

U.S. EPA's Plan EJ 2014 Briefing Document

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The U.S. EPA's recently released Plan EJ 2014 (EJ = Environmental Justice) provides ample insights into the Agency's vision for assessing and acting upon environmental hazards that may disproportionately affect minority and/or low-income communities. The plan itself, which is available at <http://www.epa.gov/environmentaljustice/plan-ej/index.html>, comprises five "cross-agency" focus areas, including EJ considerations in Rulemaking, Permitting, Compliance and Enforcement, Community-Based Action Programs, and Administration-Wide Actions, and four "tools development" areas, including Science, Law, Information, and Resources. This briefing document includes excerpts from Plan EJ 2014 regarding EPA's plans for integrating EJ considerations into all five "cross-agency" focus areas, with particular attention to the areas of permitting activities, compliance, and community-based action programs since these are the topics that are most interest to our clients.

Background

The name, Plan EJ 2014, is meant to mark the 20th anniversary of Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," which was signed by former President Clinton on February 11, 1994. The Plan also recognizes U.S. EPA's obligation to comply with Title VI of the Civil Rights Act of 1964 and its own civil rights program as well as the requirements for public involvement in permitting under 40 CFR Part 25.

While Plan EJ 2014 applies only to U.S. EPA, the Agency intends that the concepts, goals, strategies, and tools it is developing will eventually be implemented by the states, local agencies, Tribal and indigenous people's agencies, and other federal agencies.

Overall Trends in Addressing Environmental Justice

Plan EJ 2014 confirms several key trends in U.S. EPA's ongoing efforts to address EJ, including:

- Compiling data on cumulative risk from both permitted and unpermitted sources and using these data to inform permitting actions, including the setting of permit operating conditions.
- Exploring increased monitoring, including monitoring requirements in permitting actions.
- Expanding the inclusion of mitigation and Supplemental Environmental Project (SEP)-like activities into permitting actions in overburdened communities.
- Increasing public input into SEPs negotiated in settlement of enforcement actions as well as considering options for restitution to the community in criminal enforcement cases.
- Developing and encouraging the use of quantitative data (e.g., socioeconomic and demographic data as well as data on emissions, permit exceedences, existing contaminated sites, etc.) to identify potentially overburdened communities. (Other Agency documents, such as the *Toolkit for Assessing*

Potential Allegations of Environmental Injustice, already describe a number of quantitative indicators, ranging from the availability of health care and fresh produce to reliance on subsistence fishing and literacy rates, which can be used to determine: 1) whether a community may face increased vulnerability to environmental hazards, and 2) whether residents may face obstacles to meaningful public involvement in permitting and other such activities.)

- Considering the distribution of both the environmental burdens and benefits of EPA’s past and present actions.
- Empowering communities and community groups by providing information, permit pre-application meetings, technical assistance, and the like to promote meaningful public involvement.

Role of Permitting in Achieving Environmental Justice (Excerpts from Plan)

“Many federal environmental statutes rely heavily on permits to deliver the environmental protection results that are the goal of our federal environmental laws. These permits play a key role in providing effective protection of public health and the environment in communities. Building upon the Agency’s efforts to incorporate environmental justice concerns in rules, Plan EJ 2014 calls upon EPA to consider environmental justice concerns during the permitting process. EPA will develop and implement tools to: 1. Enhance the ability of overburdened communities to participate fully and meaningfully in the permitting process, and 2. Assist permitting authorities to meaningfully address environmental justice issues in permitting decisions to the greatest extent practicable.” (From Page 10, Plan EJ 2014.)

“Initially, the Agency will focus on EPA-issued permits that provide the best current opportunities for taking environmental justice concerns into consideration. In this way, EPA can make short-term progress and gain valuable lessons for subsequent efforts. In the long term, EPA will focus on permits issued pursuant to federal environmental laws (i.e., federal, state, or tribal) that enable the Agency to address the complex issue of cumulative impacts from exposure to multiple sources and existing conditions.” (From Page 10.)

Additional Comments from Science Tools Development Section on Approach to Determining Risk to Disadvantaged Groups (Excerpts from Plan)

“Multiple aspects of the physical environment in which we live, learn, work, and play can put certain groups of people ‘at higher risk.’ Also, individuals and groups may experience disadvantages related to their gender, lifestage, socioeconomic status, race, ethnicity, disability, education, geographic location, or other characteristics historically linked to discrimination or exclusion. This complex interaction between the physical environment and other conditions of social disadvantage contributes to social disparities in environmental health outcomes.

