

*Disclaimer: This document identifies internal recommended procedures for EPA employees who are staff or managers developing or issuing a permit. This document is not a rule or regulation. This plan does not change or substitute for any law, regulation, or any other legally binding requirement and is not legally enforceable. It does not impose any legally binding requirements.*

## Introduction

This EPA Region 9 Regional Implementation Plan to Promote Meaningful Engagement of Overburdened Communities in Permitting Activities describes actions EPA Region 9 can take to promote meaningful engagement of overburdened communities in regional permitting activities.<sup>1,2</sup> The Plan EJ 2014 Environmental Justice Permitting Initiative promotes the consideration of environmental justice concerns in the permitting process by: 1) enhancing the ability of overburdened communities to participate fully and meaningfully in the permitting process for EPA-issued permits; and 2) taking steps to address environmental justice issues in the EPA permitting process.<sup>3</sup>

Overburdened communities may experience barriers that discourage active participation in the permitting process, such as: lack of trust, awareness or information, limited access to technical and legal resources, and language barriers. The term “overburdened” describes minority, low-income, tribal and indigenous populations or communities in the United States that potentially experience disproportionate environmental harms and risks due to exposures or cumulative impacts or greater vulnerability to environmental hazards. This increased vulnerability may be attributable to an accumulation of negative and lack of positive environmental, health, economic, or social conditions within these populations or communities. Targeting outreach efforts to bring overburdened communities into the permitting process can help reduce barriers to community participation, and consequently help EPA address environmental justice concerns.

This plan provides a framework to help Region 9 conduct enhanced public outreach activities for permit applications and renewals, to meaningfully engage overburdened communities or communities with a significant interest in the permitting process. The types of outreach activities as well as the number of permits for which Region 9 would conduct enhanced outreach depend on site-specific considerations and resource availability.

## EPA Permits Background

Facilities are required to obtain permits from EPA or designated permitting authorities to emit or discharge pollutants into the air or water, or manage or dispose of hazardous waste. This section provides a brief overview of EPA permitting programs, and specifies which of these permits are generally issued by EPA Region 9 in California, Arizona, Nevada, Hawaii, the Pacific Islands, and Tribal Nations.

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<sup>1</sup> “EPA Activities to Promote Environmental Justice in the Permit Application Process” available at [www.epa.gov/environmentaljustice/plan-ej/permitting.html](http://www.epa.gov/environmentaljustice/plan-ej/permitting.html).

<sup>2</sup> EPA defines Environmental Justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. **Fair treatment** means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies. **Meaningful involvement** means that: (1) people have an opportunity to participate in decisions about activities that may affect their environment and/or health; (2) the public’s contribution can influence the regulatory agency’s decision; (3) their concerns will be considered in the decision making process; and (4) the decision makers seek out and facilitate the involvement of those potentially affected. More information is available at: <http://www.epa.gov/environmentaljustice/basics/ejbackground.html>.

An “environmental justice concern” is the actual or potential lack of fair treatment or meaningful involvement of people, including minority, low-income, and indigenous populations, in the development, implementation, or enforcement of environmental laws, regulations, and policies.

<sup>3</sup> Plan EJ 2014 is EPA’s roadmap to integrating environmental justice into its programs and policies. More information on the Plan EJ 2014 Environmental Justice and Permitting Initiative is available at: <http://www.epa.gov/compliance/ej/resources/policy/plan-ej-2014/plan-ej-permitting-2011-09.pdf>.

## I. Clean Air Act

### *Air Permits*

The Clean Air Act (CAA) gives EPA authority to regulate emissions of air pollutants. The three major CAA air permitting programs are: preconstruction permits (also known as New Source Review permits), operating permits (also known as Title V permits) and acid rain permits (also known as Title IV permits).<sup>4</sup> For sources in Indian Country, these permits are issued by EPA, and may be issued by the tribal permitting authority upon EPA program approval or delegation. A complete list of CAA permit program delegation agreements may be found at: <http://www.epa.gov/region09/air/permit/permitdelegation.html>.

