents in Region 4 who live on the frontline of environmental and health assaults are

demanding fundamental and significant change at the senior level management. To signify an intentional shift toward greater accountability toward these communities, we urge you to hire and gather the best and the brightest for your Reform Team. An EJ “litmus test” for us in this area is the level of replacement of those senior EPA staff persons who have consistently made and or collaborated in decisions that have exacerbated health and environmental problems in low-income and people of color communities.

We urge EPA to deploy thoughtful leaders on chemical exposure and environmental health, scientific and common sense solutions to the toxic chemical contamination problem, progress in business and industry with [Green Chemistry](#) development, and other innovative thinkers to advise your administration on toxic chemical exposure as a variable in all policy as well as on new appointments. Set a public interest research agenda that coordinates green chemistry with green energy and green engineering technologies and green job programs being developed.

Regulators in Region 4 should be free from ties to the chemical industry or other entities that would attempt to influence their decisions or impact the integrity of community protections. The preferred “stakeholders” in this process must be the people of the United States, not the chemical corporations.

EPA should convene a “hot spot task force” to identify priority communities for targeted enforcement and corrective action. Engaging in this investigation and reform necessitates targeted enforcement in documented environmental justice “[hot spots](#)” areas. These include places where multiple petrochemical plants, manufacturing facilities, incinerators or other dumps are sited but also areas where workers and communities are routinely contaminated disproportionately by agricultural chemicals; pollution from coal mining or other fossil fuels extraction; where illness rates are undeniably higher than the state or national averages; or where certain types of rare illnesses appear to be linked to specific contaminants or a “[toxic cocktail](#)” of chemicals, or where there are populations more vulnerable to exposures. Better enforcement is not only an issue of accountability and trust, but also of morality and basic human right to clean air, clean water, uncontaminated food and good health.

3. Investigate and reform unjust Region 4 policies on waste facility permitting hazardous waste cleanup and disposal, and property assessments and relocation. The policy of allowing low-income and people of color communities to become the “[dumping grounds](#)” of hazardous waste facilities must not be allowed to continue, and immediate steps must be taken to implement protections for communities in these areas. Corporations, polluting industries, and potentially responsible parties ([PRPs](#)) causing harm must be held accountable.

For example, it is clear that waste disposal decisions following [TVA’s](#) coal [ash](#) spill in Tennessee and the BP [oil disaster](#) in the Gulf, made jointly between the EPA, the states, and private industry placed environmental justice communities in the direct path of toxic waste dumping. EPA Region 4 must ensure that the dumping of millions of tons of toxic coal ash sludge in the Arrowhead landfill in [Uniontown, Alabama](#) poses no present or future threat to the health or environment of the people of Perry County.

4. EPA approved the removal of 3.5 million cubic yards of hazardous coal ash sludge from the mostly white [Roane County, Tennessee](#) in east Tennessee to the [Arrowhead Landfill](#) (a/k/a Perry County Associates Landfill) located in the heart of the Alabama’s “Black Belt” in [Perry County, Alabama](#). EPA should use all of its enforcement powers and legal authority to abate offensive odors, fugitive dust, and water pollution emanating from the landfill.

Offensive odors. Many residents living near the Arrowhead Landfill have complained about suffering nausea, vomiting, headaches, and respiratory irritation as a result of offensive odors emanating from the Landfill. As discussed in the October 5, 2010 letter from attorney David A. Ludder, EPA Region 4 has the authority to enforce the EPA-approved State Implementation Plan for Alabama via the [Clean Air Act](#). We request that EPA file its own lawsuit or intervene in the pending lawsuit, *Abrahams v. Phill-Con Services, LLC*, No. 2:10-cv-00326 (S.D. Ala. filed June 25, 2010), to ensure that the residents obtain relief from the real injuries they are suffering because of the air pollution emanating from the Arrowhead Landfill.