“Since 1994, as stated in the Executive Order 12898 (EO 12898), it has been incumbent upon all federal agencies including EPA to identify and address disproportionately high and adverse human health or environmental effects on minority and low-income populations that may result from their programs, policies, and activities. The concept of disproportionate environmental health impacts and burdens refers to the finding that some populations systematically experience higher levels of risks and impacts than the general population. (Brulle and Pellow 2006) This perspective recognizes that multiple factors, including

social, psychosocial, economic, physical, chemical, and biological determinants may contribute to disproportionately high and adverse human health or environmental impacts.” (From Page 45.)

Excerpts from Plan EJ 2014 Including All “Cross Agency” Focus Areas

Plan Overview

Plan EJ 2014 is meant to mark the 20th Anniversary of the signing of Executive Order 12898 on environmental justice, is EPA’s overarching strategy for advancing environmental justice. It seeks to:

- Protect the environment and health in overburdened communities.
- Empower communities to take action to improve their health and environment.
- Establish partnerships with local, state, tribal, and federal governments and organizations to achieve healthy and sustainable communities. (Page 1.)

In Plan EJ 2014, EPA uses “the term ‘overburdened’ to describe the minority, low-income, tribal, and indigenous populations or communities in the United States that potentially experience disproportionate environmental harms and risks as a result of greater vulnerability to environmental hazards. This increased vulnerability may be attributable to an accumulation of both negative and lack of positive environmental, health, economic, or social conditions within these populations or communities.” (Page 1.)

“The Administrator has directed the Agency to address the needs of overburdened communities by decreasing environmental burdens, increasing environmental benefits, and working alongside them to build healthy, sustainable, and green communities. This priority recognizes that Title VI of the Civil Rights Act and EPA’s civil rights program is a critical component in advancing environmental justice.” (Page 1.)

Cross-Agency Focus Areas (Excerpted from Plan)

Incorporating Environmental Justice into Rulemaking

Goal—To more effectively protect human health and the environment for overburdened populations by developing and implementing guidance on incorporating environmental justice into EPA’s rulemaking process.

Strategies:

1. Finalize the *Interim Guidance on Considering Environmental Justice During the Development of an Action*.
2. Facilitate and monitor implementation of guidance on incorporating environmental justice into rulemaking.
3. Develop technical guidance on how to conduct environmental justice assessments of rulemaking activities.

Considering Environmental Justice in Permitting

Goal—To enable overburdened communities to have full and meaningful access to the permitting process and to develop permits that address environmental justice issues to the greatest extent practicable under existing environmental laws.

Strategies:

1. Develop tools that will enhance the ability of overburdened communities to participate fully and meaningfully in the permitting process.
2. Concurrent with Strategy 1, develop tools to assist permitting authorities to meaningfully address environmental justice in permitting decisions.
3. Implement these tools at EPA and work with others to do the same.

Advancing Environmental Justice through Compliance and Enforcement

Goal—To fully integrate consideration of environmental justice concerns into the planning and implementation of the Office of Enforcement and Compliance Assurance's (OECA) program strategies, case targeting strategies, and development of remedies in enforcement actions to benefit overburdened communities.

Strategies:

1. Advance environmental justice goals through selection and implementation of National Enforcement Initiatives.
2. Advance environmental justice goals through targeting and development of compliance and enforcement actions.
3. Enhance use of enforcement and compliance tools to advance environmental justice goals in the regional geographic initiatives to address the needs of overburdened communities.
4. Seek appropriate remedies in enforcement actions to benefit overburdened communities and address environmental justice concerns.
5. Enhance communication with affected communities and the public regarding environmental justice concerns and the distribution and benefits of enforcement actions, as appropriate.

Supporting Community-Based Action Programs

Goal—To strengthen community-based programs to engage overburdened communities and build partnerships that promote healthy, sustainable, and green communities.

