

EPA Region 2 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.

To implement Administrator Lisa P. Jackson's priority on environmental justice, the EPA released the "Proposed Regional Actions to Promote Public Participation in the Permitting Process," a set of agency-wide guidelines for development of regional implementation plans aimed at enhancing public participation in permitting actions involving overburdened communities. EPA Region 2 is committed to addressing environmental justice (EJ) concerns in these communities. This document contains the Region's plan for ensuring stakeholders in overburdened communities are given a full and fair opportunity to participate in EPA's permitting process where the action could pose significant impacts to their health and environment. The term "overburdened" describes minority, low-income, tribal and indigenous populations or communities in the United States that potentially experience disproportionately high and adverse 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.

1) Priority permits

EPA Region 2 will screen applications falling in the categories described in this section for permitting projects that may involve activities with significant public health or environmental impacts on already overburdened communities and prioritize them for our enhanced public participation protocols.

Applicability

In accordance with EPA's agency-wide guidance, Region 2 defines the following EPA-issued permit categories as "priority permits" for environmental justice purposes and will conduct the Region's enhanced outreach protocol in reviewing them.

- Prevention of Significant Deterioration (PSD) Pre-construction permits under the Clean Air Act (CAA), for new major sources and major modifications of existing sources of criteria pollutants;
- Significant Underground Injection Control (UIC) Program permits under the Safe Drinking Water Act (SDWA);
- "Major" industrial National Pollutant Discharge Elimination System (NPDES) permits (as defined in 40 CFR 122.2) under the Clean Water Act (CWA) that are for:
 - New sources or new dischargers, or
 - 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;
- "Non-Major" industrial NPDES permits (as defined in 40 CFR 122.2) under the CWA that are identified by EPA on a national or regional basis as a focus area, for:

- New sources or new dischargers, or
- 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;
- Resource Conservation and Recovery Act (RCRA) permits associated with new combustion facilities or modifications to existing RCRA permits that address new treatment processes or corrective action cleanups involving potential off-site impacts;

In addition, EPA Region 2 will consider prioritizing for enhanced public involvement activities for both new and renewal permit applications where the Region has information relevant to the permit about which a community has raised environmental justice concerns and the Region has other information relating to EJ concerns related to the permit. The outreach activities Region 2 will undertake as part of these permitting processes will be determined based on the type of action, EPA’s statutory authority and the prioritization scheme herein outlined.

Regional Prioritization Scheme

Because each of our permitting programs is unique in its regulatory obligations, Region 2 will tailor its specific outreach activities to the requirements of the lead program. The Region will use the following organizational scheme to prioritize its permitting actions. The specific set of public participation and outreach measures associated with each type of action are addressed in the section entitled “Enhanced Outreach Activities” (see below).

Priority permits shall be those that the Division Director, under delegation from the Regional Administrator, finds to be the subject of **wide-spread public interest** or ones that raise major issues of **environmental or public health** concern; such permits may include the following:

- PSD permit applications under the CAA
- RCRA permit applications.
- “Major” industrial NPDES permit applications as described above.
- “Non-Major” industrial NPDES permit applications as described above.
- Significant UIC permit applications under the SWDA.

In addition, the PSD Section will conduct enhanced review on PSD permit applications under the Clean Air Act for which there are limited public interest and some environmental or public health concern.

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.

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 2 will use EJSCREEN or 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 as well as data unique to an area that may capture environmental and demographic factors more holistically. EJSCREEN is not designed to determine conclusively 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 are not available for the area, such as is currently the case for Puerto Rico and the Virgin Islands, the regional offices may complete a similar screening by reviewing available demographic and environmental data. EPA expects that EJSCREEN will not be the appropriate tool for screening in other limited circumstances.

