

RESPONSE TO COMMENTS
FY 2023-2024 NATIONAL PROGRAM GUIDANCE
OFFICE OF ENVIRONMENTAL JUSTICE AND EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>NACAA applauds EPA’s commitment to the Strategic Plan goal to “provide a cross-cutting foundation for integrating [environmental justice] EJ and civil rights considerations into the fabric of work across the Agency.” Air pollution continues to be a significant problem in this country, threatening public health and welfare, especially in overburdened environmental justice (EJ) communities that disproportionately suffer adverse human health and environmental impacts. On January 15, 2021, NACAA provided recommendations and priorities for clean air and climate program to the Biden-Harris Administration. This document. <u>Improving Our Nation’s Clean Air Program: Recommendations from the National Association of Clean Air Agencies to President-Elect Biden’s and Vice President-Elect Harris’ Administration</u> (January 15, 2021), calls upon EPA to center EJ in its work. Please see the specific recommendations in this document pertaining to EJ.</p>	<p>National Association of Clean Air Agencies (NACAA)</p>	<p>Page 4 (Introduction)</p>	<p>Thank you for your comment. We are reviewing the referenced recommendations.</p>	<p>Made no changes to the NPG.</p>

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<p>EPA appropriately recognizes the importance of working closely with state and local agencies on EJ activities. Those agencies are more than stakeholders, they are co-regulators. As such, it is imperative that EPA work collaboratively and in concert with state and local governments, many of which can make valuable contributions, based on their tremendous experience and expertise with EJ issues. EPA should work to blend federal activities with existing state and local programs that have been successful.</p> <p>In order to carry out this critical EJ work, state and local air quality agencies require sufficient funding. Unfortunately, grants to state and local agencies have been inadequate for many years. Accordingly, NACAA is recommending that federal grants under Sections 103 and 105 be increased to \$500 million annually, beginning in FY 2023. Such increases will help to support agencies in fulfilling their current responsibilities and taking on new and high-priority programs, which include additional activities and programs to address EJ more effectively.</p>	NACAA	Page 5 (Promote EJ and Civil Rights at the Federal, Tribal, State, Local, and Community Levels)	Thank you for your comment. EPA is prioritizing significant funding from our increased EJ program budget to support the EJ efforts of our governmental partners at the state, local, and tribal levels.	Made no changes to the NPG.
<p>By September 30, 2026, EPA wants to include Environmental Justice and Civil Rights commitments to address disproportionate impacts in all written agreements. We recommend EPA go through a regulatory process to lay out these commitments rather than doing so in policies and procedures.</p>	<p><i>Kent Woodmansey,</i> <i>SD DANR</i> South Dakota Department of Agriculture and Natural Resources (SD DANR)</p>	<i>Pages 8 and 10</i>	Thank you for your comment. EPA will consider this option as we work through this commitment.	Made no changes to the NPG.

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<p>The Texas Commission on Environmental Quality (TCEQ) appreciates the general guidance provided by OEJ/ECRCO on EPA Strategic Goal 2 implementation; however, TCEQ requests additional guidance on how states should implement the objectives. While the plan develops objectives, TCEQ requests detailed, specific guidance to appropriately implement and address the objectives. For example, additional guidance on how EPA will measure compliance for the specific goals EPA expects states to achieve is needed. Further, TCEQ requests additional information on funding to implement EPA’s goals and a detailed timeline for implementing EPA’s objectives.</p>	<p>Texas Commission on Environmental Quality (TCEQ)</p>	<p>Introduction, p. 4</p>	<p>EPA is committed to providing clear guidance regarding financial assistance recipient’s legal obligations to have in place procedural nondiscrimination programs; clarifying and strengthening existing guidance regarding recipient’s obligations to identify and address adverse disparate impacts, including how to consider cumulative impacts; and providing proactive technical assistance for recipients on compliance with civil rights obligations.</p>	<p>Made no changes to the NPG.</p>
<p>OEJ/ECRCO’s guidance focuses on priorities, strategies, and activities for “overburdened,” “underserved,” “vulnerable,” and “disproportionately affected” communities and “disproportionate impacts,” stating that future guidance will clarify how the agency expects states to address activities in these communities. What these terms could mean is subject to wide interpretation; however, there is no mention of creating guidance for defining or identifying such communities or impacts. Further guidance to define and identify the communities and impacts to which EPA’s priorities, strategies, and activities—and by extension similar efforts by states—should apply is critical for states’ and the public’s understanding of EPA’s goals.</p>	<p>TCEQ</p>	<p>– “Overburdened,” p. 2, 3, 5, 8, 12-14, 20-23, 27 –“Underserved,” p. 2, 3, 5, 10, 12-14, 21, 27 –“Vulnerable,” p. 2, 14, 15, 22 – “Disproportionate impacts”/ “disproportionately affected” p. 2, 4, 5, 8, 9, 13, 14, 23, 25, 26</p>	<p>Thank you for your comment. Details regarding definitions for some of these terms have been established previously while others are currently under development. EPA is working to produce a more standard lexicon of such terms outside of planning documents such as this NPG to provide greater clarity and stability of the definitions.</p>	<p>Made no changes to the NPG.</p>

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<p>OEJ/ECRCO explains that “[m]any commitments will need to be implemented within individual national programs and regions.” How will EPA ensure equitable implementation of policies and procedures (and, thus, enforcement) across programs and regions? Additionally, EPA plans to focus on ECRCO’s enforcement of civil rights laws, including implementing “affirmative compliance reviews.” TCEQ requests additional information on what those compliance reviews will contain and when such reviews will begin.</p>	<p>TCEQ</p>	<p>Introduction, p. 4</p>	<p>In its Strategic Plan FY22-26, EPA embedded its commitment to integrate environmental justice and external civil rights considerations throughout all EPA programs and activities. To that end, by September 30, 2026, all EPA programs and regions will have identified and implemented areas and opportunities to integrate environmental justice considerations and achieve civil rights compliance in their planning, guidance, policy directives, monitoring, and review activities. As for civil rights compliance reviews, EPA has developed a process for Prioritizing and Selecting Affirmative Compliance Reviews, which is posted on ECRCO's webpage. Under the Strategic Plan, ECRCO committed to initiate 45 proactive post-award civil rights compliance reviews, utilizing this process, to address discrimination issues in environmentally overburdened and underserved communities by September 30, 2026.</p>	<p>Made no changes to the NPG.</p>

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<p>OEJ/ECRCO acknowledges that “seeking a resolution of community concerns” regarding health and environmental protection requires “invoking a response” from governmental agencies at the state level and clear guidance for governmental entities on how to engage with, and respond to, community-based organizations that receive grants through EPA’s Environmental Justice (EJ) program. TCEQ requests information on whether this guidance will explain what governmental response is required and whether the guidance will recommend engagement and response practices that are specific to the goals of different grant programs offered under EPA’s EJ program.</p>	TCEQ	Objective 1 – Strategy 3, p. 7	Thank you for your comment. The particular details requested for in this commitment are currently under development and will be made public in iterative fashion once finished to both provide transparency to external partners and communities and also to receive feedback for future enhancements and refinements.	Made no changes to the NPG.
<p>OEJ/ECRCO states, “[o]nce the universe of written agreements has been established for FY23, EPA will develop capacity building materials and other resources with and for tribes and states on identifying disproportionate impacts.” TCEQ requests that any guidance or materials be provided as soon as possible for states to timely and effectively plan and implement EJ and civil rights compliance measures. TCEQ also requests more information on 1) the types “formal agreements”; 2) how EPA will handle these agreements for states that do not have the resources to fully implement these measures; and 3) how EPA will address jurisdictional limits within states. Additionally, TCEQ requests that EPA provide guidance and expectations before requesting states to enter these agreements.</p>	TCEQ	Objective 1, p. 8	Thank you for your comment. EPA will review and consider your recommendations.	Made no changes to the NPG.