Strategies:

1. Advance environmental justice principles by building strong state and tribal partnerships through the National Environmental Performance Partnership System (NEPPS) and the National Program Manager (NPM) guidance.
2. Identify scalable and replicable elements of successful Agency community-based programs and align multiple EPA programs to more fully address the needs of overburdened communities.
3. Promote an integrated One EPA presence to better engage communities in the Agency's work to protect human health and the environment.

4. Foster community-based programs modeled on the Community Action for a Renewed Environmental (CARE) principles.
5. Explore how EPA funding, policies, and programs can inform or help decision makers to maximize benefits and minimize adverse impacts when considering current land uses in decision making, planning, siting, and permitting.
6. Promote equitable development opportunities for all communities.

Fostering Administration-Wide Action on Environmental Justice

Goal—To facilitate the active involvement of all federal agencies in implementing Executive Order 12898 by minimizing and mitigating disproportionate, negative impacts while fostering environmental, public health, and economic benefits for overburdened communities.

Strategies:

1. Assist other federal agencies in integrating environmental justice in their programs, policies, and activities.
2. Work with other federal agencies to strengthen use of interagency legal tools, i.e., National Environmental Policy Act and Title VI of the Civil Rights Act of 1964.
3. Foster healthy and sustainable communities, with an emphasis on equitable development and place-based initiatives.
4. Strengthen community access to federal agencies.

Additional Information on Environmental Justice in Permitting (Lead Program Office and Region – Office of Air and Radiation, Office of General Counsel, Region 1)

“Many federal environmental statutes rely heavily on permits to deliver the environmental protection results that are the goal of our federal environmental laws. These permits play a key role in providing effective protection of public health and the environment in communities. Building upon the Agency’s efforts to incorporate environmental justice concerns in rules, Plan EJ 2014 calls upon EPA to consider environmental justice concerns during the permitting process. EPA will develop and implement tools to: 1. Enhance the ability of overburdened communities to participate fully and meaningfully in the permitting process, and 2. Assist permitting authorities to meaningfully address environmental justice issues in permitting decisions to the greatest extent practicable.” (Page 10.)

“Initially, the Agency will focus on EPA-issued permits that provide the best current opportunities for taking environmental justice concerns into consideration. In this way, EPA can make short-term progress and gain valuable lessons for subsequent efforts. In the long term, EPA will focus on permits issued pursuant to federal environmental laws (i.e., federal, state, or tribal) that enable the Agency to address the complex issue of cumulative impacts from exposure to multiple sources and existing conditions.” (Page 10.)

Proposed activities outlined in this implementation plan rely heavily on the advice and recommendations presented by the National Environmental Justice Advisory Council (NEJAC) from both their most recent response to EPA’s permitting charge and numerous relevant prior NEJAC reports. (Page 42.)

Strategy 1 of the EJ Permitting Implementation: Develop tools that will enhance the ability of overburdened communities to participate fully and meaningfully in the permitting process.

These tools will focus on ensuring that overburdened communities are fully informed about the potential impacts of permitted activities and understand the information they receive. In addition, we will explore ways of promoting regular dialogue between overburdened communities and the regulated facilities at all stages of the permitting process, including early involvement, and after a permit has been issued. (Page 45.)

Among the best practices and the like being considered to assist in conducting public outreach and notification:

- Public notifications outside of newspapers (multi-media press releases and advertisements, use of internet, but not exclusive reliance on such technologies).
- Documents written in plain language.
- Translations of documents in appropriate languages.
- Direct and targeted outreach to community organizations and institutions.
- Making documents physically accessible and free to communities.
- Providing per diem or other financial resources for community members to attend meetings.
- Scheduling meetings during non-working hours.
- Providing third party attorneys and scientists as resources for communities.
- Periodic engagement and notification throughout the permitting process, including when there are changes to the scope of the permit application or when environmental studies are taking place.
- Model processes to improve information flow between the facility, community, and permitting authority.
- Web-based, searchable, updated contact lists, by EPA region, of community organizations and tribal government and indigenous organizations to facilitate outreach.
- Guidance on developing long-term communication protocols with specific overburdened communities that reflect the communities' preferences for how to receive information and provide feedback into permitting decisions.

Permit Conditions—How to Integrate Environmental Justice Into Actual Permit Conditions.

