



USET

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*Transmitted Electronically
To ejc_coordinator@cdc.gov*

December 1, 2023

Dr. Mandy Cohen
Director
Centers for Disease Control and Prevention
Department of Health and Human Services
395 E St. SW
Washington, DC 20024

Dr. Aaron Bernstein
Director
Agency for Toxic Substances and Disease
Registry
Department of Health and Human Services
4770 Buford Hwy
Atlanta, GA 30341

Dear Director Cohen and Director Bernstein,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Centers for Disease Control and Prevention/Agency for Toxic Substances and Disease Registry (CDC/ATSDR) request for comments on its Environmental Justice Index (EJI) tool. Announced in August 2022, the CDC/ATSDR EJI tool was intended to build off existing environmental justice indexes to provide a single environmental justice score for local communities across the United States (U.S.) so public health officials could identify and map areas most at risk for the health impacts of environmental burden. We appreciate CDC/ATSDR's willingness to incorporate Indian Country, Tribal communities, and Indigenous Knowledge and values into the EJI tool. However, USET SPF has several concerns and issues with the current functionalities of the EJI tool as it pertains to Tribal Nations. It is evidently apparent that this tool was developed with state and local governments in mind, as it does not capture and display Tribal Nation data appropriately. Our comments expand upon these concerns and issues and provide certain recommendations to CDC/ATSDR on how to develop an EJI tool that accurately and appropriately displays data for Tribal Nations in a manner that recognizes our sovereign authority.

USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and

^[1] USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe–Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mi'kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

The Current CDC/ATSDR EJI Tool Does Not Appropriately Recognize the Sovereign Status of Tribal Nations

At the outset of launching the EJI tool, there is no option to view data for a specific Tribal Nation. The EJI tool provides only two drop-down tabs to select—one for states, and the other for counties. USET SPF has also discerned that among the data sources used to populate the EJI tool Census tract data, CDC/ATSDR is relying on Census demographic and socioeconomic data for “minority” populations from the American Community Survey for the years 2015 through 2019. The EJI tool implies that Tribal Nations should use the tool as a “minority” population rather than as sovereigns with separate governance and authorities distinct from state and local governments. Since the jurisdictional boundaries of Tribal Nations do not conform to Census tracts it would be difficult for Tribal Nations, among others, to conduct analyses of environmental threats to our public health and natural ecosystems without requiring complicated extraction of data from the state and county level datasets. There are also further complications as to how a Tribal Nation would input such data and analyses into the EJI tool ranking system. Further, the EJI tool [Resources](#) page, including the Guidance Documents, do not include any references to Tribal Nations. This issue is further reinforced when reviewing the EJI [FAQ](#) page, which focuses on providing information for individuals, community-based organizations, researchers, scientists, and public health officials at local, state, and federal levels. It is glaringly apparent that the EJI tool architecture and its informational resources require a comprehensive overhaul for the inclusion and accurate representation of Tribal Nations.

Lack of Accurate Representation of Tribal Nation Jurisdictional Boundaries and a Searchable Option to View Specific Tribal Nations

The use of Census data and tracts does not accurately capture our jurisdictional boundaries or reflect the actual social and economic demographics of our lands and citizens. Since Census tracts can encompass lands within and outside our jurisdictional boundaries, the use and reliance on them in the EJI tool makes it difficult, if not impossible, to discern specific Tribal Nation data. This is problematic both for Tribal Nations to effectively utilize the EJI tool as well as inform policymakers, public health officials, and others regarding the environmental and public health issues our communities and lands are experiencing.

One recommendation USET SPF offers is that the CDC/ATSDR carve out these Census tracts to reflect the actual jurisdictional boundaries of sovereign Tribal Nations. On May 25, 2022, USET SPF provided [comments](#) to the Council on Environmental Quality (CEQ) to provide recommendations on how to improve the beta version of its [Climate and Economic Justice Screening tool](#) (CEJS tool) to support the Justice40 Initiative. The Justice40 Initiative aims to provide 40 percent of funding from federal services and programs to target areas such as climate change, clean energy and energy efficiency, clean transit, affordable and sustainable housing, training and workforce development, remediation and reduction of legacy pollution, and the development of critical clean water infrastructure. However, the beta version of the CEJS tool had a similar issue the CDC/ATSDR EJI tool is now contending with – overt reliance on Census tract data. USET SPF recommended that Tribal Nations should be represented on the CEJS tool geospatial online map since Census tracts do not accurately capture our jurisdictional boundaries or reflect the actual social and economic demographics of our lands and citizens. As a result, CEQ revised the CEJS tool to show an accurate representation of Tribal Nation jurisdictional boundaries by carving out Census tracts to conform to our jurisdictional boundaries. However, while Tribal Nations are “searchable” (some more than others), there is no drop down tab option to immediately view a specific Tribal Nation in the CEJS tool.

