

# **EPA Region 6 Regional Implementation Plan To Promote Meaningful Engagement of Overburdened Communities in Permitting Activities**

*This document identifies internal recommended procedures for EPA employees who are staff or managers developing or issuing a permit. This document is not a rule or regulation. This plan does not change or substitute for any law, regulation, or any other legally binding requirement and is not legally enforceable. It does not impose any legally binding requirements.*

This Implementation Plan lays out the actions Region 6 can take when issuing EPA permits to promote greater participation in the permitting process by communities that have historically been underrepresented in that process. This plan is a part of EPA's continued efforts under Plan EJ 2014 to integrate environmental justice (EJ) into all of its programs.

## **1) PRIORITY PERMITS**

Region 6 will prioritize enhanced public involvement opportunities for EPA-issued permits that may involve activities with significant public health or environmental impacts on overburdened communities. The term "overburdened" describes minority, low-income, tribal and indigenous populations or communities in the United States that potentially experience disproportionate environmental harms and risks due to exposures or cumulative impacts or greater vulnerability to environmental hazards. This increased vulnerability may be attributable to an accumulation of negative and lack of positive environmental, health, economic, or social conditions within these populations or communities.

This includes the following types of EPA issued permits:

- a) Construction permits under the Clean Air Act, especially new major sources (or major modifications of sources) of criteria pollutants.** The types of priority permits for enhanced public participation are:
  - i) Prevention of Significant deterioration (PSD) permits on Tribal Lands. Tribal consultation will also be conducted for PSD permits that may affect Tribes.
  - ii) PSD permits for offshore activities. These are for Non Green House Gas (GHG) pollutants.
  
- b) Significant Underground Injection Control (UIC) Program permits under the Safe Drinking Water Act.** The types of priority permits for enhanced public participation are:
  - i) Class 1 injection well permitting actions on Indian Lands in the Region.
  
- c) National Pollutant Discharge Elimination System (NPDES) permits.** This includes permits in New Mexico. The types of priority permits for enhanced participation are:

- i) Major Industrial NPDES permits (as defined in 40 CFR 122.2) for (1) new sources or new dischargers, or (2) existing sources with major modifications, including, but not limited to, a new outfall, a new or changed process that results in the discharge of new pollutants, or an increase in production that results in an increased discharge of pollutants.
  - ii) Non-major industrial NPDES permits (as defined in 40 CFR 122.2) under the Clean Water Act for (1) new sources or new dischargers, or (2) existing sources with major modifications, including, but not limited to, a new outfall, a new or changed process that results in the discharge of new pollutants, or an increase in production that results in an increased discharge of pollutants. The types of priority permits for enhanced public participation are:
    - (1) Individual permits for facilities discharging the pollutant of concern at a level of significance to impaired water bodies that have 60+ points on the major-minor NPDES permit rating worksheet.
- d) Resource Conservation and Recovery Act (RCRA) permits associated with combustion facilities or modifications to existing RCRA permits that address new treatment processes or corrective action cleanups involving potential off-site impacts.**
- i) The Region does not currently issue RCRA permits meeting the definition above.

## **2) APPROACH TO EJ SCREENING AND ADDITIONAL ANALYSIS**

EJ screening is the use of available environmental and demographic information to highlight locations where additional review (e.g., information collection or analysis) may be warranted. EJ screening results in a preliminary characterization of potential impacts on the population, including low-income and/or minority populations, and potential environmental and health impacts that may fall disproportionately on them.

### **EJSCREEN**

EPA is now beta-testing a nationally consistent screening tool called EJSCREEN. EJSCREEN is a geospatial tool that contains demographic and environmental data for the United States at the census block group level. The environmental factors include: (1) PM 2.5 Level in Air; (2) Ozone Level in Air; (3) Diesel Particulate Matter Level in Air; (4) Air Toxics Cancer Risk; (5) Air Toxics Neurological Hazard Index; (6) Air Toxics Respiratory Hazard Index; (7) Traffic Proximity and Volume; (8) Lead Paint Indicator (% pre-1960); (9) Risk Management Plan Facility Proximity; (10) Superfund Site Proximity; (11) Treatment Storage Disposal Facility Proximity; and (12) Major Direct Dischargers to Water Proximity. In addition to environmental factors, the tool also uses

two primary demographic factors, specifically, percentage of the population that is minority and percentage of population that is and low-income. EJSCREEN also includes information about linguistic isolation, population over age 64, population under age 5, and population with less than a high school education. EJSCREEN also creates indexes, which combine each environmental indicator with the two primary demographic factors, to provide a measure of how much each block group contributes to disparity between demographic groups nationwide.

Region 6 will use EJSCREEN and other readily available sources of information, including known community concerns, to perform initial EJ screening of permits. As a pre-decisional tool, EJSCREEN will be used to highlight candidates for additional review where enhanced outreach may be warranted. Additional review includes consideration of additional available information and data unique to an area and that may capture environmental and demographic factors more holistically. EJSCREEN is not designed to conclusively determine whether or not disproportionately high and adverse impacts in fact exist.

In cases where EJSCREEN is not appropriate for use in screening because the relevant data were not available for the area, the region will complete a similar screening by reviewing available demographic and environmental data. EPA expects that in most circumstances EJSCREEN will be the appropriate tool for initial screening.

### **Region 6 Procedures:**

The Region will screen priority permits, as described in Section 1, for which the program intends to issue a draft permit that year. The Office of Environmental Justice and Tribal Affairs (OEJTA) will provide information on the affected community, where possible. GIS maps should be created showing the location, type of permit, name, and permit number. Based on the results of the initial screen, Region 6 may collect additional information about the affected community and the nature of the potential environmental impacts due to the permit. The permitting office will provide OEJTA and the Office of External Affairs (OEA) information about the potential environmental impacts due to the discharges or emissions covered by the permit.