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<p>The NPG provides that EPA will review formal agreements between EPA and states to ensure these agreements reflect “commitments to identify and address disproportionate environmental and public health impacts in overburdened communities.” TCEQ requests information on whether the scope of these agreements will include memoranda of agreements for state authorization to implement federal environmental programs. Also, TCEQ would like information regarding how EPA will consider differences in environmental regulations between states when determining what specific commitments to include in the formal agreements to be covered and how EPA will incorporate those commitments into the agreements using “standardized language.”</p>	TCEQ	Objective 1, p. 8	Thank you for your comment. EPA is currently working through the details of implementing this commitment and will consider the potential inclusion of MOA as suggested. EPA also appreciates that different states have different relationships vis a vis implementation of EPA authorities and will pursue a tailored approach as necessary to account for these differences.	Made no changes to the NPG.
<p>The NPG states that EPA will review state-issued permits to ensure they “are responsive to EJ and civil rights concerns...consistent with federal law and...underlying authorities.” Also, the NPG reflects that ECRCO will be tasked with providing clear guidance regarding obligations that recipients of EPA financial assistance, such as states authorized to implement federal environmental regulations and programs, have “to identify and address adverse disparate impacts, including how to consider cumulative impacts.” Guidance does not establish legal obligations and is not binding on states. Any obligations required to fully implement Title VI and clarify to state recipients, including TCEQ, how to address cumulative impacts and other EJ and civil rights concerns in standardized permitting should be promulgated through notice and comment rulemaking.</p>	TCEQ	Objective 1 – Strategy 2, p. 9-10	Thank you for your comment. EPA will review your recommendation.	Made no changes to the NPG.

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<p>OEJ/ECRCO states that they wish to “increase transparency by affirmatively providing information to the public”; however, during the July 1, 2022 meeting with states, EPA stated that each EPA region will develop a plan for EJ and civil rights compliance that will not be made public. TCEQ requests that EPA be fully transparent and make the plans public. Additionally, TCEQ requests additional information on how EPA will ensure that standards are addressed uniformly across states to ensure consistency in the implementation process.</p>	TCEQ	Objective 1, p. 10	Thank you for your comment. EPA is committed to maximum transparency in the development of such EJ efforts and language in addition to collaborating with our governmental partners throughout the different elements of this work. EPA will make public summaries of the regional and program action plans.	Made no changes to the NPG.
<p>OEJ/ECRCO establishes general deadlines throughout this document for September 30, 2026. These deadlines apply to both implementation and enforcement actions. TCEQ requests that EPA provide more detailed and practical timelines with deadlines and provide additional information on how these policies will be enforced against states when states have not been provided the proper implementation resources.</p>	TCEQ	Objective 1, p. 10	Thank you for your comment. These National Program guidances are the documents which provide more details regarding definitions, commitments, and deadlines for various commitments made in the overarching multiyear strategic plan.	Made no changes to the NPG.
<p>OEJ/ECRCO states they will review grant applications, “including ‘four-corners review’ of the Form 4700-4, to determine whether the answers are filled out completely and consistently with the nondiscrimination regulatory requirements and based on certification from the applicant of truthfulness and accuracy.” EPA stated during the July 1, 2022 meeting with states that a letter regarding this review was sent to all award recipients. TCEQ requests additional information on when that review will begin and how it will affect states that are at various phases of implementation of the NPG or who have not received additional, detailed guidance on implementing the NPG.</p>	TCEQ	Objective 1, p. 11	On July 1, 2022, EPA sent notice to all EPA financial assistance recipients of a revised Form 4700-4 review process that will take effect on January 1, 2023. During the 6- month period from July 1 to January 1, ECRCO will be training EPA staff on the revised process and providing outreach to stakeholders. EPA will also be developing the audit protocol during this period. Audits will then begin in the first part of 2023.	Made no changes to the NPG.

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OEJ/ECRCO states, “EPA will issue guidance on external civil rights compliance to promote compliance with civil rights laws and address adverse and disparate impacts by recipients of federal funds.” When will that guidance be provided?	TCEQ	Objective 2, p. 13	EPA anticipates that it will issue clarifying guidance regarding recipient's obligations to identify and address adverse disparate impacts, including how to consider cumulative impacts, within the first two quarters of FY23.	Made no changes to the NPG.
The NPG establishes the following goal: “By September 30, 2026, 80% of significant EPA actions with environmental justice implications will clearly demonstrate how the action is responsive to environmental justice concerns and reduces or addresses disproportionate impacts.” TCEQ requests additional guidance on when and how this goal will affect states. Does this percentage include actions taken by recipients of EPA financial assistance?	TCEQ	Objective 2, p. 13	Thank you for your comment. This commitment relates to actions and decisions taken by EPA, not by coregulators or recipients of EPA funding. Other goals/commitments speak to EPA's priorities regarding actions taken by coregulators and recipients of EPA funding.	Made no changes to the NPG.
OEJ/ECRCO explains that policies and procedures are needed for performing EJ analysis on “EPA rulemakings with EJ implications.” TCEQ requests information on what OEJ/ECRCO anticipates as being “EPA rulemakings with EJ implications.” Also, will EPA’s focus on rulemaking extend to promulgating regulations that specifically address disparate impacts, EJ, and civil rights considerations in the siting of facilities, issuance of permits, and authorization of regulated activities with potential impact on human health and the environment? Or will EPA’s approach consist of analyzing how EPA rulemakings, not specific to EJ, may address EJ and civil rights concerns?	TCEQ	Objective 2 – Strategy 1, p. 14	Thank you for your comment. EPA is committed to maximum transparency in the development of such EJ efforts and language in addition to collaborating with our governmental partners throughout the different elements of this work.	Made no changes to the NPG.

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<p>The NPG reflects that ECRCO will work to identify resources that support development of “model program/office specific LEP plans and procedures” and consultation for programs and regions developing language assistance plans. TCEQ would like information regarding whether these model plans and procedures will impact state agencies’ implementation of language assistance plans and, if so, whether they will address the need for available resources to fund implementation of language assistance plans once they are developed.</p>	TCEQ	Objective 2, p. 19	Thank you for your comment. EPA will review your recommendation.	Made no changes to the NPG.
<p>Regarding the 305 audit EPA plans to complete, will EPA initiate enforcement for noncompliance? If so, when will this enforcement process begin and how will the audits be enforced? Will EPA consider progress that states have achieved in implementation? What specifically will EPA evaluate in the audits? Will states have an opportunity to submit comments on the audit process?</p>	TCEQ	Objective 3, p. 21	<p>On July 1, 2022, EPA sent notice to all EPA financial assistance recipients of a revised Form 4700-4 review process that will take effect on January 1, 2023. During the 6- month period from July 1 to January 1, ECRCO will be training EPA staff on the revised process and providing outreach to stakeholders. EPA will also be developing the audit protocol during this period. Audits will then begin in the first part of 2023.</p>	Made no changes to the NPG.

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<p>The NPG states that ECRCO will implement modifications to the Pre-Award Compliance Review process and a post-award audit process to determine whether potential recipients are complying with civil rights requirements. TCEQ requests a timeframe for when these modifications will be implemented relative to ECRCO's planned affirmative compliance reviews. Also, TCEQ requests information on whether EPA will conduct rulemakings and issue additional guidance documents to address EJ and civil rights concerns before these modifications and audits take effect.</p>	TCEQ	Objective 3, p. 22	<p>On July 1, 2022, EPA sent notice to all EPA financial assistance recipients of a revised Form 4700-4 review process that will take effect on January 1, 2023. During the 6- month period from July 1 to January 1, ECRCO will be training EPA staff on the revised process and providing outreach to stakeholders. Audits will then begin in the first part of 2023. Separately, on January 6, 2022, ECRCO issued a Process and Criteria for Prioritizing and Selecting Affirmative Compliance Reviews. EPA has since initiated a compliance review on March 18, 2022, according to this process.</p>	Made no changes to the NPG.

