



Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

Renewing Comments Re: Prisoner Populations Letter in EJ 2020 Action Agenda

Last year, in July 2015, HRDC's Prison Ecology Project submitted a letter re: EPA's Draft Framework for the EJ 2020 Plan, pointing out a glaring oversight in the EPA's Office of Environmental Justice.

It was a 10-page comment with 93 organizations signed on, and it was submitted alongside comments from the largest environmental organization in the country, the [Sierra Club](#) (representing over a million members) and [EJ Forum](#) (a coalition of the 43 most active EJ organizations across the country), which referenced and reinforced our concerns in their comments.

Attached is a renewed and updated comment.

We understand that EJ 2020 covers a wide range of crucial issues, and we found ourselves in agreement with the broad comments of the two organizations listed and linked above, as well as other groups that addressed local and national concerns.

Based on our review of the agency's documents that have been released since that time, our comment appears to have been largely ignored.¹

Our concerns for the millions of people impacted by, and forced to live within, this nation's prisons barely warranted a single line at the bottom of the page in the EPA's summary of public comments.

The recent water crisis experienced in Flint, Michigan specifically impacted prisoners in the Genessee County Jail, and a federal judge weighing in on contaminated water and extreme heat in Texas state prisons, have provided additional examples of the need to address EJ concerns involving prisons.

Despite more than a year of dialogue with EPA representatives and an in-person meeting in Washington, D.C. on June 10, 2016, the reason for this agency omitting or ignoring imprisoned people remains a mystery. Especially in light of other agencies, such as the Department of Energy (DOE) and the Atomic Safety and Licensing Board (ASLB), opting to do so in recent years, as we have referenced on page 4 of HRDC's updated comment that is attached.

Yet EPA staff continue to make excuses, namely citing a legal concern that prisoners represent a speculative population that they are not equipped to analyze. Unfortunately, we are left feeling that this attitude represents the very "discriminatory effect" that Title VI and EO 12898 were written to protect communities against.

¹ This includes (1) the *Draft EJ 2020 Action Agenda*, (2) *EPA's Response to Public Comments on the Draft EJ 2020 Action Agenda Framework*, (3) National Measures Technical Appendix, and (4) EPA Region 4's comment on the Letcher County Draft and Final EIS

While prisoners generally come from urban and rural areas representing a cross-section of the communities *most overburdened* by pollution from industrial facilities, the prison experience often places them into a new category where they also become a unique, distinct demographic of people forced to reside *inside* an industrial facility.

By not explicitly including prisoners, the EPA is missing a significant opportunity to develop inter-agency strategies on environmental justice for this uniquely vulnerable and over-burdened community of people. And the agency is putting itself at risk of violating the very framework it has been charged with overseeing since 1994.

In addition to the background information that was presented last year (and is reiterated in HRDC's updated comment attached to this email), the authors and undersigned organizations are also including the following specific suggestions for inclusion in a final EJ 2020 Action Agenda:

- *EPA should include prisoners as one of the "100 most overburdened communities" that EJ 2020 will focus on.* Note that the definition of EJ *communities* is not defined solely by geography, but also by groups of people with common environmental/economic experiences (as is the case, for example, with migrant farmworkers). Within the category of a prisoner community, there will be sub-groups of EJ communities, much like other overburdened communities in multi-racial neighborhoods or in geographic areas where multiple Native tribes or nations were forced to relocate, where members of several EJ demographics are all disproportionately impacted.²
- EPA should acknowledge that mass incarceration in the U.S. represents a "discriminatory effect" perpetuated by the federal government, and that, in regard to Title VI, there is a clear case to be made that the operation of prisons on toxic sites, such as former coal mines, landfills, Superfund sites, etc., constitutes a discriminatory effect on the EJ community of prisoners.³

Specific input on the *Draft EJ 2020 Action Agenda and EPA's Response to Public Comments on the EJ 2020 Framework*:

- Page 13 of the *EJ 2020 Draft* indicates that "where EPA is unable to address identified EJ concerns in EPA permit conditions, EPA will identify other federal, state or local agencies or other entities that may be able to assist." If securing effective data for prisoner demographics is an obstacle (as has been claimed), there are several avenues to remedy this, including resources from the Bureau of Justice Statistics, the Census Bureau and several non-governmental organizations that have done further analysis of these agencies' findings. *The EPA should indicate if it has reached out to these entities, and what the response has been.*

² The EJ 2020 Action Agenda references "working with federally recognized tribes and indigenous people" among its primary goals. It bears noting that statistics show Native Americans, along with essentially every other EJ demographic, are consistently over-represented in the prison population.

<http://www.prisonpolicy.org/graphs/statepopulations.html>

³ In order to understand the context for shining the EJ spotlight on prisons, the EPA needs to understand that mass incarceration in general came as a response to the Civil Rights movement, where government agencies replaced overt discrimination with persistent criminalization of low-income people of color. That is not speculation, as the current administration has admitted to same when attempting to address the undisputed discriminatory effect of disparate sentencing for drug-related charges.

