

EPA Activities to Promote Environmental Justice in the Permit Application Process Frequently Asked Questions

- 1. Do Actions that EPA Regional Offices Are Taking to Promote Meaningful Engagement in the Permitting Process by Overburdened Communities (“EPA Actions”) or the Promising Practices for Permit Applicants Seeking EPA-Issued Permits: Ways to Engage Neighboring Communities (“Promising Practice”) in the Federal Register notice apply to permits that are issued by state, tribal, or local permitting authorities, or just permits that are issued by EPA?**

EPA Actions and *Promising Practices* apply only to permits that are issued by EPA. It does not apply to permits issued by state, tribal or local governments. By addressing environmental justice in its permits, EPA is leading by example among federal departments and agencies. EPA recognizes that the majority of environmental permits are issued by state, tribal, or local permitting authorities and that many of these authorities already engage in the kinds of actions described in these documents. EPA intends to discuss its experiences and ideas with these authorities and invites them to continue sharing their ideas and approaches for ensuring the meaningful involvement of overburdened communities in the permitting process and encouraging dialogue between permit applicants and communities. Finally, EPA remains supportive of state, tribal, or local permitting authorities to implement any ideas contained in these documents that may improve their own or their permit applicants’ efforts to engage overburdened communities in the permitting process.

- 2. Do EPA Actions or the Promising Practices impact any obligations the States may have under Title VI of the Civil Rights Act of 1964 and other non-discrimination statutes?**

As recipients of federal financial assistance, States have affirmative obligations under Title VI of the Civil Rights Act of 1964 and other non-discrimination statutes. This notice does not address or modify those obligations. For further information about the obligations under these statutes, please refer to 40 CFR Parts 5 and 7. Other potential resources include *EPA’s Guidance to Environmental Protection Agency Financial Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (69 FR 35602) and *Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs* (71 FR 14207).

- 3. How will EPA Actions apply to EPA-permitted activities that may impact multiple EPA regions?**

A permitted activity could potentially impact an area that straddles two or more EPA regions. The EPA region where the permitted activity is located usually has the lead for issuing the permit. EPA regions with the lead for issuing the permit routinely engage other regions impacted by the permitted activity to coordinate on analysis and outreach and will apply the prioritization process for enhanced outreach as described in *EPA Actions*.

- 4. Do EPA Actions or the Promising Practices change existing statutes and regulations governing the permitting process for EPA-issued permits?**

No. Although EPA expects *EPA Actions* and *Promising Practices* to aid EPA in its implementation of Executive Order 12898 with regard to permitting, *EPA Actions* and *Promising Practices* are not an interpretation of environmental statutes, nor do they add or change interpretations of statutory obligations regarding permitting contained in existing regulations. They create no legal obligations and in no way change the legal landscape of the EPA permitting process. To the contrary, the only legal requirements applicable to EPA regional offices and permit applicants throughout the permitting process are those contained in the EPA's environmental statutes, implementing regulations, the Administrative Procedure Act, applicable anti-discrimination laws, and other applicable statutes and regulations.

5. If EPA is not changing the permitting process, why did EPA issue *EPA Actions* and associated regional implementation plans?

EPA is issuing EPA Actions to better meet its responsibilities under Executive Order 12898 by increasing meaningful engagement of overburdened communities in EPA's permitting process in a way that is transparent and provides national consistency while maintaining some regional flexibility. As some commenters noted, EPA already has a legal obligation to provide opportunities for public involvement in the permitting process. EPA believes, however, that in some circumstances it is appropriate to go beyond the minimum public involvement requirements of statutes and regulations to encourage the participation of communities that will be significantly impacted by a permit but that have historically been underrepresented in the permitting process.

Further, though EPA has discretion to increase the level of public outreach it makes to communities beyond the requirements found in statutes and regulations, EPA's ability to perform outreach is constrained by its resources. EPA developed EPA Actions to more effectively target outreach resources for the most meaningful engagement, to provide guidance to its permitting programs in regional and headquarters offices in order to promote consistency and transparency in EPA's permitting outreach planning, and to ensure that enhanced outreach is provided in situations where it may have an impact on potential permit outcomes. EPA believes that such transparency and consistency aids EPA in making more informed decisions, but also gives notice to the public of EPA's considerations and encourages public engagement in the permitting process.

