

Plan EJ 2014



Incorporating Environmental Justice Into Rulemaking

Plan EJ 2014 is EPA's roadmap for integrating environmental justice into its programs and policies.



INCORPORATING ENVIRONMENTAL JUSTICE INTO RULEMAKING

Implementation Plan

September 2011

Led by

Office of Chemical Safety and Pollution Prevention,
Office of Policy, Office of Research and Development,
Office of Environmental Justice, and Region 9

U.S. Environmental Protection Agency
Washington, D.C. 20460



PLAN EJ 2014 AT A GLANCE

Plan EJ 2014 is the U.S. Environmental Protection Agency (EPA)'s roadmap to integrating environmental justice into its programs and policies. The year marks the 20th anniversary of the signing of Executive Order 12898 on environmental justice. Plan EJ 2014 seeks to:

- Protect the environment and health in overburdened communities.
- Empower communities to take action to improve their health and environment.
- Establish partnerships with local, state, tribal, and federal governments and organizations to achieve healthy and sustainable communities.

As the EPA's overarching environmental justice strategy, Plan EJ 2014 has three major sections: Cross-Agency Focus Areas, Tools Development Areas, and Program Initiatives.

The Cross-Agency Focus Areas are:

- Incorporating Environmental Justice into Rulemaking.
- Considering Environmental Justice in Permitting.
- Advancing Environmental Justice through Compliance and Enforcement.
- Supporting Community-Based Action Programs.
- Fostering Administration-Wide Action on Environmental Justice.

The Tools Development Areas are:

- Science.
- Law.
- Information.
- Resources.



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Goals At-A-Glance

To more effectively protect human health and the environment for overburdened populations by developing and implementing guidance on incorporating environmental justice into EPA's rulemaking process.

1.0 INTRODUCTION

Dirty air, polluted water, and contaminated land have significant effects on the health and economic possibilities of the people who live in overburdened communities.¹ Administrator Jackson has called on the U.S. Environmental Protection Agency (EPA) to develop policies that have a measurable effect on the health and environment of overburdened populations and communities. The *Interim Guidance on Considering Environmental Justice During the Development of an Action* (Environmental Justice in Rulemaking Guidance) and the associated development of technical guidance for rulemaking activities, (Environmental Justice Technical Guidance), are important tools for answering that call.

1.1 Goals

The goal of this implementation plan is to more effectively protect human health and the environment for overburdened populations by developing and implementing guidance for incorporating environmental justice into EPA's rulemaking process. Specifically, this implementation plan will:

- Elevate the interim *Environmental Justice in Rulemaking* on the procedural aspects of environmental justice in rulemaking to final status.
- Establish and commence mechanisms to facilitate and monitor implementation by National Program Managers (NPMs) and regional offices of the Environmental Justice in Rulemaking Guidance to maximize its effectiveness. NPMs lead the major EPA offices that are responsible for developing regulations protecting air, water, land, and ensuring chemical safety. EPA's regional offices also develop some lower tier regulations and, therefore, also need to implement the guidance.
- Develop technical guidance on how to conduct environmental justice assessments of rulemaking activities within analytical and decision-making frameworks used by EPA to support regulatory development (e.g., exposure assessment, benefit-cost analysis).

Successful implementation of this plan will significantly advance the Agency's commitment to the goals of environmental justice in EPA's rulemaking work to protect human health and the environment. Issuing the Environmental Justice in Rulemaking Guidance as an interim final document in July 2010 represented a historic accomplishment, conveying EPA's commitment to consider environmental justice concerns in the rulemaking process for the first time in EPA's history. It represents one of the Agency's most important and publically visible endeavors. The Environmental Justice in Rulemaking Guidance provides specific, detailed

¹ In Plan EJ 2014, EPA uses the term "overburdened" to describe the minority, low-income, tribal, and indigenous populations or communities in the United States that potentially experience disproportionate environmental harms and risks as a result of greater vulnerability to environmental hazards. This increased vulnerability may be attributable to an accumulation of both negative and lack of positive environmental, health, economic, or social conditions within these populations or communities.