- Page 14 of the *EJ 2020 Draft* states that the “EPA will enhance communication and transparency with affected communities and the public regarding compliance and enforcement action.” In this spirit, *the EPA should re-publish a record of the successful enforcement actions of Region 3’s Prison Initiative from 1999 –2011 as a starting point to launch a national EPA Prison Initiative.*
- Page 26 of the *EJ 2020 Draft* references the five priority areas of 2015 Interagency Working Group on Environmental Justice (EJ IWG) “Framework for Collaboration” over the next three years. Four of those five (climate change impacts, NEPA, rural communities and indigenous peoples) include clear connections to the concern of recognizing prisoners. *The EPA should note this in the Final EJ 2020 Action Agenda.*
- Page 28 of the *EJ 2020 Draft* states that the EJ IWG will “identify and leverage federal resources to address environmental challenges and build sustainable communities.” Addressing the problem of prisons with other federal agencies—such as the DOJ, which spends billions on the prison system every year—is a good way to do some of this leveraging. *The EPA should indicate that it will reach out to the DOJ and suggest a Memorandum of Understanding akin to the one it has with the Department of Labor.*⁴
- Page 29 of the *EJ 2020 Draft* states that “100% of all current EPA NEPA reviewers will complete [a] review of *Promising Practices* and [*National Training Product*].” *The EPA should require its Region 4 NEPA reviewer to confirm that this has been completed in regard to the BOP Letcher County EIS which is still pending a Record of Decision, and would likely accept an ex parte filing from another federal agency which is part of the EJ IWG under the DOJ. Region 4 must ask the BOP to conduct an assessment of the prisoners it plans to transfer from overcrowded federal facilities, as the project’s needs assessment indicates is the plan.*
- Page 37 of the *EJ 2020 Draft* lists four key areas in which EPA has existing measures: lead, drinking water, air quality and hazardous wastes. Each of these issues has also been demonstrated to impact prisoner populations. *The EPA should indicate this overlap in goals and priorities as a reason to explicitly incorporate prisoner populations in its planning.*⁵
- Page 16 of the *EPA’s Response to Public Comments on the Draft EJ 2020 Action Agenda Framework* states the “EPA is committed to ensuring that its programs [to] protect human health and the environment address EJ hot spots.” *The EPA should indicate where these “hot spots” overlap with prisoner populations, among the other overburdened communities that make up those spots.*
- Page 10 of the *EPA’s Response to Public Comments on the Draft EJ 2020 Action Agenda Framework* states that “through EJSCREEN and other agency tools, EPA has made great strides in considering prison populations.” HRDC’s attempt to use EJSCREEN to explicitly identify any prison populations or the location of prisons was unsuccessful. *The EPA should add layers to the*

⁴ See Footnote #4 in HRDC’s *Updated comment on the inclusion of prisoner populations in the Environmental Protection Agency’s EJ 2020 Action Agenda*, attached to this letter.

⁵ While the lead concern listed focuses on childhood blood levels, there is also crossover here, as learning impacts associated with lead exposure have been documented as a factor in the school-to-prison pipeline which typically occurs in overburdened communities. The following article addresses this concern using Flint, MI as an example: <http://thinkprogress.org/justice/2016/01/22/3741585/flint-juvenile-justice-catastrophe/>

EJSCREEN tool that assist in identifying prisoner populations, as well as other similarly unique demographics which the Census Bureau's Annual Community Survey (ACS) has been incorporating into its reports over the past decade.

We have decided to assist the EPA in achieving its goal of increased public input on EJ matters impacting prisoner populations by suggesting that organizations and individuals make use of the following resources described in the *Draft EJ 2020 Action Agenda*.

EPA's existing citizens' concerns reporting system, using this link:
<https://www.epa.gov/enforcement/report-environmental-violations>

EPA's External Compliance and Complaints Program under Title VI, using this link:
<https://www.epa.gov/ocr/external-compliance-and-complaints-program-title-vi>

Additionally, through the suggestion of EPA staff, we are also encouraging the public to contact the DOJ, as an agency member of the EJ IWG, using this link:
<http://ojp.gov/about/ocr/complaint.htm>

In closing, we encourage the EPA not to abdicate its responsibility to prisoners with respect to enforcing environmental laws and providing guidance on civil rights issues that relate to environmental justice. We hope these comments are useful and we look forward to your action on these urgent environmental injustices that imprisoned populations are facing.


Signed,

Paul Wright



Director, HRDC
Editor, Prison Legal News
Former Prisoner

David Pellow



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Analyst, Campaign to Fight Toxic Prisons

cc: All EPA Points of Contact for EJ 2020
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Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

July 28, 2016

SENT VIA EMAIL

Charles Lee
Deputy Associate Assistant Administrator for Environmental Justice
USEPA, Office of Environmental Justice (2201-A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Updated comment on the inclusion of prisoner populations in the Environmental Protection Agency's EJ 2020 Action Agenda

Dear Mr. Lee:

The Human Rights Defense Center's (HRDC) Prison Ecology Project and the undersigned organizations and individuals submit the following comment on the Environmental Protection Agency's EJ 2020 Action Agenda.

While it is encouraging to see the EPA attempting to increase the effectiveness of Executive Order 12898 and Title VI of the Civil Rights Act in protecting communities that have been overburdened by industrial pollution, we also find that there is a significant piece missing to the dialogue thus far: recognition of the vast number of prisoners and their families as an extremely and uniquely overburdened population.¹

The need for EJ 2020 comes from the unfortunate reality that many of the environmental permit approvals that have taken place in recent decades, and continue today, fall into a category of poverty discrimination policies which almost exclusively impact poor communities, with a disproportionate impact on poor communities of color. Few industrial sectors exemplify this more clearly than the prison industry.²

¹ HRDC uses the term "prisoner" to refer to people held in prisons, jails, detention facilities, civil commitment centers and other facilities that detain people against their will as punishment or while awaiting court-related proceedings, i.e. trial, sentencing, deportation, etc.

