

Environmental Justice Application Review Procedure

CHECKLIST (Last revised 10/27/06)

1. CHECK PERMIT APPLICATION RECEIPT DATE

Was application received on or after April 18, 2003, the effective date of the policy?

- **N** Application not subject to procedural requirements of CP-29 V, end.¹
- **Y** Continue to Step 2.

2. DETERMINE APPLICABILITY

Is permit(s) type subject to CP-29 V?

See list of applicable permits at right.

- **N** Application not subject to procedural requirements of CP-29V, end.
- **Y** Continue to Step 3.

MAJOR PROJECT (INCLUDING MAJOR MODIFICATION) AS DEFINED IN 6NYCRR PART 621, AND FURTHER IMPLEMENTED BY THE FOLLOWING PROGRAMS:

- Titles 7 and 8 of article 17, state pollutant discharge elimination system (SPDES) (implemented by 6 NYCRR Part 750 et seq.)
- Article 19, air pollution control (implemented by 6 NYCRR Part 201 et seq.)
- Title 7 of article 27, solid waste management (implemented by 6 NYCRR Part 360)
- Title 9 of article 27, industrial hazardous waste management (implemented by 6 NYCRR Part 373)
- Title 11 of article 27, siting of industrial hazardous waste facilities (implemented by 6 NYCRR Part 361)

MINOR MODIFICATION PURSUANT TO:

- Title 7 of article 27, solid waste management (implemented by 6 NYCRR Part 360): involving any tonnage increases beyond the approved design capacity
- Title 7 of article 27, solid waste management (implemented by 6 NYCRR Part 360): involving an increase in the amount of putrescible solid waste beyond the amount that has already been approved in the existing permit

Note: The procedural requirements of CP-29 V. do not apply to renewals, registrations, and general permits. For example, the storm water SPDES permit is not an applicable permit type.

3. IDENTIFY POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS AND ESTIMATE THE POTENTIAL IMPACT AREA

- Based on Analyst experience and knowledge, and in consultation with relevant program staff, determine the Potential Impact Area of the Proposed Action. The area of impact should consider impacts to the environment.²
- Continue to Step 4.

¹Note: According to CP-29, it is Department policy to promote EJ and incorporate measures for achieving EJ into its programs, policies, regulations, legislative proposals and activities. Therefore, even where the procedural requirements of CP-29 do not apply, the Department must ensure the fair treatment and meaningful involvement of all people with respect to the development, implementation and enforcement of environmental laws, regulations and policies.

²“Environment” means the physical conditions that will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, resources of agricultural, archeological, historic or aesthetic significance, existing patterns of population concentration, distribution or growth, existing community or neighborhood character, and human health, per 6 NYCRR Part 617.2(l)

4. SCREEN FOR POTENTIAL EJ AREAS

- Use EJ Screening Wizard to screen for Potential EJ Areas (PEJA) by drawing a circle around the proposed project site.

The area within the circle represents the estimated potential impact area and should default to radii at ½ mile increments (½ mile, 1 mile, 1 ½ mile). For instance, if the estimated potential impact area identified in Step 3 above is greater than ½ mile but less than one mile, default to one mile radius. A PEJA is represented as a dark purple census block group(s).

- Print a map of the screen. A copy of the map should be kept with the file.
- Continue to Step 5.

5. DETERMINE WHETHER THE POTENTIAL IMPACT AREA INCLUDES A PEJA

Does the EJ Screening Wizard show any PEJA(s) within the circle (Potential Impact Area)? A PEJA area will appear as a dark purple census block group(s), while the other block groups will appear light blue.

- **N** No dark purple census block group(s) appear within the circle. Therefore, the application is not subject to the remaining procedural requirements of CP-29 V; or
- **Y** Dark purple census block groups appear within the circle. However, ground truthing³ shows that the underlying demographics data is erroneous. Therefore, the application is not subject to the remaining procedural requirements of CP-29 V. This selection requires preparation of a note to the file explaining the method used and results of ground truthing.
- **Y** Dark purple census block group(s) appears within the circle, continue to Step 6.

