

EPA Region 4

Environmental Justice Permitting Implementation Plan

April 16, 2013

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.

The purpose of this regional implementation plan is to establish a process for the region to plan and allocate resources for outreach in order to improve opportunities for meaningful engagement of overburdened communities in permitting activities potentially affecting their communities.

Region 4's goal is to address the needs of 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.

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 4 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 4 issues a limited number of permits in the various media programs. Each program has developed an implementation plan to ensure that communities have access to information during permitting activities and can effectively participate during the permitting process.

Permitting Activities

In Region 4, the majority of permits are issued by either state or local permitting authorities. However, the Region does issue permits for the following:

Air Permits:

- Outer Continental Shelf (OCS) sources
- Construction Permits for Florida sources triggering New Source Review based on greenhouse gas GHG emissions¹
- Liquefied Natural Gas (LNG) sources

Water Permits:

Safe Drinking Water Act:

- Underground Injection Control (UIC) permits

Clean Water Act:

- Tribal Wastewater Treatments Plants
- Miami-Dade Central District Wastewater Treatment Plant
- Vessel and Small Vessel General Permits
- Navy Ocean Discharge Permits
- Aquaculture Ocean Discharge Permits
- Oil and Gas Industry General Permit
- Port Dolphin Liquefied Natural Gas (LNG) Permit

Resource Conservation and Recovery Act (RCRA):

- Hazardous and Solid Waste Amendments (HSWA) Corrective Action Permits in Mississippi

Toxic Substance Control Act (TSCA) disposal facility and risk-based cleanup approvals, prioritization and/or enhanced public involvement opportunities will be considered for those

¹Unlike the criteria pollutants for which EPA has historically issued PSD permits, there is no National Ambient Air Quality Standard (NAAQS) for GHG. The global climate-change inducing effects of GHG emissions, according to the “Endangerment and Cause or Contribute Finding”, are far-reaching and multi-dimensional (75 FR 66497).

permits that may involve activities with significant public health or environmental impacts. Permit applications in areas that have been previously identified as overburdened will be given a more detailed analysis. For each federal permit that is prioritized for enhanced environmental justice (EJ) activities, the permit writer(s) will work with the regional Office of Environmental Justice and Sustainability (OEJSS) and the regional Office of External Affairs (OExA) to develop an appropriate approach to enhanced public outreach. The development of an approach will include a discussion of which office will contribute the resources (both FTE and dollars) that will be necessary for the enhanced outreach. To the extent that tribal interests are associated with a priority permit, the Region will include tribal consultation as a part of any enhanced outreach, consistent with the Agency's tribal consultation policy. If significant EJ concerns related to the permits are identified during the planning process, the Region will implement enhanced activities through the permit process for those permits.

Media-Specific Prioritization

Region 4 will consider prioritizing enhanced public involvement opportunities for those EPA-issued permits that may involve activities with significant public health or environmental impacts on already overburdened communities as determined by the use of screening tools or other methodology. EPA has identified the following permit situations that may be conducive for EPA to consider utilizing the types of enhanced public involvement described in this plan.

For the Air, Pesticides and Toxics Management Division, most CAA permits issued in Region 4 are issued by States and of the permits issued by EPA, most are not conducive to utilizing the enhanced public participation due to the unique circumstances surrounding those permits (e.g., they are located more than 25 miles offshore). In addition, for GHGs, climate change modeling and evaluations of risks and impacts are typically conducted for changes in emissions that are orders of magnitude larger than the emissions from individual projects that might be analyzed in PSD permit reviews. Quantifying the exact impacts attributable to a specific GHG source obtaining a permit in specific places and points would not be possible. Thus, we conclude it would not be meaningful to evaluate impacts of GHG emissions on a local community in the context of a single permit. Therefore, the only permits we would prioritize for enhanced public involvement would be those triggering permitting for criteria pollutants and on the main land.

The Water Division will prioritize as follows:

1. New sources or new dischargers
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 increase of any effluent parameter (including flow) by 50% or more.
3. Tribal wastewater treatment facilities with design discharge flow of greater than or equal to 1 million gallons per day (1 MGD).
4. Federal NPDES permits for which a community has expressed environmental justice concerns related to the permit or where EPA has other information indicating environmental justice concerns related to the permit.

The RCRA Division is already engaged in enhanced community engagement activities within the State of Mississippi with respect to its HSWA Corrective Action permits, and is also bound by

the RCRA Expanded Public Participation Rule, which provides for early involvement and expansion of public involvement throughout the RCRA permitting process. Additional outreach and public involvement will be discussed with the authorized state program to determine the appropriate focus on overburdened populations with the greatest potential impacts from the RCRA permit.

The RCRA Division issues Toxic Substance Control Act approvals (similar to permits) for PCB disposal facilities, as well as approvals for PCB cleanup actions by private parties. For any such actions located in areas with potential EJ concerns, the RCRA Division will follow the steps summarized in the document for RCRA permits.

Roles of Regional Offices and Programs

This plan applies to permits issued by Region 4 as listed above. Each office responsible for issuing permits will coordinate as appropriate with the following groups as outlined in the Region 4 EJ Policy.

Executive Leadership Team

The Executive Leadership Team (ELT), comprised of the Regional Administrator, Deputy Regional Administrator, Chief of Staff and Division Directors, will be responsible for making EJ part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs or activities on minority and low-income populations within Region 4 states. The ELT will identify any cross-cutting issues in which their staffs will be collectively engaged. As appropriate, they have the responsibility to direct resources to support EJ activities.