² On July 9, 2015, the Prison Policy Initiative released a new report on prisoner income: "Using an underutilized data set from the Bureau of Justice Statistics, this report provides hard numbers on the low incomes of incarcerated men and women from before they were locked up... The American prison system is bursting at the seams with people who have been shut out of the economy and who had neither a quality education nor access to good jobs. We found that, in 2014 dollars, incarcerated people had a median annual income of \$19,185 prior to their incarceration, which is 41% less than non-incarcerated people of similar ages." See: www.prisonpolicy.org/reports/income.html

A recent report from the Prison Policy Initiative shows that, according to the U.S. Census, blacks are incarcerated at a rate five times that of whites, and Hispanics/Latinos are nearly twice as likely to be incarcerated as whites. It goes further to illustrate that white people are underrepresented in every one of the 50 states' prison populations, whereas black, Hispanic/Latino and Native Americans are consistently overrepresented in every state.³

There are approximately 2.3 million people incarcerated in prisons, jails, immigration detention centers and other correctional facilities in the United States; if all of those prisoners were housed in one location, it would constitute the fourth-largest city in the nation with a population greater than that of Houston, Texas.⁴

If we can recognize there is a problem with forcing people to live in close proximity to toxic and hazardous environmental conditions, then why are we ignoring prisoners who are forced to live *inside* detention facilities impacted by such conditions?

We realize that the federal government's responsibilities are divided up among multiple agencies, with the EPA dealing primarily in issues related to ambient pollution. As such, some of the issues addressed below may be outside the EPA's immediate jurisdiction, but we understand the EPA to be leading the Interagency Working Group on Environmental Justice and feel that you will be able to best discern which agencies are best positioned to address the unique circumstances of prisoner populations.⁵

While we cannot speak to the knowledge of all federal agencies, we believe that both the EPA and the Department of Justice (DOJ) are well informed about the environmental impact of mass incarceration on poor communities in general and poor communities of color in particular, and that this impact affects both those imprisoned in detention facilities and those who are employed in or live near them.⁶

While prisons themselves are sources of outdoor pollution, e.g. particulates from outdated prison boilers, discharges of untreated or inadequately treated sewage, etc., which affect surrounding communities that also often fit the criteria of EJ communities, that matter is not what we are addressing in this particular comment.

³ "Breaking Down Mass Incarceration in the 2010 Census: State-by-State Incarceration Rates by Race/Ethnicity" by Leah Sakala, May 28, 2014. Source: <http://www.prisonpolicy.org/reports/rates.html>

⁴ Source: <http://www.city-data.com/top1.html>

⁵ For example, the EPA has a Memorandum of Understanding (MOU) with OSHA: https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_id=238&p_table=mou

This presumably takes the Department of Labor's "Environmental Justice Strategy" into consideration: <http://www.dol.gov/asp/ej>. We found no language addressing environmental safety for the prisoner workforce, and no comparable MOU with the DOJ.

⁶ In 2007, under an agreement with the EPA, the U.S. Department of Justice, Bureau of Prisons voluntarily audited 16 of its facilities in Maryland, Pennsylvania, Virginia and West Virginia to see if they were meeting regulations for controlling air and water pollution, hazardous waste and other environmental risks. These audits did not appear to include any EJ component that acknowledged the demographic of prisoners. Source: <https://yosemite.epa.gov/opa/admpress.nsf/90829d899627a1d98525735900400c2b/ac0e8764a666f41685257323006756ab!opendocument>

The intention of this comment is to provide background on how prisoners are excluded from environmental justice protections, both in the permitting of prisons and the permitting of other industrial facilities operating in proximity to prisons. We have also provided a dozen examples of how and where this has manifested in various regions throughout the country.

Background on the EPA and Prisons

Beginning in 1999, the Office of Enforcement, Compliance, and Environmental Justice (OECEJ) within EPA Region III conducted what they called a “prison initiative.” Although this initiative has not been very active in conducting inspections since about 2011, over the course of a decade EPA Region III conducted multiple investigations of conditions in prisons which resulted in a broad spectrum of enforcement actions.⁷ This initiative is well-documented through articles and press releases published online and in printed publications such as the *National Environmental Enforcement Journal*.⁸

Since January 2015, HRDC’s Prison Ecology Project has been conducting extensive research, public records requests, interviews and reviews of Environmental Impact Statements and Environmental Assessments to understand how environmental justice criteria has been applied to prisoner populations, given the overwhelming evidence that prisoners are disproportionately people of color and *almost entirely* low-income, regardless of race. We are disappointed to report that we have seen no information pointing to any intention of the EPA to recognize the population of people in prison, despite the fact that they constitute the most vulnerable and overburdened demographic of citizens in the country.

In an interview conducted by the Prison Ecology Project on February 5, 2015, EPA Region III representative Donna Heron explained explicitly that environmental justice guidelines have not been applied to prisoners because the EPA uses census data which does not take prisoners into account.

We find this reason to be insufficient. The data exists and could be gathered to allow the EPA to effectively and accurately determine environmental impacts on incarcerated populations. If the EPA’s chosen data happens not to include these populations, the EPA should seek to supplement the data for these missing populations by conducting research on what other data sources should be included to provide the most accurate picture of the populations that will be subject to any environmental impacts, including prisoner populations.⁹

⁷ Until very recently, the activity of Region III’s Prison Initiative was documented online, but it was removed for an unclear, unjustified reason. Some of the information previously posted online can now only be found on the Prison Ecology Project’s website: <http://prisonecology.org>

⁸ In particular, an article written by EPA inspector Garth Conner, titled “An Investigation and Analysis of the Environmental Problems at Prisons,” was published in the May 2003 edition of the *NEE Journal*, addressing the overpopulation of prisons and the industrial facilities operated within them. The article highlighted six separate investigations which all resulted in a broad spectrum of enforcement activity at state, federal and local correctional facilities.