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<p>TCEQ seeks clarification of the timing of the elements of the OEJ/ECRCO guidance. For example, for the long-term performance goal to address disproportionate impacts in all written agreements between EPA and tribes/states, Strategy 1 discusses integrating commitments to identify and address disproportionate impacts into written agreements between EPA and the states. In Strategy 2, ECRCO indicates that EPA will review state-issued permits to ensure that EJ and civil rights concerns are met. However, additional guidance regarding key elements of its strategies (e.g., how to identify and address cumulative and disparate impacts) will be forthcoming. It is unclear from the NPG if this critical guidance will be completed before states must integrate commitments into their agreements with EPA and before EPA begins reviewing state permits for EJ and civil rights concerns. Assuming the guidance will be completed before these actions, it is unclear whether sufficient time will be given to states to implement the guidance before EPA begins requiring commitments in agreements and reviewing state permits for EJ and civil rights concerns. The guidance suggests sufficient time may not be available (e.g., it sets a performance measure of 25% completion for written agreements with states by FY23). Similarly, in the long-term performance goal regarding initiation of 45 post-award civil rights compliance reviews, ECRCO commits to beginning compliance reviews in FY23, however it is generally unclear when critical guidance will be available.</p>	TCEQ	Objective 1, p. 8-10; FY 2023 NPG Measures chart, p. 25; Objective 3, p. 20-21	EPA is committed to providing clear guidance regarding financial assistance recipient's legal obligations to have in place procedural nondiscrimination programs. That guidance should be issued yet in FY22 or early FY23. In addition, in the first part of FY23, ECRCO will clarify and strengthen existing guidance regarding recipient's obligations to identify and address adverse disparate impacts, including how to consider cumulative impacts. As for civil rights compliance reviews, EPA has developed a process for Prioritizing and Selecting Affirmative Compliance Reviews, which is posted on ECRCO's webpage. Under the Strategic Plan, ECRCO committed to initiate proactive post-award civil rights compliance reviews, utilizing this process, to address discrimination issues in environmentally overburdened and underserved communities.	Made no changes to the NPG.

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<p>We commend OEJ-ECRCO for releasing draft national program guidance for the first time, and including explicit commitments to advance environmental equity and justice. However, there are several crucial gaps in the guidance, as well as programs and commitments currently not included, all of which are essential to advancing these goals. Specifically:</p> <ul style="list-style-type: none"> - The guidance does not define key terms, including, but not limited to: “environmental justice communities,” “community-driven,” “meaningful involvement,” “equitable practices,” and “underserved and overburdened communities.” These definitions should, at minimum, clarify the relationship between members of “underserved and overburdened communities,” “environmental justice communities,” and protected classes under Title VI. 	<p>Citizen group of 16 individuals</p>	<p>Missing from draft guidance</p>	<p>Thank you for your comment. Details regarding definitions for some of these terms have been established previously while others are currently under development. EPA is working to produce a more standard lexicon of such terms outside of planning documents such as this NPG to provide greater clarity and stability of the definitions.</p>	<p>Made no changes to the NPG.</p>

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<p>Title VI compliance and enforcement is central to OEJ-ECRCO's mission, but the draft NPG does not address the receipt, processing, investigation, or resolution of Title VI complaints, nor the issuance of Title VI compliance guidance for recipients of federal funding, including clarifying that Title VI compliance imposes both procedural and substantive obligations on recipients. Please see the attached letter and appendices submitted on November 24, 2021 to Administrator Regan, OEJ, and ECRCO, as well as the attached February 24, 2022, letter to the Office of General Council and ECRCO for our detailed recommendations on these and other concerns.</p>	<p>Citizen group of 16 individuals</p>	<p>Missing from draft guidance</p>	<p>ECRCO's Case Resolution Manual (CRM) describes EPA's processes to ensure prompt, effective, and efficient resolution of civil rights complaints consistent with the civil rights laws, including investigation steps and resolution of civil rights complaints through agreements and preliminary findings. Also, EPA is committed to providing clear guidance regarding financial assistance recipient's legal obligations to have in place procedural nondiscrimination programs; clarifying and strengthening existing guidance regarding recipient's obligations to identify and address adverse disparate impacts, including how to consider cumulative impacts; and providing proactive technical assistance for states on compliance with civil rights obligations.</p>	<p>Made no changes to the NPG.</p>
<p>The draft NPG does not address if and when EPA will withdraw or defer federal funds if a Title VI violation is found. Clarifying the thresholds for imposing these consequences is essential to ensuring compliance with Title VI.</p>	<p>Citizen group of 16 individuals</p>	<p>Missing from draft guidance</p>	<p>Thank you for your comment. EPA's nondiscrimination regulation at 40 CFR 7.130 states that if compliance cannot be assured by informal means, EPA may terminate or refuse to award or to continue assistance, and that EPA may also use any other means authorized by law to get compliance, including a referral of the matter to the Department of Justice. ECRCO's Case Resolution Manual further discusses preliminary findings, voluntary compliance and initiation of enforcement action at Chapters 5-7.</p>	<p>Made no changes to the NPG.</p>

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<p>The draft NPG does not include or reference the commitments made by EPA in its Sep. 2021 letter responding to the Office of the Inspector General regarding ECRCO, including the release of a public Title VI complaint database. These commitments, benchmarks, and associate timelines should be incorporated into the draft NPG under the relevant Program Priorities. This letter can be found here:</p> <p>https://www.epa.gov/system/files/documents/2021-10/epaoig_20-e-0333_agency_response2.pdf.</p>	Citizen group of 16 individuals	Missing from draft guidance	ECRCO's commitments to the EPA OIG are public and can be found on EPA OIG's website. Many of those commitments have been subsumed under the EPA FY22-26 Strategic Plan, including under LTPGs 2.1, 2.2. and 2.3.	Made no changes to the NPG.
<p>The draft NPG does not address if and how ECRCO plans to involve Title VI complainants in the investigation, negotiation, resolution, and settlement of Title VI complaints with recipients. Notably, the NPG does not address, standardize, or in any way make transparent its initiation of an informal resolution agreement "plus" process.</p>	Citizen group of 16 individuals	Missing from draft guidance	ECRCO's Case Resolution Manual (CRM) describes EPA's processes to ensure prompt, effective, and efficient resolution of civil rights complaints consistent with the civil rights laws, including investigation steps and resolution of civil rights complaints through agreements and preliminary findings. The CRM is a living document to be periodically updated to account for new developments and processes, such as the IRA plus process.	Made no changes to the NPG.
<p>The draft NPG does not discuss how OEJ or ECRCO will engage with the Environmental Council of the States (ECOS), including outreach to, training of, and guidance for ECOS members on civil rights compliance.</p>	Citizen group of 16 individuals	Missing from draft guidance	EPA is committed to continuing its engagement with ECOS and other stakeholders with respect to civil rights compliance, including providing regular and meaningful technical assistance, guidance, and training, such as the recently conducted 3-part civil rights training workshops, as well as soliciting feedback from ECOS and other stakeholders on environmental justice and civil rights issues and concerns.	Made no changes to the NPG.

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<p>Some simple revisions would greatly improve the organization, readability, and utility of the NPG:</p> <ul style="list-style-type: none"> The codes for Measures on PP. 25-26 should also be inserted in the main text to facilitate easy references (e.g., "EJCR15" should be inserted next to the corresponding measure on p. 20, etc.). <p>The Program Priorities, Long Term Performance Goals, Strategies, and Activities should all be numbered. There should be a consistent numbering scheme throughout the document that makes the organization and tiering of the various categories (objectives, strategies etc etc.) more useful and clear.</p>	Citizen group of 16 individuals	Throughout	Thank you for your comment. The codes for measures on pages 25-26 have been integrated into the main text of the guidance for easier reference. For formatting, the NPG follows a template provided by EPA. We will keep your comment for consideration in future editions.	Made no changes to the NPG.
<p>The NPG states EPA plans to "request[] commitments by EPA programs and regions and other governmental partners to include the principles of meaningful involvement and equity in their work and with underserved and overburdened communities." This commitment falls under Objective 1 related to non-EPA partners (Federal, Tribal, State, Local, and Community entities). Therefore this request should be explicitly extended to those non-EPA partners.</p>	Citizen group of 16 individuals	Pg 5	Thank you for your comment. By stating that this will extend to "other governmental partners" it explicitly includes co-regulators at the state, local, and tribal levels.	Made no changes to the NPG.

