

# NPDES Program Policy

## Addressing Environmental Justice and Equity in NPDES Permitting

### OVERVIEW

The U.S. Environmental Protection Agency is committed to securing environmental justice and equity for all environmentally overburdened communities. Executive Orders 14096, 14008 (sec. 219), 13985, and 12898 direct agencies to make achieving environmental justice and equity a part of their mission. This program guidance provides Principles and Recommended Practices for addressing environmental justice in the EPA’s National Pollutant Discharge Elimination System permit program. The creation of this nationally applicable interim framework outlines how the EPA’s NPDES program aims to use existing *Clean Water Act* authorities and discretion, and encourages, where appropriate, the use of other applicable federal laws, including federal civil rights laws, to help mitigate potential adverse and disproportionate effects of a permitting action where the EPA is the permitting authority or where the EPA is supporting a state in issuing an NPDES permit.

The principles encourage consideration of all relevant statutory and regulatory authorities to develop permit terms and conditions to mitigate identified water quality concerns and other disproportionate environmental impacts as appropriate. The principles and recommended practices also recognize the importance of ensuring that permitting decisions do not, either intentionally or in effect, discriminate on the basis of race, color, or national origin (including limited English proficiency), disability, age, or sex in violation of federal nondiscrimination laws, including Title VI of the Civil Rights Act of 1964. The principles also cross-reference the [Interim Environmental Justice and Civil Rights in Permitting Frequently Asked Questions \(FAQs\)](#) at appropriate junctures.

The EPA defines environmental justice as “[t]he **fair treatment** and **meaningful involvement** of all people regardless of race, color, culture, national origin, income, and educational levels with respect to the development, implementation, and enforcement of protective environmental laws, regulations, and policies,” and defines these terms as follows.<sup>1, 2, 3</sup>

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<sup>1</sup> [EPA EJ 2020 Glossary](#).

<sup>2</sup> Executive Order 14096 defines Environmental Justice as follows: “Environmental justice” means the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other federal activities that affect human health and the environment so that people:

- (i) are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and
- (ii) have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.

<sup>3</sup> Section 3 of Executive Order 14096 defines Government-Wide Approach to Environmental Justice, including that each agency shall, as appropriate and consistent with applicable law: (vii) provide opportunities for the meaningful engagement of persons and communities with environmental justice concerns who are potentially affected by federal activities, including by:

- (A) providing timely opportunities for members of the public to share information or concerns and participate in decision-making processes;
- (B) fully considering public input provided as part of decision-making processes;
- (C) seeking out and encouraging the involvement of persons and communities potentially affected by federal activities by:

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| <b>Fair Treatment</b>  | <b>Meaningful Involvement</b>  |
| The principle that no group of people, including a racial, ethnic or a socioeconomic group, should bear a disproportionate share of the negative environmental consequences from industrial, municipal, and commercial operations or the execution of federal, state, local, and Tribal programs and policies. In implementing its programs, the EPA has expanded the concept of fair treatment to include not only consideration of how burdens are distributed across all populations, but the distribution of benefits as well. | Potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health. The public's contribution can influence the regulatory agency's decision. The concerns of all participants involved will be considered in the decision-making process. The decision makers seek out and facilitate the involvement of those potentially affected. |

The principles in this program guidance recognize that environmental justice and equity should be evaluated on a permit-by-permit basis. For general permits, these principles may need to be adapted to account for geographic and scope considerations. Regions are encouraged to share these principles and recommended practices and work collaboratively with state, Tribal, and local partners to facilitate their implementation.

**PRINCIPLES FOR ADDRESSING ENVIRONMENTAL JUSTICE AND EQUITY**

The following principles provide the foundation and basis for the specific actions the NPDES program plans to take to address environmental justice and equity.

- 1. Identify potential environmental justice concerns related to the permit:** When drafting a permit, the EPA permit writers should conduct a screening to identify existing environmental justice concerns (i.e., groups or communities that may be disproportionately impacted by the NPDES permitting action) or the potential for new environmental justice concerns to arise, and determine whether further analyses or enhanced public involvement activities should be conducted to inform the permitting decision. The screening should consider all of the NPDES permitted discharges within the community being assessed and the potential combined water quality and public health effects of these discharges. In addition, permit writers could review the [Implementation of the Clean Water and Drinking Water State Revolving Fund Provision of the Bipartisan Infrastructure Law](#) memorandum to explore alternative criteria for identifying communities with environmental justice concerns.

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(1) ensuring that agencies offer or provide information on a federal activity in a manner that provides meaningful access to individuals with limited English proficiency and is accessible to individuals with disabilities;  
(2) providing notice of and engaging in outreach to communities or groups of people who are potentially affected and who are not regular participants in federal decision-making; and  
(3) addressing, to the extent practicable and appropriate, other barriers to participation that individuals may face; and  
(D) providing technical assistance, tools, and resources to assist in facilitating meaningful and informed public participation, whenever practicable and appropriate.