⁹ HRDC is requesting further dialogue with EPA staff on this matter, as the methods used by the EPA to gather population data, and the consistency of those methods, are currently unclear.

We also found that prison-related permitting has often attempted to claim a Finding of No Significant Impact (FONSI) in permitting, or worse, has alleged “categorical exclusions” that keep these plans off the radar of public input.¹⁰ We feel that when plans are being made that involve the incarceration of hundreds or thousands of low-income people, for which there are alternatives to incarcerating in the first place, this must be viewed as a *significant environmental justice impact*.

While the EPA does not seem to have a record of acknowledging prisoner populations that we could locate, we are aware of at least two examples in which other federal entities have acknowledged prisoner populations – the Atomic Safety and Licensing Board (ASLB) and the Department of Energy (DOE).¹¹

The DOJ, BOP and Environmental Justice

“During the twenty years since Executive Order 12898 was issued, there have been significant accomplishments by community leaders, Federal, state, local and tribal governments, and others to advance this important work. Yet there is more work to be done. Low-income, minority, and tribal Americans are still disproportionately burdened with pollution, resulting in disproportionate health problems, greater obstacles to economic growth, and a lower quality of life. The Department will continue to play a vital role in making environmental justice a reality for all Americans. We welcome [] input on the Department’s environmental justice activities, strategy, and guidance as we move forward.”

— Stuart F. Delery, Acting Associate Attorney General, from the DOJ’s 2014 Implementation Progress Report on Environmental Justice¹²

The DOJ’s updated guiding document on Environmental Justice Strategy contains much lip-service to viewing EJ as a priority. Section III.C.4, “Specific Component Obligations,” states the Federal Bureau of Prisons (BOP) is “working to ensure that its activities are consistent with the President’s mandate [Executive Order 12898]. For example, the Bureau will include consideration of environmental justice in its environmental impact statements [EIS] under the National Environmental Policy Act [NEPA].”¹³

¹⁰ The following is a 2014 announcement of a FONSI on a 2,000-bed immigrant detention facility, before there was even a site selected. According to the notice, “A geographical restriction associated with the RFP required the facility to be located in one of the following states: Ohio, Michigan, Pennsylvania, Delaware, New Jersey, or New York. See: <http://www.gpo.gov/fdsys/pkg/FR-2014-09-26/html/2014-22616.htm>

¹¹ In 2013, the ASLB found that the Nuclear Regulatory Commission staff had “failed to comply with its . . . obligations” to analyze environmental justice impacts under the National Environmental Policy Act. Source: <http://www.clearwater.org/latest-news/nrc-board-finds-accident-indian-point-nuclear-power-plant-greater-impact-poor-minorities>. Also, from the DOE’s October 2007 Final EIS, p.xxxi (PDF p.33) for the Gilberton coal power project in PA: “The Mahanoy State Correctional Institution is located 2,600 ft east of the proposed main plant site, and its minority inmate population represents an ‘environmental justice’ population to which the adverse impacts of constructing and operating the proposed facilities could be distributed disproportionately.”

¹² Source: <http://www.justice.gov/sites/default/files/ej/pages/attachments/2015/02/11/2014-implementation-progress-report.pdf>

¹³ Source: http://www.justice.gov/sites/default/files/ej/pages/attachments/2014/12/19/doj_ej_strategy.pdf

During the period that EPA conducted its prison initiative in Region III, reports also surfaced about rampant pollution and environmental health problems stemming from industrial facilities in federal prisons nationwide. According to a 2010 report, the Justice Department's Office of the Inspector General cited "numerous violations of health, safety and environmental laws, regulations and (Bureau of Prisons) policies" at certain prison industry programs.¹⁴

However, according to our research, the BOP has *never* taken its prisoner population into consideration under NEPA's EJ guidance. This remained true as of the agency's most recent example of a NEPA-required EIS, which was published for public comment last year for a facility in Letcher County, Kentucky. HRDC prepared a comment which, among other issues, addressed insufficient efforts to address EJ-related concerns.¹⁵ The following is an excerpt from HRDC's comment submitted to the BOP:

Under the Environmental Justice guidelines of NEPA, and according to the EIS, the people most probable to be in BOP custody if this facility was built are very likely to meet the criteria for recognition as Environmental Justice communities. Inside the prison, the racial demographics and income of prisoners can be reasonably projected to populate the facility based on the demographics of other BOP facilities in the country.... The BOP reports 41% percent of its population to be of non-white "minority" status,¹⁶ whereas this racial demographic only makes up approximately 25% of the entire US population.¹⁷ The EIS also says nothing of prisoners' status as an almost entirely low-income population.

The EIS goes on to allege that, essentially, the only EJ impact to the local community (which is a low-income rural region of Appalachia) will be the positive economic benefits associated with the prison. The most obvious oversight here is that the region is known to have extreme water contamination problems due to decades of heavy coal mining operations. In fact, both proposed sites for the anticipated BOP facility are located on abandoned mines.¹⁸

In a review of a 2010 Environmental Assessment (EA) for a state prison being turned over to the BOP for use as a supermax prison in Thomson, Illinois, HRDC found a very similar approach to EJ matters with respect to permitting.¹⁹ This facility, which will be used for extreme isolation units (solitary confinement) when opened, included no mention in its permits of the anticipated demographics which would populate the prison, nor the prison's proximity to a number of coal

¹⁴ Source: <http://www.mcclatchydc.com/2010/11/09/103445/whistleblower-exposed-violations.html>