<p>The NPG contains several references to grantmaking to support capacity building and technical assistance and compensate organizations and individuals for their expertise and participation. To have an impact, EJ grants need to go directly to grassroots organizations with accountability structures in place to ensure that funds priority needs as defined by the communities most impacted by environmental and climate risks and burdens. This begins with an explicit commitment to making funding decisions and establishing oversight mechanisms as part of a community-led process. This language should be included as part of Strategy 3.</p> <p>Too often, federal grants and other funds flow through intermediary institutions or organizations before reaching communities. These intermediaries often take a significant percentage to cover indirect costs before reallocating those funds, sometimes over 50%. To ensure the benefits of federal grants actually reach communities, EPA should add a Measure under Strategy 3 on P. 7 that quantifies and reports out the percentage of funds that directly reach community-level grantees, and the percentage retained by intermediary institutions.</p> <p>Another potential mechanism to facilitate direct, effective funding to grassroots organizations is to create regional Environmental Justice Advisory Councils (EJACs) so that EJ leaders can be directly integrated into decision-making and assist in oversight in the distribution of that funding.</p> <p>Overreliance on intermediary organizations can also manifest in gatekeeping and implicit bias in the distribution of fund, as well as hindering relationship-building and information exchange between EPA and community members. A regional EJAC approach could mitigate those impacts while fostering relationships and exchange of information.</p>	<p>Citizen group of 16 individuals</p>	<p>PP. 6-8</p>	<p>Thank you for your comment. EPA's EJ program deeply appreciates and shares the expressed concern over the use of intermediaries and the potential for significant funding to be taken up in administrative overhead instead of reaching the intended community-based organizations. EPA is committed to transparently showing year over year the amount of total funding that flows out of the EJ program in addition to where and how much of that funding reaches recipients on an individual basis. EPA also appreciates the desire to establish regional EJ councils and is working towards that idea with the additional funding provided to EPA's regions through the EJ budget increase in the FY2022 budget.</p>	<p>Made no changes to the NPG.</p>
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<p>Under Strategy 3, the Measure (EJCRO3 on P. 2) is based on eliciting “a governmental response” but does not specify what types of responses are meaningful or how to track them. The draft NPG should elaborate on what “governmental response” means, including providing examples of adequate responses indicative of success under Strategy 3, to ensure the Measure is meaningful.</p>	<p>Citizen group of 16 individuals</p>	<p>PP. 7-8, 25</p>	<p>Thank you for your comment. The particular details requested for in this commitment are currently under development and will be made public in iterative fashion once finished to both provide transparency to external partners and communities and also to receive feedback for future enhancements and refinements.</p>	<p>Made no changes to the NPG.</p>
<p>To strengthen the Long-Term Performance Goal to “include commitments to address disproportionate impacts in all written agreements between EPA and tribes and states,” those agreements should also include commitments to produce documentation of how those disproportionate impacts were addressed, and specifically how they were reduced, eliminated, and/or mitigated.</p>	<p>Citizen group of 16 individuals</p>	<p>P. 8</p>	<p>Thank you for your comment. This detail and commitment will be kept in consideration as EPA implements this commitment. The point of the comment is also reflected in another commitment in the NPG regarding EPA review of state issued permits.</p>	<p>Made no changes to the NPG.</p>
<p>On PP. 8-9, the draft NPG mentions the “review” of state-led implementation activities, including the issuance of environmental permits. This language should be revised to expressly include the many forms of oversight available to EPA, including commenting, audits, evaluations, appeals etc.</p>	<p>Citizen group of 16 individuals</p>	<p>PP. 8-9</p>	<p>Thank you for your comment. EPA will apply the appropriate form of oversight given the unique details of each particular instance.</p>	<p>Made no changes to the NPG.</p>

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<p>The draft NPG includes a commitment to “launch a workgroup with the permitting programs to develop a framework that lists the expectations for permits that are responsive to EJ and civil rights concerns.”</p> <p>EPA has convened numerous, similar workgroups over the past 25 years with minimal impact. To ensure this workgroup’s success, the NPG should explicitly commit to:</p> <ol style="list-style-type: none"> 1. Rely on available studies and documents, including NEJAC reports on permitting, cumulative impacts, and collaborative approaches; 2. Tap the expertise of, but not be under the management of, EPA’s media/program offices (air, water etc); 3. Emphasize lessons-learned across EPA programs; 4. Involve and interact with the NEJAC on an ongoing basis; 5. Periodically report out on identified “best practices” to EPA staff, federal funding recipients, and the public; and 6. Support “pilot” projects, including with select state/local agencies, to test and advance the developed framework within an established timeframe. 	Citizen group of 16 individuals	P. 9	Thank you for your comment. EPA will review your recommendation.	Made no changes to the NPG.
ECRCO’s commitment at the bottom of p. 9 to “identify and address” adverse disparate impacts should be clarified to read “ identify, address, reduce, or eliminate ” adverse disparate impacts.	Citizen group of 16 individuals	P. 9	Thank you for your comment. EPA will review your recommendation.	Made no changes to the NPG.

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<p>Under Strategy 2, the EJ Program commits to partner with EPA program offices to “establish which permitting programs under which statutes to focus on” including NPDES, UIC, and CAA Title V.</p> <p>To promote transparency and accountability, the Activities should include a process to document and publicize which programs have been selected, and the results of EPA’s civil rights performance analyses.</p> <p>The Strategy should also include community-driven processes for selecting and reviewing priority programs. For example, we recommend in addition to the listed programs, EPA should prioritize review of</p> <ul style="list-style-type: none"> ● RCRA programs, especially hazardous waste landfills and coal ash disposal sites; ● FIFRA programs and the re-registration of pesticides; and ● the NAAQS program, including setting new standards and the evaluation of SIPs to meet past and current PM annual and daily standards. 	<p>Citizen group of 16 individuals</p>	<p>P. 9</p>	<p>Thank you for your comment. EPA will review your recommendation.</p>	<p>Made no changes to the NPG.</p>

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>Under Objective 1, OEJ-ECRCO commits to “clarify and strengthen existing guidance regarding recipient’s obligations to identify and address adverse disparate impacts, including how to consider cumulative impacts.”</p> <p>The associated Measure EJCR05 on p. 10 and 25 (“percentage of state-issued permits reviewed by EPA that include terms and conditions that are responsive to environmental justice concerns and comply with civil rights obligations”) should be revised to measure the “number of state-issued permits reviewed by EPA that include terms and conditions that are responsive to environmental justice concerns and comply with procedural civil rights obligations as well as requirements to reduce, mitigate, or eliminate disproportionate impacts.”</p>	Citizen group of 16 individuals	P. 9-10, 25	Thank you for your comment. EPA will review your recommendation.	Made no changes to the NPG.
<p>The commitment at the top of p. 10 to provide “proactive technical assistance with civil rights obligations...” should be clarified to include both “procedural and substantive” civil rights compliance. This edit is consistent with ECRCO’s commitments made in EPA’s September, 2021 letter to the Office of the Inspector General (OIG).</p>	Citizen group of 16 individuals	P. 10	Thank you for your comment. EPA will review your recommendation.	Made no changes to the NPG.

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>OEJ-ECRCO appears to conflate two different goals under the Program Priority on p. 10 (“Collaboration with state recipients of EPA financial assistance and partnerships with academic institutions”). While Strategy 1 addresses state recipients, Strategy 2 (pp. 11-12) is primarily focused on paid internships within EPA, which are unrelated to the Program Priority. We recommend moving Strategy 2 into its own Program Priority on diverse workforce development and training and more clearly articulate the relationships between advancing environmental justice and civil rights, “building capacity of underserved communities to provide their experience to EPA,” and creating a path to employment at EPA through paid internships.</p>	<p>Citizen group of 16 individuals</p>	<p>p. 10-12</p>	<p>Thank you for your comment. EPA will review your recommendation.</p>	<p>Made no changes to the NPG.</p>