If significant EJ concerns related to the permits are identified, the region may implement enhanced public participation. To the extent resources are available; the potential for implementing enhanced public participation activities for permits with significant EJ concerns will be prioritized within each permitting program. The EJ Plan 2014 Legal Tools document will be consulted in the process.

For permits issued on or near Indian Land that may impact Tribal members, the permitting program may implement enhanced public participation which is separate from activities related to tribal consultation.

### 3) ROLES OF REGIONAL OFFICES AND PROGRAMS

In Region 6 the potentially impacted permitting programs include the Air Permitting Program, RCRA Permitting and in the Water Program, EPA issued permits under the NPDES and the UIC Programs. The permitting offices will identify upcoming priority permits for promoting greater public involvement. When identifying priority permits, the programs will also take into account permits that the community has identified as a priority; to the extent such information is available.

After the initial EJ screening is completed, a coordination meeting will involve the permitting program, the OEJTA and the OEA. During this meeting an approach for enhanced public participation for each permit will be discussed. The permitting program will make decisions about priority permits and enhanced public participation based on resources.

### 4) ENHANCED OUTREACH ACTIVITIES: ROLES AND RESPONSIBILITIES

For each permit that is prioritized through the process outlined above, the region will develop an approach to enhanced outreach that is appropriate for each permit.

The following provides activities that may be considered for enhanced outreach at key junctures in the permitting process to promote greater involvement of overburdened communities. The list of activities is not meant to be comprehensive or exhaustive. Different situations will justify different responses. In addition to enhanced public outreach efforts, other methods of addressing and incorporating environmental justice concerns in the agency's permitting actions will be considered including, but not limited to, available legal tools to achieve environmental justice as set forth in Plan EJ 2014 Legal Tools.

**i. Planning & Gathering Information:**

- Explore ways to reach out to the affected community in coordination with relevant EPA staff, including permit writers, EJ coordinators, public affairs staff, the press office, and EPA's Conflict Prevention & Resolution Center. *(Lead: OEA, permitting program)*
- Evaluate the appropriate length of the public comment period. *(Lead: permitting program)*
- Consider holding information meetings for the public in addition to formal public comment sessions. *(Lead: permitting program with support from OEJTA and OEA)*

**ii. Coordinating within EPA:**

- For applicants with multiple EPA issued priority permits, inform EPA permit writers from other offices in the region that your office has received a permit application from the applicant. *(Lead: OEJTA with support from the permitting program)*

**iii. Communicating with the Community:**

- Designate EPA point(s) of contact that the community can get in touch with to discuss environmental justice concerns or questions of a technical nature about the permit application. *(Lead: permitting program and OEJTA)*
- Use informational materials to explain the permitting process. *(Lead: permitting program)*
- Use plain language when communicating with the public. *(Lead: permitting program, OEJTA and OEA)*
- Use communication techniques the community values, such as direct mailings, posters, articles in local newspapers, and emails to list serves. *(Lead: permitting program with support from OEJTA and OEA)*
- Make key documents on the proposed project readily accessible to the community, using a variety of media tools (paper copies, online, etc.), when appropriate. *(Lead: permitting program with support from OEJTA and OEA)*
- Hold public meetings at times and places in the community best designed to afford the public a meaningful chance to attend. *(Lead: permitting program with support from OEJTA and OEA)*
- After the permit has been issued, make available to the community a summary of EPA's comment responses and provide information on where the community can find the entire comment response document. *(Lead: permitting program)*

**iv. Communicating with the Permit Applicant:**

- Encourage the permit applicant to provide EPA with a plain-language description of its proposed project or permit application. *(Lead: permitting program, OEJTA and OEA)*
- Encourage the permit applicant to consult EPA guidance on environmental justice and other resources developed under Plan EJ 2014, including the Promising Practices for Permit Applicants Seeking EPA-Issued Permits: Ways to Engage Communities at the Fence-Line. *(Lead: permitting program)*
- Encourage the permit applicant to provide documents in multiple languages as needed for communities with multi-lingual populations (including interpreters at public meetings). *(Lead: permitting program)*
- Encourage the permit applicant to take the lead on enhanced public participation. *(Lead: permitting program)*

## **5) OUTREACH TO TRIBAL COMMUNITIES AND TRIBAL CONSULTATION**

Identifying communities with environmental justice concerns will, by necessity, often include Tribal communities within Region 6. Section 6-606, of Executive Order 12898, Federal Actions for Addressing Environmental Justice in Minority Populations and Low-Income Populations, notes that each federal agency's responsibility set forth under the order shall apply equally to Native American programs. EPA recognizes that the U.S. government has a unique legal relationship with federally recognized Tribes and works with Tribes on a government to

government basis. Thus, in accordance with EPA Tribal Consultation and Coordination Policy with Indian Tribes (May 4, 2011), EPA will consult with Tribes on permitting activities identified that may affect Tribes. (Note that permitting activities that may affect Tribes do not necessarily need to be located on or near Tribal lands. The nature of activity and type of permit will dictate the extent of analysis needed to determine whether a Tribe may be affected.)

Where communities are identified that are not Tribal lands but nevertheless have a significant Native American population, outreach may be conducted as set forth in Section 4.

In some cases, both Tribal consultation and enhanced outreach may need to be conducted where both a Tribe may be affected and overburdened communities and environmental justice concerns are identified during the screening process.

## **6) PROGRESS REVIEW**

Region 6 will periodically review progress and share lessons learned with other regions and headquarters in carrying out the enhanced outreach provided in this plan.