6. INDICATE EJ APPLICABILITY ON DART DETAIL PAGE

- Check the "Yes" button for Environmental Justice on the DART Application Detail page. Continue to Step 7.

³ "Ground truthing" refers to the collection of reference material used to verify the demographic data. Ground truthing may be accomplished through a variety of methods, including: a review of the census data, a site visit, the application of Department knowledge, the collection of field data or other. See attached "Guidance on Ground Truthing."

7. NOTIFY APPLICANT THAT THE PROPOSED ACTION IS SUBJECT TO CP-29 V

- Inform the Applicant, via notice of incomplete application or otherwise, that the proposed action is subject to CP-29 V. and the following items are required for a complete application:
 - Public Participation Plan (PPP); and
 - Full EAF, for Type I and Unlisted Actions subject to CP-29 V. (Lead agency determination may affect this requirement. See Step 8.)
- Provide the Applicant with the following information:
 - Commissioner Policy-29, Environmental Justice and Permitting;
 - Tips for Preparing a Public Participation Plan;
 - EJ Screening Wizard Map showing PEJA(s);
 - List of Community stakeholders and contact names, if available; and
 - Name and Contact information of Regional Citizen Participation Specialist
- Continue to Step 8.

8. CONSIDER LEAD AGENCY STATUS

EJ concerns should be identified, analyzed and addressed during the project's SEQR review.

Since lead agency status provides greater control over the SEQR review of coordinated projects, DEC should consider seeking lead agency status when potential impacts may affect a PEJA. If the potential for at least one significant adverse environmental impact is likely, DEC should strongly consider vying for lead agency status in order to insure that an EJ analysis is performed.

When the DEC is not the lead agency and does not have legal authority to compel the lead agency to comply with the requirements of CP-29 V, the DEC should strongly encourage the lead agency, in writing, to consider environmental justice issues in the environmental review and comply with all requirements of CP-29 V.

As lead agency DEC must require, as per CP-29V:

- Full EAF, and
- Coordinated Review.

And if DEC makes a positive declaration and requires an EIS, DEC must require, as per CP-29V:

- Formal Scoping;
- An EJ Analysis as part of the EIS that identifies the PEJA(s) to be affected, describes the existing environmental burden on the PEJA(s), and evaluates the additional burden of any significant adverse environmental impact on the PEJA(s), and
- A minimum 60 day Public Comment period for EIS Review.
- Continue to Step 9.

9. REVIEW PUBLIC PARTICIPATION PLAN FOR COMPLETENESS

In consultation, as necessary, with DEP's own Environmental Justice Advisors, the Office of Environmental Justice, and the Regional Citizen Participation Specialist, determine whether the application's proposed public participation plan is acceptable.

CP-29 V.D. outlines the intent and minimal requirements of a PPP. The Office of Environmental Justice guidance: *Tips for Preparing a Public Participation Plan* provides guidance on the components of a successful plan.

Consider the following factors as minimal items in the content of a PPP:

- Stakeholder list;
- Draft public notice;
- Draft invitation to public meeting;
- Location of posted material
- Dates, location(s), timing, and frequency of meeting(s);
- Location of repositories;
- Website addresses with information related to the project, if available;
- Facility contact phone number and address made available to public; and
- Extent and type of outreach.

Note: A significant portion of the PPP should be implemented prior to the completeness determination, including establishment of repositories, distribution of written information and public meeting(s), so that the concerns raised by an affected PEJA(s) are considered in the significance determination.

- Continue to Step 10.