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>The long-term performance goal on p. 10 gives state recipients of EPA financial assistance four years (by Sep. 30, 2026) to come into compliance with foundational civil rights laws. However, there are many state recipients that have been the subject of repeated civil rights complaints that are either under investigation, in negotiations, or under an informal resolution agreement. Funding recipients with a track record of non-compliance should not be allowed another four years before they are forced to comply. Therefore, the long-term performance goal should be revised to say “By September 30, 2026, all state recipients of EPA financial assistance will have foundational civil rights programs in place. For those programs that have been found to be in violation of civil rights laws by ECRCO, OECA, or DOJ, the associated state recipients will have foundational civil rights programs in place within twelve months of finalizing the NPGs.</p> <p>The draft NPG should also clarify that “foundational civil rights programs” impose procedural requirements only, and that recipients of federal funding must also comply with the terms and conditions associated with their grant(s), including affirmative obligations to avoid disproportionate impacts.</p>	<p>Citizen group of 16 individuals</p>	<p>P. 10</p>	<p>Thank you for your comment. The EPA FY22-26 Strategic Plan includes annual performance measures with respect to each LTPG to be met along with the overall FY26 measure. Also, EPA is committed to providing clear guidance both with regard to financial assistance recipient's legal obligations to have in place procedural nondiscrimination programs, as well as clarifying and strengthening existing guidance regarding recipient's obligations to identify and address adverse disparate impacts, including how to consider cumulative impacts. In addition, EPA will continue to provide technical assistance for recipients on compliance with procedural and substantive civil rights obligations, both proactively outside of a complaint or compliance review and during the complaint/compliance review resolution processes.</p>	<p>Made no changes to the NPG.</p>

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>On p. 14, OEJ commits to “develop additional guidance on conducting a robust environmental justice analysis for disproportionate impacts in communities.”</p> <p>Both OGC and ECRCO have significant experience and obligations related to this commitment. Yet the draft NPG does not specify OGC’s or ECRCO’s role in developing this guidance, nor does it include a commitment to develop this guidance as part of a community-driven process.</p> <p>We urge OEJ-ECRCO to include these specifications, in addition to a commitment for EPA programs to then document how the analysis affected their decision.</p> <p>We also point to our attached November 2021 letter to Adm. Regan, OEJ, and ECRCO with more specific considerations regarding guidance on environmental justice and equity analyses.</p>	Citizen group of 16 individuals	PG. 14	Thank you for your comment. OGC and ECRCO are both centrally involved in the development of this commitment. EPA is committed to the involvement of communities as a central driver in the development of this work and is currently working on multiple opportunities for communities to help inform this commitment as it moves forward. A separate commitment in the strategic plan speaks to the use of cumulative impacts guidance within EPA decisions and actions.	Made no changes to the NPG.
<p>On p. 14, the Measure under Strategy 1 is the “percentage of significant EPA actions with environmental justice implications that respond to environmental justice concerns and reduce or address disproportionate impacts.” We applaud the guidance’s focus on “reducing” impacts, and recommend specifying responses to “reduce, mitigate, or eliminate disproportionate impacts.”</p>	Citizen group of 16 individuals	PG. 14	Thank you for your comment. EPA will ensure to include that “addressing” disproportionate impacts includes their reduction, mitigation, and/or elimination.	Made no changes to the NPG.

<p>On P. 15, the Long-Term Performance Goal prioritizes “community-driven, coordinated and collaborative” approaches. This discussion is invaluable and reflects a long needed evolution of EPA’s collaborative approaches, including collaborative problem solving.</p> <p>For this language to be meaningful, the draft NPG should include a working definition of “community-driven.” One approach could be to define this as “projects or methodologies in which the impacted community or communities play a significant leadership role, including co-leading significant activities including determining scope, agendas, and processes, including decision-making processes.”</p> <p>Ideally, this working definition should be developed in close consultation with advocates and representatives of overburdened communities. Some model examples also include:</p> <ul style="list-style-type: none"> • The community engagement process to create H.R. 2021, the Environmental Justice for All Act, modeled on the Environmental Justice Principles, a foundational document of the environmental justice movement drafted at the First People of Color Environmental Leadership Summit. • Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments (supporting “self-determination”): https://www.govinfo.gov/content/pkg/FR-2000-11-09/pdf/00-29003.pdf <p>The draft NPG should also include another Measure under this Long-Term Performance Goal: Best practices identified for implementing “community-driven, coordinated and collaborative” approaches, including examples from EPA’s prior work under CARE, CPS, EJ Small grants and other programs. There are significant longstanding models available across the country, in West Oakland and elsewhere. Participants in those projects should also be engaged to surface “lessons learned”.</p>	<p>Citizen group of 16 individuals</p>	<p>PP. 15-16</p>	<p>Thank you for your comment. EPA is committed to the development of this community-driven, coordinated, and collaborative approach to both fully involve community stakeholders and build upon successes of previous efforts cited in the comment. The suggestion of also including a "best practices" component of this commitment is excellent and will be updated in the national program guidance for this goal.</p>	<p>In section bullet on page 16 under activities, modified as: Provide guidance, best practices, and develop training materials along with...</p>
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Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>The draft NPG cites “the three Key Principles for Community Work,” which, according to footnote 9, “were developed as an outcome of many years of experience of EPA working in and with communities.” However, there is no publicly available version of this document, and there is no reference or documentation of how these principles were developed and with whom. Furthermore, there is no definition for the key terms offered (“community-driven,” “collaborative,” etc).</p> <p>All references to the “Key Principles for Community Work” should be corrected. There are no such Principles that have been agreed upon by the environmental justice and civil rights advocacy community. References to such principles having already been “developed” or “recognized” should be removed and instead the NPG should include a commitment to develop such principles in close and meaningful collaboration with advocates. NEJAC involvement or advice should be sought as part of this process.</p>	<p>Citizen group of 16 individuals</p>	<p>P. 16</p>	<p>Thank you for your comment. The three key principles reference principles established across various previous efforts such as CARE, Collaborative Problem Solving, NEJAC public participation recommendations, etc. This current commitment is focused on pulling these past efforts together into a working and implementable commitment across EPA activities. EPA is committed to implementing this commitment openly and with the involvement of community stakeholders and we look forward to engaging the NEJAC as a necessary and valuable body in this effort. EPA has modified the language, so it doesn’t come across that EPA has developed new key principles for community work.</p>	<p>On pages 16-17 of the guidance, references to “the three Key Principles for Community Work” have been modified to “key principles for community work”. Footnote 9 has been updated as well.</p>

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>Any activities associated with the Program Priority regarding “meaningful language access to EPA programs and activities” must not rely solely on the internet to solicit or receive feedback or provide information to the public. Many households across the U.S. lack access to the internet, in particular, households within environmental justice communities.</p> <p>The Activities listed under this Program Priority should therefore be amended to state that trainings, technical assistance, model LEP plans and procedures, and other programs will include mechanisms and strategies to reach households without internet access as well as households whose residents communicate primarily in oral languages only.</p>	<p>Citizen group of 16 individuals</p>	<p>P. 18</p>	<p>Thank you for your comment. EPA will review your recommendation.</p>	<p>Made no changes to the NPG.</p>

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>We commend OEJ-ECRCO’s commitment to conduct 45 proactive post-award civil rights compliance reviews by Sep. 30, 2026.</p> <p>To ensure this goal leads to the fulfillment of Objective 3 (“Strengthen Civil Rights Enforcement,”) we strongly urge ECRCO to issue civil rights compliance guidance for federal funding recipients.</p> <p>Furthermore, the draft NPG should include commitments to meaningfully engage impacted communities in deciding where compliance reviews should be prioritized, and in the compliance reviews themselves. The meaningful engagement needs to be <i>both</i> in where compliance reviews are needed <i>and</i> in the compliance reviews themselves.</p> <p>Finally, to further ensure OEJ-ECRCO meet Objective 3, the Activities listed at the top of p. 22 should include a commitment to regularly extract, educate, and promote lessons learned and best practices from the post-award compliance reviews.</p>	<p>Citizen group of 16 individuals</p>	<p>PG. 20-22</p>	<p>Thank you for your comment. EPA is committed to providing clear guidance regarding financial assistance recipient's legal obligations to have in place procedural nondiscrimination programs; as well as clarifying and strengthening existing guidance regarding recipient's obligations to identify and address adverse disparate impacts, including how to consider cumulative impacts. Also, on January 6, 2022, ECRCO issued a Process and Criteria for Prioritizing and Selecting Affirmative Compliance Reviews. The compliance review criteria include consideration of input from impacted communities and other internal and external stakeholders. EPA has since initiated a compliance review on March 18, 2022, according to this process.</p>	<p>Made no changes to the NPG.</p>