- Best practices, guidance, and trainings on developing permits to include issues important to local communities.
- Resources to facilitate and/or fund the placement of more fence-line and community-based monitors in overburdened communities.
- Best practices, guidance, trainings, and protocols on developing permit conditions to better address and protect indigenous peoples' cultural and subsistence resources.
- Guidance on how to conduct traditional knowledge information gathering and how to integrate that into permit conditions.
- Protocols for factoring environmental justice into permit conditions, regardless of the level of public participation.
- Best practices, guidance, and trainings on minimizing issuance of emergency permits.

“Outside” of Traditional Permitting

Guidance and trainings on using resources and programs outside of permitting includes:

- Helping communities develop and adopt community-specific, comprehensive environmental justice plans.
- Community Action for a Renewed Environment (CARE)
- Encouraging the creation of Supplemental Environmental Project (SEP)-like mitigation projects (diesel retrofits, off-site street sweeping, tree planting, landscaping, public playgrounds and green spaces, etc.)
- Good Neighbor/Environmental Benefit Agreements.
- Performance Partnership Agreements.
- Increasing and maintaining active listening, engagement, and follow-up with communities outside of permitting actions.

EPA's Office of Air and Radiation (OAR) is piloting several kinds of analyses that are useful in informing managers about the potential environmental justice implications of air rulemakings. OAR is evaluating and testing several analytical approaches, including: 1. Proximity-based socio-demographic analyses, which highlight the characteristics of those living closest to sources of air pollution; 2. Exposure and health risk modeling that breaks out data based on socio-demographic characteristics (e.g., race, income); and 3. Benefits mapping that shows the distribution of benefits of a regulation to various socio-demographic groups. (Plan EJ 2014: Appendix, Implementation Plans, page. 115)

Additional Information on Advancing Environmental Justice through Compliance and Enforcement (Lead Program Office and Region: Office of Enforcement and Compliance Assurance, Region 5)

Goals At-a-Glance—To fully integrate consideration of environmental justice concerns into the planning and implementation of OECA's program strategies, case targeting strategies, and development of remedies in enforcement actions to benefit overburdened communities. (Page 57.)

“Every three years, OECA selects a limited number of high priority national environmental and compliance problems to address through concentrated, nationwide enforcement efforts.” (Called National Enforcement Initiatives.) (Page 59.)

“One of OECA's primary program goals is to aggressively go after pollution problems that make a difference to communities, and we place a high priority on benefits to overburdened communities in selecting our National Enforcement Initiatives.” (Page 59.)

National Enforcement Initiatives for FY 2011-2013:

- Keeping raw sewage and contaminated stormwater out of our nation's waters.
- Preventing animal waste from Concentrated Animal Feeding Operations (CAFO) from contaminating surface and ground waters.
- Cutting toxic air pollution that affects communities' health.
- Reducing widespread air pollution from the largest sources, especially the coal-fired utility, cement, glass, and acid sectors.
- Reducing pollution from mineral processing operations.
- Assuring energy extraction sector compliance with environmental laws. (Page 60.)

“In selecting these areas of focus, OECA gave significant weight to problems that affect overburdened communities. For example, raw sewage discharges from municipal sewer systems often affect poor and minority communities by contaminating urban waters or causing sewage backups into their homes. CAFOs are often located near poor rural communities, and animal waste that gets into groundwater can contaminate nearby residents’ drinking water supplies. Toxic air pollution can affect the health of poor and minority communities that often are located closest to industrial facilities with toxic air emissions. Widespread air pollution from coal-fired power plants and other industries can travel long distances and contribute to respiratory illnesses, such as asthma, that afflict poor and minority populations and children. Large mineral processing facilities, which can cause significant contamination of ground and surface waters with hazardous waste, are often located near poor and minority communities. Energy extraction activities, which often occur on or near tribal lands in the west, can cause air or water pollution problems that affect tribal communities.” (Page 60.)

“Selection of National Enforcement Initiatives for FY 2014-16 ... OECA will call for nominations for the FY 2014-2016 National Enforcement Initiatives, with emphasis on those with potential opportunities for addressing environmental justice concerns, and will then select the new initiatives.” (Page 61.)

“Protection of the public health is OECA’s highest priority, and protection of the health of overburdened communities is especially important.” (Page 62.)