10. MAKE SIGNIFICANCE DETERMINATION AND PUBLISH NOTICE OF COMPLETENESS

- Consider public comments received to date, including any feedback from PPP, EJ concerns raised, and other environmental considerations pursuant to SEQR when making the significance determination.
- Make significance determination, if not already made.
 - As a component of the overall negative declaration, the negative declaration should specifically address how project related impacts on the PEJA(s) will be minimized or mitigated or are not significant.
 - A positive declaration requires scoping, coordinated review, an EIS, and a minimum 60 day Public Comment period for EIS Review. Pursuant to CP-29 V.B.2.J, the EIS must include an EJ Analysis. Consult DEP's own Environmental Justice Advisors or the Office of Environmental Justice for help developing a case-specific EJ Analysis methodology.
- Post Notice of Complete Application in the ENB, publish or notice as required, and notify interested stakeholders.
- Continue to Step 11.

11. EVALUATE EJ CONCERNS AND ADDRESS EJ ISSUES THROUGHOUT PROJECT REVIEW

Throughout the project review and any environmental impact assessment, EJ concerns should be considered and addressed appropriately.

Department staff should consider existing and new ways to address EJ concerns. Consider permit conditions to, among other things, limit hours of operation and require public reporting requirements; consider modifications to the proposed action, such as reducing the proposed throughput or emissions; and consider structural changes to the physical plant, such as relocation of facility entrance, elimination of on street queues, etc.

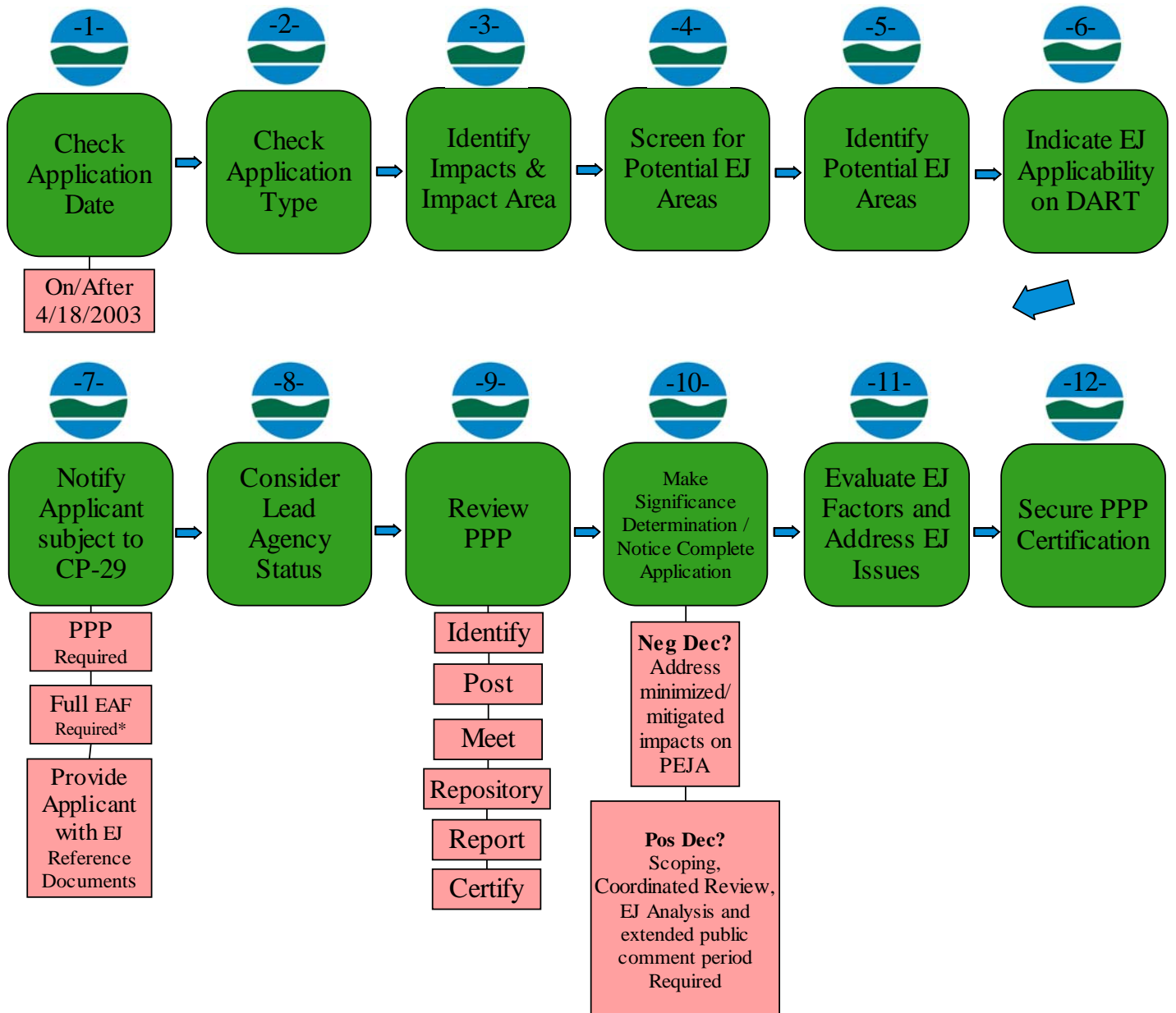
Project-related impacts/burdens to the identified potential EJ area(s) should be avoided and/or mitigated to the greatest extent possible.