2. **Conduct meaningful participation of affected communities early in the permitting process:** The EPA should encourage permit applicants to identify communities that could be impacted by discharges from the facility for which the permit is being developed, and engage them early in the process, preferably before the permit application (or notice of intent for general permits) is submitted. The goals for engaging these communities early are to identify their concerns regarding the potential effects of the permitting action or permitted operator on environmental conditions and health and to promote fair and meaningful participation throughout the permitting process. Information about the community's perspectives on existing or potential environmental justice concerns can also inform any planned analysis to assess the impact of the permit on environmental justice concerns. Early engagement with the community and the operator may also help identify measures the operator can take to avoid or mitigate potential adverse and disproportionate effects of the permitting action.
  
3. **Enhance public involvement throughout the permitting process:** The EPA Permit writers should provide communities potentially affected by a permitting action with opportunities to provide input into the decisions that will impact community members.<sup>4</sup> Examples of how the participation of communities can be enhanced include: providing information and 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, community meetings); providing multiple methods for public comment; holding public hearings in or near the community; providing translation and interpretive services where appropriate and considering languages used by the community for any written materials; providing additional, easy to understand support documents to supplement a permit fact sheet, statement of basis, or other permit decision support documents; and taking other actions that may address barriers to meaningful participation and further encourage public engagement during the permitting process. This could also include ensuring that all of the EPA public meetings, stakeholder meetings, and external-facing materials provide crucial information in a non-technical, actionable manner and are accessible for persons with disabilities and limited English proficiency.<sup>5, 6</sup>
  
4. **Conduct a “fit for purpose” environmental justice analysis:** If the screening described in Principle 1 above indicates that a community is potentially overburdened, and the permitting action could result in a community with EJ concerns being disproportionately and adversely affected by environmental and human health risks, the EPA permit writer should coordinate with the Office of Environmental Justice and External Civil Rights, the Regional Environmental Justice program, or

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<sup>4</sup> For more information see the EPA's [Public Involvement Policy](#).

<sup>5</sup> For more information, see [Environmental Justice in the Permitting Process \(2000\)](#), [Enhancing Environmental Justice in EPA Permitting Programs \(2011\)](#), [EPA Activities To Promote Environmental Justice in the Permit Application Process \(May 9, 2013\)](#), and [Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency](#).

<sup>6</sup> Effective public participation is also a component of any analysis to determine whether recipients' programs and activities, including permitting activities, comply with the EPA's nondiscrimination 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).

other EPA programs to conduct an environmental justice analysis of appropriate scope to inform the permitting decision (the permit writer may also work with the Office of Environmental Justice and External Civil Rights, as well as other EPA programs, local institutions of higher learning and other stakeholders knowledgeable of the community to identify and use an existing environmental justice analysis that has been conducted for the community, if appropriate). The results of any analysis should be included in the administrative record for the permit to transparently show whether and how the permit could adversely and disproportionately affect a community. Environmental justice analyses will likely vary according to the specific circumstances of any permit decision, but may include evaluating:<sup>7</sup>

- Demographic data indicating vulnerabilities in the potentially affected community;
- Input from stakeholders, including the potentially affected community;
- Existing environmental data relevant to the environmental justice concern, including surface water quality monitoring, or, as appropriate, data from other media;
- The permit application, discharge monitoring data, and other information submitted by the permit applicant;
- Existing public health data about the potentially affected community;
- The permitting action's potential pollutant and non-pollutant stressors (e.g., flooding, mosquito breeding, noise, odor, and traffic);
- The cumulative impact of the permitting action under consideration together with impacts from other regulated and non-regulated sources of pollution in the community and any relevant climate change impacts; and
- The potential effects of the permitting action under consideration on the health of a community and the distribution of those effects within the community; and potential methods for avoiding, minimizing or mitigating adverse effects on the community.

5. **Minimize, avoid, or mitigate disproportionate and adverse effects associated with the permit action to promote fair treatment, where appropriate:** When a permitting action might result in disproportionate and adverse human health or environmental effect on a community with environmental justice concerns, the permit writer and other EPA programs can promote fair treatment by fully examining all relevant statutory and regulatory authorities, including discretionary authorities, to avoid or mitigate identified water quality impacts or other impacts to the extent feasible and appropriate.<sup>8</sup> The permit writer and other EPA programs may also be in a position to help identify whether other federal, state, Tribal, or local entities have authorities that may be used to address or mitigate effects and engage with those entities, where feasible and appropriate, to implement solutions. Identification of such authorities may stem, for example, from early and effective public involvement and participation.