¹⁵ HRDC's comment on the BOP's Letcher County prison siting proposal can be found here: <https://www.prisonlegalnews.org/news/publications/hrdc-comment-letcher-county-prison-siting-coal-mine-site-march-2015/>

¹⁶ Current BOP statistics do not include specific numbers for Latino or Hispanic prisoners, though they do report 19% of BOP prisoners are citizens of Latin American countries. (A 2010 report stated that 33% are "Hispanic from any race"). Source: http://www.bop.gov/about/statistics/statistics_inmate_race.jsp

¹⁷ U.S. Census Bureau, "The White Population 2010." Source: <http://www.census.gov/prod/cen2010/briefs/c2010br-05.pdf>

¹⁸ The complete EIS can be viewed here: <https://www.prisonlegalnews.org/news/publications/draft-eis-bop-prison-letcher-county-ky-2015/>

¹⁹ The complete Environmental Assessment can be viewed here: <https://www.prisonlegalnews.org/news/publications/environmental-audit-bops-thomson-correctional-center-2010/>

and nuclear plants, as well as a military Superfund site. The EA also avoided taking a hard look at operating such a facility in a flood zone, less than half-a-mile from the Mississippi River, and what unique challenges this could pose to an extremely vulnerable population likely to fit the criteria of an EJ demographic.

The DOJ, as a participating agency in the implementation of EJ strategy, should set a national example as a federal agency by requiring the prisoner populations in the custody of the Bureau of Prisons to be explicitly included in environmental reviews. The regional EPA offices should be coordinating with state and county agencies to do the same.

Below are some additional examples which illustrate the need for recognizing prisoners in environmental justice policy and implementation strategy:

- *New Orleans, Louisiana jail post-Katrina* – This facility became an example of how ill-prepared county-run jails are to handle emergency situations, sparking a report by the ACLU on the terrible reality that unfolded for prisoners after the storm in 2005. “The prisoners inside the Orleans Parish Prison suffered some of the worst horrors of Hurricane Katrina,” said Eric Balaban, a staff attorney for the ACLU’s National Prison Project. “Because society views prisoners as second-class citizens, their stories have largely gone unnoticed and therefore untold.”²⁰
- *Escambia County, Florida jail flood* – In May 2014, another flood-related disaster at a county-run jail on the Gulf Coast illustrated that very little had been done since the lessons of Katrina to address the dangers of incarcerating people in increasingly flood-prone areas. At the Escambia County jail in north Florida, severe rain led to flooding in the basement of the facility that in turn resulted in a gas leak and explosion that killed two prisoners and injured many others.²¹
- *Chemical spill in Charleston, West Virginia* – Another risk to prisoners, who are often located in industrial wastelands where the likelihood of pollution disasters can contaminate the water supply, was demonstrated at the South Central Regional Jail in Charleston after a major coal-processing-related chemical spill occurred in January 2014 when a storage tank ruptured. Prisoners were affected by the water contamination to a greater extent than many other local residents, as they were exposed to the contaminated water for longer periods without proper notice.²²
- *Sing Sing Correctional Facility and the Indian Point nuclear plant in New York* – A 2012 legal proceeding filed by environmental groups in the Hudson Valley of New York during an administrative hearing of the Nuclear Regulatory Commission exposed a completely insufficient emergency evacuation plan for prisoners held at

²⁰ Source: <https://www.aclu.org/news/aclu-report-details-horrors-suffered-orleans-parish-prisoners-wake-hurricane-katrina>

²¹ Source: <http://www.cnn.com/2014/05/01/justice/florida-jail-gas-explosion/index.html>

²² Source: <http://storiesfromsouthcentralwv.com/resources/wv-chemical-spill-background>

Sing Sing Correctional Facility, again illustrating why this population fits the criteria of an EJ demographic.²³

- *Rikers Island jail, New York City* – The Rikers Island jail complex has become notorious for its location on a toxic waste landfill site where lawsuits have been filed against the facility by employees who became ill due to the conditions there.²⁴ As a result of this landfill, there have been pockets of methane gas that rupture under the site reportedly causing foul odors and structural damage. In addition, the lack of an evacuation plan during Hurricane Sandy illustrated the increased potential for flood-related disasters at this facility.²⁵
- *Coal ash dump in LaBelle, Pennsylvania* – Surveys and reports from prisoners at the State Correctional Institute-Fayette have indicated ongoing problems related to sickness among prisoners who are exposed to airborne coal dust. The prison houses over 2,000 prisoners, was built on top of a former coal mine and sits adjacent to a 506-acre coal ash dump owned and operated by Matt Canestrone Contracting (MCC). The dump receives ash waste from coal-fired power plants throughout the region. Before it became a fly ash dump, it was one of the world’s largest coal preparation plants, which left over 40 million tons of coal waste. MCC recently renewed its permit to dump 416,000 tons of coal ash per year at the site. Coal ash contains mercury, lead, arsenic, hexavalent chromium, cadmium and thallium. “In short, coal ash toxins have the potential to injure all of the major organ systems, damage physical health and development, and even contribute to mortality,” according to a report by Physicians for Social Responsibility.²⁶

Thirteen Colorado prisons in contaminated area – Cañon City is the location of nine state and four federal prisons and penitentiaries. It’s also known for longstanding water quality problems related to the mining and processing of uranium. Liquid waste laced with radioactive material and heavy metals was discharged into 11 unlined ponds from 1958–1978. Those were replaced in 1982 with two lined impoundments, and after well tests in Cañon City showed contamination, the Cotter uranium mill site was put on a national list for Superfund cleanups. The wells were up to 360 times the federal health limit. “Vapors can seep up through the soil and get into homes. Then you have not only a drinking issue but an inhalation risk,” EPA spokeswoman Sonya Pennock said. But cleanup isn’t expected until 2027. Additionally, according to Sharon Cunningham of Colorado Citizens Against Toxic Waste (CCAT), there is only one known air monitoring site west of the Cotter site and the prison grounds