- A. **New Source Review (NSR) Permitting Program**: This program requires facilities to obtain an air permit before starting construction or making certain modifications to the facility. The permit specifies which air pollution control devices must be used, what emission limits must be met, and how the facility must be operated. Three types of permits can be obtained under this program:<sup>5</sup>
- i. **Prevention of Significant Deterioration (PSD) Permit** – This permit is required for new major sources or major modifications to major sources in an attainment area. PSD permits may be issued by EPA Region 9 or by state or local permitting authorities.
  - ii. **Nonattainment NSR Permit** – These permits are required for new major sources or major modifications to major sources in a nonattainment area. Nonattainment NSR permits are generally issued by state and local permitting authorities.
  - iii. **Minor Source Permit** – This permit is for newly constructed stationary sources that do not require a PSD or nonattainment major NSR permit, or minor changes at major sources with increases in pollutants that do not trigger PSD or nonattainment major NSR permit. Minor source permits are issued by state and local permitting authorities according to programs approved by EPA. Minor source permits on tribal land are issued by EPA Region 9 or by tribal permitting authorities according to programs approved by EPA.
- B. **Operating Permit Program**: This program requires facilities to obtain a permit that consolidates all of the applicable CAA requirements for a facility into one document. Operating permits are legally enforceable documents designed to improve compliance by clarifying what facilities must do to control air pollution. These permits may be issued by EPA Region 9 or state, local, or tribal permitting authorities.<sup>6</sup> EPA Region 9 is the Operating Permit Program permitting authority for all sources in Indian country, except for the Navajo reservation, where EPA Region 9 has delegated the administration of the program to the Navajo Nation Environmental Protection Agency.
- C. **Acid Rain Permitting Program**: This program uses a market-based approach to reduce levels of sulfur dioxide and nitrogen oxides. Facilities own an allowance of pollution that is reflected in an acid rain permit. Although allowances may be bought, sold, or banked, facilities may not emit at levels that would violate federal or state limits set under CAA Title I to protect public health.<sup>7</sup> Acid rain permits are issued by the Title V permitting authority.

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<sup>4</sup> More information on the Clean Air Act air permitting programs is available at: <http://www.epa.gov/airquality/permjmp.html>.

<sup>5</sup> More information on NSR Permitting Program is available at: <http://www.epa.gov/airquality/nsr/>.

<sup>6</sup> More information on the Operating Permit Program is available at: <http://www.epa.gov/airquality/permits/>.

<sup>7</sup> More information on the Acid Rain Program is available at: <http://www.epa.gov/airmarkets/progsregs/arp/basic.html>. More information on Acid Rain Permits is available at: <http://www.epa.gov/airmarkets/progsregs/arp/permitting-factsheet.html>.

## II. Clean Water Act

### *National Pollutant Discharge Elimination System Permits*

The federal Clean Water Act (CWA) requires all municipal, industrial, and commercial facilities that discharge wastewater or stormwater directly from a point source into a water of the United States to obtain a National Pollutant Discharge Elimination System (NPDES) permit. The NPDES permit program regulates point sources that discharge directly to surface waters. Two types of NPDES permits are provided for: individual permits and general permits. An individual permit is specifically tailored to an individual facility and is issued in response to an application from the permittee. A general permit covers several facilities that have the same type of discharge and are located in a specific geographic area, and individual dischargers request coverage under the permit. The NPDES program has several program areas, which are listed in Table 1 below.

EPA can authorize states, tribes, and territories to administer the NPDES program, though the Agency continues to perform oversight after program delegation is authorized. In Region 9, California, Arizona, Nevada, and Hawaii issue NPDES permits for discharges in areas (other than Tribal lands) within those states. EPA Region 9 is the NPDES permitting authority for Tribal lands in Arizona, California, Nevada, and all Navajo lands; the Pacific Island territories of Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands; and any discharges into federal ocean waters beyond state boundaries.

Table 1. NPDES Permit Program Areas

Source	Program Area
Municipal	Municipal publicly owned treatment works (POTWs) effluent discharges Indirect non-municipal discharges (Pretreatment) Biosolids (sewage sludge) use and disposal Combined sewer overflow (CSO) discharges Sanitary sewer overflow (SSO) discharges Municipal separate storm sewer systems (MS4s) discharges
Non-municipal (industrial)	Process wastewater discharges Non-process wastewater discharges Stormwater discharges associated with industrial activity Stormwater discharges from large construction activities Cooling water intake structures Concentrated animal feeding operations Concentrated aquatic animal production facilities Vessel discharges

Adapted from Exhibit 2-4 of the U.S. Environmental Protection Agency NPDES Permit Writers' Manual (September 2010). Available at: [http://www.epa.gov/npdes/pubs/pwm\\_2010.pdf](http://www.epa.gov/npdes/pubs/pwm_2010.pdf).