Fugitive Dust. Many residents living near the Arrowhead Landfill have complained about fugitive dust being blown off the Landfill site. They are justifiably concerned that this dust may contain hazardous constituents such as arsenic. The EPA-approved [State Implementation Plan for Alabama](#) provides that “[n]o person shall cause or permit the discharge of visible fugitive dust emissions beyond the lot line of the property on which the emissions originate.” 40 C.F.R §§ 52.50 and 52.53 (incorporating Ala. Admin. Code r. 335-3-4-.02).

The Alabama Supreme Court declared this provision unconstitutionally restrictive and overbroad. *Ross Neely Express, Inc. v. Alabama Dep’t of Env’tl. Mgmt.*, 437 So.2d 82 (Ala. 1983). However, Ala. Admin. Code r. 335-3-4-.02 remains a part of the EPA-approved “applicable implementation plan” and remains enforceable by EPA. See *General Motors Corp. v. United States*, 496 U.S. 530, 540-541 (1990); *Safe Air for Everyone v. U.S. Env’tl. Protection Agency*, 488 F.3d 1088, 1097 (9th Cir. 2007); *Env’tl. Defense Fund v. Env’tl. Protection Agency*, 467 F.3d 1329, 1337 (D.C. Cir. 2006); *Duquesne Light Co. v. Env’tl. Protection Agency*, 698 F.2d 456, 470-471 (D.C. Cir. 1983). [EPA also has the authority to disapprove the State Implementation Plan for Alabama and to promulgate a federal rule to control fugitive emissions. 42 U.S.C. § 7410(c)]. We request that EPA issue a Notice of Violation of the fugitive dust provision of the applicable State Implementation Plan to the Arrowhead Landfill and subsequently issue a compliance order and penalty order for such violation.

Water Pollution. Multiple complaints have been filed with EPA concerning storm water management and pollution of waters near the Landfill. Following a February 22-23, 2010 inspection of the Landfill by EPA, on July 14, 2010 EPA issued a “Letter of Concern” to Phill-Con Services concerning storm water management at the Landfill. The findings of the inspection and “Letter of Concern” indicate numerous violations of NPDES Permit Nos. ALG160167 & ALG140902. Considering the hazardous nature of the wastes being disposed at the Landfill, a lower threshold for formal enforcement action (including penalties) should apply. We request that EPA issue an administrative compliance order and penalty order to the Arrowhead Landfill under the [Clean Water Act](#).

5. Protect our young people and their educators in the places where they learn and teach. Work with community-based environmental justice groups to monitor air quality near local schools and possible migration pathways to inside schools and develop a plan to address, reduce, or eliminate toxic air contaminants. Such plans should, in addition to parent and school administration, involve local industry and local, state, and federal governments. Where possible, outdoor air monitors should be located near schools. EPA Region 4 should analyze and report the results regularly to communities on current ambient air toxic monitoring. EPA Region 4 should also fully fund the Healthy School Environments program.

6. Require environmental justice analysis in disaster response decisions to avoid, minimize, or mitigate disproportionately high and adverse human health or environmental effects, including social and economic effects, on minority and low-income populations; to ensure the full and fair participation by all potentially affected

communities in the transportation decision-making process; and to prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low- income populations. Make environmental justice reporting and analysis public via posting on EPA Region 4 website.

7. Instill better right-to-know practices and implement the [Precautionary Principle](#) so that Region 4 policies are consistent with modern global chemical policies.

A gross lack of knowledge currently exists about the potential hazards of chemical substances produced, imported, exported, and used in the U.S. This serious data deficiency demands utmost priority for chemicals that are suspected of being mutagens, carcinogens, reproductive or neuro-developmental toxicants, endocrine disruptors, and persistent bioaccumulative toxic ([PBT](#)) chemicals. The general public's body burden of these chemicals is already too high considering the chronic illnesses linked to exposure and that is reason enough to act. The disproportionate impacts on low-income communities and communities of color also requires a precautionary approach.

