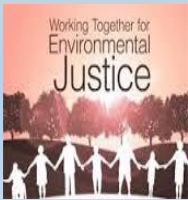


Lessons Learned in NEPA and Environmental Justice

**B. Suzi Ruhl, Senior Attorney Advisor
Office of Environmental Justice, US EPA**

*Accelerating Access to Opportunity: 2016 U.S. Department of
Transportation Civil Rights Virtual Symposium*

March 8, 2016 Washington, DC



Crosswalking Environmental Justice and NEPA

IDENTIFY

EJ ISSUES and AREAS

TERMS

FACTORS

MAPPING



NAVIGATE

FEDERAL AUTHORITIES TO ADDRESS EJ THROUGH NEPA

EXECUTIVE ORDER

PRESIDENTIAL
MEMORANDUM

FEDERAL IWG ON EJ



LEVERAGE

PROMISING PRACTICES ON EJ METHODOLOGIES IN NEPA REVIEWS

PROCESS

SUBSTANCE

KEY TOPICS



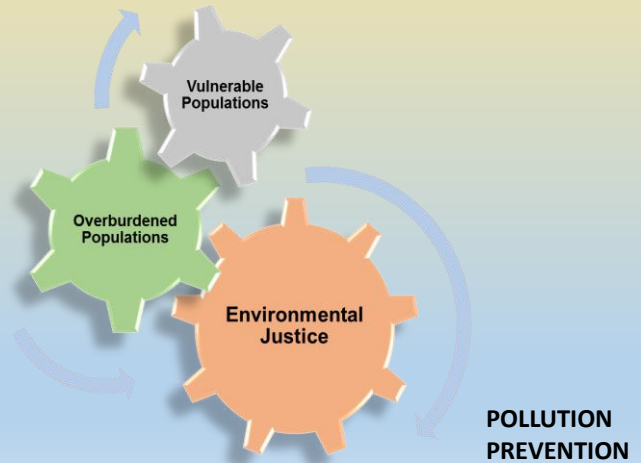
IDENTIFY

EJ ISSUES and AREAS

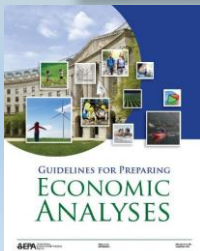
TERMS

EQUITABLE DEVELOPMENT

Crosswalking *Environmental Justice*

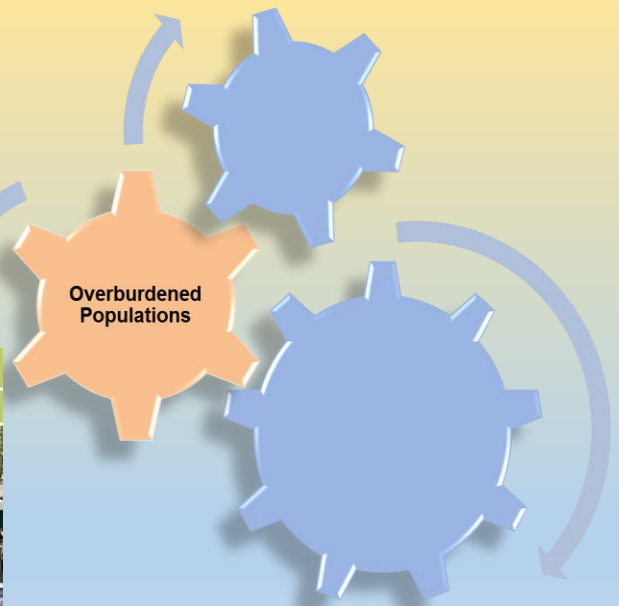
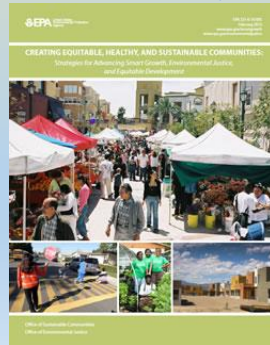


Environmental Justice:
Fair treatment and
meaningful involvement
 of all people regardless of
race, color, national origin,
 or **income** with respect to
 the development,
 implementation, and
 enforcement of
 environmental laws,
 regulations, and policies