- Continue to Step 12.

12. SECURE PPP CERTIFICATION FROM APPLICANT PRIOR TO ISSUANCE OF PERMIT

- Ensure compliance with procedural requirements of CP-29, including obtaining applicant certification of PPP completion and implementation.

Environmental Justice Application Review QUICK CHECK



Environmental Justice Application Review

GUIDANCE ON GROUND TRUTHING

Occasionally the results of the preliminary screen will conflict with what is known or what is expected for that geographic area. This is commonly due to minor discrepancies in the 2000 census demographic data or the GIS application. For instance, some cemeteries, parks or other open space areas with little or no residential populations may appear as PEJAs; and, although rare, sometimes a census block group with a low number of racial or ethnic minorities or a high average income level will appear as a PEJA.

To address these apparent discrepancies, ground truthing should be performed where the preliminary screen appears to conflict with what is known or what is expected for that geographic area. Ground truthing refers to the collection of reference material used to verify the demographic data. Ground truthing may be accomplished through a variety of methods, including: a review of the census data, a site visit, the application of Department knowledge, the collection of field data or other. Staff should prepare a note to the file briefly explaining the results of ground truthing.

The simplest method of ground truthing, which should be performed first in all cases, involves reviewing the demographic data. The demographic data can be compared to what is known or what has been observed about the geographic area. Also, the demographic data may help focus public participation if the project requires the applicant to develop an enhanced public participation plan. For example, if a screen shows that the census block group is a PEJA and the demographic data shows that: 1) it is a PEJA because it exceeds the poverty threshold; and, 2) the majority of the population is in the 18 - 21 year age group; and it is also known that the census block group is within a college campus area - then it is reasonable to conclude that the PEJA designation relates to the student population. Outreach may then be directed to the school administration and need not solicit the input of each and every student. Similar scenarios exist with prison populations and other large institutions that may comprise most or all of a census block group. See instructions for reviewing the demographic data in box below.

A second ground truthing method involves the physical inspection of the geographic area and documentation of observed conditions. This approach may be used when a review of the demographic data proves inconclusive and staff knowledge about the geographic area is limited. In this case, staff should identify the actual physical boundary of the disputed census block group, conduct a physical inspection of the census block group and document what is observed within the census block group. These observations may be supported with photos, videos, etc.

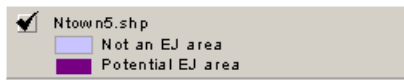
A third ground truthing method involves the application of Department knowledge. This approach may be used when information maintained and verified by the Department conflicts with the demographic data. For example, the demographic data indicates that a census block group is a PEJA, however, based on Department knowledge it is known that the census block group is zoned industrial and has no residential or transient population. Documentation should include a written description of the Department knowledge used to refute the demographic data, along with any supporting documentation such as maps or plans.