Regarding the EJI tool, we strongly recommend that the CDC/ATSDR carve out Census tracts to conform with Tribal Nation jurisdictional boundaries and include a drop-down tab to search for a specific Tribal Nation. To accomplish this task, geospatial shapefiles of our Tribal Nation jurisdictional boundaries can be obtained from the Department of the Interior (DOI), Bureau of Indian Affairs. Additionally, USET SPF recommends that the drop-down tab to search for a specific Tribal Nation should rely on DOI's "List of Federally Recognized Tribes" that is published annually in the Federal Register. It is important to note, however, that if the CDC/ATSDR carves out Census tracts to conform with our jurisdictional boundaries, then the data represented within the carved Census tract data for the EJI tool will still require the CDC/ATSDR to reevaluate and revise how it collects and publishes data on the EJI tool to represent data within our boundaries. The CDC/ATSDR must move away from its current use and reliance on "minority" population demographic and socioeconomic data to ensure that the carved Census tracts conforming to our Tribal Nation boundaries accurately capture and represent Tribal Nation-specific data. This will assist EJI tool users in viewing and conducting accurate data extraction and analysis on Tribal Nations. This is especially important since this data will be relied upon to assist public health officials and policymakers to identify and respond to environmental and social factors affecting the environmental and public health and well-being of our Tribal Nations.

Further, as expressed in our May 2022 comments to CEQ, USET SPF recommended that once Tribal Nation jurisdictional boundaries were recognized on the CEJS tool then we should automatically be recognized as eligible for federal funds under the Justice40 Initiative. CEQ agreed with this recommendation and designated all Tribal Nations and our lands as eligible for funds under the Justice40 Initiative. Once Tribal Nations are recognized on the CDC/ATSDR EJI tool then the same must occur as a matter of upholding trust and treaty obligations to Tribal Nations. Tribal Nations have had to contend with environmental and public health threats and issues since first contact with European nations. This has been the result of political and social ideologies, such as the execution of Manifest Destiny and the blatant exploitation of our lands and people to spur U.S. industrial and commercial development. Aside from the solemn moral obligations the U.S. has to address these historic and ongoing violations, the federal government has fundamental trust and treaty obligations to provide the necessary resources to Tribal Nations to address these issues. As such, we strongly recommend that the CDC/ATSDR refine the EJI tool to prioritize federal funds to Tribal Nations to improve public health and support environmental justice for our communities.

Lack of Incorporation of Indigenous Knowledge and Questions about How Such Knowledge Would Be Protected and Utilized

As mentioned throughout these comments, since the inclusion of Tribal Nations is jeopardized due to the reliance on Census tract data, the EJI tool cannot account for the incorporation of Indigenous Knowledge in its Overall Environmental Justice Ranking methodology. This methodology is designed to produce a numerical score for areas as an indicator to allow for identification and prioritization of additional resources to address environmental burden or social determinants of health. Since there is no discernable way to identify Tribal Nations and populations directly, Tribal Nations and our populations are disadvantaged in the EJI tool generated ranking system and cannot be appropriately prioritized for access to federal resources to address environmental burdens. Further, if Indigenous Knowledge were to be incorporated into the EJI tool it creates fundamental questions regarding how this knowledge would be protected as our intellectual property? Additionally, how would Indigenous Knowledge contribute to the EJI tool indicators and the Overall Environmental Justice Ranking methodology? How would Indigenous Knowledge be defined to empower Tribal Nations to conduct our own meaningful analyses of environmental and public health burdens? These are legitimate and serious concerns and questions that necessitate further discussion and consultation with Tribal Nations and our recognized experts.

Conclusion

The compilation and use of data to appropriately prioritize and direct federal resources to address environmental justice and public health concerns is critically important. However, the current version of the EJI tool does not support Tribal Nation efforts to identify these issues, impacting how we are prioritized for federal funds with which to address them. Regardless, Tribal Nations should automatically have prioritized consideration to receive these funds as a matter of upholding the federal government's solemn trust and treaty obligations. While we appreciate the CDC/ATSDR's consideration of Tribal Nations by seeking our input on how to improve the EJI tool, it is apparent that further discussion and consultation is required. For instance, there are Tribal Nation-specific indicators that would benefit from being added to the EJI tool, such as including lead in drinking water in the indicator of Toxic Site. Tribal Nations also have to contend with addressing other environmental issues like invasive species migration and how they threaten our cultural and subsistence resources. For these reasons, the EJI tool requires a comprehensive overhaul to include Tribal Nations and reflect our environmental and public health concerns. We look forward to continued dialogue on these important issues and strongly recommend that CDC/ATSDR pursue consultation with Tribal Nations on these important matters. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,



Chief Kirk Francis
President



Kitcki A. Carroll
Executive Director