

EPA Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples

I. Policy Statement

The U.S. Environmental Protection Agency (EPA or Agency) *Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples* (Policy) is designed to better clarify and integrate environmental justice principles in a consistent manner in the Agency's work with federally recognized tribes (tribes) and indigenous peoples.

This Policy is composed of 17 principles which when implemented individually and together can help improve the administration of EPA's programs, support the fair and effective implementation of federal environmental laws, and provide protection from disproportionate impacts and significant risks to human health and the environment. This Policy affirms EPA's commitment to provide fair treatment and meaningful involvement to tribes, indigenous peoples, and others living in tribal areas in EPA decisions that may affect their health or environment.

This Policy is based upon the following key documents underpinning the EPA environmental justice and tribal programs:

- Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, directs each federal agency, as defined in the Order, to "make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States." The Executive Order applies equally to Native American programs.
- Plan EJ 2014 is the Agency's overarching strategy for advancing environmental justice. The Plan seeks to: (1) protect human health and the environment in overburdened communities; (2) empower communities to take action to improve their human health and environment; and (3) establish partnerships with local, state, tribal, and federal governments and organizations to achieve healthy and sustainable communities.

- *The EPA Policy for the Administration of Environmental Programs on Indian Reservations* (EPA Indian Policy) guides the Agency in working with federally recognized tribes to protect human health and the environment, and provides guidance in the conduct of the Agency's congressionally mandated responsibilities. It provides for EPA to give special consideration to tribal interests in making Agency policy and ensures the close involvement of tribal governments in making decisions and managing environmental programs affecting tribes.

II. Environmental Justice Principles

Environmental Justice is 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. To achieve the goal of environmental justice, the EPA seeks to protect the environment and health of overburdened communities and provide them access to the Agency's decision-making processes, so that everyone has a safe and healthy environment in which to live, learn, work and play.

The Agency recognizes the strong connection many tribes and indigenous peoples have to the environment and their past and present role in the protection and sustainability of the environment and public health. The EPA establishes the following environmental justice principles to guide the Agency's efforts to work more effectively with tribes, indigenous peoples, and others living in tribal areas to identify and address their environmental justice concerns.

EPA recognizes the importance of the United Nation's Declaration on the Rights of Indigenous Peoples and the principles that are consistent with the mission and authorities of the Agency.

Promoting Environmental Justice Principles in EPA Direct Implementation of Programs, Policies and Activities

The EPA incorporates environmental justice when the Agency directly implements federal environmental programs in Indian country. This Policy provides early meaningful involvement opportunities for tribes, indigenous peoples and others living in tribal areas at all stages of Agency activity, including the development of public participation activities, the administrative

review process, and any analysis conducted to evaluate environmental justice issues. The EPA Policy on Consultation and Coordination with Indian Tribes places special emphasis on consulting with tribes on EPA decisions that may affect tribes' interests.

The following principles apply:

1. The EPA consults with tribes and provides meaningful involvement opportunities for indigenous peoples and others living in tribal areas, and considers the potential impact of Agency actions that may affect their human health or environmental interests.
2. The EPA seeks to be responsive to the environmental justice concerns of tribes, indigenous peoples, and others living in tribal areas.
3. The EPA works to understand definitions of human health and the environment from the perspective of tribes, indigenous peoples, and others living in tribal areas.
4. The EPA uses legal authorities, as appropriate, to advance environmental justice goals in its work in Indian country and in other tribal areas.
5. The EPA strives to understand cultural and communication differences of tribes and indigenous peoples to establish common understandings of, and opportunities to address, environmental justice issues.
6. The EPA encourages, as appropriate and to the extent practicable, the integration of Traditional Ecological Knowledge into the Agency's environmental science, policy, and decision-making processes to understand and address environmental justice concerns and facilitate program implementation.
7. The EPA considers confidentiality concerns regarding information on sacred sites and cultural resources, consistent with applicable laws, regulations, and policies. The EPA acknowledges that unique situations and relationships may exist in regard to sacred sites and cultural resources information for tribes and indigenous people.

Promoting Environmental Justice Principles in Tribal Environmental Protection Programs

The EPA works with federally recognized tribes as the appropriate non-federal parties for making decisions and carrying out program responsibilities affecting their environments and the health and welfare of the populace consistent with Agency standards and regulations upon delegation of program authority to the tribe.

The following principles apply:

8. The EPA recognizes the right of the tribal governments to self-determination and acknowledges the federal government's trust responsibility to tribes, based on the Constitution, treaties, statutes, executive orders, and court decisions.
9. The EPA provides advice and recommendations to tribes supporting the integration of environmental justice principles and programs into tribal government programs, policies and activities, including procedures designed to ensure fair treatment and meaningful involvement of both tribal members and others living in areas affected by the tribal program.
10. The EPA assists tribes in building capacity to establish public participation, community involvement, education, and communication systems to engage with tribal members and others living in areas affected by the tribal program and to conduct their own environmental justice analysis.