instructions for steps that should be taken procedurally to fulfill this commitment through EPA's rule writing process, formally known as the Action Development Process (ADP). It provides information to rule writers on when during the ADP to consider environmental justice, as well as the types of questions to ask. It outlines multiple steps that every EPA program office can take to incorporate the needs of overburdened populations and communities into its decision-making, scientific analysis, and rule development. Complementary to the Environmental Justice in Rulemaking Guidance is the Environmental Justice Technical Guidance. This guidance will provide technical direction to EPA analysts to aid them in incorporating environmental justice into the development of risk assessment, economic analysis, and other scientific input and policy choices during the development of a rule.

1.2 Organizational Structure

Distinct organizational structures are being employed under each goal of this implementation plan:

- **Leadership** for finalizing the Environmental Justice in Rulemaking Guidance is being provided by the Office of Chemical Safety and Pollution Prevention (OCSPP), which has reconvened the Agency-wide Environmental Justice in Rulemaking Workgroup and its Process Guidance Subgroup. The final guidance documents developed by the workgroup, and associated issues requiring senior management attention, are raised first with the Principals for this effort – the Deputy Assistant Administrators (DAAs) or Deputy Regional Administrators (DRAs) for OCSPP, Office of Policy (OP), Office of Enforcement and Compliance Assurance (OECA), Region 9; and the Associate Assistant Administrator for Environmental Justice – and then elevated to the Environmental Justice Committee (EJC) and the Executive Management Council (EMC) prior to being presented to the Administrator for final approval.
- **An Executive Steering Committee (ESC)** comprised of senior executives from OCSPP, OP, OECA, the Office of Environmental Justice (OEJ), the Office of Research and Development (ORD), the Office of Air and Radiation (OAR), the Office of Water (OW), the Office of Solid Waste and Emergency Response (OSWER), and Region 9; along with the Associate Assistant Administrator for Environmental Justice, will oversee the implementation, facilitation, and monitoring efforts. Those efforts are expected to continue after the guidance documents are finalized to promote continuous learning and improvement and to ensure effective implementation.
- **The Environmental Justice Technical Guidance** is being developed as a Tier 1 action under the ADP by an Agency-wide workgroup chaired by OP, OEJ, and ORD. As a Tier 1 action, the Administrator or her designee is the decision maker at each stage of the ADP.²

² EPA's regulatory development process utilizes a system of "tiering" to prioritize actions in terms of their potential for large and multimedia effects and ensures early involvement of key Agency personnel. Each regulatory action is assigned one of three tiers. Tier 1 denotes the Administrator's Priority



2.0 IMPLEMENTATION

2.1 Strategies

Strategies to achieve the goals of this plan are specific to each goal:

Developing Environmental Justice Analysis for the Definition of Solid Waste Rule

After EPA finalized the 2008 Definition of Solid Waste (DSW) rule, the Agency committed to perform an expanded environmental justice analysis in response to concerns raised by citizens and other stakeholders about the rule's potential impact on communities. The EPA developed an innovative methodology that incorporated sound science and community engagement.

EPA began by soliciting input from the public through roundtables, conference calls, and webinars to get their thoughts on how to best conduct the analysis. The Agency identified potential hazards that may pose risks to communities from the recycling of hazardous secondary materials and the facilities that may take advantage of the 2008 DSW rule. The facility locations were then mapped against demographics of the surrounding communities. EPA synthesized the information and determined that certain population groups would be disproportionately impacted by the increased risk of adverse impacts under the 2008 DSW rule.

EPA incorporated these considerations in the revised proposed rule, signed June 30, 2011, to mitigate these potential adverse impacts, as allowed under applicable authorities. In addition, EPA has taken steps in implementing the DSW rule that also help mitigate these impacts. These steps include closely monitoring the facilities notifying under the rule, working with the states and EPA Regions to ensure they have the information they need to ensure compliance with the provisions of the rule, and making available to the public information about the facilities that have notified.

Strategy 1: Finalize the Interim Guidance on Considering Environmental Justice During the Development of an Action.