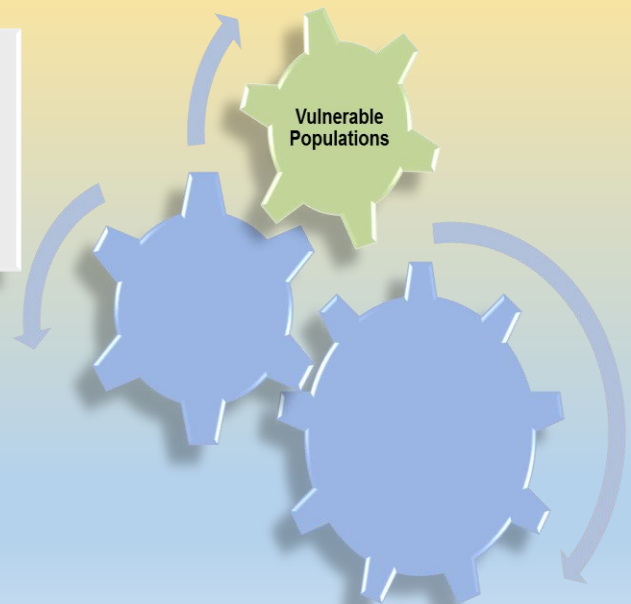
Overburdened Populations:

Minority, low-income, tribal, and indigenous populations or communities in the United States that potentially experience **disproportionate environmental harms and risks as a result of greater vulnerability** to environmental hazards.



Vulnerable Populations:

Groups of people especially at risk to impacts of a major storm due to their location or because they are **overburdened and lack resources** or have **less access to services**.





IDENTIFY FACTORS

Proximity and Exposure



Cumulative Impacts



Physical Infrastructure



Susceptible Populations



Unique Exposure Pathways



Participating in Decision Making

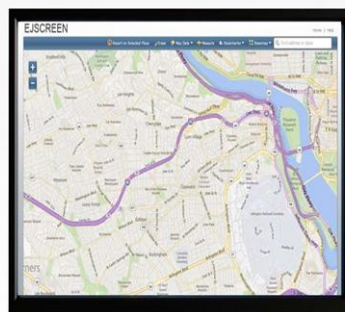


PSYCHOLOGICAL STRESSORS



IDENTIFY MAPPING

EJ SCREEN:
EPA's
Environmental
Justice Screening
Tool



Key Features

- 12 EJ indexes-combines environmental and demographic information
- 12 environmental indicators
- Annually updated demographics – U.S. Census Bureau American Community Survey
- Web accessible
- Standard printable reports, maps, and bar graphs
- Higher resolution maps
- Raw data downloads



NAVIGATE

FEDERAL AUTHORITIES
WHEN ADDRESSING EJ

EO 12898

Crosswalking *Environmental Justice*

Each Federal agency shall make achieving **environmental justice** part of its mission by identifying and addressing, as appropriate, **disproportionately high and adverse human health or environmental effects** of its programs, policies, and activities **on minority populations and low-income populations.**



NAVIGATE

FEDERAL AUTHORITIES
WHEN ADDRESSING EJ

Presidential
Memorandum

Purpose is to underscore “Certain **provisions of existing law** that can help ensure that all communities and persons across this Nation live in a safe and healthful environment. **Environmental and civil rights statutes** provide many opportunities to address environmental hazards in minority communities and low income communities.”



NAVIGATE

*FEDERAL AUTHORITIES
WHEN ADDRESSING EJ*

**Presidential
Memorandum**

For NEPA Reviews of Federal Actions:

- Analyze environmental effects, including human health, economic, and social effects on minority populations, low-income populations and Indian tribes
- Mitigation measures should address significant and adverse environmental effects on minority populations, low-income populations, and Indian tribes
- Provide opportunities for effective community participation
- Review of Lead agency NEPA analyses should appropriately analyze environmental effects on minority populations, low-income populations and Indian tribes



NAVIGATE

*EJ CAPACITY to
ADVANCE EQUITABLE,
HEALTHY , RESILIENT,
SUSTAINABLE
COMMUNITIES*

FEDERAL IWG on EJ

IWG Federal Agencies

- Environmental Protection Agency (Chair)
- White House Office: Council on Environmental Quality
- Departments: Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, Interior, Justice, Labor, Transportation, Veteran's Affairs
- General Services Administration
- Small Business Administration



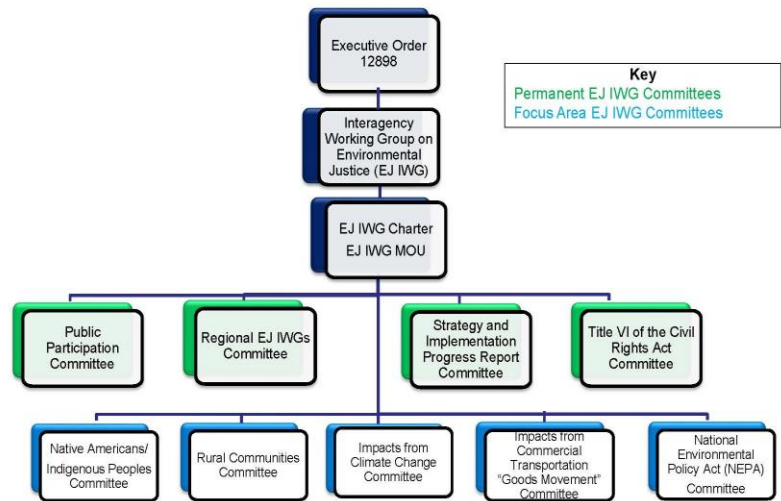
- Created by EO 12898 (1994)
- Reconvened at the Cabinet Level (2010 and 2015)
- Charter & Memorandum of Understanding in 2011
- Framework for Collaboration, FY 2016-2018 (2016)



Federal Interagency Working Group on Environmental Justice

Obama Administration announced Federal agencies have agreed to develop environmental justice strategies to protect the health of people living in communities overburdened by pollution and provide the public with annual progress reports on their efforts... EJ MOU- 8/4/11

EJ IWG Governance Structure 2016 - 2018



December 2015



LEVERAGE: NEPA and EJ



LEVERAGE: NEPA Committee of the Federal IWG on EJ

Purpose

- ✓ Improve effective, efficient and consistent consideration of EJ in the NEPA process
- ✓ Share promising practices/lessons learned developed by federal government NEPA practitioners
- ✓ Provide cross agency training on EJ and NEPA



Subcommittees:

