FACT SHEET

FEBRUARY 1998

NEPA Call-In

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Environmental Justice

Introduction

What is Environmental Justice?

Environmental impacts do not fall equally on everyone in society. Studies have shown that chemical manufacturing plants, hazardous waste landfills, highways and other developments with negative environmental consequences are more likely to be located in low-income and minority communities. Low-income populations and minority populations are more likely to be exposed to physical displacement and adverse impacts on their cultural institutions, traditional forms of land use, community cultural character, religious practices, and financial well being. The idea behind environmental justice is to recognize these disproportionate impacts and try to avoid them.

Environmental Justice (EJ), then, is the pursuit of equal justice and equal protection for all people under the environmental statutes and regulations. EJ means ensuring that "EJ communities" are not exposed to unjustly high and adverse environmental impacts. An EJ community is any aggregated or dispersed population that (a) is a low-income population based on the Bureau of the Census (BOC) Current Population reports, (b) is over 50-percent minority, or (c) contains a minority population percentage meaningfully greater than the minority population percentage in the general population or other appropriate unit of geographic analysis. Federally recognized Indian tribes or groups within tribes, which are made up of minority individuals, may be EJ communities.

This fact sheet provides information about the history of EJ; the requirements of Executive Order (EO) 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" as well as Council on Environmental Quality (CEQ) and GSA guidance on EJ implementation strategies. