



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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MEMORANDUM

SUBJECT: Final Guidance on Considering Environmental Justice during the Development of a Regulatory Action

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TO: EPA Managers and Staff

We are pleased to transmit to the agency EPA's final *Guidance on Considering Environmental Justice During the Development of a Regulatory Action*. This guidance was created to ensure understanding and foster consistency with efforts across EPA's programs and regions to consider environmental justice and make a visible difference in America's communities.

Thank you for your leadership to ensure that people from all walks of life are well-served and safeguarded from environmental hazards. To those staff and managers who developed, tested, reviewed and finalized this guidance, we are particularly grateful. The guidance is an essential resource to advance our efforts to develop effective regulations and policies that serve all people, including minority, low-income populations and indigenous peoples who are often the most impacted by environmental harm and public health concerns.

The final guidance supersedes the agency's *Interim Guidance on Considering Environmental Justice During the Development of an Action*, released in July 2010, which has been effective at assisting EPA rule-making teams integrating environmental justice considerations into their work. The tools and approaches outlined in the interim guidance were vital in our efforts to reduce pollution in overburdened communities. The final guidance builds on this progress and outlines critical steps that every rule-making team can take. Further, the guidance offers specific strategies for giving vulnerable populations a voice in shaping EPA rules and regulations.

To help illustrate the value and impact of our work to integrate environmental justice considerations into rules, we have attached a list of examples to this memo. This is a short list and only a sample of the good work ongoing in the Agency. The guidance can be accessed through EPA's Action Development Process (ADP) Library at <http://intranet.epa.gov/adplibrary/>.

Key improvements from the interim guidance are:

- Improved definitions of the populations of concern;
- Refined discussion of the factors that contribute to potential environmental justice concerns;
- Refined direction on when and to what extent environmental justice needs to be considered in the rulemaking process;
- Recommendations added for how to meaningfully engage minority, low-income and indigenous populations and tribes;
- Suggestions added on overcoming barriers to considering environmental justice in the rulemaking process; and
- References added to new tools that were not available when the Interim Guidance was released, including *EJ Legal Tools* and EJSCREEN.

Rule-writers and decision-makers are reminded that they must respond to the following three core questions throughout the Action Development Process, and in particular at the time the rule-making action is presented to the final decision-maker:

- How did the public participation process provide transparency and meaningful participation for minority populations, low-income populations, tribes and indigenous peoples?
- How did the workgroup identify and address existing and new disproportionate environmental and public health impacts on minority populations, low-income populations and indigenous peoples?
- How did actions taken under #1 and #2 impact the outcome or final decision?

Engaging the public, meeting with stakeholder groups and affected people, and utilizing tools like EJSCREEN are some critical ways to consider environmental justice in EPA's rule-making actions.

The guidance supports EPA implementation of Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

(http://epa.gov/environmentaljustice/resources/policy/exec_order_12898.pdf). EPA strives to set the standard for addressing the environmental challenges that burden so many of our people and communities. Rulemaking is a critical part of how we carry out our mission of protecting the environment and health of all Americans. We call upon you to reaffirm the spirit of Executive Order 12898 and to commit to strengthening our mission to protect our environment and every American's fundamental right to breathe clean air, drink clean water and live on clean land.

Attachment

Examples of environmental justice consideration in major EPA rules:

Definition of Solid Waste 2015 (DSW): On January 13, 2015, EPA published the final revisions to the Definition of Solid Waste Rule, also known as the DSW rule. It represents a major environmental justice milestone by directly addressing impacts to communities, disproportionately borne by minority and low-income populations from the mismanagement of hazardous materials sent to recycling. EPA conducted a rigorous environmental justice analysis that examined the location of recycling facilities and their proximity and potential impact to adjacent residents. The methodology and scope was developed through a broad public engagement and expert peer review process. The analysis identified significant regulatory gaps in the previous DSW rule which could negatively impact communities adjacent to third party recyclers, including minority and low-income populations.

EPA identified mismanagement that could pose a risk of fires, explosions, accidents and releases of hazardous constituents to the environment. The economics of commercial recycling contain market disincentives that encourage over-accumulation and mismanagement of hazardous secondary material. The 2008 DSW rule lacked the tools needed for proper oversight of these facilities by EPA, states and the communities affected by them. The final rule addresses the market disincentives in a way that helps encourage safe and legitimate recycling while addressing the need to protect communities. The final rule also includes a public participation component so that communities are notified prior to recycling operations beginning and have a chance to weigh in on the environmental decisions that affect them, which was a major issue identified in the environmental justice analysis.

Mercury and Air Toxics Standard (MATS): In December 2011, EPA finalized the first federal standards that require power plants to limit their emissions of toxic air pollutants like mercury, arsenic and metals. The Mercury and Air Toxics Standard (MATS) was supported by EPA's study of the public health hazards from power plant emissions as required by the Clean Air Act. EPA used data on subsistence fishing and potential health impacts of mercury deposition on the minority, low-income and indigenous populations engaged in subsistence fishing to arrive at an "appropriate and necessary" finding that moved the rulemaking forward. In addition, EPA held a series of webinars, community calls, and consultations with tribal leadership on this rule. Most plants will come into compliance in April 2015, with full implementation by April 2016. EPA projects that mercury emissions from these sources are expected to be reduced from 29 tons in 2016 without MATS to 9 tons in 2016 with MATS, approximately a 74 percent reduction. Overall, the MATS rule will improve public health by lowering mercury exposure, especially for children and the elderly and for low-income, minority and indigenous populations that rely on subsistence fishing.

