

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



Cover Pictures:

Black Mesa, AZ – Wahleah Johns

Petroglyph National Monument, New Mexico – EPA Region 6, 2011

Kotzebue Beach, Alaska– photo by Gladys Knight Harris, courtesy of Alex Whiting, 2014

Federal EJ Interagency Workgroup Public Meeting, Albuquerque, NM – EPA Region 6, 2011

Kukaniloko Birthing Stones, Hawaii - Blain Weiss 2013

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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 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 to federally recognized tribes and indigenous peoples in all areas of the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands, and others living in Indian country, fair treatment and meaningful involvement 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 developing Agency policy and ensures the close involvement of tribal governments in making decisions and managing environmental programs affecting federally recognized tribes.

II. Environmental Justice Principles

The 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. 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 federally recognized 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 federally recognized tribes and indigenous peoples in all areas of the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands, and others living in Indian country, to identify and address their environmental justice concerns.

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

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

The EPA incorporates environmental justice when the Agency directly implements federal environmental programs. This Policy provides early meaningful involvement opportunities for federally recognized tribes, indigenous peoples, and others living in Indian country, 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 federally recognized tribes on EPA decisions that may affect their interests.

The following principles apply:

1. The EPA consults with federally recognized tribes and provides meaningful involvement opportunities for indigenous peoples throughout the United States, and others living in Indian country, 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 federally recognized tribes, indigenous peoples throughout the United States, and others living in Indian country.
3. The EPA works to understand definitions of human health and the environment from the perspective of federally recognized tribes, indigenous peoples throughout the United States, and others living in Indian country.
4. The EPA uses legal authorities, as appropriate, to advance environmental justice goals in its work throughout the United States, including in Indian country.
5. The EPA strives to understand cultural and communication differences of federally recognized 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 and permitted by law, 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, cultural resources, and other traditional knowledge, as permitted by law. The EPA acknowledges that unique situations and relationships may exist in regard to sacred sites and cultural resources information for federally recognized tribes and indigenous peoples.

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.

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 federally recognized tribes, based on the U. S. Constitution, treaties, statutes, executive orders, and court decisions.
9. The EPA provides advice and recommendations to federally recognized 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 federally recognized 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 vital to effectively protect human health and the environment in Indian country 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 affected 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 decision-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 chairs and works with the Federal Interagency Working Group on Environmental Justice, established by Executive Order 12898, to facilitate federal collaboration on environmental justice issues facing federally recognized 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 federally recognized tribes and indigenous peoples.
16. The EPA encourages federal agencies and state and local governments to incorporate environmental justice principles into their programs, policies, and activities that may affect federally recognized tribes, indigenous peoples throughout the United States, and others living in Indian country.
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 federally recognized tribes, indigenous people throughout the United States, and others living in Indian country.

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 EPA 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

The following terms are defined for the purposes of this Policy:

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.

Federally Recognized Tribe (for the purposes of this Policy) - 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. When used in this document, "tribes" refers to federally recognized tribes unless otherwise specified.

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.

Indigenous Peoples (for the purposes of this Policy) - the term "indigenous peoples" includes state-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; Native Hawaiians; Native Pacific Islanders; and individual Native Americans.

Overburdened communities - communities or populations, 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.

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 federally recognized tribes, the many individuals, and all of the tribal, environmental justice and other organizations that provided advice in developing this Policy.

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 to better understand and identify opportunities to effectively implement the *EPA Policy on Environmental Justice for Federally Recognized Tribes and Indigenous Peoples*. The listed resources, as well as other additional resources, are available at: www.epa.gov/environmentaljustice/, <http://www.epa.gov/indian/>, and other government websites.

1. Environmental Justice Legal Tools - The *Plan EJ 2014: 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 federally recognized 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 environmental justice 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 (SEP) 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 – This policy focuses providing 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 Agency is using and provides information and points of contact to help community members decide whether 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 – This guidance 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 federally recognized 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 federally recognized tribes establishing public participation, community involvement, education, and communication core capacities.
10. *Executive Order (EO) 12898 (1994) Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* – The EO directs federal agencies to develop environmental justice strategies to aid federal agencies in identifying and addressing 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* – The EO establishes 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 federally recognized tribes, and to reduce the imposition of unfunded mandates upon federally recognized tribes.
13. *Executive Order 13515 (2009) - Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs* – The EO seeks 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* – The EO 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>