In order to fully implement the Precautionary Principle, resources must be immediately directed toward environmental monitoring of air, water, and soil where chemical exposure is suspected in order to prevent, not just manage, exposure to workers and communities. When toxic chemical exposure is identified, immediate action and resources must be available to halt the exposure and protect communities, especially children.

8. Design an action plan to protect Region 4 communities from chemical security threats and vulnerabilities. Derailments of trains with hazardous cargo, explosions of refineries and chemical facilities, or leaks of chemicals at water treatment plants or other similar facilities can be prevented – often with savings to industry – with review and implementation of safer substitutions or technologies.

Assessment of toxic chemical exposures must be an immediate mandated component of all relief efforts for communities in times of disaster, with protection mitigations in place to prevent additional and new exposures (e.g., rampant exposure to formaldehyde in FEMA trailers following Hurricane Katrina and the levee collapse in New Orleans) compounding existing tragedy. Region 4 should increase the use of the Supplemental Environmental Projects ([SEPs](#)) mechanism to address pollution prevention and environmental justice issues.

9. Establish a climate of access, transparency and direct input on regulatory decisions. The people of Region 4 need to have access and the ability to participate in the decision making process for remediation and resolve, which requires resources for capacity building and access to expertise to represent their interests.

We ask that you make available new research findings, information on chemical and other harmful emissions sources, company non-compliances and permit information available on its website and in publicly accessible locations throughout the Region. EPA administrators should at minimum make themselves available to meet with community members on request. Information should be made available in multiple languages (e.g., Spanish) to further break down the language and cultural barriers that can otherwise contribute to disproportionate health impacts.

In addition, you should also commit to quarterly meeting with environmental health justice leaders, who are connected directly to local health and environmental problems, can work collectively with government agencies to

identify and build support for tangible solutions, and build trust among community members and EPA leaders willing and interested in earning that trust.

10. Require assessments of multiple, cumulative and, where possible, synergistic exposures, unique exposure pathways, and impacts to sensitive populations when considering environmental permits and regulations. This should apply to the Resource Conservation and Recovery Act, the Clean Air Act, the Clean Water Act, the Federal Insecticide, Fungicide and Rodenticide Act and other applicable federal laws. Similar assessment should be made in establishing site-specific clean-up standards under Superfund and Brownfields Programs, in the restoring or reclaiming of natural coastline, wetland, mountain or forest areas and the like. These assessments will better gauge the full impacts of exposure to toxic chemicals or destructive practices on the general population as well as determine disproportionate impact or harm.

11. Develop a specific timeline for implementing important environmental justice priorities designed for a speedy repair of the long broken EPA Region 4 system. It has taken decades for the toxic contamination through our region to reach this critical level but we cannot wait decades more for relief. We realize that comprehensive reform of the broken regulatory system will take some time to do well. But that should not prevent Region 4 from taking practical steps, starting now, to reduce the burden of illness from toxic contaminants and to prevent our young people and future generations from this fate.

Finally, environmental justice leaders are eager to assist the new Region 4 administrator with designing and building support for transformational change in the region— change and improvements that will stop the illness and harm that disproportionately plague low-income and people of color communities.

Many of the EJ leaders' recommendations to EPA Region 4 administrator are aligned with the Lawyers' Committee for Civil Rights Under Law 2010 report, [Now is the Time: Environmental Injustice in the U.S. and Recommendations for Eliminating Disparities](#), a report presented to the Obama Administration and its various agencies, including the EPA and the Department of Justice. The report outlines recommendations on how the Administration can effectively utilize existing law to eliminate disparities in environmental protection and the agencies can fulfill their responsibilities under [Executive Order 12898](#), "Federal Actions To Address Environmental Justice In Minority Populations and Low-Income Populations," signed by President Bill Clinton more than sixteen years ago. The time is right and it's the right thing to do.

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