3) Roles of regional offices and programs

Applicable Regional Programs

Region 2 permitting programs to which this EJ Permitting Implementation Plan will apply:

- a) Clean Air and Sustainability Division's (CASD) Air Programs Branch (Permitting Section) and Hazardous Waste Programs Branch,
- b) Caribbean Environmental Protection Division's (CEPD) Multi Media Permitting and Compliance Branch (Air Programs Team) and Response & Remediation Branch (RCRA Team),
- c) CEPD's Municipal Water Programs Branch and Multimedia Branch,
- d) Clean Water Division's (CWD) Clean Water Regulatory Branch (NPDES Section),
- e) Division of Enforcement and Compliance Assistance's (DECA) Water Compliance Branch (Groundwater Compliance Section), and
- f) Emergency and Remedial Response Division (ERRD – Branches and/or Sections with RCRA permitting responsibilities).

Roles and Responsibilities

The following section defines the roles and responsibilities of programs with functions involved in the permitting process. The Region will develop a template permit communication plan and contact list, both of which will be implemented as part of the permitting process. In addition to coordinating communication with EPA Region 2, the programs will coordinate with state, local, and/or tribal authorities in appropriate circumstances. To the extent tribal interests are associated with a priority permit, the region will conduct tribal consultation as a part of any enhanced outreach, consistent with the agency's tribal consultation policy.

Lead Programs

The Program with statutory authority to review the permit application will have primary responsibility and serve as the *Lead Program* for the action. The Lead Program will have the following responsibilities:

- a) Determine whether the application involves a priority permit (e.g., whether the application involves a permit falling into one of the stated categories and involves an overburdened community as described above).
- b) Identify potential EJ concerns using EJSCREEN or an equivalent tool.
- c) Communicate permit action to relevant Support Programs and identify necessary resources
- d) Identify a single program point of contact (POC) for the permit action; this person will serve as the technical POC for purposes of internal Agency communications.
- e) Develop outreach and communication plans including identifying resources (e.g., translation needs and materials) necessary to execute the plan.
- f) Work with Support Programs to decide on the single EPA POC for the Region for purposes of communications with external stakeholders – the EPA contact will adhere to the permit communication plan in responding to public inquiries about the permit action.
- g) Conduct all technical review of and respond to communications involving technical issues around the action.
- h) Coordinate with other Region 2 and/or Headquarters programs with permitting and/or enforcement responsibilities in the geographic location relevant to the permit application.
- i) Resolve all regulatory issues, including, but not limited to, necessity of a hearing, venue and other logistical needs associated with conducting a public hearing/meeting, sufficiency of public notification, correspondence regarding the action, length of public comment period, availability of translation, compiling the Record, etc.

Support Programs

Programs with potential secondary responsibilities in permit actions will provide support to the Lead Program as requested. These duties may include:

- a) Assist the Lead Program to determine whether the application involves a priority permit.
- b) EJSCREEN analysis – Office of the Regional Administrator-Office of Strategic Programs (ORA-OSP) will assist Lead Program in conducting the analysis.
- c) Assist the Lead Program in meeting the action’s communication needs – the specific activities involved will be collaboratively decided by the Lead and identified Support Programs; such support may include, for example:
 - o Public Affairs Division (PAD) may assist the Lead Program in meeting public communication needs.
 - o ORC may assist in permit review and outreach activities.
 - o ORA-OSP and other Support Programs may assist the Lead Program in notifying EJ stakeholders in the impacted community.
 - o The EPA contact may be in a Support Program.
- d) Assist the Lead Program in implementing the outreach plan as required; this could include
 - o Securing resources for translation.
 - o Drafting press releases.
 - o Reviewing action fact sheets and other written material.
- e) Work with the Lead Program to develop an outreach plan including resources (e.g., translation needs and documents) necessary for execution.

4) Enhanced Outreach Activities

Region 2 strives to ensure enhanced public participation in all our Priority Permits. However, each permit action is unique for a variety of reasons, including, for example, the nature of the facility to be permitted, the business operator involved, the communities it impacts, etc. For this reason, the Region will tailor its outreach as much as possible to address the conditions surrounding the permit. The following section outlines the minimum actions the Region will undertake as part of enhanced public participation outreach efforts. Note the level of outreach is commensurate with the priority level of the permit action.

