

NEW MEXICO ENVIRONMENT DEPARTMENT



Office of the Secretary

POLICY 07-13

- SUBJECT:** Public Participation
- PURPOSE:** To provide guidance and direction for the proper and appropriate public participation opportunities related to New Mexico Environment Department ("NMED" or the "Department") activities (e.g., permitting, corrective action), and proceedings. This policy is in addition to any applicable procedures required by State statute or regulation.
- POLICY:** NMED shall provide proper public participation and meaningful involvement opportunities related to NMED's actions and proceedings. In so doing NMED shall carry out its actions and proceedings consistent with the principles of Environmental Justice including the needs for fair treatment and meaningful involvement.
- REVISIONS:** First Revision to 2-6-18 Policy.
- APPLICABILITY:** All NMED programs and employees, including NMED grant and subgrant recipients, contractors, subcontractors and agents, shall comply with this policy.
- REFERENCES:** United States Environmental Protection Agency ("EPA"), EJSCREEN website (<https://www.epa.gov/ejscreen>); New York State Department of Environmental Conservation ("NYSDEC") DEC Policy, CP-29 *Environmental Justice and Permitting (March 9, 2003)*; *NYSDEC Tips for Preparing a Public Participation Plan*; EPA Office of Environmental Justice ("OEJ"), *The Model Plan for Public Participation*, Public Participation and Accountability Subcommittee of the National Environmental Justice Advisory Council (November 1996). 40 C.F.R. Parts 5 and 7; Title VI of the Civil Rights Act of 1964; and Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500; Public Participation Guidance for EPA Assistance Recipients:

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(website <https://www.govinfo.gov/content/pkg/FR-2006-03-21/pdf/06-2691.pdf>; and Limited English Proficiency Guidance: (website <https://www.gpo.gov/fdsys/pkg/FR-2004-06-25/pdf/04-14464.pdf>).

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1. SUMMARY

This policy provides guidance for ensuring that public participation opportunities related to NMED activities and proceedings are adequate based upon the specific circumstances and are in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. § § 2000d to 2000d-7 and the EPA regulations at 40 C.F.R. Parts 5 and 7. The policy is written to assist NMED staff, NMED grant and subgrant recipients, contractors, subcontractors and agents,, the regulated community, and the public in understanding requirements related to public participation.

This policy will support the involvement of all people in NMED's activities and proceedings by further educating NMED staff on the topics of federal civil rights requirements, environmental justice and public participation; by providing opportunities for public participation above and beyond NMED's statutorily mandated public participation requirements; by highlighting the provision of adequate public access to NMED permitting information; and by further incorporating federal civil rights and environmental justice concerns into NMED's permitting and other associated processes.

2. DEFINITIONS

For purposes of this policy, the following definitions shall apply.

- A. ***Block group*** means an area defined by the Census Bureau that usually has in the range of 600 – 3,000 people living in it.
- B. ***Environmental justice*** means 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.
 - 1. "Fair treatment" means that no group of people, including a racial, ethnic, or socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies. All groups should also be able to share any distribution of environmental benefits.
 - 2. "Meaningful involvement" means People have an opportunity to participate in decisions about activities that may affect their environment and/or health; the public's contribution can influence the regulatory agency's decision; community concerns will be considered in the decision making process; and decision makers will seek out and facilitate the involvement of those potentially affected.
- C. ***Limited-English proficient ("LEP") individual*** means an individual who does not speak English as their primary language and who has a limited ability to read,

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speak, write, or understand English, and who therefore may be entitled to language assistance with respect to a particular type of service, benefit, or encounter.

D. **Minority population** means a population that is identified or recognized by the U.S. Census Bureau as Hispanic, African-American or Black, Asian and Pacific Islander, American Indian or Alaskan Native.

E. **Percent linguistically isolated households** means households in which all members age 14 years and over speak a non-English language, and also speak English less than “very well” (have difficulty with English). For the purpose of this policy, it is calculated by dividing the number of linguistically isolated households by the total population in the determined radius and multiplied by 100.

F. **Percent low-income (of population)** means the percent of a block group’s population in households where the household income is less than or equal to twice the federal “poverty level.” For purposes of this policy, the poverty level is established by the U.S. Census Bureau.

G. **Percent minority (of population)** means the percent of individuals in a block group who list their racial status as a race other than white alone and/or list their ethnicity as Hispanic or Latino. That is, all people other than non-Hispanic white-alone individuals. The word “alone” in this case indicates that the person is of a single race, not multiracial.