A fourth ground truthing method involves the collection and review of reference data or field data. This approach may be used when additional information is needed and staff are equipped and able to obtain the additional information. For example, the number of regulated facilities in a PEJA is disputed and staff use GPS to verify the numbers.

The demographic data may be reviewed while performing the preliminary screen.

1) Perform the preliminary screen to determine whether the potential impact area includes a PEJA. The preliminary screen will show census block groups in light blue, dark purple or both.

2) In the legend at the left side of the screen, click the cursor over the ntown#.shp to make it the active theme. The ntown#.shp shows the light blue and purple legend colors for “Not an EJ Area” and “Potential EJ Area,” respectively, and looks like this:



3) Click the cursor over the identification tool in the tool bar. The identification tool looks like this:



4) Click on a census block group for which you would like to verify the data. Census block groups are separated from each other by a fine, white line. Clicking within the boundary of a census block group will generate a table of census data for that census block group. The table contains a variety of demographic indicators, including population total, population by age, race etc.

Demographic indicators of interest include:

Age # (Age of population broken down by age categories)

Per_min (Percent Minority)

P_belpov (Percent below Poverty)

Minority (# of People classified as Minority)

bel_pov (# of people living below the poverty threshold)

urb_min (DEC threshold for urban minority)

rur_min (DEC threshold for rural minority)

pov_cutoff (DEC threshold for poverty)

coc_p_min (Community of concern percent minority= Percent minority for entire Potential Impact Area, which includes this census block group)

coc_p_pov (Community of concern percent poverty= Percent poverty for entire Potential Impact Area, which includes this census block group)

Environmental Justice Application Review Procedure Worksheet

NYSDEC #	
Project Name	
Project Address	

1. Date of Application Receipt _____ On or after 4/18/03? -No, end. -Yes, continue.
2. Is permit(s) type subject to CP-29 V? (See list of applicable permits below.) -No, end. -Yes, continue.

MAJOR PROJECT OR MODIFICATION

- SPDES
- Air pollution control
- Solid waste management
- Industrial hazardous waste management
- Siting of industrial hazardous waste facilities

MINOR MODIFICATION:

- Solid waste management involving any tonnage increases beyond the approved design capacity
- Solid waste management involving an increase in the amount of putrescible solid waste beyond the amount that has already been approved in the existing permit.

3. A. Briefly list known potential adverse env'tl impacts relating to the project (ex. air emissions, odor, traffic, etc.) _____

B. Estimate Potential Impact Area (½ mile, 1 mile, 1 ½ mile, etc.) _____

4. Preliminary Screen Conducted? -No, conduct preliminary screen. -Yes, continue.
5. Preliminary Screen shows PEJA(s) (purple shaded area) within Potential Impact Area? -No, end. -Yes, continue.

Results of Ground Truthing _____

NOTE: If the preliminary screen does not show any PEJA(s) within the Potential Impact Area, or if the ground truthing finds the screening system to be in error, end.

6. Is EJ applicability checked on DART detail page? -No, check EJ applicability on DART. -Yes, continue.
7. Was applicant notified of CP-29 applicability? -No, notify applicant, require ppp & full EAF*, provide EJ info. -Yes, continue.
8. Identify Lead Agency. - DEC -Other _____
9. Review public participation plan. Plan complete? -No, notify applicant, request revision. -Yes, accept plan.
10. A. Significance Determination - Neg dec, should discuss minimization/mitigation of impacts on PEJA(s)
- Pos dec, scoping, coor. review, EIS with EJ analysis, and extended public comment for EIS required.

B. Post Notice of Complete App. & Notify stakeholders. Done? -No, post and notify. -Yes, continue.

11. Note any EJ concerns addressed during the permit review (use reverse side of this form for additional space) _____

12. PPP certification of completion obtained? -No, obtain certification. -Yes, continue permit review process.