6. Which permits will EPA regional offices consider prioritizing for enhanced outreach?

EPA's guidance balances national consistency and regional flexibility in deciding which permits will be prioritized for enhanced outreach. Thus, while all EPA regional offices will prioritize permits with significant impacts on overburdened communities, enhanced outreach activities may vary across and within a region depending on the potential impacts of the permitted activity, the affected community and the potential impact of enhanced outreach. The regional implementation plans give a general picture of the types of permits that an EPA regional office expects will be considered for enhanced outreach and what enhanced outreach might entail.

7. How will an EPA regional office determine whether a permitted activity may have significant public health or environmental impacts?

Permit applications provide information on the proposed project consistent with the requirements of particular statutes and regulations. EPA may also do its own assessment of the environmental and public health impacts of a proposed project, using modeling and monitoring data for example. Such information would inform an EPA regional office's decision on whether a permitted activity has significant environmental or public health impacts.

8. What is the definition of "overburdened community" that is relevant for *EPA Actions* and *Promising Practices*?

EPA Actions and *Promising Practices* apply the description of overburdened communities articulated in EPA's Plan EJ 2014. The term is used to describe the 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. While EPA is not establishing rigid criteria for identifying overburdened communities, EPA believes this description will help the Agency better meet its responsibility of protecting public health and the environment in a manner that is consistent with Executive Order 12898 and its goals under Plan EJ 2014.

9. Are tribal and indigenous communities within the definition of overburdened communities?

Tribal and indigenous communities are included in EPA's definition of overburdened communities under Plan EJ 2014. For nearly thirty years, EPA has worked with federally recognized tribal governments on a government-to-government basis as sovereigns, partners, and co-regulators. EPA has also worked with indigenous communities to address their environmental and health concerns and involve them in EPA decision-making. As EPA implements *EPA Actions*, it will continue to ensure the meaningful engagement of indigenous communities in the permitting process to promote environmental justice, while also consulting with tribes on EPA-issued permits that may affect tribes or their resources as appropriate. This approach is consistent with the working draft of the EPA Policy on Environmental Justice for Tribes and Indigenous Peoples, which was recently released for public review and comment.

10. How will an EPA regional office determine whether a permitted activity impacts a potential overburdened community? What screening tool or process will EPA regional offices use to screen permit applications?

The Agency has developed a nationally consistent screening tool to help identify communities that are potentially overburdened. This tool, known as EJSCREEN, is one of several tools being developed under Plan EJ 2014. EPA anticipates that its regional offices will use EJSCREEN and other readily

available information, including known community concerns, to help prioritize their permits for enhanced outreach. 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. Please visit EPA's Plan EJ 2014 website (<http://www.epa.gov/environmentaljustice/plan-ej/index.html>) for more information about the EJSCREEN tool.

11. Will EPA regional offices screen every permit application to determine whether potential overburdened communities may be impacted by permitted activities?

The prioritization process laid out in *EPA Actions* directs EPA regional offices to prioritize permits. Regional offices will consider prioritizing all EPA-issued permits that have (1) significant environmental impacts; and (2) impacts on overburdened communities. The order in which the prioritization criteria are examined may vary from region to region. *EPA Actions* does not expect a regional office to assess whether there are overburdened communities prior to assessing whether a permit has significant environmental impacts, or the reverse, because the assessment of each prioritization criteria is independent of the other. Thus, a regional office could make a determination that a permit does not have significant environmental impacts and decline to perform an environmental justice screening to analyze whether a potentially overburdened community will be impacted by the permit because the permit has not triggered the criteria for prioritization for enhanced outreach. Alternatively, a regional office may choose to examine whether a permit impacts a potentially overburdened community prior to assessing the significance of the environmental impacts. In that case, all permit applications in the Region would undergo an environmental justice screening.

12. If an EPA regional office finds that a permit may not have significant public health or environmental impacts, or may not impact an already overburdened community, can the permit still be prioritized for enhanced outreach? Will the permit receive any outreach at all?

