

EPA Region 3 Regional Implementation Plan to Promote Meaningful Engagement of Overburdened Communities in Permitting Activities

Disclaimer:

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.

Background

To support the Administrator's priority of Environmental Justice and the goals and objectives set forth in Plan EJ 2014, EPA developed a set of agency-wide guidelines for development of regional implementation plans aimed at enhancing public participation in permitting actions in overburdened communities. The purpose of this implementation plan is to establish a process for Region 3 to plan and allocate resources for outreach in order to improve opportunities for meaningful engagement of overburdened communities in their permitting activities. 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.

Region 3 has conducted a review of its EPA issued permits in order to gauge the scope of permitting activities within the Region, and to assess the types of permits that are being issued by the Region in both the short and long term. This assessment was conducted so that we may recognize these opportunities to more fully engage our communities in EPA's permitting process, and to set our priorities for implementation of the Region 3 process.

As a result of our assessment, Region 3 will be focusing on water permits being issued in the District of Columbia. The District of Columbia water permits are the only EPA Region 3 issued permits being issued in the near term, so the focus of our pilot trial of the Implementation Plan will take place there. This Implementation Plan is the model plan that all of our Regional Programs will use for EPA issues permits as outlined in the document below.

1) Priority permits

Region 3 will prioritize enhanced public involvement opportunities for those EPA-issued permits that may involve activities with significant public health or environmental impacts on already overburdened communities, identified by the Region's EJ Screening Protocol which utilizes EJSCREEN and other sources of information. Permits that may have significant public health or environmental impacts and will be reviewed include, but are not limited to, the following:

- District of Columbia Water Permits
- Construction permits under the Clean Air Act, especially new major sources (or major modifications of sources) of criteria pollutants;
- Significant Underground Injection Control Program permits under the Safe Drinking Water Act;

- “Major” industrial National Pollutant Discharge Elimination System (NPDES) permits (as defined in 40 CFR 122.2) under the Clean Water Act 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 Clean Water Act 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; and
- Resource Conservation and Recovery Act (RCRA) permit modifications that address new treatment processes or corrective action cleanups involving potential off-site impacts.

In addition, the Region will consider prioritizing for enhanced public involvement activities both permit applications and renewals for which a community has expressed environmental justice concerns, and permit applications and renewals where Region 3 has other information indicating environmental justice concerns related to the permit.

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 developing 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 percentage of population. 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 the percent of residents that are minority and percent of residents that are low income in each area, to provide a measure of how much each block group contributes to disparity between demographic groups nationwide.

Region 3 will use EJSCREEN and other readily available sources of information, including known community concerns, to perform initial EJ screening of permits once EPA has transitioned to the tool in circumstances where EJSCREEN has relevant data for the geographic area in question. As a pre-decisional tool, EJSCREEN will be used to highlight candidates for additional further review where enhanced outreach may be warranted. Additional further review may include 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 not be the appropriate tool for initial screening in limited circumstances.

In addition to the initial screen using EJSCREEN, OECEJ conducts an enhanced screening assessment to better determine the types of communities living around the facility or site of the permit. The following demographic data¹ is obtained and added as “layers” in GIS:

- Total Population
- Population Density
- Per Capita Income
- Med. Family Income
- # and % Poverty
- # and % Minority
- Education Level (ex. # and % of people with at least a bachelor's degree)
- # Housing Units
- # and % of Households with No Heat
- # and % of Households with No Plumbing
- Populations by Age (ex. # and % Children under 5 or Adults over 65)
- # and % Female Head of Household

All this information is obtained on the block or block group level. A block group, which usually contains 300 – 2,000 people, is the smallest level for which income-related demographic data is collected by the U.S. Census.

Community Locations

Google Maps is a good resource to determine community names and approximate location. Those names can then be searched online for more anecdotal information.

GoogleEarth Pro’s “Satellite View” can also be utilized to try to determine the proximity of the site/facility to communities and even specific residences. For example, Region 3 recently mapped every structure in the area surrounding a proposed permit for a mountain top mining project.

¹ Some of this data is already provided through EJSCREEN.

Other Points of Interest

The following data may also be beneficial in determining the permit's cumulative impact as well as the communities' cumulative burden:

- School Locations
- Church Locations
- Hospital Locations
- Cemetery Locations
- EPA Regulated Facility Locations
- Impaired Waterways
- Environmentally Sensitive Areas pursuant to CWA 311(b)(3) and 311(j)
- Transportation Infrastructure (Roads/Rails)
- Overall Facility Footprint

Based on the results of the initial screen and the enhanced review, OECEJ will collaborate with the Divisions to collect additional information about the affected community and the nature of the environmental impacts due to the permit to further prioritize permits for enhanced outreach opportunities.

3) Roles of regional offices and programs

EJ Screening will be conducted for all Divisions by the Office of Enforcement, Compliance and Environmental Justice (OECEJ).