Priority PSD Pre-Construction Permits Under the Clean Air Act

Region 2 issues two types of PSD permits: a) permits involving wide-spread public interest or major issues of environmental or public health concern and b) permits involving limited public interest or some issues of environmental or public health concern. The actions the Region will take to conduct enhanced public outreach for each type are here outlined.

a. Permits involving wide-spread public interest or major issues of environmental or public health concern

Planning & Gathering Information:

- **Identify priority permits.** The Permitting Section in the Air Programs Branch will use EJSCREEN, or a comparable tool, and include in the analysis information from the impacted community in order to determine whether EJ concerns exist that are relevant to a PSD permit. The Permitting Section will also determine whether the permitting action involves one of the identified Priority Permit categories.
- **Formulate a Communication Plan.** Consult with internal and external stakeholders in order to identify effective methods of communication with the impacted community. The Permitting Section will implement a permit communication plan so as to involve as wide a range of interested stakeholders as practicable.
- **Locate existing data and studies relevant to the impacted community.** The Permitting Section will use this information in conducting the EJ analysis as appropriate.
- **Evaluate the appropriate length of the public comment period.** The Permitting Section will set a comment period that accommodates the requests of stakeholders as much as practicable.
- **Consider holding meetings for the public.** The Permitting Section will hold public information meetings when interest exists in the impacted community and as resource allows.

Coordinating within EPA:

- **For applicants with multiple EPA permits,** the Permitting Section will inform permit writers, as well as other Divisions (e.g., the Division of Enforcement and Compliance Assistance) with regulatory authority in the area about the permit application and the Divisions will coordinate their actions to the extent practicable.

Communicating with the Community:

- Designate single EPA contact to address public concerns or questions.
- Create and make available informational fact sheets about the application.

- Use plain language when communicating with the public, including verbal and written communications.
- The Permitting Section will develop and use techniques that are feasible and effective in communicating with the public.
- Provide translations of outreach documents.
- Make key documents on the proposed project readily accessible to the community, using a variety of media tools (paper copies, online, etc.), when appropriate.
- If public meetings are part of the outreach plan, hold them at times and places in the community that afford the public a good chance of attending.
- The Permitting Section will make available information on where the community can find the entire response to comments document.

Communicating with the Permit Applicant:

- The Permitting Section will request in writing that, along with the technical permit application materials, the permit applicant provide a plain-language description of the requested permit action.
- 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*.

b. Permits involving limited public interest or some issues of environmental or public health concern

Planning & Gathering Information:

- **Identify priority permits.** The Permitting Section in the Air Programs Branch will use EISCREEN, or a comparable tool, and information from stakeholders in the impacted communities in order to determine whether EJ concerns exist.
- **Formulate a Communication Plan.** Consult with stakeholders internal and external in order to identify effective methods of communication with the impacted community. To the extent practicable, the Permitting Section will use the communication method(s) that is/are valued by stakeholders in the impacted community.
- **Evaluate the appropriate length of the public comment period.** To the extent practicable, the Permitting Section will set the length of the public comment period so as to respect the requests of stakeholders in the impacted community.

Coordinating within EPA:

- **For applicants with multiple EPA permits,** the Permitting Section will inform permit writers and staff from other Divisions in the Region with regulatory authority.

Communicating with the Community:

- Designate single EPA contact to address public concerns or questions.
- Make informational fact sheets available.
- Use plain language when communicating with the public.
- The Permitting Section will develop and use techniques that are feasible and effective in communicating with the public.

- Make key documents on the proposed project readily accessible to the community, using a variety of media tools (paper copies, online, etc.), when appropriate.
- The Permitting Section will make available information on where the community can find the entire comment response document.

Communicating with the Permit Applicant:

- Encourage the permit applicant to provide EPA with a plain-language description of its proposed project or permit application. The Permitting Section that issues PSD permits will request in writing that, along with the technical permit application materials, the permit applicant provide a plain-language description of the requested permit action.
- Encourage the permit applicant to consult EPA guidance on EJ 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*.

