

WSSI 2023 Regulatory Updates
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Legal and Regulatory Updates

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3. Environmental Justice Developments

Environmental Justice



💧 Executive Order 14008 (Jan. 27, 2021)

- ~ Amends and expands on E.O. 12898 (Feb. 11, 1994)
- ~ “Agencies shall make achieving environmental justice part of their missions”
- ~ Various agency-specific directives

💧 Virginia Environmental Justice Act (2020)

- ~ Codified state policy to “promote environmental justice”
- ~ Related bill makes VDEQ policy to “further environmental justice and enhance public participation in the regulatory and permitting processes”

EJ Definition



“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)

EPA Permitting Guidance



Environmental Protection Agency

Interim

Environmental Justice and Civil Rights in Permitting Frequently Asked Questions

August 2022

Office of General Counsel
Office of Policy

U.S. Environmental Protection Agency
Washington, D.C. 20460

- Recommendations to permitting agencies to integrate EJ and Civil Rights Act compliance
 - ~ Screen for EJ communities with EJScreen or other tools (EJ)
 - ~ Evaluate direct and **cumulative** impacts on those communities (both)
 - ~ Engage the community (EJ)
 - ~ Determine if adverse impact (EJ) is disparate and unjustified (CRA)
- Compliance with EJ guidance **and** environmental laws does **not** guarantee compliance with CRA

DEQ EJ Permitting Guidance

- Draft published March 15
- “Informal” comments accepted until May 1
- “Formal” comment period to follow



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Subject: Guidance Memo No. 23-XXXX – Environmental Justice in the Permitting Process

To: Regional Directors, Division Directors, Office of Environmental Justice

From: Melanie D. Davenport, Director of Regulatory Affairs and Outreach

Date: TBD 2023

Copies: James J. Golden, Director of Central Operations; Jeffery A. Steers, Director of Regional Operations

Draft EJ Guidance: Key Terms

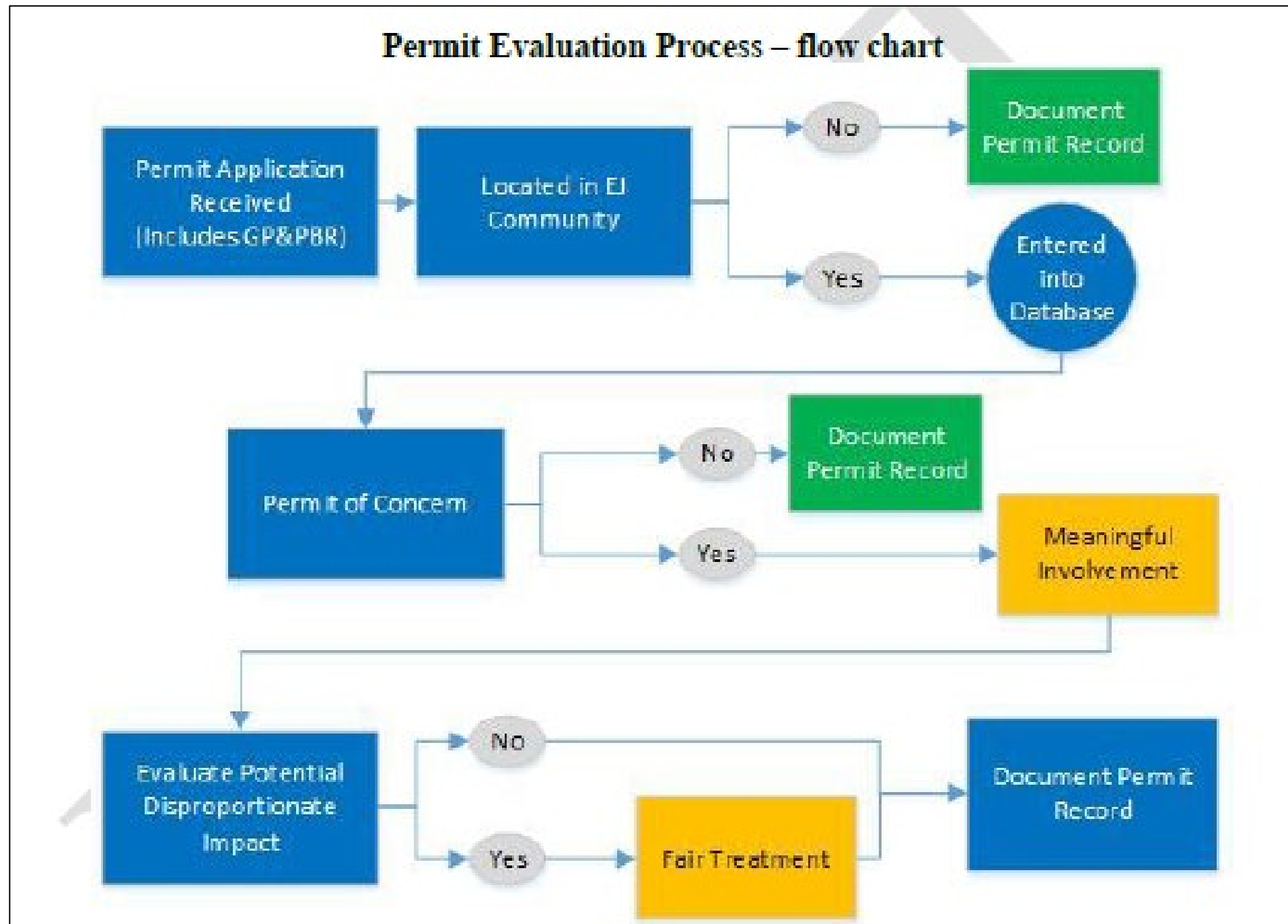
💧 “Permits of Concern” Related to Water

- ~ VPDES: New or expanded municipal discharge >25 MGD
- ~ VWP: Impacts >10 acres of wetlands or 25,000 lf of stream
- ~ Groundwater: New or expanded withdrawal >1 MGD
- ~ Surface Water: Any new or expanded withdrawal
- ~ Catchall: Others on a case-by-case basis

💧 “EJ Community”

- ~ Census block where >30% of households low income
- ~ “Geographically distinct area” where “population of color” exceeds state average (38%)

Draft EJ Guidance: Process



EJ in Practice


“But environmental justice is not merely a box to be checked.”

Friends of Buckingham v. Va. State Air Pollution Control Board, 947 F.3d 68, 92 (4th Cir. Jan 7, 2020)

Rapidly Evolving Legal and Regulatory Landscape

- ◆ **Identify EJ Communities**
 - ~ EPA EJSCREEN Tool, Census data
 - ~ Local knowledge of community and historical/cultural resources!
- ◆ **Meaningful Involvement**
 - ~ Go above and beyond (and before) public notice
- ◆ **Fair Treatment**
 - ~ Avoid disparate impact
 - ~ Community benefits/mitigation

Do Not Overlook EJ Communities in Project Area



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