

## ATTACHMENT

### EJ in Air Permitting Principles for Addressing Environmental Justice Concerns in Air Permitting December 2022

Securing environmental justice and equity for all environmentally overburdened communities is a high priority for EPA. Executive Orders 14008, 12898, and 13985 direct agencies to make achieving environmental justice and equity a part of their mission. To advance environmental justice and equity through permitting actions under the Clean Air Act (CAA), the Office of Air and Radiation (OAR) is providing resources and recommendations to the EPA regions regarding approaches for addressing environmental justice and advancing environmental equity.

Additionally, Title VI of the Civil Rights Act of 1964 and other federal civil rights laws ensure that recipients of EPA financial assistance (“EPA recipients”), including state and local permitting programs, do not discriminate – either intentionally or in effect – against persons on the basis of race, color, national origin (including limited English proficiency or “LEP”), disability, sex, and age. Compliance with the federal civil rights laws by EPA recipients is mandatory and represents an important enforcement tool for achieving environmental justice. The [\*Interim Environmental Justice and Civil Rights in Permitting Frequently Asked Questions\*](#) (“FAQ”) provide valuable information about how civil rights issues may arise in the context of permitting and suggested methods of analysis that may be appropriate in those situations. While not reproducing the level of detail in the FAQs in this document, links to specific, relevant FAQs are integrated throughout where appropriate.

The goal of this document is to provide a framework of principles and practices to assist each EPA region to promote environmental justice and equity through air permitting programs using existing CAA authorities and discretion, federal civil rights laws, as well as other federal and state laws that may help to mitigate potential adverse and disproportionate effects of a permitting action. This document will be updated as needed to incorporate the experience and insight gained through the use of these principles and practices, the FAQs, and any future relevant EPA guidance. The document does not prescribe a single specific approach or methodology for addressing environmental justice and equity in air permitting. Rather, what is appropriate in each situation should be considered on a case-by-case basis.

EPA regional air permitting staff are encouraged to immediately apply these eight principles and associated practices in issuing federal CAA permit decisions. Regions are equally encouraged to work collaboratively and proactively with state, tribal, and local partners to facilitate their consideration and application of these same principles in their air permitting actions where appropriate to protect human health and the environment for all affected individuals, including those who live in communities with environmental justice and equity concerns.

This document does not change or substitute for any requirement under the CAA or its implementing regulations, any EPA-approved CAA permitting program, or Title VI of the Civil Rights Act, nor are they a regulation themselves. Nothing in this document is intended to impose or establish legally binding requirements and no part of this document has legally binding effect

or represents the consummation of agency decision making. To the extent there is any inconsistency between this document and any statute, regulation, or guidance, the latter takes precedence. EPA retains discretion to use or deviate from this document as appropriate. It is, therefore, not a final agency action and is not judicially reviewable.

- 1.) **Identify communities with potential environmental justice concerns:** EPA regions and permitting authorities can use EJScreen or other suitable geographic information system and mapping tools and data to identify communities with potential environmental justice concerns to encourage proactive community engagement and promote the fair treatment and meaningful involvement of the affected community in air permitting actions. EJScreen and similar tools allow users to couple demographic indicators (*e.g.*, low-income communities, communities of color, and tribal/indigenous communities) with environmental indicators in order to conduct a screening of a community potentially disproportionately and adversely affected by environmental and human health harms or risks. There are additional environmental indicators in EJScreen that allow users to screen for whether communities affected by an air permitting action are already affected by other pollution sources and may be vulnerable based on age, unemployment, or linguistic isolation, among other non-pollution stressors. Finally, the use of screening tools may also inform permitting authorities of whether a permitting decision may raise possible issues of civil rights compliance, *i.e.*, may have an adverse and disparate effect on the basis of race, color, or national origin (including LEP) See *FAQ #8*.
- 2.) **Engage early in the permitting process to promote meaningful participation and fair treatment:** OAR encourages permitting authorities to identify those permitting actions that may have a disproportionately high and adverse effect on communities, including those with environmental justice concerns, preferably before the permit application is submitted. OAR also recommends that air permit applicants work with the permitting authority and affected community to provide opportunities for meaningful participation and fair treatment throughout the air permitting process. This practice creates the opportunity for the permitting authority, either independently or working with the permit applicant, to identify resources or any additional information that would facilitate understanding of the potential effects of a permitting action on the community and promote fair treatment and meaningful participation throughout the permitting process. Early engagement may also facilitate the early identification of siting alternatives, if appropriate, or mitigation measures that the applicant can take to address potential adverse and disproportionate effects of the permitting action. It is important for EPA and permitting authorities to communicate throughout the permitting process and to recognize and address concerns affecting the community. Similarly, it is important for the applicant and the permitting authority to meaningfully engage with the community in order to discuss and consider potential approaches to addressing concerns before, during, and after the air permitting process.
- 3.) **Enhance public involvement throughout the permitting process:** When a permitting action may result in disproportionately high and adverse human health or environmental effects on a community, including one with environmental justice concerns, it is important that the permitting authority and permit applicant provide the affected community with meaningful opportunities to provide input into the decisions that will impact residents' lives.

This could include, for example, training on how to make effective comments on permits; making the permit application, administrative record, and data easily and publicly available; notifying the public of the action through multiple communication methods (e.g., mail, online, social media, door-to-door, etc.); providing multiple methods for public comment (e.g. mail, online, voicemail); holding formal public hearings and informal public meetings in or near the community; providing translation and interpretive services where appropriate; providing more easily understandable support documents to supplement a statement of basis or other permit decision support documents; and other actions that may address barriers to meaningful participation and further encourage public engagement during the permitting process. For more information, see [\*Environmental Justice in the Permitting Process \(2000\)\*](#), [\*Enhancing Environmental Justice in EPA Permitting Programs \(2011\)\*](#), and [\*EPA Activities To Promote Environmental Justice in the Permit Application Process \(May 9, 2013\)\*](#).