National Ambient Air Quality Standards for Particulate Matter: In December 2012, EPA strengthened the annual health National Ambient Air Quality Standard (NAAQS) for fine particulate matter (PM). Under Section 109 of the Clean Air Act, EPA set the primary standard to protect public health with an adequate margin of safety, considering "sensitive or susceptible

individuals or groups.” People most at risk from PM exposure include people with heart or lung disease (including asthma), older adults, children and people of lower socioeconomic status. In writing the PM NAAQS Implementation Rule, EPA engaged with communities to help identify areas to provide guidance to states on targeting activities that address the impact on low-income communities. EPA met with the National Environmental Justice Advisory Council and conducted a training in North Carolina on this issue. The proposal for the Implementation Rule was signed in March 2015 and provides suggestions to the states on targeting emissions reductions in communities with environmental justice concerns as well as suggestions on how to engage communities in the development of the PM State Implementation Plans.

Petroleum Refinery Residual Risk and Technology Review: In June 2014, EPA proposed the Petroleum Refinery Residual Risk and Technology Review (RTR) rule to achieve further controls on toxic air emissions from petroleum refineries. Early engagement with communities indicated a particular interest in fence-line monitoring, which was supported by EPA’s emissions inventory data indicating a significant portion of emissions from refineries come from fugitive sources. Based on this community input and the risk and technology review analyses, EPA proposed requirements for:

- Additional emission control requirements for storage tanks, flares and coking units;
- Higher combustion efficiency for flaring operations; and
- Monitoring of air concentrations at the fence-line of refinery facilities.

After the proposal was released, EPA held community calls and webinars and conducted trainings in New Orleans, Louisiana, and in Oakland, California. As a result, a significant number of communities provided more substantive comments for consideration during the development of the final rule. Additionally, in the summer of 2014 the agency held two public hearings on this rulemaking (one in Wilmington, California and one in Houston, Texas). The comment period for this rulemaking closed on October 28, 2014 and EPA is under a consent decree with environmental litigants to finalize this rule by June 16, 2015. EPA received 100,000 comments on this rulemaking. EPA is currently reviewing the comments received and will be considering all comments as we move forward with the final rulemaking.

Revisions to Agricultural Worker Protection Standards: On March 19, 2014, EPA published a proposed rule to revise the current Worker Protection Standard (WPS), designed to protect workers on agricultural establishments from occupational exposure to pesticides. EPA recognizes that individuals working with pesticides, or contacting crop products on which pesticides have been used, are at greater risk of exposure. The estimated two million farmworkers are potentially exposed to pesticide residues, both during applications as well as when they re-enter treated areas for hand labor activities. The core concepts of environmental justice have been part of the fundamental basis of the rule since its inception. EPA sought and received extensive input from the farmworker community over many years to help the Agency formulate the best set of improved protections in the proposed rule. Improvements where environmental justice consideration made a difference include training and notifications to workers, requirements to support the enforcement of required protections, and enhancements to decontamination supplies and emergency assistance requirements.

Implementation of Lead Renovation Repair and Painting Program: In April 2008, EPA issued its final Lead Renovation, Repair, and Painting Program (RRP) rule that addressed lead-based paint hazards created by renovation, repair, and painting activities in target housing and child-occupied facilities. Recognizing that children in minority populations and children whose families are poor have an increased risk of exposure to harmful lead levels, EPA determined that effective implementation was one of the best ways to ensure that these populations are not exposed to additional leaded dust resulting from common, but improperly-performed, home renovation, repair, and painting work. EPA's Dust Study supported this approach because it demonstrated that renovation activities result in dust lead levels that can be orders of magnitude above the hazard standard and higher than the levels achievable if the RRP requirements were followed. EPA concluded that fully implementing the regulations can be a successful tool in addressing elevated blood lead levels in children. Implementation of the RRP rule is expected to minimize exposure to lead-based paint hazards and protect children and others. Because minority and low-income children are already at higher risk of lead poisoning, we expect that this activity will have specific benefits to populations with environmental justice concerns.

Unregulated Contaminant Monitoring Regulation (UCMR 3) for Public Water Systems

Final Rule: EPA uses the Unregulated Contaminant Monitoring program to collect data for contaminants suspected to be present in drinking water, but that do not have health-based standards or treatment technique regulations established under the Safe Drinking Water Act. After conducting an environmental justice analysis of the rule, EPA updated it to require that all public water systems report U.S. Postal Service zip codes in their service area. This additional data will enable EPA to potentially identify areas that may have disproportionately high and adverse human health or environmental impacts on minority or low income population water supplies.