“To ensure that all EPA enforcement personnel consider and address environmental justice concerns early in the enforcement process, the Agency, in consultation with DOJ, is revising its internal Model Litigation Report guidance to call for increased analysis and discussion of environmental justice considerations in civil case referrals that EPA sends to DOJ. In addition, EPA will issue guidance calling for analysis and discussion of environmental considerations in the requests for prosecutorial assistance that the Agency provides to DOJ. These guidances will be issued in 2011.” (Page 62.)

“In order to implement the direction to consider environmental justice concerns in selecting and conducting enforcement cases, case teams will need guidance on how to identify areas of potential environmental justice concern. EPA has developed a number of screening tools to assist in identifying areas of potential environmental justice concern. These include the online mapping tool, “EJ View” (formerly known as the Environmental Justice Geographic Assessment Tool, or EJGAT), which uses demographic, environmental, health, and facility-level information to assist in identifying areas with potential environmental justice concerns. OECA has also developed a screening tool called the Environmental Justice Strategic Enforcement Assessment Tool (EJSEAT), which uses these same categories of data to assist in identifying areas of potential environmental justice concerns that may be appropriate for enforcement action to address the effects of noncompliance on overburdened communities.” (Pages 62-63.)

“With all of these screening tools, it is important to remember that they can only provide a starting point for analysis and decision making as to whether a community has environmental justice concerns or whether any enforcement action is appropriate. “Ground truthing” is needed before drawing any conclusions regarding any particular community or environmental compliance problem....” (Page 63.)

“Increase efforts to address environmental justice concerns through use of injunctive relief, including mitigation, and Supplemental Environmental Projects in civil enforcement actions, as appropriate. OECA, the EPA regions, and DOJ are jointly heightening their focus in civil enforcement cases on potential options to obtain meaningful environmental and public health benefits to specific overburdened

communities affected by violations of federal environmental laws. These efforts go beyond traditional injunctive relief to stop illegal pollution, to mitigate the environmental and public health harm cases by illegal pollution and, where appropriate and agreed to by defendants, to include Supplemental Environmental Projects (SEPs) that provide benefits to communities. For example, in a case involving illegal discharges of pollutants from a facility that damaged a tribal fishing area, the relief ordered (in addition to stopping the illegal discharges) included restocking the fishing ground. EPA has also been successful in obtaining SEPs from defendants to retrofit diesel school buses, to reduce the air pollution that children are exposed to. We will continue and accelerate these types of efforts to reduce pollution burdens that have a disproportionate impact on minority, low-income, tribal and indigenous populations.” (Page 67.)

“Increase efforts to benefit affected communities through use of community service and the Crime Victims’ Rights Act in criminal actions. OECA will work with DOJ to 1. Explore innovative uses of criminal sentencing options , e.g., community service or environmental compliance plans, and 2. Take into account information obtained pursuant to the Crime Victims’ Rights Act when developing environmental crimes case resolutions (e.g., restitution). (Page 67.)

Additional Information on Supporting Community-Based Action Programs (Lead Program Office and Regions Office of Solid Waste and Emergency Response, Regions 2, 3, 4.

“The Plan EJ 2014 Supporting Community-Based Action Programs implementation plan builds upon an Agency effort to improve the effectiveness of EPA’s place-based community programs through better information access, coordination, and leveraging. Through this process, EPA hopes to make “community” an organizing principle for our work. To implement this principle, EPA is currently doing the difficult foundational work of internally aligning and coordinating its programs. The resulting foundation will enable EPA, particularly its regions, to more effectively expand partnerships, build local capacity, and foster health and economic benefits in overburdened communities, as well as aligning EPA programs and investments with those of other federal agencies, state, local, and tribal governments, and other stakeholders.” (Page 79.)

Activity 6: Develop a community –based partners (CBP) initiative for opportunities in underserved and environmental overburdened neighborhoods to collaborate with federal agencies, private industry, foundations, and other institutions to implement the CARE principles.

In developing the CBP program, EPA will assess and implement ways by which the Agency can better act as a conduit to bring together underserved communities with federal agencies, private industry, businesses, foundations, universities, and other institutions.

Activity 7: Develop a CBP program that caters to grassroots or emerging community groups with little or no organizational or technical capacity.

This second type of CBP program will address Agency concerns in reaching out to those community groups who have been unsuccessful in competing for government grants.