Promoting Environmental Justice Principles in EPA's Engagement with Indigenous Peoples

The fair treatment and meaningful involvement of indigenous peoples and communities is paramount to effectively protect human health and the environment in tribal areas and throughout the country.

The following principles apply:

11. The EPA seeks to maintain relationships with indigenous peoples and communities based upon mutual understanding and respect.
12. The EPA strives for open communication and meaningful involvement with indigenous peoples and communities and also encourages an

appropriate level of involvement by other federal and non-federal government agencies in matters in which EPA is involved.

13. The EPA strives to identify key points of contact in communities to facilitate meaningful involvement and fair treatment on environmental justice issues, and to better understand the unique aspects and nature of the communities.
14. The EPA recognizes and supports the use of federal, tribal and indigenous peoples' conflict management and dispute resolution processes and tribal and indigenous peoples' traditional consensus building and decisions-making practices, as appropriate, to address disputes and potential conflicts.

Promoting Environmental Justice Principles in Intergovernmental Coordination and Collaboration

The EPA works in coordination and collaboration with federal, tribal, state and local government agencies to address environmental justice issues. The EPA works with the Federal Interagency Working Group on Environmental Justice, established by Executive Order 12898, to facilitate federal collaboration on environmental justice issues facing tribes and indigenous peoples.

The following principles apply:

15. The EPA encourages and seeks to facilitate discussions among and between government entities with an interest in environmental justice issues affecting tribes and indigenous peoples.
16. The EPA encourages federal agencies and state and local governments to incorporate environmental justice principles into their policies and programs that may affect tribes, indigenous peoples, and others living in tribal areas.
17. The EPA collaborates and cooperates with other federal agencies to leverage resources to better communicate, share information, and address the environmental justice concerns of tribes, indigenous people, and others living in tribal areas.

III. Roles, Responsibilities and Assessment

The following roles and responsibilities have been defined under this Policy. These roles and responsibilities reflect the fact that oversight and coordination of this Policy occurs at EPA headquarters while most implementation of this Policy occurs in program and regional offices.

- a. **Assistant and Regional Administrators:** Assistant and Regional Administrators oversee the implementation of the Agency's priorities and plans for integrating environmental justice and for addressing environmental justice concerns and issues within their respective offices and regions. They also designate a representative to serve as their Environmental Justice Tribal and Indigenous Peoples Advisor.
- b. **Environmental Justice Tribal and Indigenous Peoples Advisors:** The Advisors provide advice to the Assistant and Regional Administrators and serve as liaisons to facilitate effective implementation of this Policy. The Office of Environmental Justice chairs this group.
- c. **Assessment:** The Office of Environmental Justice leads an Agency-wide Policy implementation assessment, with support from the American Indian Environmental Office and the Environmental Justice Tribal and Indigenous Peoples Advisors.

IV. Policy Implementation and Additional Information

The Appendix contains information to assist Agency management and staff to better understand and identify opportunities to effectively implement this Policy.

V. Definitions

Environmental Justice - 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 - no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative

environmental consequences of industrial, governmental, and commercial operations or programs and policies.

Meaningful Involvement - (1) potentially affected community members have an appropriate opportunity to participate in decisions about a proposed activity that will affect their human health or environment; (2) the public's input can influence the regulatory agency's decision; (3) the concerns of all participants involved will be considered in the decision-making process; and (4) the decision-makers seek out and facilitate the involvement of those potentially affected.

Overburdened communities - communities, including minority, low-income, tribal, and indigenous, in the United States that potentially experience disproportionate environmental harms and risks as a result of greater vulnerability to environmental hazards.

Tribe or Federal Recognized Tribe - an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1944, 25 U.S.C.479a. The elected officials for the federally recognized tribe and the government structure they administer are referred to as the federally recognized tribal government.

Indigenous Peoples – (for the purposes of this Policy) the term “*indigenous peoples*” includes state recognized tribes, non-recognized tribes, indigenous and tribal community-based organizations, individual members of federally recognized tribes, including those living on a different reservation or living outside Indian country, individual members of state-recognized tribes, individual members of non-recognized tribes, Native Hawaiians, and Native Pacific Islanders.

Indian Country - as defined at 18 U.S.C. § 1151, (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Tribal Areas – (for the purposes of this Policy) the term “*tribal areas*” means Indian country, as defined at 18 U.S.C. § 1151, and/or other land areas of interest to federally recognized tribes and indigenous peoples.

Sacred Sites - as defined in Executive Order 13007, any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

VI. Acknowledgment

EPA acknowledges and thanks the National Environmental Justice Advisory Council (NEJAC) and the NEJAC’s Indigenous Peoples Work Group for their role in the development of this Policy. The EPA also thanks the tribes, the many individuals, and all of the tribal, environmental justice and other organizations that provided advice in developing this Policy.