- Assess internal and external comments provided on the interim Environmental Justice in Rulemaking Guidance through Agency websites.
- Evaluate documents produced by rule-writing workgroups since the Interim Guidance was released to assess the extent to which the guidance is being addressed and its effect on EPA's rulemaking decisions.
- Interview members of rule-writing workgroups, their supervisors, and their senior managers to assess the clarity and usefulness of the guidance and the burdens associated with its implementation; and obtain suggestions for improvement.
- Revise the Environmental Justice in Rulemaking Guidance for presentation to and approval by the EMC, its EJC, and the Administrator.

Strategy 2: Facilitate and monitor implementation of guidance on incorporating environmental justice in rulemaking.

- Work with the National Program Managers (NPM) and regions, which are primarily responsible for incorporating environmental justice in their own rulemaking efforts.
- Provide training to rule-writing teams, their managers, and decision-makers.
- Initiate a continuous learning effort to identify effective practices and lessons learned from the NPMs' ongoing rulemaking efforts.
- Develop and commence implementing a monitoring scheme to assess the extent to which the guidance is being applied, the resources being

Actions, which are the few top actions that demand ongoing involvement of the Administrator and extensive involvement of Assistant Administrators and Regional Administrators across the Agency.

devoted to its application, and the effect it is having on rulemaking decisions.

Strategy 3: Develop technical guidance on how to conduct environmental justice assessments of rulemaking activities.

- Develop draft technical guidance through an Agency-wide ADP workgroup.
- Establish and conduct a peer consultation on the Draft Environmental Justice Technical Guidance with a special panel of EPA's Science Advisory Board (SAB).
- Execute an outreach strategy to obtain internal and external comments on the Draft Environmental Justice Technical Guidance.
- Incorporate SAB, EPA, and external comments in developing the Final Environmental Justice Technical Guidance for approval by the Administrator.

2.2 Activities

The following activities are intended to carry out the strategies identified for this implementation plan.

Strategy 1: Finalize the Interim Guidance on Considering Environmental Justice During the Development of an Action.

- Activity 1.1: Announce April closure of public comment period via the Environmental Justice listserv.
 - Time Frame: Completed in April 2011.
- Activity 1.2: Review internal and external comments provided during the implementation period when the guidance is in interim status.
 - Time Frame: July 2011.
- Activity 1.3: Review documents produced by and interview members of the EPA rule-writing workgroups.
 - Time Frame: October 2011.
- Activity 1.4: Revise and release Final Environmental Justice in Rulemaking Guidance document.
 - Time Frame:
 - ✓ Draft to OCSPP, OP, and OAR Principals by end of October 2011.
 - ✓ Draft to EJC by mid-November 2011.
 - ✓ Draft to ESC by end of November 2011.
 - ✓ Draft to Administrator by mid-December 2011.
 - ✓ Release by end of December 2011.

Strategy 2: Facilitate and monitor implementation of guidance on incorporating environmental justice into rulemaking.

- Activity 2.1: Distribute model training presentations to Agency, NPM, and region-specific regulation development and ADP trainers.
 - Time Frame: June 2011.

- Activity 2.2: Initiate a continuous learning effort to identify effective practices and lessons learned from the Agency's ongoing rulemaking efforts.
 - Time Frame: September 2011.
- Activity 2.3: Develop and commence implementing a monitoring scheme to assess the extent to which the guidance is being applied, the resources being devoted to its application, and the effect it is having on rulemaking decisions.
 - Time Frame: December 2011.

Strategy 3: Develop technical guidance on how to conduct environmental justice assessments of rulemaking activities.

- Activity 3.1: Establish a cross-Agency Environmental Justice Technical Guidance Workgroup.
 - Time Frame: Completed in February 2010.
- Activity 3.2: Tier the Environmental Justice Technical Guidance as a Tier 1 Action in the ADP.
 - Time Frame: Completed in November 2010.
- Activity 3.3: Develop draft technical guidance on incorporating environmental justice in rulemaking.
 - Time Frame: FY 2012.
- Activity 3.4: Conduct internal and external review of draft technical guidance on incorporating environmental justice in rulemaking.
 - Time Frame: FY 2012/2013.
- Activity 3.5: Develop and release final technical guidance on incorporating environmental justice in rulemaking.
 - Time Frame: FY 2013.