²³ Sources: (1) <http://pbadupws.nrc.gov/docs/ML1218/ML12180A648.pdf>; (2) <http://www.clearwater.org/ea/indian-point-campaign/>; (3) <http://publicjustice.net/content/nuclear-regulatory-commission-nuclear-plant-operator-near-nyc-failed-consider-impact-sever-0>

²⁴ Source: <http://www.nydailynews.com/new-york/correction-officers-suit-rikers-island-prison-built-toxic-landfill-causing-cancer-article-1.149319>

²⁵ Source: <http://grist.org/justice/a-sinking-jail-the-environmental-disaster-that-is-rikers-island/>

²⁶ Sources: (1) <https://www.prisonlegalnews.org/news/2015/apr/9/report-highlights-health-concerns-related-coal-ash-dump-pennsylvania-prison>; (2) <http://atavist.ibtimes.com/poison-prisonj653t>

have probably never been sampled for soil contamination from particles being blown into the area.²⁷

- *Valley fever at Avenal and Pleasant Valley State Prisons, California* – Lawsuits and news reports have repeatedly noted that people imprisoned in areas prone to valley fever (resulting from drought, over-development and increased temperatures) are at elevated risk of contracting that disease due to constant exposure and abysmal healthcare options available in prisons.²⁸ Valley fever has claimed the lives of more than 50 prisoners and sickened thousands of others. A federal court ordered the removal of thousands of prisoners from the Avenal State Prison and Pleasant Valley State Prison due to concerns about valley fever. According to a report in *Prison Legal News*, “Medical studies have shown that Filipinos, blacks, Hispanics and people suffering from diabetes and HIV are more susceptible to valley fever, meaning that prisoners in the Central Valley – where 16 of California’s 33 adult prisons are located – are especially vulnerable. For example, blacks comprise just 6.6% of California’s general population but make up 29% of the state’s prison population.” Similar problems involving valley fever have been reported in Arizona, at the Saguaro Correctional Center in Eloy, disproportionately impacting Hawaiian prisoners.²⁹
- *Arsenic in Texas and California prison water supplies* – This is a reoccurring story, where prisons such as Kern Valley State Prison in Delano, California and the Wallace Pack Unit near Navasota, Texas are built in areas with contaminated water supplies and prisoners are forced to endure health impacts due to these environmental conditions. In June 2016, in a lawsuit filed by prisoners, a federal judge in Texas held that arsenic-laden water “violates contemporary standards of decency.”³⁰
- *Lead in Michigan and Wisconsin prison water supplies* – This issue has surfaced in multiple facilities. Prisoners at the Genesee County jail in Michigan received only nine days’ worth of bottled water in late 2015, despite a public health emergency being declared. The jail then stopped providing prisoners with bottled water, forcing them to drink, shower and eat food prepared with Flint city water. Also, the Waupun Correctional Institution in Wisconsin has struggled with high copper and lead levels for years. Officials at the 150-year-old prison say the facility is using water treatment to keep metals from aging lead and copper pipes from leaching into the water, but prisoners report ongoing water problems.³¹

²⁷ Sources: (1) http://www.denverpost.com/ci_17811381; (2) <http://www.wise-uranium.org/umopcc.html>; (3) <http://ccatoxicwaste.org/about.htm/about.html>

²⁸ Source: <http://www.motherjones.com/environment/2013/08/valley-fever-explained>

²⁹ Sources: (1) <https://www.prisonlegalnews.org/news/2015/jun/3/california-tests-state-prisoners-valley-fever-amid-lawsuits-deaths>; (2) <http://www.civilbeat.org/2016/06/a-deadly-dust-is-plaguing-hawaii-prisoners-in-arizona>

³⁰ Source on arsenic: <http://water.epa.gov/lawsregs/rulesregs/sdwa/arsenic/index.cfm>; in Texas: (1) <http://gritsforbreakfast.blogspot.com/2014/09/well-water-contaminated-with-arsenic-at.html>; (2)

<http://www.mysanantonio.com/news/houston-texas/article/Federal-judge-State-must-provide-water-without-8316245.php>; in California: <http://www.watertechnonline.com/articles/arsenic-above-mcl-found-in-prison-water>

³¹ Sources: (1) http://www.mlive.com/news/flint/index.ssf/2016/03/inmates_file_lawsuit_demanding.html; (2) http://host.madison.com/ct/news/local/environment/water-tainted-with-lead-copper-at-two-wisconsin-state-prisons/article_5d05d6d8-fdc7-11e5-b181-a73a6523dfc0.html