- Community of Practice
- Education



LEVERAGE: NEPA Committee- Practitioners Across Federal Family

Committee Chairs

- EPA
- DOT

Subcommittee Chairs

- DOJ
- EPA
- HHS

Affinity Group Chairs

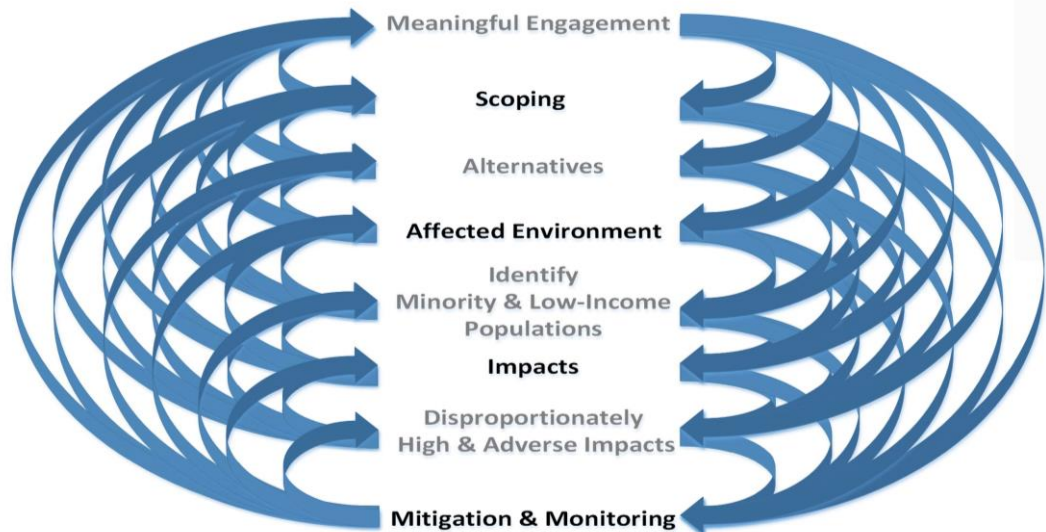
- DOE
- USDA-APHIS
- EPA Regions

DOI: *BLM, NPS, BR, FWS*
DOT: *OST, FTA, FHWA*
USDA: *APHIS, USFS*

DOJ, DOE, DOS
DHS, DOE, HHS, HUD, DVA
EPA, GSA, NRC, CEQ



LEVERAGE: NEPA and EJ- IWG Report on *Promising Practices for EJ Methodologies in NEPA Reviews*



LEVERAGE: NEPA AND EJ KEY TOPICS

- ✓ Identification of minority populations
- ✓ Evaluating disproportionately high and adverse impacts
- ✓ Balancing burdens and benefits
- ✓ Adaptive mitigation and monitoring measures

LEVERAGE: NEPA and EJ SUCCESS STORY

Charleston Marine Terminal Expansion

- Goods Movement: Overburdened communities frequently located near major transportation hubs.
- Port Expansion: Major expansion of the nation's fourth busiest container port in Charleston, South Carolina
- NEPA: Environmental impact statement prepared by U.S. Army Corps of Engineers
- Stakeholder Collaboration: EPA, Corps, South Carolina Port Authority, Lowcountry Alliance for Model Communities
- Outcome: Development of a mitigation plan potential environmental, health and socio-economic impacts
 - environmental monitoring
 - affordable housing trust
 - community park
 - employment training programs
 - expanded health care opportunities



THANK YOU

QUESTIONS

Ruhl.suzi@epa.gov

EJ and the National Environmental Policy Act

What is NEPA?

How does NEPA intersect with Environmental Justice?

History and Purpose of NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

Signed by President Nixon on January 1, 1970.

Senator Jackson summarized its purposes as:

- * to establish a national policy on the environment;
- * to authorize expanded research and understanding of our natural resources, the environment, and human ecology; and
- * to establish in the Office of the President a properly staffed Council of Environmental Quality Advisors.

April 16, 1969, hearing introduced the concept of an environmental impact statement (referred to as a “finding”) and the need for an action-forcing provision to obtain compliance from federal agencies.

NEPA's Objectives:

- * Disclose, analyze, and consider environmental information when making decisions.
- * Inform the public of potential impacts and alternatives and involve the public in decision making.

Implementation

- * Study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.
- * Recognize the global character of environmental problems and assist in efforts to prevent the decline in the quality of the world's environment.
- * Share environmental information and advice with States, Indian tribes, counties, cities, institutions and individuals.
- * Initiate and utilize ecological information in the planning and development of natural resources.

Adapting EJ Analysis to NEPA

Environmental review is required for all Federally funded projects and includes:

- Reviewing important adverse effects of the project to determine whether those adverse effects are significant;
- Determining whether adverse effects can be avoided, minimized, or mitigated; and,
- Assessing the Project's benefits versus its burdens on the environment.

All Classes of Action Consider EJ

Environmental justice should be considered in all decisions whether the project is processed with an Environmental Impact Statement, Environmental Assessment, or Categorical Exclusion.

Public Outreach in EJ/NEPA

- * Is there a discussion of the public engagement process?
- * What efforts were made to reach minority and low-income populations?
- * Is there mention of how EJ communities were engaged during:
 - ✓ Transportation Planning process
 - ✓ NEPA process

HOW DOES ENVIRONMENTAL JUSTICE IMPROVE TRANSPORTATION DECISION MAKING?

- * Make better transportation decisions that meet the needs of all people.
- * Design transportation facilities that fit more harmoniously into communities.
- * Enhance the public-involvement process, strengthen community-based partnerships, and provide minority and low-income populations with opportunities to learn about and improve the quality and usefulness of transportation in their lives.
- * Improve data collection, monitoring, and analysis tools that assess the needs of, and analyze the potential impacts on minority and low-income populations.
- * Partner with other public and private programs to leverage transportation-agency resources to achieve a common vision for communities.
- * Avoid disproportionately high and adverse impacts on minority and low-income populations.
- * Minimize and/or mitigate unavoidable impacts by identifying concerns early in the planning phase and providing offsetting initiatives and enhancement measures to benefit affected communities and neighborhoods.