Priority RCRA Permits

Planning & Gathering Information:

- **Identify priority permits.** As part of its annual or biennial planning processes, Hazardous Waste Programs Branch (HWPB) will coordinate with CEPD and ERRD to identify permits EPA plans to issue under RCRA and evaluate the need for enhanced public involvement in individual permit actions. As part of the review, HWPB, CEPD and/or ERRD will use appropriate screening tools, such as EJSCREEN or a comparable tool, and collaborate internally with ORA-OSP, and/or PAD and, if necessary, externally with appropriate local non-profit EJ organizations to identify EJ concerns. The specific set of outreach actions HWPB, CEPD and/or ERRD would undertake will depend on the needs of the action and available resources.
- **Locate existing data and studies relevant to the impacted community.** As part of the review of a permit application targeted for enhanced public involvement, HWPB or ERRD¹ will search in-house online databases and, if necessary, contact ERRD, CEPD, DECA, Division of Environmental Science and Assessment (DESA), PAD, and ORA-OSP in order to locate any additional information relevant to overburdened communities potentially impacted by the permitting action. If the review reveals concerns relevant to the permit action, HWPB and ERRD will work with the applicant(s) to address them as part of the permitting process.
- **Determine effective ways to reach out to the affected community.** HWPB or ERRD will collaborate internally with ORA-OSP and PAD and, if necessary, externally with appropriate local non-profit EJ organizations in order to identify feasible and effective methods of communicating with the impacted EJ community of concern. HWPB will strive to conduct its public communication so as to include as many stakeholders as practicable given available resources.
- **Evaluate the appropriate length of the public comment period.** HWPB or ERRD will consider reasonable requests for an extension of the public comment period that are timely submitted and, to the extent practicable, set the comment period so as to accommodate such requests.
- **Consider holding a public information meeting.** HWPB or ERRD will collaborate internally with ORA-OSP, PAD, and other regional offices and, if necessary, externally with appropriate local non-profit EJ organizations in order to assess the need for a

¹ ERRD will take the full RCRA responsibilities, administrative and technical, for those RCRA sites that are transferred to them including the issuance of RCRA permits

public information meeting. If substantial public interest exists and resources are available, HWPB will hold a public information meeting in the impacted community.

Coordinating within EPA:

- HWPB or ERRD will inform appropriate regional program offices whose responsibilities include permitting and/or enforcement responsibilities under the SDWA, CAA, CWA as well as CEPD and ERRD that HWPB has received the RCRA permit application. The Programs will coordinate their actions as appropriate.

Communicating with the Community:

- HWPB, CEPD and/or ERRD will collaborate with ORA-OSP, PAD, and other appropriate regional offices in regional efforts to formulate responses to any questions or concerns raised as part of the RCRA permitting process.
- HWPB, CEPD and/or ERRD will provide, as needed, informational fact sheets which explain the RCRA-permitting process.
- HWPB, CEPD and/or ERRD will collaborate with PAD and ORA-OSP to communicate with the public in plain language, in compliance with the Plain Writing Act of 2010.²
- HWPB, CEPD and/or ERRD will collaborate with PAD and ORA-OSP to identify and use techniques feasible and effective in communicating with the public.
- HWPB or ERRD will provide translations of outreach documents.
- During the public comment period of draft RCRA permits, HWPB or ERRD will provide local libraries or other public places that are readily accessible to the impacted community with copies of the permit application, EPA's decision documents, and any other relevant documents directly relating to the issues of concern. To the extent practicable, HWPB will also make such documents available online.
- Where substantial stakeholder interest exists and resources allow, HWPB, CEPD and/or ERRD will collaborate with PAD and ORA-OSP to determine appropriate schedules and locations for public meetings acceptable to communities.
- HWPB, CEPD and/or ERRD will make available information on where the community can find the entire comment response document.

Communicating with the Permit Applicant:

- HWPB, CEPD and/or ERRD will request in writing that, along with technical permit application materials, the permit applicant provide a plain-language description of the requested permit action. HWPB will work with PAD and ORA-OSP in order to determine whether the plain language criteria are met.
- HWPB or ERRD will request in writing that the permit applicant follows the EPA guidance on EJ and other appropriate 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*.