<p>The Strategies and Activities under Objective 3 are incomplete and overemphasize procedural (“foundational”) over substantive civil rights requirements, and thus are inadequate to ensure the Objective will be met. This Objective should be revisited in concert with our November 2021 letter submitted to Adm. Regan, OEJ, and ECRCO to, at minimum, include substantive obligations for federal funding recipients.</p> <p>These strategies and activities also undercut and contradict the EPA’s commitments made to the OIG in September, 2021: https://www.epa.gov/system/files/documents/2021-10/epa_oig_20-e-0333_agency_response2.pdf. These commitments represent crucial first steps towards substantive Title VI compliance, i.e. reforming recipient decision-making processes to comply with the prohibition of making decisions with discriminatory effect. Specifically, there are three commitments from that letter that ECRCO promised to complete during FY22, i.e., before the start of the work under the NPGs commencing Q1FY23 (10/1/2022).</p> <p>The NPG should acknowledge, incorporate, carry forward, and build on these commitments, including:</p> <ol style="list-style-type: none"> 1. Issuing a "Dear Colleague" letter (p. 3 of EPA’s letter); 2. Updating Chapter 1 of the Toolkit, which currently serves as the best resource from EPA that goes beyond procedural Title VI compliance (p. 3 of EPA’s letter), and 3. Defining ECRCO’s approach for requiring federal funding recipients to go beyond Form 4700-4’s data collection requirements and use that data "...in their decision-making process to promote equity and ensure program decisions, including permitting decisions, are 	<p>Citizen group of 16 individuals</p>	<p>PP. 20-24</p>	<p>Thank you for your comment. EPA is committed to providing clear guidance regarding financial assistance recipient's legal obligations to have in place procedural nondiscrimination programs, including the requirement to collect and maintain data; as well as clarifying and strengthening existing guidance regarding recipient's obligations to identify and address adverse disparate impacts, including how to consider cumulative impacts. Also, on July 1, 2022, EPA sent notice to all EPA financial assistance recipients of a revised Form 4700-4 review process that will take effect on January 1, 2023. During the 6-month period from July 1 to January 1, ECRCO will be training EPA staff on the revised process and providing outreach to stakeholders. Following on EPA's commitment to the EPA OIG, as well as those in the Strategic Plan, these changes are being made to enforce compliance with the civil rights obligations identified in the Form 4700-4 and to more effectively carry out EPA’s obligation to make a pre-award compliance determination under 40 C.F.R. § 7.110.</p>	<p>Made no changes to the NPG.</p>
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Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>consistent with civil rights laws." (P. 7 of EPA's letter).</p> <p>We also point to our attached February 2022 letter to OGC and ECRCO with more specific considerations regarding refinement of the process for reviewing Form 4700-4, including specific recommendations regarding requirements for collection and analysis of data.</p>				

<p>Consistent with the stated Program Priority on P. 20 (“Civil rights compliance by decision makers that receive EPA financial assistance”), the NPG must go beyond relying on the pre-award 4700-4 Forms and incorporate education and compliance with EPA’s detailed Terms and Conditions regarding affirmative compliance with Title VI.</p> <p>In its September, 2021 letter to the OIG, EPA said: “ECRCO accepts Recommendation 4 and plans to use the 4700-4 pre-award process, the EPA General Terms and Conditions, which are binding on recipients and subrecipients of funds, and the process described below to implement this Recommendation.” (Emphasis added).</p> <p>EPA has since confirmed with members of the Title VI Alliance that these “General Terms and Conditions” in fact refer to the detailed terms and conditions at https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2021-or-later, specifically including #39 (page 25) regarding “Civil Rights Obligations” at https://www.epa.gov/system/files/documents/2021-09/fy_2022_epa_general_terms_and_conditions_effective_october_1_2021.pdf.</p> <p>These Terms include “an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.” This condition has been in EPA grants since January 2013. It is beyond time for the Agency to educate and enforce this condition.</p>	<p>Citizen group of 16 individuals</p>	<p>PP. 20-24</p>	<p>Thank you for your comment. On July 1, 2022, EPA sent notice to all EPA financial assistance recipients of a revised Form 4700-4 review process that will take effect on January 1, 2023. During the 6-month period from July 1 to January 1, ECRCO will be training EPA staff on the revised process and providing outreach to stakeholders. Following on EPA's commitment to the EPA OIG, as well as those in the Strategic Plan. These changes are being made to enforce compliance with the civil rights obligations identified in the Form 4700-4 and to more effectively carry out EPA’s obligation to make a pre-award compliance determination under 40 C.F.R. § 7.110.</p>	<p>Made no changes to the NPG.</p>
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Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p><i>The draft Guidance states that “OEJ and ECRCO are working with EPA’s regions and programs to determine how best to integrate these measures and take advantage of every opportunity to advance EJ and civil rights compliance in light of each region and program’s financial, capacity, and statutory limitations.”</i></p> <p><i>The final OEJ/ECRCO NPG should also consider the financial, other resource/capacity, and statutory limitations of state and local agencies.</i></p>	Association of Air Pollution Control Agencies (AAPCA)	Section I. Introduction Page 4	Thank you for your comment. We will consider your recommendation.	Made no changes to the NPG.
<p><i>EPA states that “As EPA reviews such state issued permits, we will work to ensure the permits are responsive to EJ and civil rights concerns that have been made clear through engagement, the use of tools, or the performance of an EJ and civil rights analyses, consistent with federal law and our underlying authorities.”</i></p> <p><i>State and local agencies are interested in more information, including potential training, regarding EPA’s expectations for state and local-issued permits.</i></p>	AAPCA	Section II. Program Priorities, Strategies, and Activities Objective 1. Promote EJ and Civil Rights at the Federal, Tribal, State, Local, and Community Levels (Strategy 2) Page 9	Thank you for your comment. We will consider your recommendation.	Made no changes to the NPG.

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p><i>State and local agencies should be engaged early as EPA begins “delineating the responsibilities of programs and regions towards meeting their objectives, identifying data gaps, building tracking systems, and putting in place any needed policy, guidance, or regulatory changes.”</i></p>	<p>AAPCA</p>	<p><i>Section II. Program Priorities, Strategies, and Activities Objective 2. Embed EJ and Civil Rights in EPA Policies, Programs and Activities Page 13</i></p>	<p>Thank you for your comment. EPA is committed to maximum transparency in the development of such EJ efforts and language in addition to collaborating with our governmental partners throughout the different elements of this work.</p>	<p>Made no changes to the NPG.</p>
<p><i>AAPCA appreciates ECRCO’s commitment to provide technical assistance and training for state and local agencies to better understand civil rights compliance, including procedural safeguards and best practices.</i></p>	<p>AAPCA</p>	<p><i>Section II. Program Priorities, Strategies, and Activities Objective 3. Strengthen Civil Rights Enforcement in Communities with Environmental Justice Concerns Pages 21 – 22</i></p>	<p>Thank you for your comment.</p>	<p>Made no changes to the NPG.</p>

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p><i>EPA's draft OEJ/ECRCO Guidance sets as a program priority "Meaningful and regular opportunities to converse with and listen to communities," indicating in the Agency's strategy that "Increased information sharing and outreach will establish and imbed a continuous and transparent pathway for open dialogue between EPA and communities." As co-regulators responsible for Clean Air Act implementation, air agencies are critical partners in this outreach. State and local air agencies can bring important details and history as well as gain insight that could inform environmental decision-making. AAPCA underscores that working together to provide meaningful and consistent communication from federal, state, and local partners is crucial for effective public outreach efforts.</i></p>	AAPCA	<p><i>Section II. Program Priorities, Strategies, and Activities Objective 3. Strengthen Civil Rights Enforcement in Communities with Environmental Justice Concerns Page 22</i></p>	<p>Thank you for your comment. EPA appreciates and agrees that our coregulators are necessary partners in this work and critical to its success. EPA is committed to maximum transparency and collaboration with our governmental partners in the implementation of this commitment.</p>	<p>Made no changes to the NPG.</p>
<p>EPA Statement: "EPA will take, whenever possible and most effective, an agency-wide approach to implementing the commitments and actions contained in this NPG, especially those that require new investments in resources or staffing."</p> <p>MoDNR Comment: The department lauds EPA for focusing on an agency-wide approach, and strongly encourages EPA to proactively and robustly coordinate with other federal agencies to ensure a "whole of government" approach in implementing these commitments, including developing consistency in procedure and substance.</p> <p>Such coordination will be particularly important for any duplicative or overlapping expectations placed by federal partners onto co-regulators.</p>	<p>Hannah Humphrey, Deputy Director Missouri Dept. of Natural Resources (MDNR)</p>	<p>Page 4</p>	<p>Thank you for your comment. EPA is committed to strengthening intra-agency collaboration with respect to environmental justice and civil rights compliance, including with DOJ as the federal government's primary civil rights coordinating agency.</p>	<p>Made no changes to the NPG.</p>

