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Cc: McKeePerez, Nancy; Singh, Ben; Miller, Mallory
Subject: [EXTERNAL] New Grant Requirement for FY22 - EJ Activities
Attachments: DRAFT Menu of options for state programs to incorporate EJ - 3-16-22.docx

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Afternoon All,

I wanted to give everyone a heads-up about this new grant requirement for LUST Prevention & Trust Fund, so y'all can start thinking and planning. However, this is still being worked on by OUST along with the accompanying guidance and is a very rough draft (think coarse sandpaper). This menu provides you some options to consider when implementing EJ activities. You don't have to choose any option listed. You have the flexibility to come up with your own. OUST realizes that states will be limited by resources, personnel, regulations, the political environment and your existing EJ Process, so they are giving you the freedom to use the menu or not. This menu and guidance were supposed to be completed by March 18th. I think they have received numerous comments/suggestions from states which they didn't expect, since they did a small pilot study with a few states, regions and tribes. Since there have been a ton of questions about this, OUST decided to add more explanations within the menu for guidance. It started out just as a menu. Also, there is some confusion over when this requirement was supposed to start either FY22 or 23; there has been no clarification on that either. Although, they have stated it was to start this FY (FY22). So, you can see, there is still a lot of work OUST has to do, but I still wanted to let y'all know what is going on so y'all could start thinking/planning.

The attachment is a menu that I will have to complete when I submit your grant application package to the Grants Office, so it will be attached to your Work Plan. If I already have sent you a Work Plan, I'll send the menu out once finalized by OUST.

If you have any questions, comments or suggestions about the menu or in general about the requirement, please send them to me which I will then forward onto OUST.

Terry

DRAFT
**Menu of Options for State UST/LUST Programs to
 Incorporate Environmental Justice**

OUST created this document as a reference for regions to:

- (1) Guide conversations and workplan development with grant recipients, and
- (2) Support development of regional approaches in Indian country.

Overview

Consistent with Administration direction and priorities, OUST expects states, territories, and the District of Columbia (hereafter referred to as states) to make [environmental justice](#) (EJ) a priority and to work to integrate environmental justice considerations into their programs and programmatic decisions. OUST expects that grants awarded to states will include a general requirement on incorporating EJ. To achieve this goal, states can undertake different programmatic actions based on state needs, authorities, and resource constraints. States may also develop, or may have already developed, their own definitions of areas with EJ concerns using criteria of interest to the state.

This document provides a list of ideas for potential programmatic adjustments for states to consider implementing into UST and LUST programs with the expectation that these activities will be memorialized in upcoming state grants. This is not an exhaustive list, and programs are able to come up with other ideas for implementing EJ considerations. Not all items in this list will be possible for every state program. Each region and state should discuss what will work for a given state's program. Some states may want to consider developing specific EJ-focused initiatives. Given resource constraints, other states may want to consider piloting activities in targeted areas first and scaling up. Regions need to determine how best to integrate EJ considerations into programmatic decisions in Indian country and should work with Tribal partners to determine that approach.

OUST conducted EJ pilot projects August 2021 – February 2022 to inform this document, and consolidated ideas with both a state and Indian country focus. Throughout the pilots, OUST worked with state UST and LUST programs in Massachusetts, Arizona, and Oregon. OUST collaborated with Regions 1, 9, and 10 for the state-focused pilots, along with Region 8's program in Indian country. Note: Several Indian country specific activities are included below in italics.

Foundation Building Activities

- Engage and collaborate
 - Connect with partners focused on environmental justice efforts in the agency, coordinate with regional UST and LUST program offices in the state and with other invested stakeholders.
 - Consider EJ outreach to communities and stakeholder groups or increase existing EJ outreach and engagement efforts, for example, community meetings.
 - Develop guidance and trainings on advancing environmental justice in UST and LUST programs, and/or across state agency.
 - *EPA efforts in Indian country: connect with Regional EJ coordinators and Tribal Affairs personnel; engage with specific tribes.*
- Develop an approach and analyze universe
 - Define areas with EJ concerns; consider state definitions of environmental justice if applicable

- States may want to use EPA’s existing screening tools and supplement with additional data and knowledge of local communities:
 - [UST Finder](#) – provides recent snapshot of locations and attributes of state UST and LUST sites; work currently underway to add EJ information (target completion date April 2022)
 - [EJScreen](#) – provides national data that combines environmental and demographic information at the census block level
- States may create state specific EJ screening methodology to define areas with EJ concerns, include state definition of environmental justice when applicable and state specific data elements of interest; consider developing mapping tool or use existing state tools.
- Acknowledge the potential for disproportionate impacts from climate change on vulnerable communities, e.g., floods, droughts, wildfires, and consider these factors in environmental justice efforts that relate to prevention or cleanup activities.
- Identify clusters and geographic opportunities; focus on criteria of interest to program (e.g., non-compliant sites) and environmental justice concerns, identify areas where state groups or organizations are focusing on environmental justice.
- Establish EJ metrics of interest to your organization to assess your progress.