H. **Person with disabilities** means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment.

I. **Rural area** means territory, population, and housing units that are not classified as an urban area. See definition for ‘urban area’ below. For purposes of this policy, rural area classifications are established by the U.S. Census Bureau.

J. **Urban area** means all territory, population, and housing units located in urbanized areas and in places of 2,500 or more inhabitants outside of an urbanized area. An urbanized area is a continuously built-up area with a population of 50,000 or more. For purposes of this policy, urban area classifications are established by the U.S. Census Bureau.

3. **PRELIMINARY SCREENING**

In an effort to ensure the proper enhancement of public outreach, NMED Bureaus must perform a preliminary screening to identify areas/populations for which additional consideration, analysis or outreach is necessary. The Bureaus should use EPA’s “EJSCREEN” as their initial (or base) screening tool. EJSCREEN is an environmental justice mapping and screening tool that provides a nationally consistent dataset and approach for combining environmental and demographic indicators. EJSCREEN allows users to access high-resolution environmental and demographic information for locations in the United States and compare their selected locations to the rest of the state, EPA region, or the nation. The tool shall be used to help with preliminary

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determinations about whether or not minority and/or low-income populations are potentially impacted by the Department's activity or proceeding, whether there are existing environmental issues or to identify whether there is a combination of environmental and demographic indicators that is greater than usual. However, because EJSCREEN cannot provide data on every environmental impact and demographic factor that may be important to a location, Bureaus may seek out and use other screening tools, informational databases, Departmental historical knowledge, and community resources (e.g. local governments, neighborhood associations, places of worship, community groups, etc.).

A. Methodology for Preliminary Screening

For its base screening, each Bureau shall conduct a preliminary screening using the EPA EJSCREEN tool for facility locations where public participation is required for the specific activity (e.g., permitting) or proceeding. The EJSCREEN tool report that provides the most relevant information is the EJSCREEN ACS (American Community Survey) Summary Report. Please see Attachment 1 for the User Guide for EJSCREEN 2022 (or as updated) for instructions on how to conduct preliminary screenings. For each preliminary screening, the Bureau will determine the appropriate and logical radius based on whether or not a majority of minority persons are found at any radius of 4, 35 and 50 miles from the facility by using EJSCREEN. Bureaus shall use the following parameters as a starting point for the preliminary screening:

- a. Number of households within the determined radius¹ (set as a "buffer" in EJSCREEN) from the geographic center of the facility or proposed facility (or, in lieu of a circle radius, a stream-length or other self-generated area of capture);
- b. The per capita income for the population within the determined radius compared to the per capita income for the U.S.² (or, in lieu of a circle radius, a stream-length or other self-generated area of capture);
- c. Percent of minority population and percent of population by race within the determined radius (or, in lieu of a circle radius, a stream-length or other self-generated area of capture);
- d. The percent of Linguistically Isolated Households (a demographic indicator in EJSCREEN) by language for the population within the determined radius (or, in lieu of a circle radius, a stream-length or other self-generated area of capture); and,

¹See also the example in Section 3.A above.

² See the U.S. statistics for per capita income at the U.S. Census Bureau website <https://www.census.gov/quickfacts/fact/table/US/INC910217> (as updated).

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- e. The percent or population within the determined radius (or, in lieu of a circle radius, a stream-length or other self-generated area of capture) by ability to speak English “less than very well”.

The Bureaus shall seek out additional data sources in addition to EJSCREEN such as the NMED’s EJ Mapping Tool, local governments or Departmental historical knowledge in making its assessment of a community. Please note that in some instances, after communication with the appropriate Bureau Chief and Division Director, enhanced public outreach may be required regardless of the results of the preliminary screening.

B. Results of Preliminary Screening

Upon compiling the results of the preliminary screening, such results will be used, and included in, a Public Involvement Plan (PIP), which is mandatory for each NMED activity or proceeding requiring public participation. EJSCREEN tool report(s) produced during the preliminary screening, and any other relevant information source, shall be directly included in the PIP. The results of the preliminary screening will also be used in the Individualized Assessments as described in NMED’s LEP Accessibility and Outreach Policy (07-11), Sections 3.0-6.0.