Effective public participation is also a component of any analysis to determine whether recipients' programs and activities, including permitting activities, comply with EPA's non-discrimination regulations. See 40 CFR Parts 5 and 7. For more information, see the Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Recipient Guidance), 54 Fed. Reg. 14207 (Mar. 21, 2006) and Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 69 Fed. Reg. 35602 (June 25, 2004).

- 4.) **Conduct a “fit for purpose” environmental justice analysis:** When a permitting action may result in disproportionately high and adverse human health or environmental effects on a community, including one with environmental justice concerns, permitting authorities are encouraged to conduct an environmental justice analysis of appropriate scope to inform the permitting decision.

An environmental justice analysis accomplishes two important policy objectives: (1) it addresses the principle of fair treatment by further evaluating adverse and disproportionate impacts and identifying ways to prevent or mitigate such impacts; and (2) it addresses the principle of meaningful involvement by fostering enhanced community engagement in the permitting decision. EPA recommends including the results of any analysis in the administrative record for the permit to transparently show whether and how the permit may adversely and disproportionately affect a community. Environmental justice analyses will vary according to the specific circumstances of any permit decision, but may include:

- Further evaluation of demographic data indicating vulnerabilities in the affected population;
- Further input from stakeholders, including the affected community;
- An evaluation of existing environmental data, including air monitoring, air modeling, or, as appropriate, data from other media;
- An evaluation of the facility's compliance record;
- An evaluation of existing public health data about the affected community;
- An evaluation of the permitting action's potential health and non-health adverse effects (e.g., noise, odor, and traffic);

- An evaluation of the cumulative impact of the permitting action under consideration together with impacts from other regulated and non-regulated sources of pollution in the community;
- An evaluation of the potential effects of the permitting action under consideration on the health of a population and the distribution of those effects within the population; and
- An evaluation of potential methods for minimizing or mitigating adverse effects on the community.

See *FAQ #8*. If the screening analysis indicates that the permitting action will have a disproportionate effect on the basis of race, color, or national origin (including LEP status), then it may be necessary to conduct an analysis of disparate impacts under federal non-discrimination laws, including Title VI. See *FAQ #9*, 11-13. The components of an environmental justice analysis described above can also be relevant to the consideration of civil rights compliance. See *FAQ #4*.

**5.) Minimize and mitigate disproportionately high and adverse effects associated with the permit action to promote fair treatment:** When a permitting action may result in disproportionately high and adverse human health or environmental effects on a community, including one with environmental justice concerns, permitting authorities can promote fair treatment by fully examining all relevant statutory and regulatory authorities, including discretionary authorities, to develop permit terms and conditions to address or mitigate identified air quality impacts to the extent feasible. Examples of potential legal discretion under existing authorities may be found in [EPA Legal Tools to Advance Environmental Justice](#). EPA and other air permitting authorities may also consider whether other federal, state, tribal or local entities have authority that may be used to address or mitigate effects and engage with those entities, where feasible, to implement solutions.

In addition to considering whether an air permit meets all applicable federal air permitting requirements, EPA may, when appropriate and conditions warrant, submit formal comments to identify available discretion under federal, state, or local authorities that may be applied to mitigate or otherwise address the air permitting action's effects on the community. In addition, EPA may submit formal comments when a permitting action raises an EPA recipient's independent obligation to comply with federal non-discrimination laws, including Title VI. See *FAQ #5*.

EPA recipients have an independent obligation under federal civil rights laws with respect to all of their programs and activities, including environmental permitting programs. If a permitting program is an EPA recipient and its decision is likely to have an adverse and disparate effect on the basis of race, color, national origin (including LEP), disability, sex, or age, then the program should consider broadly the availability of less discriminatory alternatives. For more information, see *FAQ #14*.

- 6.) **Provide federal support throughout the air permitting process:** When a permitting action by an EPA recipient may result in disproportionately high and adverse human health or environmental effects on a community, including one with environmental justice concerns, EPA will be available to collaborate with the permitting authority to provide technical support, guidance, and recommendations to address these effects on the community, including cumulative effects.
- 7.) **Enhance transparency throughout the air permitting process:** It is important that permitting authorities provide transparency in decision making throughout the air permitting process with consideration of the specific needs of the community. The administrative record for the permitting action should be readily available in a format and location that is easily accessible to the affected community. We recommend clearly documenting the affected community's concerns and addressing those concerns to the extent possible. The permitting authority and applicant can consider ways to make compliance monitoring, test results, records, and reports required by the permit publicly available in a meaningful way that is understandable and readily accessible by the community. For more information and available resources, see *FAQ #15*.
- 8.) **Build capacity to enhance the consideration of environmental justice in the air permitting process:** EPA's capacity to confront environmental justice challenges will depend on a coordinated, long-term effort with our regulatory partners, stakeholders, and affected communities nationwide. EPA recognizes the importance of building the collective capacity of EPA, state, tribal, and local co-regulators to promote the fair treatment and meaningful involvement of communities with environmental justice concerns in the air permitting process. OAR supports the development of EPA, state, local and tribal capacity to identify and address these concerns through training, technical assistance, and outreach activities. Many permitting authorities have already developed effective tools to advance environmental justice. EPA supports peer-to-peer learning between our regulatory partners, stakeholders, and affected communities to identify best practices on how to address environmental justice concerns and collectively expand our positive impact in environmentally overburdened communities.