²For EPA guidance, see e.g., <http://epa.gov/plainwriting/index.html>

Priority “Major” and “Non-Major” Industrial NPDES Permits

Planning & Gathering Information:

- **Identify priority permits.** The NPDES Permitting Section will use EJSCREEN, or a comparable tool, and information from stakeholders in the impacted community in order to determine whether EJ concerns exist and whether the permit under review falls within the categories of Priority Permits.
- **Evaluate the appropriate length of the public comment period.** The NPDES Permitting Section will set the length of the comment period so as to respect the requests of stakeholders from impacted communities to the extent practicable.

Coordinating within EPA:

- **For applicants with multiple EPA permits,** the NPDES Permitting Section will inform permit writers and staff from other Divisions in the Region involved in implementation of NPDES regulatory authority.

Communicating with the Community:

- Designate single EPA contact to address public concerns or questions.
- Make informational fact sheets available.
- Use plain language when communicating with the public.
- The NPDES Permitting Section will develop and use techniques that are feasible and effective in communicating with the public.
- Make key documents on the proposed project readily accessible to the community, using a variety of media tools (paper copies, online, etc.), when appropriate.
- The NPDES Permitting Section will make available information on where the community can find the entire comment response document.

Communicating with the Permit Applicant:

- The NPDES Permitting Section will request in writing that, along with the technical permit application materials, the permit applicant provide a plain-language description of the requested permit action.
- Encourage the permit applicant to consult EPA guidance on EJ 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*.

Priority Significant UIC Permits Under the Safe Drinking Water Act

Planning & Gathering Information:

- **Identify priority permits.** The Groundwater Compliance Section handles UIC permitting (UIC Section). It will use EJSCREEN, or a comparable tool, as well as EPA and Region 2 screening-related policy guidance to determine whether the application involves an EJ priority permit.
- **Evaluate the appropriate length of the public comment period.** The public comment period is 30 days for the UIC Section (40 CFR 124) but the Section will set the length of the comment period to respect stakeholders’ requests to the extent practicable.

- **Consider holding a public information meeting.** If substantial stakeholder interest exists and to the extent resources allow, the UIC Section will hold a public information meeting to address questions from impacted communities.

Coordinating within EPA:

- **For applicants with multiple EPA permits,** the UIC Section will notify Section and/or Branch Chiefs (as appropriate) in other Divisions that it has received a permit application from the applicant.

Communicating with the Community:

- Designate single EPA contact to address public concerns or questions. The UIC Section will work with PAD to designate a single EPA contact for each permit; the Section will work with this person to address public concerns or questions.
- Make informational fact sheets available. Where the Region anticipates or is aware of significant public interest in a particular permit application, the UIC Section will make available informational fact sheets which will be written in plain language and include a project description.
- Use plain language when communicating with the public.

Communicating with the Permit Applicant:

- Encourage the permit applicant to provide EPA with a plain-language description of its proposed project or permit application for public distribution. Between EPA technical staff and the permit applicant accepted technical language is expected, acceptable and preferred. However, the UIC will request in writing that, along with the technical permit application materials, the permit applicant provide a plain-language description of the requested permit action.
- The UIC Program will send a copy of *Promising Practices for Permit Applicants Seeking EPA-Issued Permits: Ways to Engage Communities at the Fence-Line* to the applicant with the administrative review letter.

5) Progress Review

Regions will periodically report their progress and share lessons learned with other regions and headquarters in carrying out the enhanced outreach provided in this plan.

Divisions in the Region will adhere to the Region 2 Interim EJ Policy for guidance in designing specific outreach actions appropriate for their permit actions and in accordance with the plan herein outlined. (See also Figure 1 for the Region's Decision Tree).

Figure 1. Region 2 Decision Tree for Compliance with the Region 2 Implementation Plan for Enhanced Public Participation in Permitting. See Region 2 Interim EJ Policy, Section 2.0 (<http://www.epa.gov/region2/ej/overview.htm>) for specific guidance on identifying potential EJ communities of concern.