- *Prisons built on military Superfund site in California* – The Victorville Federal Correctional Complex was built on the site of one of the Weapons Storage Areas (WSA) for the former George Air Force Base in California, Superfund ID: CA2570024453. The DOD and Air Force did a federal-to-federal transfer of Parcel K to the BOP, a site which contains the former South WSA. The Victorville Federal Correctional Complex (FCC) consists of three facilities: FCI Victorville Medium I, Medium II and United States Penitentiary-Victorville.³² A federal-to-federal transfer was also done with Castle Air Force Base’s WSA, where the United States Penitentiary (USP) in Atwater was built “on a part of the base near where munitions were kept and where investigators from the Air Force Safety Center suspect nuclear weapons were maintained and stored.”³³ These sites are among many other prisons built on or near contaminated military sites.
- *Toxic and hazardous site for immigrant detention in Tacoma, Washington* – The Northwest Detention Center, a privately-operated prison designed to house 1,575 immigrants, is adjacent to a Superfund site known as Project Area #3 of the Tacoma Tar Pits (EPA ID# WAD980726368).³⁴ The location is also in a designated volcanic hazard zone as well as a tsunami flood zone, and lacks sufficient evacuation plans.³⁵
- *Water contamination in prisons nationwide* – A report published by *Prison Legal News* in 2007 highlighted seventeen states, including Alabama, Georgia, Indiana, Massachusetts, Maryland, Ohio and Washington, where water contamination in prisons and their surrounding communities had been reported to cause problems including illness (such as Legionnaire’s Disease) and various environmental violations.³⁶ The report concluded that protections under the Clean Water Act may be difficult for prisoners, as such problems are often complex, requiring water testing and expert witnesses to prove a claim, neither of which are likely to be available to the average *pro se* prisoner litigant. According to author John Dannenberg, “As the environmental movement in the United States grows, it may be time to make the connection to environmental degradation caused by mass imprisonment.”³⁷

³² EPA Victorville Superfund Record of Decision:

<http://www.epa.gov/superfund/sites/rods/fulltext/r0994115.pdf><http://www.epa.gov/superfund/sites/rods/fulltext/r0994115.pdf>

³³ Source: <http://www.georgeafb.info/victorville-federal-correctional-complex/><http://www.georgeafb.info/victorville-federal-correctional-complex/>

³⁴ Source: http://yosemite.epa.gov/r10/nplpad.nsf/0/06e1c0cda0d11fc285256594007559fd!OpenDocument&ExpandSection=-3#_Section1

³⁵ Source: <http://www.documentcloud.org/documents/408880-snewsroom-p12081313010.html#document/p1/a67587>

³⁶ Source: <https://www.prisonlegalnews.org/news/2007/nov/15/prison-drinking-water-and-wastewater-pollution-threaten-environmental-safety-nationwide/>

³⁷ *Id.*

Alternatives to Incarceration

While most of these issues present environmental justice concerns in a traditional sense of the concept, there is another component which is an overarching matter for many if not all of the examples listed above—the existence of alternatives to incarceration.³⁸ The review of alternatives is an integral piece of permitting through NEPA. When considering the value or need for a prison, there should be a *hard look* (as NEPA requires) at the ways in which a reduction in prisoner populations would reduce or eliminate the need for constructing or expanding prisons, and thus reduce or eliminate resulting environmental justice concerns.

Impacts on Children

In addition, we feel that consideration of environmental justice impacts on prisoners should extend to the families of prisoners as well, in particular those with children. Statistics show that one in 28 children has a parent in prison—2.7 million children are growing up in households in which one or more parents are incarcerated. Two-thirds of these parents are incarcerated for nonviolent offenses, primarily drug offenses. One in nine black children has an incarcerated parent, compared to one in 28 Hispanic/Latino children and one in 57 white children.³⁹ Even Sesame Street has taken note of the plight of children with parents in prison.⁴⁰

The absence of parents due to incarceration has a significant impact on the communities where these children live. This factor should be considered among a review of the cumulative impacts that affect environmental justice communities.⁴¹ While a parent's absence may be temporary, negative health impacts resulting from incarceration can continue far beyond a prisoner's release date, causing additional financial and emotional hardships for families with children.

Next Steps

For the above-stated reasons, HRDC and the undersigned organizations and individuals ask the EPA to use the EJ 2020 Action Agenda to ensure that the millions of prisoners in this country receive the protections that are intended under Executive Order 12898 and Title VI of the Civil Rights Act of 1964.

³⁸ Extensive examples of alternatives to incarceration can be found on the following websites: Office of National Drug Control Policy, <https://www.whitehouse.gov/ondcp/alternatives-to-incarceration>; American Psychological Association, <http://www.apa.org/monitor/julaug03/alternatives.aspx>; Families Against Mandatory Minimums (FAMM), <http://famm.org/wp-content/uploads/2013/08/FS-Alternatives-in-a-Nutshell-7.8.pdf>; article from *The Guardian*, <http://www.theguardian.com/commentisfree/2013/jul/04/alternatives-incarceration-prison-numbers>

³⁹ Source: http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2010/CollateralCosts1pdf.pdf

⁴⁰ Source: <http://www.sesamestreet.org/parents/topicsandactivities/toolkits/incarceration#>

⁴¹ The EPA's involvement in the Partnership for Sustainable Communities provides context for the EJ cumulative impacts that we refer to here. "Creating healthy, sustainable, and equitable communities is a priority of the federal government. Environmental Justice plays a key role in an integrated effort that concurrently addresses housing, environment, transportation and health issues." Source: <http://www.epa.gov/oecaerth/environmentaljustice/sustainability/index.html#teamej>

HRDC would like to participate further in the EPA's EJ 2020 Action Agenda, to ensure that prisoners are taken into consideration with respect to environmental justice and impacts on minority and low-income populations. Please contact me to discuss how we may do so. For example, our staff can be available for additional meetings in-person or via conference call, and we can continue to invite participation from other stakeholders and advocates in the prisoners' rights and criminal justice reform community who are interested in this issue.

Thank you for reviewing our concerns; I look forward to further communication on this subject. If you have questions or require additional information, please do not hesitate to contact me.