Office of Environmental Justice and Sustainability

The OEJS will provide overall assistance and coordination for EJ in Region 4 and will work with the various Divisions and permitting offices to provide maps for each state that identify low income and minority populations that may have areas with EJ concerns. The OEJS will also lead outreach activities for timely communication and meaningful engagement with community stakeholders, federal, tribal and state partners, industry and others about EJ successes, challenges and opportunities for collaboration.

Division and Office Responsibilities

Each Division or Office tasked with issuing permits will prioritize permits for screening and will set annual EJ targeting goals. The anticipated goals will be communicated to the OEJS and the OExA for coordination and comment via the Division EJ Council representative or other appropriate staff. Each permitting office will have quarterly meetings with the Division EJ team to review and update the areas that have been targeted. This determination will be made via preliminary screening utilizing EJ screening tools. Additional screening criteria may be utilized as deemed appropriate in each permitting scenario. The permit writer(s) will provide information about the nature

of the potential environmental impacts due to the nature of the activities covered by the permit.

Enhanced Activities

The activities presented below are those which the permit writer(s), with the assistance of the regional OEJS, could undertake related to enhance public participation to promote greater involvement of the impacted community. The list of activities is intended to identify priority areas of activity. Similarly, the list of activities is not meant to be comprehensive; different permitting situations will justify different responses. In addition, many of the activities, especially those regarding information exchanges, are generally good practices that the Region strives to apply to all permits. Note that some permits already contain regulations addressing many of these activities. As a result, the list below should be used to guide the selection of activities appropriate for the permitting process.

The enhanced procedures may result in identification of information indicating that permit conditions should be designed to address specific environmental justice concerns.

- **Planning**
 - **Gathering Information**
 - Determine pertinent information for the impacted community (e.g., identify community's demographics, including: age, education level, income, language and/or language barriers, population, race/ethnicity, and economic status; identify environmental and public health concerns related to the permit; identify 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, etc.). (With the assistance of the regional OEJS)
 - Discuss methods for outreach to the impacted community. (With the assistance of the regional OEJS and regional OExA)
 - Locate existing environmental and public health data and studies that are relevant to the impacted community.
 - Determine the level of involvement the impacted community has had with respect to the proposed permitting activity – i.e., has the impacted community identified the permit as a priority. (With the assistance of the regional OEJS)
- **Encourage Enhanced Activities by Applicant**
 - Encourage the applicant/permittee to communicate with the impacted community and other interested parties regarding plans to submit a permit application to EPA Region 4.
 - Encourage the applicant/permittee to provide the EPA with a plain-language description of the proposed permit activity.
 - Encourage the applicant/permittee 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

- **Upon Receipt of Permit Application**
 - Coordinate with and inform EPA permit writers in other regional program offices that an application has been received from the applicant/permittee. Determine if the applicant/permittee has current permits or permits proposed for issuance in other EPA regional programs.
 - Inform impacted community (and other interested parties as appropriate) that Region 4 has received an application and the media for which the application is for. Consider placing public notice of receipt of permit application in local newspapers and/or other media of value to impacted community. (With the assistance of the regional OEJS)
 - Consider holding informational meeting(s)/training session(s) for interested parties and the impacted community (in addition to formal public hearings/meetings) to address the permitting process and better community – EPA communication. Based on community interest, these meetings/training sessions may be general in nature or permit-specific. (With the assistance of the regional OEJS and the regional OExA)
 - Ensure ongoing coordination with the regional OEJS throughout the permitting process to address EJ concerns.
- **Upon Preparation of Draft Permit**
 - **Communicate with the Public Regarding the Proposed Permit**
 - Use informational materials written in plain language to explain the permitting process and in the predominant language(s) of the community. (With the assistance of the regional OExA)
 - Ensure that public notices reach interested parties and the impacted community, and are written in plain language. (With the assistance of the regional OExA)
 - Ensure that key permit documents are conveniently accessible/available to interested parties and the impacted community, using a variety of media tools (paper copies, online, etc.), when appropriate.
 - Use communication techniques that the impacted community values, such as direct mailings, flyers/posters, articles in local newsletters/papers, and emails to list serves. (With the assistance of the regional OExA)
 - Consider extending the public comment period, when appropriate/requested.
 - Designate EPA regional staff to respond to community concerns, especially those related to the permit and about EJ. (The permit writer(s) will respond to permit-specific comments. The regional OEJS will respond to comments raising specific EJ issues.)
 - **Plan for a Public Hearing** (With the assistance of the regional OExA)
 - Hold public hearings/meetings at times and in places best designed to afford the public (especially members of the impacted community) a meaningful opportunity to attend.
 - Offer translation services for communities with multi-lingual populations (including interpreters at public hearings/meetings or translations of permit documents). Also provide appropriate assistance for hearing-impaired individuals.

- **After Finalization of Permit and Permit Issuance**
 - **Ensure Appropriate Follow-up with Community Stakeholders**
 - Make available to interested parties and the impacted community a summary of the EPA's response to comments and provide information on where the entire comment response document can be found. (The permit writer will respond to permit-specific comments. The regional OEJS will respond to comments raising specific EJ issues.)

Progress Review

Region 4 will periodically review progress and share lessons learned with other regions and headquarters in carrying out the enhanced outreach provided in this plan.