

EPA REGION 8'S RESPONSE TO PETITION FOR REVIEW

ATTACHMENT H

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

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EPA Region 8 Regional Implementation Plan to Promote Meaningful Engagement of Overburdened Communities in Permitting Activities

To implement Administrator Lisa P. Jackson's priority on environmental justice, the EPA released the "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 8 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 permitting actions may have significant public health or environmental impacts.

EPA Region 8's goal is to address the needs of overburdened populations or communities to participate in the permitting process. *Overburdened* is used to describe the 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. Participation of overburdened communities in the permitting process is an essential step toward the ultimate goal of achieving permits that meaningfully address environmental issues. To evaluate potential overburdened communities the Region will use EJSCREEN, which incorporates information on minority and low income areas as well as environmental factors.

This plan identifies internal recommended procedures for EPA Region 8 employees who are staff or managers acting on a permit application. EPA Region 8's general process for prioritizing permit applications we receive for enhanced public participation is as follows:

- 1) Conduct a preliminary screen to assess if the area around the facility contains a potentially overburdened community;
- 2) Determine if the type of permit action has the potential for significant public health or environmental impacts; then
- 3) Based on the first two steps and any other relevant information available, decide whether enhanced public participation is warranted.

This plan is not a rule or regulation, and the recommendations in it may not apply to a particular permit application, depending on facts and circumstances. No part of the plan constitutes final agency action that could injure any person or represent the consummation of agency decision making. 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 agreement.

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1. Preliminary EJ screening

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 8 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. Each regional direct-implementation permitting program will screen all permit applications whose activities are identified as having significant environmental and/or health impacts for EJ concerns. The screening will occur either upon receipt of an application or prior to receiving an application if there is definitive information available that an application will be submitted¹.

¹ Applicants often arrange pre-application meetings with the Region prior to submitting an application for a significant permit action.

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What will Region 8 screen? EPA Region 8's permitting programs will screen all applications for EPA-issued permits with proposed activities that have significant environmental and/or health impacts (see section 3 of this plan for a description of permit prioritization).

2. Additional review

What additional review will be carried out? When additional review is appropriate, EPA Region 8 permitting programs will consider additional available information (including information provided by community members) on possible environmental and community impacts related to the permit; and on barriers to effective public participation in the absence of enhanced outreach. Relevant information may include: identifying local neighborhood and religious institutions, schools and sensitive receptors such as day care centers and clinics and hospitals, local businesses, community-based organizations and environmental organizations; demographic information including age, income, language, population, race/ethnicity, and economic status; and environmental and public health concerns related to the permit.

How will this additional review be used? Additional review helps to prioritize permits for enhanced outreach, given the facts surrounding a particular permit and a specific community. It also helps the permitting programs to plan for appropriate outreach.

3. Permit prioritization

What types of permits are priorities? As noted above, EPA Region 8's permitting programs will screen all applications for significant EPA-issued permits and will prioritize actions to enhance public participation based on whether or not their review identifies a need for enhanced participation. The criteria the permitting programs use to make this determination is specific to the type of permit and potential impacts for each permit action. Each permitting program will work with the Region's EJ Team to develop the particular criteria for identifying a need for enhanced participation. Types of permits that may be issued by EPA Region 8 and that are considered a priority for enhanced participation due to the potential for significant public health or environmental impacts include:

- Construction (New Source Review) permits under Clean Air Act (CAA) Title I (as defined in 40 Code of Federal Regulations (CFR) 52.21 and 49.151), particularly new major sources, major modifications of existing sources, and synthetic minor sources² of criteria pollutants;
- Underground Injection Control (UIC) Program permits under the Safe Drinking Water Act (40 CFR parts 144 to 148) for Class I deep injection wells, large-scale Class II enhanced recovery (ER) project wells, Class III uranium in-situ recovery (ISR) wells or Class VI wells for Geologic Sequestration of CO₂;

² Sources that are major but are proposing to accept enforceable emission limitations to reduce their potential air emissions below the major source thresholds.

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- Approvals under the Toxic Substances Control Act (TSCA) for polychlorinated biphenyls (PCB) commercial storage facilities as described in 40 CFR 761.65(d) or other PCB waste disposal activities as described in 40 CFR 761.20©, 761.20(e), 761.70, 761.72, 761.75 or 761.77 , where there will be potential releases of PCBs and/or dioxins to the air, water and ground exceeding the regulatory levels from its operations;
- “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. Generally these permits require analysis under the National Environmental Policy Act (NEPA); and
- “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.

The region may become aware of potential EJ concerns for permit actions not considered significant and may decide to screen those permits on a case-by-case basis.