When reviewing state, Tribal, or territory permits in the EPA's oversight role, in addition to considering whether a state or territory NPDES permit meets all applicable federal permitting requirements, the EPA may, when appropriate and conditions warrant, submit formal comments to

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<sup>7</sup> See FAQs #8.

<sup>8</sup> Examples of potential legal discretion under existing authorities may be found in [EPA Legal Tools to Advance Environmental Justice](#).

identify available discretion under federal, state, Tribal, or local authorities that may be applied to avoid, mitigate or otherwise address the NPDES permitting action's effects on the community.

- 6. Provide federal support and build capacity to evaluate environmental justice in the NPDES permitting process:** Addressing environmental justice challenges will likely depend on a coordinated, long-term effort with the agency's regulatory partners, stakeholders, and affected communities nationwide. The EPA continues to collaborate with state NPDES authorities through the Association of Clean Water Administrators' environmental justice workgroup to promote best practices to identify and address the impacts of permitting decisions to avoid new or mitigate existing environmental justice concerns. In addition, the EPA plans to provide training, technical assistance, and outreach to build the collective capacity within the EPA and with state, Tribal, and local partners. This technical assistance can include providing guidance and recommendations on a state permitting action to address disproportionate and adverse human health or environmental effects on a community, including cumulative impacts. For more information regarding how EPA's Office of Water is providing water technical assistance (WaterTA) and supporting WaterTA provided by financial assistance recipients to communities across the country, permit writers may review the March 24, 2023 [Implementation of EPA Water Technical Assistance](#) memorandum.
- 7. Enhance transparency throughout the NPDES permitting process:** The administrative record for the permitting action should be made readily available in a format and location that is easily accessible to the affected community in a timely manner. The EPA permit fact sheet or statement of basis should clearly document the affected community's concerns and address those concerns to the extent appropriate. Consideration should also be given on how best 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.<sup>9</sup>

## RECOMMENDED PRACTICES FOR INCORPORATING PRINCIPLES INTO NPDES PERMITS

The EPA Permit writers should aim to implement the following practices to apply the program principles in a nationally consistent manner.

- 1. Use EJScreen to identify potential or existing environmental justice concerns in communities affected by the permit:**<sup>10</sup> Permit writers can use the [Environmental Justice Screening and Mapping Tool \(EJScreen\)](#)<sup>11</sup> or other suitable tools and data to assist in determining whether a particular community may be disproportionately and adversely affected by environmental and human health risks. EJScreen can also screen for whether communities affected by an NPDES permitting action are already affected by other pollution sources and may be vulnerable based on factors such as age, unemployment, or linguistic isolation, among other nonpollution stressors.
- 2. Develop a simple/plain language "information sheet" describing "how this permit impacts you:"**  
A simple, plain language information sheet should be provided to the general public with basic

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<sup>9</sup> For more information and available resources, see FAQs #15.

<sup>10</sup> This screening may be infeasible for general permits given the permit's geographic applicability or number of permittees.

<sup>11</sup> EJScreen includes demographic indicators (e.g., low-income communities, communities of color, and Tribal/indigenous communities) and environmental indicators to screen for potential environmental and human health risks on a community.

information regarding the facility being permitted, how the permit addresses pollutants in the discharge, and how the permitting action impacts the community and their activities.

3. **Conduct targeted outreach to community organizations:** The permit writer and NPDES program should conduct direct and targeted outreach to community organizations and institutions that are well recognized and respected in the community. This outreach should include the information described in the information sheet and how the public can meaningfully participate in the permit issuance process.<sup>12</sup> Information sheets and other documents should be translated into the predominant languages spoken in the community. Engagement/outreach should be tailored to the specific cultural context (to the degree possible) beyond translating documents. This may be especially important for potentially impacted Tribal, Alaska Native, and other indigenous communities.<sup>13</sup>
4. **Use the Program and Permit Quality Review (PQR) to spotlight environmental justice implementation:** The EPA should use the PQR process to identify, highlight, and share best practices used by states and Regions to address environmental justice concerns.
5. **Provide technical assistance and collaborate with state partners:** The EPA plans to support consistent approaches for how permit writers incorporate environmental justice into the permitting process through the development of permit templates, flowcharts, checklists, and best practices. Examples of EPA and state permits, Cumulative Impacts Analyses, communication tools, and outreach strategies should be shared on the [NPDES Permit Writer's Clearinghouse](#) or webcast trainings, as appropriate.

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<sup>12</sup> Refer to [Public Participation in the NPDES Permit Issuance Process](#).

<sup>13</sup> For more information see [Environmental Justice for Tribes and Indigenous Peoples](#).