Prevention

- Analyze UST universe using environmental justice criteria and supplement with other data elements of interest to the state to inform future actions. Examples include:
 - Use EJScreen criteria; for example, identify sites in areas with 1 or more EJ index at the 80th percentile in the state
 - Update site-specific information in database where possible to include factors such as equipment information (for example, single wall tanks or piping), compliance requirements for testing, climate change risks of the area
 - Identify possible considerations that may have an impact, e.g., abandoned or TOS USTs which may have releases, food deserts, rural areas with limited gas availability
- Provide additional compliance assistance to facilities in areas with EJ concerns:
 - Target compliance site visits using combinations of the above analysis to prioritize as appropriate
 - Develop compliance assistance materials in multiple languages
 - Increase training opportunities for owners and operators, e.g., host informational webinars, direct contact via phone calls
 - Prioritize pre-inspection compliance assistance, e.g., phone calls to identify necessary records, and post-inspection visits to provide education to owners and operators
- Target inspection and enforcement efforts at facilities in areas with EJ concerns
 - Perform more frequent inspections at facilities that have a history of non-compliance
 - Strengthen inspection criteria for USTs that may present additional risk; for example, require more stringent approaches to periodic re-inspection where or when the state has the authority to do so. Note: This may be applicable across all facilities but can be prioritized in areas with EJ concerns if appropriate.
 - Modify randomized inspection selection criteria to incorporate EJ as a factor (especially in third party inspection states, where the state performs limited oversight inspections each year)
- Improve communication efforts with relevant stakeholders
 - Modify annual certification forms/questionnaires to gather data that will help EJ efforts; for example, “With what language are you most comfortable communicating about your UST?”

- Incorporate EJ awareness information into required training or certification for third parties performing state UST inspections
- Engage with community level organizations like local fire departments who work with the same regulated community to assist with compliance assistance/amplify outreach/UST messaging
Note: This may be applicable across all facilities but can be prioritized in areas with EJ concerns if appropriate.
- Develop specific state projects in areas with EJ concerns depending on available funding. Examples include:
 - Defueling project – identifying TOS or abandoned USTs in areas with EJ concerns to defuel and reduce risk
 - Orphan tank ground penetrating radar – use GPR to identify suspect UST sites in areas with EJ concerns to determine next steps (i.e., removal or admin closure)
- Look for partners and leveraging opportunities

Cleanup

- Analyze LUST universe using environmental justice criteria and supplement with other data elements of interest to the state to inform future actions. For example:
 - Use EJScreen criteria to prioritize or rank; for example, identify sites in areas with 1 or more EJ index at the 80th percentile in the state
 - Consider incorporating other site-specific details in the analysis, e.g., size of release, media impacted, stage of cleanup, location in floodplain, proximity to private domestic wells and source water protection areas
- Prioritize EJ considerations – in the cleanup program, EJ considerations can be incorporated into:
 - Outreach efforts
 - Send “wake up” letters directing RP to begin or resume cleanup activities at LUST sites in areas with EJ concerns
 - *EPA efforts in Indian country: create communication plans for engaging with Tribes with active LUST sites*
 - Enforcement – prioritize enforcement in areas with EJ concerns, begin escalating enforcement on sites that did not respond to outreach efforts or are not meeting project timelines and milestones
 - Auditing corrective action plans and cleanup activities in areas with EJ concerns
 - Focusing on abandoned LUST sites and conducting RP search activities – more attention on sites in areas with EJ concerns
 - Risk ranking process to include EJ as a factor
 - State lead cleanups with state or federal LUST cleanup money
 - State-specific programs (e.g., abandoned tanks program)
 - Allocating case managers’ time/which LUST sites to focus on
 - Setting aside a specific amount of funding for site work in areas with EJ concerns
- Look for partners and leveraging opportunities
 - Engage with Brownfields and other programs
 - Prepare inventory of sites that could be eligible for Brownfields funding
 - Prepare materials targeting current landowners (i.e., municipalities, counties, tribes) with abandoned LUST sites to include case studies on how EPA grant programs can be used to cleanup an abandoned site

Planning For The Future

- If your state has the ability to direct future placement of gas stations and locations of USTs through zoning and permitting, consider incorporating EJ concerns into the decision-making process.
- Identify aging facilities that will face critical decisions and financial pressures that may increase the chances of non-compliance and/or facility abandonment; offer additional assistance to those facilities in areas with EJ concerns.

Next Steps for OUST, Regions and States [MS1]

- Regions and states discuss potential programmatic adjustments
- Each state identifies EJ activities they plan to undertake
- Regions memorialize this in work plans for upcoming grants
 - Generic bullet at a minimum?
 - Work to integrate environmental justice considerations into UST/LUST programs and programmatic decisions
- Summarizing agreed upon activities and tracking implementation
 - End of FY22: regions share list of commitments and activities for each of their states
 - Mid-year FY2023: states provide summary of progress to regions; regions share summaries with OUST (Need to nail down timing - Before the next grant negotiation cycle?)