4. DEVELOPMENT OF PUBLIC INVOLVEMENT PLAN (PIP)

Each Bureau shall develop a PIP for each activity or proceeding requiring public participation (e.g., permitting actions, remediation or abatement plans, water quality surveys, rulemakings, etc.). A PIP template can be found as Attachment 2 to this policy. Bureaus may develop a PIP for a complex facility where multiple activities or proceedings requiring public participation are expected to occur over time (e.g., permit proceedings subsequent to remediation plans related to a particular facility). In instances where activities have quick or exigent turn-around times (e.g., for individual boil water advisories), it is suggested that PIPs be created for the general activity type, in order for the Bureau to explain how it will generally execute public outreach in those instances.

The PIP shall be made available online and in hardcopy in an easily accessible location in or near the community assessed (e.g., at a public library, post office, if allowed, or local NMED field office). In addition to the required content, the PIP will include the NMED Bureau contact information so that community members, members of the public, interested parties and regulated entities can provide comments on the PIP. Local governments, stakeholders, and community leaders shall be contacted in order to receive "feedback on the adequacy and appropriateness of the proposed outreach. While there is no set public comment period associated with PIPs, any comments

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submitted will be reviewed by Bureau staff as received and appropriate amendments to the PIP will be made as necessary. Amendments must be made in a timely manner for ongoing public processes. Every PIP shall be reviewed and approved by the appropriate Bureau Chief before issuance. Bureau Chiefs may only delegate PIP approval authority if authorized in writing by the appropriate Division Director. Any such delegation authorization must be provided to NMED's Non-Discrimination Coordinator. The PIP should also be amended if the Bureau identifies a problem in executing the outreach plan contained in the PIP or an opportunity for improvement in the future.

The PIP shall include, at a minimum, the following elements:

- a. An overview of the Bureau's plan of action for addressing the community's needs and concerns;
- b. A description of the community (including community leaders, local governments, demographics, history, and background). This section should include the results of the preliminary screening per Section 3 above;
- c. A contact list of Bureau staff with phone numbers and email addresses to allow the public to communicate with the Bureau via phone or email;
- d. A detailed plan of action (outreach activities) the Bureau will take to respond to the needs and concerns of the affected public. Examples include: responding to public comments, posting locations of information, informational meetings and availability of information (e.g., online, hard copies).
- e. A contingency plan for unexpected events (e.g., power outage at a meeting location, inclement weather, or pandemic);
- f. Location(s) where public meetings will be held, if appropriate. Consideration should be given to availability and schedules of public transportation, work schedules and significant community events, as well as state, tribal or pueblo³ and federal holidays (e.g., Christmas, Thanksgiving, King's Day Celebrations, St. Paul's Feast Day, New Years, 4th of July);
- g. The Bureau Contact will be listed in the PIP and also identified as the contact for obtaining language assistance services for LEP persons, including,

³ See https://indianpueblo.org/wp-content/uploads/indian_pueblo_cultural_center_feast_day_calendar2020_web.pdf

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translation of documents and/or interpreters for meetings and for obtaining services for persons with disabilities;

- h. In many cases, formal notification in local newspapers and on the radio is mandatory pursuant to statutory and regulatory requirements. The PIP shall identify in which periodicals, and in which sections (e.g., Legal, Classified, Display), Public Notices will be posted as well as which radio stations will be used.

If a LEP community is identified through the preliminary screening, or during the evaluation processes outlined in NMED's LEP Accessibility and Outreach Policy (07-11), the Bureau must, if possible, use a periodical and/or radio station capable of communicating information in the same language. For example, if a LEP community is identified where the primary language is Spanish, the Bureau must attempt to utilize a Spanish-only newspaper or radio station to publish and broadcast the Public Notice. If the newspaper only has a "Spanish Day" or other limited Spanish publication, the Bureau must communicate necessary information during the Spanish publication times.

- i. Location of the information repository (physical address or web address, as applicable), if appropriate.

Additional requirements may be identified as part of the LEP Accessibility and Outreach Policy (07-11) and/or the Non-Employee Disability Accessibility and Outreach Policy (07-10). Such requirements shall be incorporated into the PIP.

5. TRAINING

All NMED employees shall be required to attend training on this policy. Such training shall occur no later than 120 days after the first signing of this policy. Subsequent trainings will occur at regular intervals, as determined by the NMED's Non-Discrimination Coordinator, including:

- a. When substantive changes are made to the policy;
- b. When new employees begin employment with NMED; and
- c. At three-year intervals for all NMED employees.

Such training shall be provided by the Non-Discrimination Coordinator and the Office of General Counsel.

6. DISCIPLINE

Any employee who fails to comply with the terms and provisions of this policy may face disciplinary consequences up to and including dismissal in accordance with NMED Policy 02-71, Disciplinary Action.