## III. Safe Drinking Water Act

### *Underground Injection Well Permits*

The Safe Drinking Water Act (SDWA) requires the EPA to develop minimum federal requirements for Underground Injection Control (UIC) programs and other safeguards to prevent injection wells from contaminating underground sources of drinking water. In Region 9, the UIC program has been fully delegated to

Nevada, Guam, and the Commonwealth of the Northern Mariana Islands. Partial delegation has been granted to the Navajo Nation and the California Division of Oil, Gas, and Geothermal Resources for Class II wells. EPA Region 9 directly implements the UIC program with support from state and tribal water quality agencies in Hawaii, Arizona, California, and in tribal lands including the Navajo Nation. EPA's regulations group injection wells into six groups or classes (Classes I - VI):

- A. Class I Injection Wells inject hazardous and non-hazardous wastes into deep rock formations isolated below underground sources of drinking water. Class I wells are classified as either hazardous, non-hazardous industrial, municipal, or radioactive depending on the properties of the injected fluid.
- B. Class II Injection Wells inject fluids associated with oil and natural gas production. There are three types: enhanced recovery wells, disposal wells, and hydrocarbon storage wells.
- C. Class III Injection Wells inject fluids to dissolve and extract minerals (i.e., uranium, salt, copper, and sulfur) for mining.
- D. Class IV Injection Wells are used as part of EPA or state-authorized actions to clean up groundwater that is contaminated with hazardous chemicals.
- E. Class V Injection Wells inject non-hazardous waste fluids into or above underground sources of drinking water.
- F. Class VI Injection Wells inject carbon dioxide into subsurface rock formations for long-term storage, or geologic sequestration.

#### IV. Resource Conservation and Recovery Act

##### *Hazardous Waste Permits*

Subtitle C of the Resource Conservation and Recovery Act (RCRA) requires owners and operators of facilities that treat, store, or dispose of hazardous waste to obtain an operating permit to ensure that hazardous wastes are handled safely and responsibly. Facilities that treat, store, or dispose of hazardous waste are often referred to as treatment, storage, and disposal facilities (TSDFs). Treatment facilities process hazardous waste to change its composition, which can enable some waste to be recovered or can reduce the amount of hazardous waste. Storage facilities temporarily keep waste onsite until they are treated or disposed. Disposal facilities permanently keep hazardous wastes onsite in a repository (most commonly a landfill).

In Region 9, California, Arizona, Nevada, and Hawaii have authority to enforce their own hazardous waste program; however, EPA retains jurisdiction and authority to initiate an independent enforcement action, pursuant to RCRA Section 3008(a) and a Memorandum of Agreement between EPA and the Region 9 states.

#### V. Toxic Substances Control Act

##### *Toxic Substances Control Act Permits*

The Toxic Substances Control Act (TSCA) authorizes EPA to regulate the manufacture, handling, storage, and disposal of chemical substances, including polychlorinated biphenyls (PCBs). PCBs are synthetic organic chemicals used in industrial and commercial products, which have a range of toxicity and persist in the environment for many years if released. Although PCBs were banned from manufacture in 1979 and are no longer produced in the U.S., they may be present in products and materials. Facilities that commercially store or dispose PCBs must obtain EPA permits to ensure PCBs are handled safely and responsibly.

### **Identifying Priority Permits Based on Environmental Justice Concerns**

EPA Region 9 may conduct enhanced public outreach for EPA-issued permits where environmental justice concerns have been identified by Region 9 or the community. Permits with activities that may pose significant public health or environmental impacts include:

- A. CAA construction permits, especially new major sources (or major modifications of sources) of criteria pollutants;
- B. SDWA Significant Underground Injection Control Program permits;
- C. CWA NPDES “Major” industrial permits and “Non-Major” industrial permits that are identified by EPA on a national or regional basis as a focus area, for:
  - i. New sources or new dischargers, or
  - ii. Existing sources with major modifications, including, but not limited to, a new outfall, a new or changed process that results in the discharge of new pollutants, or an increase in production that results in an increased discharge of pollutants; and
- D. RCRA permits associated with new combustion facilities or modifications to existing permits that address new treatment processes or corrective action cleanups involving potential off-site impacts.