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>EPA Statement: “OEJ and ECRCO continue to work in partnership with programs and regions to determine scope, applicability, and flexibility for the work outlined in this document.”</p> <p>MoDNR Comment: OEJ and ECRCO should make every effort to include co-regulators and our feedback when considering determinations on scope, applicability, and flexibility, particularly where those decisions will ultimately be part of expectations placed upon co-regulators.</p>	MDNR	Page 5	Thank you for your comment. We will review your recommendation.	Made no changes to the NPG.
<p>EPA Statement:</p> <ul style="list-style-type: none"> • “Once the universe of written agreements has been established for FY23, EPA will develop capacity building materials and other resources with and for tribes and states on identifying disproportionate impacts,” and • “As EPA determines the universe of written agreements to include in this measure, EPA will provide guidance on formulating and implementing these commitments into those written agreements,” and • “Once the universe of written agreements is determined, work with programs to develop and provide recommended standardized language on addressing disproportionate impacts that can be included in those written agreements.” <p>MoDNR Comment: The department encourages EPA to develop these materials, commitments, and standardized language cooperatively with co-regulators, particularly where those decisions will ultimately be part of expectations placed upon co-regulators.</p>	MDNR	Page 8	Thank you for your comment. EPA agrees and is committed to working transparently and in a spirit of collaboration with our governmental partners in recognition of the fact that many of our partners have already blazed many valuable trails regarding cumulative impacts.	Made no changes to the NPG.

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p><u>EPA Statement:</u> “Clarify and strengthen existing guidance regarding recipient’s obligations to identify and address adverse disparate impacts, including how to consider cumulative impacts.”</p> <p>MoDNR Comment: The department urges EPA to provide clear, practical, and distinct definitions for “disproportionate impact,” “disparate impact,” and “cumulative impact.”</p> <p>Any vague, ambiguous, or overlapping use of these terms, particularly where case law or technical definitions already exist, will only serve to create confusion and challenges to success.</p>	MDNR	Page 9	Thank you for your comment. Details regarding definitions for some of these terms have been established previously while others are currently under development. EPA is working to produce a more standard lexicon of such terms outside of planning documents such as this NPG to provide greater clarity and stability of the definitions.	Made no changes to the NPG.
<p><u>EPA Statement:</u> “Systemize [state partners’] compliance with foundational civil rights program requirements . . . through pre-award review, technical assistance and training, additional clarifying guidance and enhanced civil rights enforcement.”</p> <p>MoDNR Comment: The department urges EPA to ensure that the proposed additional clarifying guidance is particular, clear, and practical. See above comment regarding definitions.</p>	MDNR	Page 11	Thank you for your comment. EPA is committed to providing clear guidance regarding financial assistance recipient’s legal obligations to have in place procedural nondiscrimination programs and clarifying and strengthening existing guidance regarding recipient’s obligations to identify and address adverse disparate impacts, including how to consider cumulative impacts.	Made no changes to the NPG.

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p><u>EPA Statement:</u> In the 4th Quarter of FY 2023, ECRCO will clarify and strengthen civil rights policy guidance about what states and other recipients need to do to identify and address adverse disparate impacts, including how cumulative impacts are evaluated within the disparate impacts analysis.</p> <p>MoDNR Comment: The department urges EPA to ensure that the proposed additional clarifying guidance is particular, clear, and practical. See above comment regarding definitions. Note that even within this proposed NPG, EPA has used the terms “disparate impacts” and “adverse disparate impacts” implying a distinction. Clarity is paramount.</p>	MDNR	Pages 17-18	Thank you for your comment. EPA will review your recommendation.	Made no changes to the NPG.
<p><u>EPA Statement:</u> “Measure: Percentage of EPA programs...” or “Measure: Percentage of [co-regulators]...” or “Measure: Number of...”</p> <p>MoDNR Comment: The department cautions EPA measuring “success” with a number, or, percentages. Standalone numbers and percentages do not capture the complexities of co-regulator relationships, existing legal authorities, and state and federal policy. This concern is heightened where those measures will ultimately lead to expectations placed upon co-regulators.</p>	MDNR	<p>EPA Pages: 6, 7, 12, 14, 15, 16, 18, 19, 20,</p> <p>[Co-regulator] Pages: 8, 9, 10, 11</p>	Thank you for your comment. EPA will review your recommendation.	Made no changes to the NPG.
<p><u>EPA Statement:</u> “Permit reviews utilize the framework that lists expectation for permits that are responsive to EJ and civil rights concerns to see if the expectations have been met.”</p> <p>MoDNR Comment: The department urges EPA to be wary of unintentionally creating guidance expectations that, once incorporated into funding agreements, become requirements inconsistent with state and federal obligations under statute and regulation.</p>	MDNR	Page 10	Thank you for your comment. EPA appreciates and shares this concern and will be mindful of during implementation of this priority.	Made no changes to the NPG.

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>EPA appropriately recognizes that integrating Environmental Justice (EJ) measures at the federal level must be done “in light of each region and program’s financial, capacity, and statutory limitations.” ECOS asks that EPA also recognize that integrating EJ measures at the state level must also be done “in light of each [state’s] financial, capacity, and statutory limitations.”</p> <p>EPA should conduct an analysis of workload impact and address increased resource requirements and, when requiring additional work from state and local agencies, should provide additional resources to state and local agencies. ECOS is recommending that federal grants to states related to this work be increased to \$257.90 million annually beginning in FY 2023. This will better enable states to fulfill current, underfunded responsibilities as well as integrate these new process requirements to address EJ.</p>	ECOS	Page 4 (Introduction)	Thank you for your comment. EPA is prioritizing significant funding from our increased EJ program budget to support the EJ efforts of our governmental partners at the state, local, and tribal levels.	Made no changes to the NPG.

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>EPA's EJ program provides grants directly to community-based organizations and notes that "[t]hose projects focused on seeking resolution necessitate invoking a response from a governmental agency at the local, state, tribal, or federal level." EPA proposes to measure activities related to Strategy 3 by the "percentage of environmental justice grantees whose funded projects result in a governmental response." What type of governmental response is required? EPA should define this "measure" in more detail so as not to encourage a government response when the outcome of a project shows one is not needed and would be a waste of resources to pursue. While many projects will likely result in actions that should be taken by government agencies, it is possible that data gathered in some projects may serve to ameliorate fears and show that the federal, state, local, or tribal government does not need to take any action other than the actions it is already pursuing. The metric should be expanded to allow for this scenario.</p>	ECOS	Page 7-8 (Section II; Objective I; Program Priority: Empower and build capacity of underserved and overburdened communities; Strategy 3)	Thank you for your comment. The particular details requested for in this commitment are currently under development and will be made public in iterative fashion once finished to both provide transparency to external partners and communities and also to receive feedback for future enhancements and refinements.	Made no changes to the NPG.
<p>ECOS supports EPA's work to strengthen relationships between states and tribes, and ECOS appreciates EPA's involvement with the ECOS EJ Steering Committee and Workgroup. Regarding disproportionate impacts, ECOS supports EPA's development of capacity building materials and other resources related to identifying disproportionate impacts. Many states are also presently engaging in defining disproportionate impacts at the state level. ECOS appreciates the dialogue EPA and the states have already begun on this topic through the ECOS EJ Workgroup. ECOS encourages EPA to continue this dialogue and leverage valuable state knowledge on this topic.</p>	ECOS	Page 8 - 9 (Section II; Objective I; Program Priority: Strong partnerships with tribes and states, Strategy 1)	Thank you for your comment. EPA is committed to continuing in this fashion.	Made no changes to the NPG.