VII. Disclaimer

This document identifies internal Agency policies and procedures for EPA. This document is not a rule or regulation and it may not apply to a particular situation based upon the circumstances. This document does not change or substitute for any law, regulation, or any other legally binding requirement and is not legally enforceable. As indicated by the use of non-mandatory language, this Policy does not create any judicially enforceable rights or obligations substantive or procedural in any person.

Appendix

The Appendix contains information to assist Agency management and staff better understand and identify opportunities to effectively implement the *EPA Policy on Environmental Justice for Federal Recognized Tribes and Indigenous Peoples*.

The listed resources, as well as other additional resources, are available at:

www.epa.gov/environmentaljustice/resources/policy/index.html and
<http://www.epa.gov/indian/>

1. Environmental Justice Legal Tools - The *EJ Legal Tools* document is designed to identify legal tools to help EPA advance its goal of environmental justice in the United States. It provides an overview of a number of discretionary legal authorities that are or may be available to EPA to address environmental justice considerations under federal statutes and programs.
2. Environmental Justice in Rulemaking - *EPA's Action Development Process, Interim Guidance on Considering Environmental Justice during the Development of an Action* is a step-by-step guide that helps EPA staff ask questions and evaluate environmental justice considerations at key points in the rulemaking process. The Interim Guide is applicable to the environmental justice concerns of indigenous populations and tribes.
3. Environmental Justice Screening and Mapping Tool - *EJSCREEN* is an environmental justice screening and mapping tool that provides a nationally consistent approach to characterizing potential areas of EJ concern that may warrant further consideration, analysis, or outreach. The tool provides access to environmental and demographic data, color-coded maps and standard reports.
4. Environmental Justice in Permitting – *Actions that EPA Regional Offices Are Taking to Promote Meaningful Engagement in the Permitting Process by Overburdened Communities and Promising Practices for Permit Applicants Seeking EPA-Issued Permits: Ways to Engage Neighboring Communities*, describe actions that EPA regional offices and permit applicants can take to promote greater participation in the permitting process for EPA-issued permits by communities that have historically been underrepresented in that process.
5. EPA's *Final Supplemental Environmental Projects Policy*. Supplemental Environmental Projects (SEPs) are projects performed voluntarily by a violator that

provide additional benefits through activities or projects not otherwise required by law. SEPs may be included in certain enforcement settlements.

6. *Public Involvement Policy of the U.S. Environmental Protection Agency*, May 2003 – to provide for meaningful public involvement in all its programs, and consistently look for new ways to enhance public input; to seek input reflecting all points of view and carefully consider this input when making decisions; and ensure that decision-making processes are open and accessible to all interested groups, including those with limited financial and technical resources, English proficiency, and/or past experience participating in environmental decision-making.
7. *Resolving Environmental Conflicts in Communities*- This Resource Guide describes the alternative and appropriate dispute resolution approaches that the United States Environmental Protection Agency (EPA) is using and provides information and contacts to help community members decide if non-adversarial conflict resolution is a good choice for dealing with their environmental concerns or disputes.
8. *EPA Policy on Consultation and Coordination with Indian Tribes*, May 4, 2011 - EPA's policy is to consult on a government-to-government basis with federally recognized tribal governments when EPA actions and decisions may affect tribal interests.
9. *Guidance on the Award and Management of General Assistance Agreements for Tribes and Intertribal Consortia*, May 15, 2013 - provides a nationally consistent approach for building tribal environmental protection program capacity under the Indian General Assistance Program (GAP) and/or a mechanism to measure the progress tribes are making toward their defined program development goals. Appendix 1, Section B.6. Establishing Core Public Participation, Community Involvement, Education, and Communication Capacities, specifically speaks to tribes establishing public participation, community involvement, education, and communication core capacities.
10. Executive Order 12898 (1994) *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* – to direct federal agencies to develop environmental justice strategies to aid federal agencies identify and address disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations.

11. Executive Order 13007 (1996) *Indian Sacred Sites* - In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall..., (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.
12. Executive Order 13175 (2000) – *Consultation and Coordination with Indian Tribal Governments* – to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with tribes, and to reduce the imposition of unfunded mandates upon tribes.
13. Executive Order 13515 (2009) - *Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs* – to improve the quality of life and opportunities for Asian Americans and Pacific Islanders through increased access to, and participation in, Federal programs in which they may be underserved.
14. Executive Order 13647 (2013) – *Establishing the White House Council on Native American Affairs* – establishes a national policy to ensure that the Federal Government engages in a true and lasting government-to-government relationship with federally recognized tribes in a more coordinated and effective manner, including by better carrying out its trust responsibilities.
15. *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* - Announcement of U.S. Support, December 16, 2010, U.S. Department of State. <http://www.state.gov/documents/organization/184099.pdf>