### **Environmental Justice Screening**

EJ screening is the use of available environmental and demographic information to highlight locations where additional review (e.g., information collection or analysis) may be warranted. EJ screening results in a preliminary characterization of potential impacts on the population, including low-income and/or minority populations, and potential environmental and health impacts that may fall disproportionately on them. EPA is now beta-testing a nationally consistent screening tool, called EJSCREEN. EJSCREEN is a geospatial tool that contains demographic and environmental data for the United States at the census block group level. The environmental factors include:

1. PM 2.5 Level in Air
2. Ozone Level in Air
3. Diesel Particulate Matter Level in Air
4. Air Toxics Cancer Risk
5. Air Toxics Neurological Hazard Index
6. Air Toxics Respiratory Hazard Index
7. Traffic Proximity and Volume
8. Lead Paint Indicator (% pre-1960)
9. Risk Management Plan Facility Proximity
10. Superfund Site Proximity
11. Treatment Storage Disposal Facility Proximity
12. Major Direct Dischargers to Water Proximity

In addition to environmental factors, the tool also uses two primary demographic factors, specifically, percentage of the population that is minority and percentage of population that is and low-income. EJSCREEN also includes information about linguistic isolation, population over age 64, population under age 5, and population with less than a high school education. EJSCREEN also creates indexes, which combine each

environmental indicator with the two primary demographic factors, to provide a measure of how much each block group contributes to disparity between demographic groups nationwide.

Region 9 will use EJSCREEN and other readily available sources of information, including known community concerns, during the pre-decisional screening process. As a pre-decisional tool, EJSCREEN will be used to highlight candidates for additional review where enhanced outreach may be warranted. Additional review includes consideration of additional available information and data unique to an area and that may capture environmental and demographic factors more holistically. EJSCREEN is not designed to conclusively determine whether or not disproportionately high and adverse impacts in fact exist.

In cases where EJSCREEN is not appropriate for use in screening because the relevant data were not available for the area, the region will complete a similar screening by reviewing available demographic and environmental data. EPA expects that in most circumstances EJSCREEN will be the appropriate tool for initial screening.

### **Identifying When to Conduct Enhanced Outreach**

Region 9 will generally use environmental justice screening and consider other information to determine when to conduct enhanced outreach. Enhanced outreach includes those activities that go beyond public involvement activities required in 40 CFR Part 124 or other applicable regulations.<sup>8</sup> These required activities include the following: providing public notices of the preparation of a draft permit, including a notice of intent to deny a permit; providing a formal public comment period on the proposed permit action or the permit application; and providing a public hearing if there is a significant degree of public interest.<sup>9</sup>

Figure 1 below provides a framework EPA Region 9 will use to determine when to provide enhanced outreach activities for communities potentially affected by an EPA permit. The initial step of the framework is to determine whether the facility is subject to more than one EPA permit and if so, to coordinate across the relevant permitting programs on screening and/or outreach activities, if appropriate. The second step of the framework involves initial screening for potential environmental justice concerns using EJSCREEN, an EPA tool that uses environmental and demographic indices to identify areas with greater potential for environmental justice concerns, and other readily available information. Staff may supplement EJSCREEN results with additional information about the facility and community, including any community concerns previously raised to Region 9, to better elucidate actual or potential environmental justice concerns. This information would subsequently be used to determine whether enhanced outreach should be considered. The types of enhanced outreach activities to be provided would be determined on a case-by-case basis and would depend on site-specific considerations as well as resource availability.

### **Region 9 Responsibilities**

The success of this plan is contingent upon the participation and coordination among Region 9 offices and programs. This section of the plan summarizes the responsibilities different offices and programs may fulfill. Site-specific considerations and resource availability could determine whether responsibilities are shifted or reduced.

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<sup>8</sup> 40 CFR Part 124 is available at: [http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title40/40cfr124\\_main\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title40/40cfr124_main_02.tpl).

<sup>9</sup> A public hearing is required only if EPA determines that there is a significant degree of public interest. One written request does not necessarily demonstrate a significant degree of public interest. Please see 40 CFR Part 124 for more information: [http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title40/40cfr124\\_main\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title40/40cfr124_main_02.tpl).