The Divisions may submit their screening requests to OECEJ annually as a part of their yearly planning process, or individually as they come in through the year. It should be noted that early identification of communities/facilities of concern is advantageous in the development of a meaningful and robust enhanced public participation and outreach plan.

Using the information gathered during the EJ screening process, the Division responsible for the permitting action will conduct a planning meeting to identify potential permits that may require enhanced community involvement. After the preliminary list of potential communities/facilities of concern has been determined, the Division will meet with OECEJ and other Divisions if applicable to refine the list and gather other relevant information. Once the Division has all of the relevant information regarding the nature of the environmental impacts due to the discharges or emissions covered by the permit, the information gathered during the screening exercise, and information concerning community health, impacts, and demographics; final selections of permits to be evaluated will be made. The Division responsible for the permitting action will develop its plan for enhanced community involvement, and will gather the additional information required to assure that the outreach and public participation activities are appropriate.

Each Division is also responsible for assuring clear and timely consultation with and appropriate engagement and involvement of the states in this process. The states should be appropriately informed before beginning any enhanced community involvement in the respective state. At this time, there are no federally recognized tribes in Region 3. However, there is one tribe that is in the process of pursuing federal recognition. If and when this or any other of the state recognized tribes in Virginia becomes federally recognized, the Region will develop a tribal consultation process for priority permits as a part of any enhanced outreach, consistent with the agency's tribal consultation policy. We will also work with

our state recognized tribes in an appropriate manner to assure that they are meaningfully involved in any activities associated with the issuance of priority permits that may impact them.

The Community Involvement Strategy should contain the following components:

- A mechanism for identifying all interested and impacted stakeholders
- A mechanism conducting outreach to all stakeholders
- Identification of appropriate media and other communication outlets/sources that may be used to reach the affected community
- A comprehensive communication strategy
 - Community Involvement
 - Education
 - Communication through the use of:
 - Churches,
 - Civic organizations,
 - Community centers,
 - Schools,
 - Trade organizations,
 - Grassroots organizations,
 - NGOs
 - Public availability sessions,
 - Public meetings,
 - Websites,
 - Podcasts,
 - Fact sheets
- A mechanism to respond to concerns

The Division should identify any other Regional Divisions that may have a stake in the proposed action and engage them in the process. Resources and support for outreach activities may be available through the Region's Community Involvement Program in Superfund or through the Region's Communication's Office. Additionally, OECEJ should be contacted for additional support and consultation.

Enhanced Outreach Activities

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.

Presented below is a proposed list of activities that EPA Region 3 could undertake at key junctures in the permitting process to promote greater involvement of overburdened communities. The list of proposed activities is intended to identify priority areas of activity. The permitting office must identify those activities that are best suited for the action at hand, and tailor its activities to meet the specific needs of the community involved. The list of activities is not meant to be comprehensive or exhaustive. Different situations will justify different responses.

Planning & Gathering Information:

- Identify upcoming priority permits utilizing:
 - Screening tools

- Community input
 - knowledge of the permit
 - Potential for impacts upon the community
- Utilize existing data:
 - Public health information
 - Site specific data
 - Other relevant information gathered from databases
 - Information provided by other stakeholders relevant to the particular community
 - Anecdotal information from the community
- Develop a community involvement strategy designed to :
 - Improve and expand communication
 - Gather community concerns and information
 - Offer opportunities for the community to provide and receive information.
 - Provide information to communities for which English is not their first language as put forth in EPA's Limited English Proficiency (LEP) Policy.
 - Assure that the community has access to and is able to understand all information
- Evaluate the appropriate length of the public comment period based upon community feedback.
- Convene informational meetings with the community to gather input

Coordinating within EPA:

- For applicants with multiple EPA permits:
 - Inform EPA permit writers from other offices in the region that your office has received a permit application from the applicant
 - Coordinate resources as appropriate
 - Utilize OECEJ for preliminary screening
 - Seek outreach and communication resources as appropriate

Communicating with the Community:

- Region 3 and the Permitting Office will:
 - Designate Regional point(s) of contact that the community can contact to discuss environmental justice concerns or questions of a technical nature about the permit application
 - Use informational materials to explain the permitting process.
 - Use plain language when communicating with the public.
 - Use communication techniques the community values, such as:
 - Direct mailings
 - Posters
 - Articles in local or cultural newspapers and local TV or radio outlets
 - Communication through church and civic leaders within the community
 - E-mails to list serves
 - Booths at local community events
- Offer translation services for communities with multi-lingual populations as outlined in EPA's Limited English Proficiency (LEP) Policy, including:
 - Interpreters at public meetings

- Translations of public documents
- Make key documents on the proposed project readily accessible to the community using
 - A variety of media tools
 - Paper copies
 - Online
 - Etc.
- Hold public meetings at times and places in the community best designed to afford the public a meaningful chance to attend
- After the permit has been issued:
 - Make available to the community a summary of EPA's comment responses
 - Provide 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.
 - 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.

4) Progress Review

Region 3 will periodically review progress and share lessons learned in carrying out the enhanced outreach provided in this plan.