2.3 Community Engagement and Stakeholder Outreach

The following items constitute key community engagement and stakeholder outreach activities for this implementation plan.

- Consultations at regularly scheduled National Environmental Justice Advisory Council meetings and conference calls.
- Solicitation of internal and external comments on draft guidance documents via established websites.
- Engagement of state, tribal, and local governments through consortia and direct contact, to the extent possible.
- Coordination with outreach activities of other Plan EJ 2014 initiatives.
- Technical briefings and consultation with a special panel of the EPA Science Advisory Board.
- Consultations at regularly scheduled Children's Health Protection Advisory Committee (CHPAC) meetings.
- Consultations at regularly scheduled technical conferences and meetings.



2.4 Adjustments

Interim final and draft guidance documents will be revised as part of a process of elevating them to final status and may be subsequently revised based on experience and lessons learned during implementation.

3.0 DELIVERABLES

ACTIVITIES	DELIVERABLES	MILESTONES
Develop Final Environmental Justice in Rulemaking Guidance.	<ul style="list-style-type: none"> Report on <i>Summarizing Internal and External Comments, Rule-Writing Documentation Assessment, and Experiences of EPA Rule-Writers in Implementing Interim Final Guidance.</i> Draft Final <i>Guidance on Considering Environmental Justice During the Development of an Action.</i> Final <i>Guidance on Considering Environmental Justice During the Development of an Action.</i> 	<ul style="list-style-type: none"> October 2011 November 2011 December 2011
Facilitate and monitor implementation of the Environmental Justice in Rulemaking Guidance.	<ul style="list-style-type: none"> Distribute model training presentations to Agency, NPM, and regional regulation development and ADP trainers. Initiate a continuous learning effort to identify effective practices and lessons learned from the Agency's ongoing rulemaking efforts. Develop and commence implementing a monitoring scheme to assess the extent to which the guidance is being applied, the resources being devoted to its application, and the effect it is having on rulemaking decisions. 	<ul style="list-style-type: none"> June 2011 October 2011 December 2011
Develop Draft and Final Environmental Justice Technical Guidance.	<ul style="list-style-type: none"> Draft Final <i>Technical Guidance on Considering Environmental Justice During the Development of an Action.</i> 	<ul style="list-style-type: none"> FY 2013

4.0 MEASURES

The milestones established in Section 3.0 above are the performance measures which will be used to track progress in implementing this plan. These milestones may be augmented by more detailed interim milestones as they are established. Implementation of the guidance documents to be developed under this plan may support development of future outcome and activity measures.

5.0 REPORTING

Reporting on progress in implementing this plan will take place on an ongoing basis when its scheduled deliverables are completed. Annual progress reports will be provided and updates to this implementation plan will be made at that time. For information, please contact Mike Burns, 202-564-8273, Burns.Mike@epa.gov; or Kelly Maguire, 202-566-2273, Maguire.Kelly@epa.gov.



ACRONYMS

ADP	Action Development Process
CHPAC	Children's Health Protection Advisory Committee
DAA	Deputy Assistant Administrator
DRA	Deputy Regional Administrator
EJC	Environmental Justice Committee
EMC	Executive Management Council
EPA	U.S. Environmental Protection Agency
ESC	Executive Steering Committee
NPM	National Program Manager
OAR	Office of Air and Radiation
OCSP	Office of Chemical Safety and Pollution Prevention
OECA	Office of Enforcement and Compliance Assurance
OEJ	Office of Environmental Justice
OP	Office of Policy
ORD	Office of Research and Development
OSWER	Office of Solid Waste and Emergency Response
OW	Office of Water
SAB	Science Advisory Board

For more information on Plan EJ 2014, visit the U.S. Environmental Protection Agency's Office of Environmental Justice website at: <http://www.epa.gov/environmentaljustice/plan-ej/>