#### *Permit Offices*

- Provide information about existing permit universes and locations of proposed EPA permit actions to enable the EJ team to develop an internal permit tool using GIS to facilitate coordination between offices.
- Review and use the regional permit tool after an application is received to determine whether the facility has other EPA-issued permits. If the facility has more than one EPA-issued permit, notify other appropriate offices an application was received.
- Maintain the permits database underlying the GIS tool by adding location and type information on new permit applications as they are received.
- Coordinate initial screening and analysis with other permit offices that have EPA-issued permits for that facility and the EJ Program, as needed.
- Continue to lead outreach efforts and coordinate outreach activities with other permit offices, the EJ Program, and others as needed.

#### *EJ Program*

- Develop and maintain the region's GIS-based permit tool for EPA permits based on information provided by the permit programs.
- For permit programs with known universes of permittees, conduct batch screening using EJSCREEN; assist permit offices with initial screening and analysis, and response to public comments, when requested.
- Facilitate coordination among the permit offices, upon request.
- Assist with outreach activities, upon request.
- Follow up on community concerns raised to EPA during the permit process and coordinate with external agencies, as appropriate.
- Coordinate with permit offices, the Tribal Programs Office, the Pacific Islands Office, and others to review and update this plan, as appropriate.

#### *Tribal Programs Office and Pacific Islands Office*

- For EPA permit actions in Indian country and the Pacific Islands with the potential to cause environmental justice concerns, the Tribal Programs Office and Pacific Islands Office may play a coordinating role if requested by the permitting program(s).
- Permitting programs will coordinate with the Tribal Programs Office when tribal consultation is warranted.

### **Enhanced Outreach Activities to Support Meaningful Engagement**

EPA Region 9 may conduct additional outreach during the permitting process to promote greater involvement of overburdened communities. Resource availability will affect the feasibility of enhanced outreach and the number of permits Region 9 can conduct enhanced outreach for; therefore, Region 9 could choose to implement all, some or none of the activities listed below.<sup>10</sup> The list of proposed activities is intended to identify priority areas of activity.

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<sup>10</sup> Resource constraints will differ for each program based on the number of permits processed, the length of time to obtain a complete application, complexity, and the degree to which additional reviews under statutes such as the National Historic Preservation Act and the Endangered Species Act are required. Furthermore, resource constraints could limit the ability to travel to certain areas to conduct enhanced outreach.

Planning & Gathering Information:

- Identify upcoming priority permits for promoting greater public involvement. When identifying priority permits, focus on permits that the community has identified as a priority, to the extent such information is available.
- Locate existing data and studies that are relevant to the particular community, including where schools and child care centers are located relative to the proposed project.
- Explore ways to reach out to the affected community in coordination with relevant EPA staff, including permit writers, EJ coordinators, public affairs staff, and EPA's Conflict Prevention & Resolution Center.
- Evaluate the appropriate length of the public comment period.
- Consider holding informational meetings for the public in addition to formal public comment sessions.

Coordination:

- For applicants with multiple EPA permits, permit writers will inform permit writers from other offices in the region that a permit application was received from the applicant.
- Coordinate with state, local, and/or tribal authorities, when appropriate.

Communicating with the Community:

- Designate EPA point(s) of contact that the community can contact to discuss environmental justice concerns or questions of a technical nature about the permit application.
- Use informational materials to explain the permitting process.
- Use plain language when communicating with the public.
- Use communication techniques the community values, such as direct mailings, posters, articles in local newspapers, and emails to list serves.
- Offer translation services for communities with multi-lingual populations (including interpreters at public meetings or translations of public documents) when feasible.
- Make key documents on the proposed project, such as the draft permit and statement of basis or fact sheet, readily accessible to the community, using a variety of media tools (paper copies, online, etc.), when appropriate.
- When holding a public meeting, schedule the meeting at a time and place in the community to afford the public a meaningful chance to attend.
- After the permit has been issued, make available to the community a summary of EPA's comment responses and provide information on where the community can find the comment response summary.

Communicating with the Permit Applicant:

- Encourage the permit applicant to provide EPA with a plain-language description of its proposed project or permit application.
- Encourage the permit applicant to consult EPA guidance on environmental justice and other resources developed under Plan EJ 2014, including the Promising Practices for Permit Applicants Seeking EPA-Issued Permits: Ways to Engage Communities at the Fence-Line.

**Progress Review**

Region 9 will periodically review progress and share lessons learned with other regions and headquarters in carrying out the enhanced outreach provided in this plan.



**Figure 1. Outreach Planning Process**