EPA regional offices have the discretion to use other considerations to prioritize EPA-issued permits for enhanced outreach that do not meet either or both of those criteria. One important consideration would be whether a community has expressed concerns over a permit application or renewal. EPA regional offices may consider prioritizing such permits and may tailor the engagement of the community in proportion to the actual health or environmental impacts or public concerns expressed over the permitted activity. However, given resource constraints, EPA expects that it will only infrequently provide enhanced outreach for permitted activities in response to public concerns in the absence of information about potential significant public health or environmental impacts. Further, the enhanced outreach activities for a permitted activity that does not have significant public health or environmental impacts will not necessarily be the same as those for a permitted activity that has significant public health or environmental impacts. EPA intends to tailor enhanced outreach to the particular circumstances to most effectively utilize the time and resources of EPA as

well as communities and permit applicants. Similarly, EPA may, on occasion, prioritize a permitted activity for enhanced outreach due to its significant impacts even though it does not impact an overburdened community.

EPA emphasizes that EPA will still comply with all applicable public participation requirements established by the relevant statutes and regulations whether or not the permit is prioritized for enhanced outreach. But EPA-issued permits that are not prioritized for enhanced outreach may not receive the supplemental activities described in *EPA Actions* as enhanced outreach.

13. Why doesn't EPA do enhanced outreach for every permit?

Robust public outreach and engagement can consume a substantial amount of resources from all stakeholders in a permitting process and would not be warranted for every permit action. EPA recognizes that its regional offices cannot enhance engagement for every EPA-issued permit and that overburdened communities might be overwhelmed with process if they were asked to engage on every permit potentially impacting them. For this reason, EPA has developed *EPA Actions* and *Promising Practices* to prioritize enhanced public engagement for those EPA-issued permits associated with activities that may have significant public health or environmental impacts on overburdened communities.

14. If a permit is prioritized for enhanced outreach, does this mean that EPA will require stricter emission or discharge limits, or deny a permit?

An EPA regional office's decisions on whether to issue a permit and, if so, what conditions to impose are distinct from the EPA regional office's decisions about the outreach EPA may perform during the permitting process. EPA's decisions on whether to issue a permit and what permit conditions to impose are governed by statute and regulation. Neither *EPA Actions* nor *Promising Practices* affects that. However, enhanced outreach to communities during the permitting process can provide an EPA regional office with information relevant to the decision to issue a permit, and what conditions to require. For example, community involvement in the permitting process might provide EPA information on vulnerable portions of the community. Based on that information, EPA might require additional monitoring or reporting to learn more about how pollution from the permitted activity impacts vulnerable sub-populations, in accordance with applicable laws and regulations.

15. What will be included in regional implementation plans?

The regional implementation plans are consistent with the Agency-wide guidelines finalized in *EPA Actions*. First, the Plans address with more specificity the process that a regional office will use to prioritize permits for enhanced outreach. This includes outlining whether the regional office will use a screening tool or other methodology to help identify overburdened communities and the types of permits with significant public health or environmental impacts that the regional office will consider prioritizing for enhanced engagement. Second, the regional implementation plans include a list of

the activities that the regional office will undertake at key junctures in the permitting process to enhance the engagement of overburdened communities. All plans will share basic elements but may also vary as the permitting offices adapt them to address their particular needs.

16. When will the regional implementation plans be publically available?

EPA expects that the regional implementation plans will be publicly available in May 2013. The Plans will be posted to EPA's Plan EJ 2014 website, at <http://www.epa.gov/environmentaljustice/plan-ej/permitting.html>. Additionally, each regional office will post its plan to the appropriate regional website.

17. EPA Actions does not require EPA regional offices to prioritize the same types of permits and adopt the same outreach activities. Why doesn't EPA require regional offices to always prioritize certain permits and always do certain outreach activities?

EPA Actions strikes an important balance between national consistency and regional flexibility. The Agency-wide guidelines establish national consistency by providing EPA's expectations for the regional implementation plans. At the same time, EPA recognizes that the regional offices need the flexibility to take actions suited to the types of permits and communities typically seen within the region. EPA believes that each regional office has the insight and experience to develop strategies tailored to their particular circumstances. To support this regional flexibility, *EPA Actions* does not prescribe which permits the EPA regional offices must prioritize or which outreach activities they must adopt.

18. Does EPA Actions apply to permits that are jointly issued by EPA and a state, tribal, or local permitting authority with partially delegated permitting authority?