Sincerely,



Paul Wright
Executive Director, HRDC

cc: All EPA Points of Contact for EJ 2020
Stuart Delery, Acting Associate Attorney General, DOJ
Thomas A. Webber, Chief, Capacity Planning and Construction Branch, BOP
Issac Gaston, Site Selection Specialist, BOP

The following 138 organizations and individuals are signatories to this comment:

Abolitionist Law Center (PA)
Amistad Law Project (PA)
Appalachia Resist! (OH)
Architects / Designers / Planners for Social Responsibility
Asian Pacific Environmental Network
Athens Books to Prisoners (OH)
Bill of Rights Defense Committee – Tacoma (WA)
Black Lives Matter, Kentucky
California Coalition for Women Prisoners
California Families Against Solitary Confinement

California Partnership

California Prison Moratorium Project

Campaign for Youth Justice (DC)

Cascadia Forest Defenders (OR)

Center for Biological Diversity

Center for Earth, Energy & Democracy

Center for Gender & Refugee Studies (CA)

Center for Sustainable Economy

Center for Women's Health and Human Rights (MA)

Civil Liberties Defense Center

Climate Justice Alliance

Climate Justice Project (CA)

Coalition for Prisoners' Rights (NM)

Columbia Legal Services (WA)

Communities United for Restorative Youth Justice

Critical Resistance Los Angeles (CA)

Cross Timbers Earth First! (OK)

CURB (Californians United for a Responsible Budget)

Detention Watch Network

Dignity & Power Now (CA)

Drug Policy Alliance

Earth First! Humboldt (CA)

Earth First! Prison Support Project

EJ Mothers' Safe Air Safe Water Force (AZ)

Ella Baker Center for Human Rights

Enlace Int'l

Environmental Health Coalition (CA)

Environmental Health Research Associates, LLC.

Environmental Justice Advocates - Lewis & Clark Law School (OR)

Everglades Earth First!

Fen Valley Earth First! (MI)

Florida Institutional Legal Services (Project of Florida Legal Services, Inc.)

Florida Justice Institute, Inc

Georgia Detention Watch

George Jackson University

Glacier's Edge Earth First! (IN)

Global Justice Ecology Project

Global Action Research Center (CA)

Got Green? (WA)

Grassroots Leadership (TX)

Hudson River Sloop Clearwater, Inc. (NY)

Hudson Valley Earth First! (NY)

Human Rights Coalition—Fed Up! (PA)

Incarcerated Nation Corp (NY)

International CURE

Jesuit Social Research Institute

Justice for Families

Justice Now

Justice Strategies

Kentucky Student Environmental Coalition

Kentuckians for the Commonwealth

Legal Services for Prisoners with Children

Little Village Environmental Justice Organization (IL)

Longleaf Earth First! (FL)

Maza Tipi Oyate (“Iron House Nation,” Lakota)

Middle Ground Prison Reform

Movement Generation (CA)

NAACP-Lexington, KY Chapter 3097

National Jericho Movement

National Lawyers Guild

National Lawyers Guild - Lewis & Clark Chapter (OR)

National Lawyers Guild Mass Incarceration Committee

National Police Accountability Project

National Religious Campaign Against Torture

Natural Resources Defense Council

New York City Jails Action Coalition

New York Environmental Law and Justice Project

November Coalition

The Nuclear Resister (AZ)

Ohio Student Association

Ohio Valley Environmental Coalition (WV)

Palm Beach County Environmental Coalition (FL)

People's Law Office (IL)

Peoples Justice League (OH)

Power U Center for Social Change (FL)

Prison Books Collective (Chapel Hill, NC)

Prison Law Office (CA)

Prison Policy Initiative

Prison Watch Network

Prisoners' Legal Services (MA)

The Promise of Justice Initiative (LA)

Queer Detainee Empowerment Project

Radical Action for Mountain Peoples Survival (RAMPS)

RAICES (Refugee and Immigrant Center for Education and Legal Services)

Rainforest Action Network

Real Cost of Prisons Project

Rising Tide North America

Roses out of Concrete (KY)

Samidoun Palestinian Prisoner Solidarity Network

San Francisco Bay View National Black Newspaper

Sentencing and Justice Reform Advocacy (CA)

The Sentencing Project

Sin Barras

Showing Up For Racial Justice, Central Kentucky

Solitary Watch

SOL Education (FL)

Southern Center for Human Rights

Southern Poverty Law Center

Stories from South Central (WV)

Support Vegans in the Prison System

Sylvia Rivera Law Project (NY)

Tar Sands Blockade (TX)

Texas Civil Rights Project

Texas Jail Project

TWAC (Trans and Women Action Camp) Cascadia

UC Davis Immigration Law Clinic

Urban Justice Center (NYC)

Urbana-Champaign Independent Media Center

Vermonters for Criminal Justice Reform

Virginia Organizing

Washington Lawyers' Committee for Civil Rights and Urban Affairs (DC)

Women's Council of the CA Chapter of the National Association of Social Workers

Working Narratives (NC)

350 Vermont

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Individuals

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Dr. Adrienne L. Hollis, Esq., Director of Federal Policy, WE ACT for Environmental Justice

Dr. Andrea Smith, co-founder of INCITE! Women of Color Against Violence, and Associate Professor of Media and Cultural Studies, UC Riverside*

Dr. Daniel Faber, Director, Northeastern Environmental Justice Research Collaborative

Dr. Robert Bullard, “Father of Environmental Justice” and Dean of the Barbara Jordan-Mickey Leland School of Public Affairs at Texas Southern University*

Dr. Sylvia Hood Washington, editor-in-chief of the *Environmental Justice Journal*

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