U.S. DOT and EJ

❖ DOT EJ Order 5610.2(a)-issued May 2012

http://www.fhwa.dot.gov/environment/environmental_justice/ej_at_dot/orders/order_56102a/dot56102a.pdf

❖ DOT EJ Strategy- issued March 2012

http://www.fhwa.dot.gov/environment/environmental_justice/ej_at_dot/dot_ej_strategy/index.cfm

❖ Federal Transit Administration- EJ Policy Guidance for FTA Recipients FTA C 4703.1-issued August 2012

http://www.fta.dot.gov/12347_14823.html

❖ FHWA EJ Order 6640.23A-issued June 2012

http://www.fhwa.dot.gov/environment/environmental_justice/

❖ FHWA EJ Reference Guide-issued April 2015

https://www.fhwa.dot.gov/environment/environmental_justice/resources/reference_guide_2015/fhwahep15035..pdf

FTA's EJ Circular

- * Chapter I: Environmental Justice, Title VI, and Public Transportation
- * Chapter II: Conducting an Environmental Justice Analysis
- * Chapter III: Achieving Meaningful Public Engagement with Environmental Justice Populations
- * Chapter IV: Integrating Principles of Environmental Justice in Transportation Planning and Service Delivery
- * Chapter V: Incorporating Environmental Justice Principles into the NEPA Process

FAA Efforts to Address EJ Analysis

FAA has updated the agency-wide NEPA Order 1050.1 and created an accompanying Desk Reference that includes more emphasis on environmental justice for all levels of NEPA reviews (EIS, EA, and CATEX).

- The FAA Order 1050.1F highlights public involvement for environmental justice populations in the planning chapter to be consistent with the DOT Order 5610.2A updates in May 2012.
- The accompanying 1050.1F Desk Reference expands the guidance on FAA's EJ responsibilities from about 2 pages to 7 pages of content:
 - * FAA must consider impacts on the environment that would affect an environmental justice population in way that is unique and significant to that population.
 - * Some adverse impacts may not normally be considered significant under NEPA (i.e., normally cause an EIS to be prepared), yet may pose a significant impact when examined in the context of their effects on minority or low-income populations.

EJ Litigation

- * Where the agency analyzes EJ concerns in a NEPA documents, NEPA is satisfied where the agency took a “hard look” at the concerns and the resulting final action was not arbitrary and capricious.
- * EO 12898 creates no private right of action.
- * Entities cannot use NEPA to create an EJ cause of action.
- * Entities challenging an agency action cannot demand that EJ considerations be added to the NEPA document.
- * However, once an agency has created an EJ analysis on the record, courts can review the action under the APA using the NEPA “hard look” standard.

What is a Hard Look?

- ✓ Assumptions spelled out,
- ✓ Inconsistencies explained,
- ✓ Methodologies disclosed,
- ✓ Contradictory evidence addressed,
- ✓ Records referenced solidly grounded in science,
- ✓ Guesswork eliminated, and
- ✓ Conclusions supported in a manner capable of judicial understanding.

EJ/NEPA Litigation

- * *Morongo Band of Mission Indians v. FAA*, 161 F.3d 569 (9th Cir. 1998). The EJ Executive Order does not create a private right of action.
- * *Senville v. Peters*, 327 F.Supp. 2d 335 (D.Ver. 2004). Once an agency creates an EJ analysis on the record, courts can rule on the adequacy.
- * *St. Paul Branch of the NAACP v. US DOT*, 764 F.Supp.2d 1092 (D.Min. 2011). The Court found that DOT's EIS properly took a "hard look" at the cumulative impacts on the community.
- * *Crenshaw Subway Coal v. L.A. Cnty. MTA*, 2015 U.S. Dist. LEXIS 143642 (C.D. Cal. Sep. 23, 2015). Response to comments and geographic analysis to compare impacts and populations.

Questions???

Contact:

Helen Serassio
Special Counsel
Federal Transit Administration
helen.serassio@dot.gov