4. Roles of regional programs

This plan applies to each permitting program in EPA Region 8 that is responsible for direct implementation of the permitting programs³. These programs are: the Air Permitting, Monitoring and Modeling Unit (CAA permits) of the Air Program, the UIC Unit (UIC permits) and the Wastewater Unit (NPDES permits) in the Water Program, and the Pollution Prevention and Toxics Unit of the Pollution Prevention, Pesticides and Toxics Program (PCB permits under TSCA). Each Unit Chief is responsible for ensuring that his or her program takes the following actions: screening; additional review where appropriate; planning for enhanced outreach when appropriate; providing enhanced outreach as planned; and providing information to the EJ Team necessary for tracking implementation of this plan.

The EJ Team is located in EPA Region 8’s Office of Enforcement, Compliance and Environmental Justice (ECEJ). The Policy and Environmental Justice Unit Chief is responsible for: screening (until the transition to EJSCREEN is complete and permitting programs are trained to use it); providing training and direction on how to conduct screening; providing additional EJ review, as requested; reviewing and commenting on

³ EPA Region 8 directly issues permits to sources in Indian country (as defined in 18 U.S.C. section 1151) or State land where specific EPA permitting programs are not delegated or approved or a permit has been legally challenged and remanded to EPA for issuance.

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draft EJ analysis and documents, as requested; reviewing and commenting on plans to provide enhanced outreach, as requested; providing contact information for community and environmental justice groups, if available; providing support as needed to respond to community environmental justice concerns; and tracking implementation of this plan.

There will be a systematic approach developed for each of the roles described above for the regional programs.

To the extent that tribal interests are associated with a priority permit, the region will include a commitment to conduct tribal consultation as a part of any enhanced outreach, consistent with the agency's tribal consultation policy.

5. Enhanced outreach activities

Where EPA Region 8 identifies a significant federal permit application in a potentially overburdened community, we will evaluate the need to take enhanced action to ensure meaningful public involvement in that permitting process. Enhanced outreach may elicit information indicating that the permit terms should be designed to address specific EJ concerns, and this information will be considered by EPA Region 8 permit writers, as appropriate on a case-by-case basis. However, this plan does not address permit content.

The following activities will be considered in the context of specific permits, taking into account all information EPA Region 8 has about the permit and the community. This list is not comprehensive, and EPA Region 8 may take other actions not on the list if justified by the situation. In addition, recognizing that many of these activities are generally good practices, EPA Region 8 may apply one or more of them whether or not they are called for under this plan.

- **Increase internal oversight**

Ensure continued management oversight for the EPA-issued permit, including coordinating among affected offices throughout the permitting process for any EPA permits for the same facility that are pending in other programs.

- **Gather and share information**

The permit review may benefit from more information about the impacted community beyond that collected during the screening and additional reviews, such as information about sensitive receptors (schools, hospitals, residences, etc.) and environmental and public health concerns. In addition, sharing more information about the permit action may help community members in reviewing and commenting on the permit. EPA will consider holding informational meetings with the community on a case-by-case basis when significant potential EJ concerns are identified through the screening and additional review process.

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- **Encourage enhanced outreach by applicant (for new permit) or permittee (for permit renewal)**
 - Encourage the applicant or permittee to provide EPA with a plain-language description of its proposed project that can be shared with community members.
 - Encourage the applicant or permittee to apply EPA guidance on environmental justice, including the “Promising Practices for Permit Applicants Seeking EPA-Issued Permits: Ways to Engage Communities at the Fenceline,” and other resources developed under Plan EJ 2014.
- **Provide the public with information regarding the proposed permit**
 - Ensure that public notices reach the impacted community and are written in plain language.
 - Ensure that public documents are accessible to the community. This is most often achieved by working with the local government to assist with making the documents available.
 - Use communication techniques the community values, such as direct mailings, articles in local newspapers, emails to list serves, websites and radio. Again, this is most often achieved by working with the local government to assist with identifying the best techniques for the community.
 - Extend the public comment period, when appropriate.
 - Respond to community technical questions and concerns, especially those of a technical nature and about environmental justice.
 - Where there are Limited English Proficiency (LEP) populations, translate public documents consistent with the Region’s LEP Plan.
- **Plan for one or more public meetings**
 - Hold public meetings at times and places in the community best designed to afford the public a meaningful chance to attend, including meetings that meet regulatory requirements, such as hearings.
 - As resources allow and consistent with the Region’s LEP Plan, offer translation services for communities with multi-lingual populations (including interpreters at public meetings or translations of public documents), when appropriate.
- **Ensure appropriate follow-up with community stakeholders**
 - After the permit has been issued, make a summary of EPA’s comment response available to the community and provide information on where community members can find the entire comment response document.
- **Coordinate with state, local and tribal authorities**

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- Coordinate with state, local, and/or tribal authorities as appropriate.

6. Progress Review

EPA Region 8 will periodically review progress and share lessons learned with other regions and headquarters in carrying out the enhanced outreach provided in this plan.