EPA regional offices will decide on a case-by-case basis whether a permit that EPA jointly issues with a state, tribal, or local permitting authority should be considered for prioritization for enhanced outreach as described in *EPA Actions*. EPA will take into account its role and authority in issuing the specific permit and will engage in dialogue with the state, tribal, or local permitting agency to support its decision. For example, EPA does not anticipate applying the enhanced outreach outlined in a regional implementation plan where EPA's involvement and authority in issuing the permit is relatively minor in comparison to the state, tribal, or local permitting authority.

19. Are permit applicants required to adopt the Promising Practices?

No. EPA is not requiring permit applicants to adopt the *Promising Practices*. *Promising Practices* are simply that: good ideas in the form of suggestions to permit applicants. Permit applicants may benefit from applying these *Promising Practices*. EPA hopes that when permit applicants practice early and meaningful dialogue with the community, they can help build trust, promote a better understanding in the community of the facility's environmental impact, and build strong relationships that will lead to better results for both the permit applicant and community. For

example, EPA expects the alignment of interests between a permit applicant's interests and those of community members, who can be employees, customers, or investors in the applicant's company, to lead to creative solutions that promote the achievement of mutual economic and environmental goals. EPA also believes that engaging the community early and throughout the permitting process can be an effective tool for identifying and addressing (or even avoiding) potential problems, and avoiding delays resulting from concerns being raised late in the permitting process. These and other benefits are discussed in the *Promising Practices*.

The *Promising Practices* are meant to complement existing guidance and recommendations issued by permitting authorities, including state and local agencies. The *Promising Practices* are not themselves legal requirements and do not modify existing statutory or regulatory requirements for the permitting process for EPA-issued permits. EPA emphasizes that no permit applicant will be required to follow these suggestions. Nor are the *Promising Practices* intended to be *de facto* requirements in the process, as a checklist or otherwise.

20. If permit applicants are not required to adopt the *Promising Practices*, why should a permit applicant adopt them?

EPA hopes that the practices described will persuade those who are new to these ideas to experiment with this form of leadership. Indeed, engaging with their communities as described in *Promising Practices* is consistent with many permit applicants' published core values. These principles, practices and values lead to corporate sustainability, stability and – ultimately – profitability.

Early and meaningful dialogue between the permit applicant and the community is especially important in communities that have historically been underrepresented in the permitting process or that potentially bear a disproportionate burden of an area's pollution. Meaningful dialogue promotes environmental justice. Providing specific information about the pollution and related health impacts of a permit action may allay general concerns the community has about the facility or educate it about other sources of exposure. A permit applicant that ignores a neighboring community's concerns about pollution from its facility or general concerns about pollution in the community may experience delays in the permitting process, negative publicity, and community distrust. Employing promising practices can foster a dialogue between the permit applicant and the community to prevent misunderstandings and possibly opposition to the permit. *Promising Practices* describes additional benefits of meaningful engagement in permitting process.

21. Will EPA provide incentives to permit applicants who adopt *Promising Practices*, like an expedited permit process?

EPA is not providing incentives to permit applicants who adopt the *Promising Practices*, such as an expedited permit process. Nevertheless, permit applicants should be aware of the many benefits that can accrue to them if they adopt the *Promising Practices* to create a constructive dialogue with

the community in which they are sited. For example, EPA expects the alignment of interests between permit applicants and community members, who can be employees, customers, or investors in the business, to lead to creative solutions that promote the achievement of mutual economic goals. EPA also believes that engaging the community early and throughout the permit term can be an effective cost-containment strategy and possibly avoid delays resulting from concerns being raised late in the permitting process. These and other benefits are described in the *Promising Practices*.

22. Some of the *Promising Practices* are mentioned in EPA regulations, guidance and recommendations that EPA has issued in the past. So why is EPA issuing the *Promising Practices*?

EPA is issuing *Promising Practices* to encourage permit applicants to strategically plan and conduct enhanced outreach to overburdened communities in the permitting process. As some commenters noted, EPA has recommended some of the outreach strategies included in *Promising Practices* previously. Nevertheless, EPA believes that it is important to issue *Promising Practices* to encourage greater use of practices, some of which are already employed by permit applicants, that EPA believes can be effectively and beneficially used in the context of permitting and environmental justice. The *Promising Practices* document consolidates recommended practices into a single document that reflects input from members of the business community, among other stakeholders.