

March of the Acronyms - How EJ/RMP/FRP and other letter groupings can impact permits and operations

Presentation to CIBO

**March 7, 2023
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Environmental Justice - Current State of Affairs

- **Recent EPA Actions**

- EPA letters to Louisiana and Texas regarding potential program deficiencies
- Principles for Addressing EJ in Air Permitting (December 2022)
- EPA Legal Tools to Advance Environmental Justice: Cumulative Impacts Addendum (January 2023)
- Grants available to EJ communities (first \$100 million in process)
- EPA preparing response to NGO petitions in several states
- NAAQS analysis

- **Other Government Actions**

- Budget submissions
- Justice40 initiative
- DOE project proposals

Key Definitions

- ***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.
 - EPA, *Legal Tools to Advance Environmental Justice* at 5 (May 2022)
- ***Disparate Impact***: Does a state permitting agency's criteria or method of administering its program or activities adversely and disparately affect members of a group identified by race, color, or national origin?
 - EPA, *Environmental Justice and Civil Rights in Permitting: Frequently Asked Questions* at 12 (August 2022)

Key Definitions

- **Cumulative Impacts** refers to the total burden – positive, neutral, or negative – from **chemical and non-chemical stressors** and their interactions that affect health, well-being, and quality of life of an individual, community, or population at **any given point in time or over a period of time**. Cumulative impacts include contemporary exposures in various environments where individuals spend time and **past** exposures that have lingering effects. Total burden encompasses **direct health effects and indirect effects** to people through impacts on resources and the environment that affect **human health and well-being**. Cumulative impacts provide context for characterizing the potential state of vulnerability or resilience of the community, i.e., their **ability to withstand or recover from additional exposures under consideration**.

– EPA, *Environmental Justice and Civil Rights in Permitting: Frequently Asked Questions* at 12 (August 2022) (quoting definition developed by EPA's Office of Research and Development)

Of EJ and PSD/NNSR – Dec. 2022 Memo

- “[P]romote environmental justice and equity ... using existing CAA authorities and discretion ... to mitigate potential adverse and disproportionate effects...”
- Principles listed
 - Identify communities with potential environmental justice concerns
 - Engage early in ... process to promote meaningful participation and fair treatment
 - Enhance public involvement throughout ... process
 - Conduct a “fit for purpose” environmental justice analysis
 - Minimize and mitigate disproportionately high and adverse effects associated with the permit action to promote fair treatment
 - Provide federal support throughout ... process
 - Enhance transparency throughout ... process
 - Build capacity to enhance the consideration of environmental justice in ... process
- More monitoring with public access to data

Environmental Justice in 2023

- Meaningful participation - \$\$ and other resources available (drones for all)
- Source monitoring (onsite, fence-line, community) with public access to data
 - CCR (coal ash) experience
 - Benzene fence-line monitoring dashboard
 - Citizen suits
- EPA (and other agencies) focus on permits/decisions impacting EJ communities & tribes
 - Alternate siting
 - Less impactful operations (not an economic analysis)
 - Permit denials/revocations
- Reducing/Equalizing burdens (can it go someplace else?)
- Legal underpinnings murky (ask v. demand)
- Cumulative Impacts Analysis (already too much? eggshell plaintiffs?)
- CEO letters

Communities and Tribes

To Be Heard

To Be Seen

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What to do

- Understand/execute public participation expectations - listen
- Understand neighbors/build relationships – listen
 - Assist with getting grants
 - Agree on a vision
- Walk the “fenceline” - listen
- Self-assessment - listen
 - Data availability (run EJSscreen, check other databases)
 - Track permit activity and potential changes
- Prepare company leadership – hope they listen

RMP

- Latest proposed revisions published Aug. 31, 2022
 - STAA (Safer Technologies and Alternative Analysis)
 - Co-located facilities within 1 mile
 - Heightened risk rationale
 - Third-party compliance audits
 - After incident
 - Agency determination
 - Employee participation
 - Consult during implementation
 - Stop work
 - Late reports
 - Emergency response
 - Field exercises
 - Community notification system
 - Information availability
- Final rule scheduled for August 2023

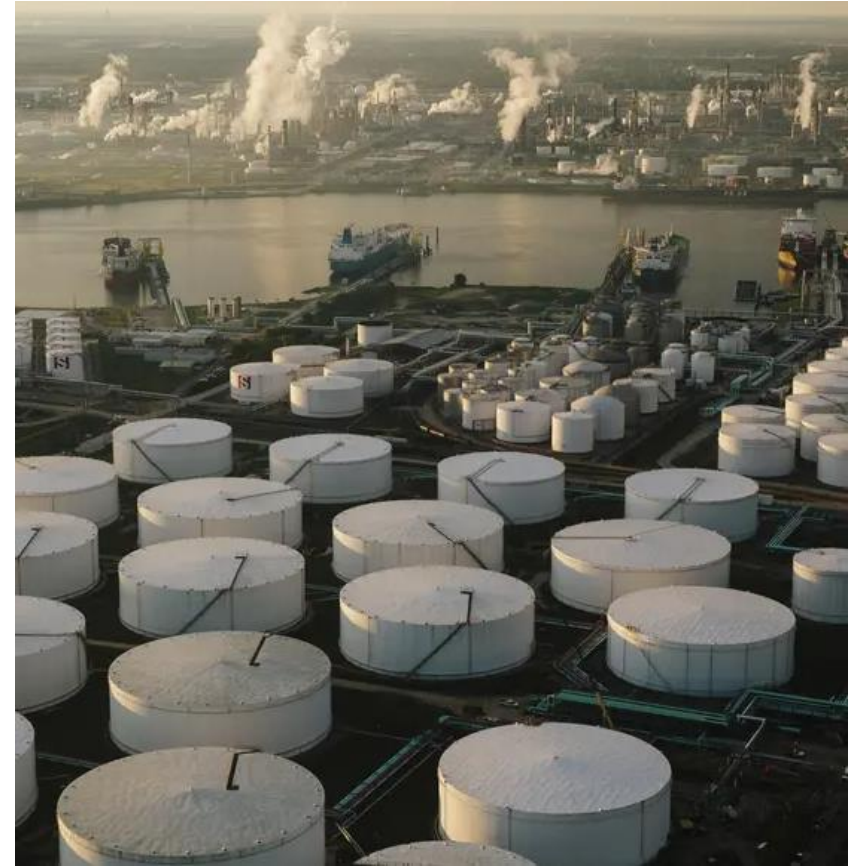
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RMP – Next steps once finalized

- Review final language carefully and compare with current operations and policies
 - OSHA/EPA alignment is not complete
- Work with local first responders and LEPC
 - Ensure communications & notifications systems work
 - Determine approach to tabletop and field exercises
- Remember: Not all additional activity results in improved risk management

FRP

- Oil Pollution Act of 1990 amended Clean Water Act
- Develop Facility Response Plan
 - Owner/operator of tank vessel or facility
 - Worst case discharge of oil or a hazardous substance
 - Reasonably be expected to cause substantial harm to the environment
 - To navigable waters or adjoining shorelines
- What to watch for in final rule
 - WOTUS ruling
 - EJ considerations
- Proposed rule 3/28/2022 – Final due by 9/2024 by consent decree



Thank You!

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