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>EPA proposes to launch a workgroup to develop a framework that lists expectations for permits that are responsive to EJ and civil rights concerns. ECOS recommend, that ECOS members, through the leadership of the ECOS EJ Steering Committee, be included in this EPA led workgroup.</p>	<p>ECOS</p>	<p>Page 9 (Section II; Objective 1; Program Priority: Strong partnerships with tribes and states; Strategy 2; Activities; EJ Program)</p>	<p>Thank you for your comment. EPA will review your recommendation.</p>	<p>Made no changes to the NPG.</p>
<p>In the July 1st discussion regarding the draft OEJ FY23-24 NPG between EPA and state leadership, EPA stated that it issues approximately 4% of the country's environmental permits under the RCRA Subtitle C and National Pollutant Discharge Elimination System (NPDES). ECOS would appreciate sharing of sample text that EPA includes in the permits it issues under the RCRA Subtitle C and NPDES programs.</p>	<p>ECOS</p>	<p>Page 9 (Section II; Objective 1; Program Priority: Strong partnerships with tribes and states; Strategy 2; Activities; EJ Program)</p>	<p>Thank you for your comment. EPA will do so and is committed to maximum transparency in the development of such EJ efforts and language.</p>	<p>Made no changes to the NPG.</p>

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<p>ECOS supports EPA's work to pursue a process for assessing cumulative impacts. Many states have begun work to incorporate a cumulative impacts assessment into their program activities as well. States are at varying points in this process. ECOS encourages EPA to reach out through the ECOS EJ Steering Committee to work with states to leverage states' knowledge and experiences.</p>	<p>ECOS</p>	<p>Page 9 (Section II; Objective 1; Program Priority: Strong partnerships with tribes and states; Strategy 2; Activities; ECRCO) Page 17 (Section II; Objective 2; Program Priority: EPA's implementation of environmental justice and civil rights compliance)</p>	<p>Thank you for your comment. EPA is committed to continuing in this fashion.</p>	<p>Made no changes to the NPG.</p>

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>ECOS supports EPA activities to ensure compliance with civil rights laws. ECOS notes that EPA is still in the process of developing new guidance related to clarify interpretations of requirements and expectations for compliance with civil rights laws. ECOS requests that EPA give states time to process and incorporate any necessary changes needed as a result of this clarified guidance before conducting affirmative guidance reviews.</p> <p>ECOS notes that the guidance clarifying interpretations of civil rights law requirements and expectations is one of ECRCO's current "Activities" for FY23 (page 11). Conducting "1 or more compliance reviews to determine compliance with Title VI" is also one of ECRCO's "Activities" for FY23 (page 21). EPA should allow delegated authorities time to process and integrate any new guidance and consider revising the deadline for "1 or more compliance reviews" mentioned on page 21 to be a time centric deadline. Instead of stating "In FY 2023" include language such as, "six months after the release of guidance clarifying requirements and expectations for compliance with civil rights laws, conduct 1 or more compliance reviews...."</p>	ECOS	<p>Page 11 and Page 21 Page 11 (Section II; Objective 1; Program Priority: Collaboration with state recipients of EPA financial assistance and partnership with academic institutions; Strategy 1, Activities, ECRCO) Page 21 (Section II; Objective 1; Program Priority: Collaboration with state recipients of EPA financial assistance and partnership with academic institutions; Strategy, Activities, ECRCO)</p>	Thank you for your comment. EPA will review your recommendation.	Made no changes to the NPG.

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>ECOS supports EPA’s goal to “set ambitious goals of achieving meaningful change on the ground for communities with EJ concerns.” ECOS requests that EPA work with the local state environmental agency and approach communities in partnership with the local state environmental agency.</p>	<p>ECOS</p>	<p>Page 12 (Section II; Objective 2; Program Priority: Reducing disparities in environmental and public health conditions)</p>	<p>Thank you for your comment. Governmental partners at all levels are critically necessary parts of this effort.</p>	<p>Made no changes to the NPG.</p>
<p>As EPA develops guidance regarding the use of EJ tools, such as EJScreen, to integrate EJ into programmatic contexts, ECOS encourages EPA to also acknowledge the important benefits of state EJ related mapping tools and their place in the decision making process for both the states and EPA.</p>	<p>ECOS</p>	<p>Page 14 (Section II; Objective 2; Program Priority: EPA accountability to overburdened and underserved communities, Strategy 2; Activities; EJ Program)</p>	<p>Thank you for your comment. EPA fully agrees and is committed to supporting the further development and enhancement of state and locally based screening, mapping, and analytical tools for EJ integration.</p>	<p>Made no changes to the NPG.</p>
<p>As EPA advances the work EPA does in communities, EPA should advance this work in coordination with the local state environmental agency. Further, as EPA develops “Key Principles for Community Work,” ECOS suggest that EPA request input on these principles through the ECOS EJ Steering Committee. Many states, have established practices in this area and EPA would likely benefit from these resources.</p>	<p>ECOS</p>	<p>Page 16 (Section II; Objective 2; Program Priority: EPA effectively working in communities; Activities: OCR/EJ Program)</p>	<p>Thank you for your comment. EPA is committed to maximum transparency in the development of such EJ efforts and language in addition to collaborating with our governmental partners throughout the different elements of this work.</p>	<p>Made no changes to the NPG.</p>

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>ECOS supports EPA's goal to clarify and strengthen civil rights policy guidance regarding what states and other funding recipients need to do to identify and address adverse disparate impacts, including how cumulative impacts are evaluated within the disparate impacts analysis. ECOS encourages EPA to work with states on this topic and share any guidelines EPA establishes regarding how to identify and account for cumulative impacts as part of a disparate impacts analysis.</p>	<p>ECOS</p>	<p>Page 17 (Section II; Objective 2; Program Priority: EPA's implementation of EJ and civil rights compliance; Activities: ECRCO)</p>	<p>EPA is committed to continuing its engagement with ECOS and other stakeholders with respect to civil rights compliance, including providing regular and meaningful technical assistance, guidance, and training, such as the recently conducted 3-part civil rights training workshops, as well as soliciting feedback from ECOS and other stakeholders on environmental justice and civil rights issues and concerns.</p>	<p>Made no changes to the NPG.</p>
<p>ECOS supports EPA's effort to regularly converse with and listen to communities. ECOS recommends that EPA conduct these activities in partnership with the local state environmental agency as well as any other appropriate government partners.</p>	<p>ECOS</p>	<p>Page 22 (Section II; Objective 3; Program Priority: Meaningful and regular opportunities to converse with and listen to communities; Strategy)</p>	<p>Thank you for your comment. EPA appreciates and agrees that our coregulators are necessary partners in this work and critical to its success. EPA is committed to maximum transparency and collaboration with our governmental partners in the implementation of this commitment.</p>	<p>Made no changes to the NPG.</p>

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>In the discussion regarding the draft OEJ FY23-24 NPG between EPA and state leadership, EPA stated that all program offices and regions will be creating specific implementation plans regarding EJ integration and implementation; however, these plans may remain internal to EPA. EPA also stated that EPA believes this process should be done in full view of and cooperation with EPA's partners at the state level so it is a meaningful, not just bureaucratic, exercise.</p> <p>ECOS agrees with EPA's statement referencing the full view and cooperation of EPA's partners. It is essential that EPA and states work together to implement EJ actions and principles. It is essential that states and EPA maintain a transparent and productive relationship as co-regulators. EPA should develop each program and regional EJ implementation plan in an open and transparent manner and recommends EPA publish each plan publicly.</p> <p>States have identified challenges regarding the process of developing agency-wide definitions of disadvantaged communities. ECOS recommends that EPA work closely with the states as guidelines for defining disadvantaged communities are established. ECOS also notes that other federal agencies may have their own definitions and encourages EPA to work with state environmental agencies to develop a consistent approach to defining this work.</p>	ECOS	Page 8 (Section II; Objective 1; Program Priority: Strong partnerships with tribes and states)	Thank you for your comment. EPA is committed to maximum transparency in the development of such EJ efforts and language in addition to collaborating with our governmental partners throughout the different elements of this work. EPA will make public summaries of the regional and program action plans.	Made no changes to the NPG.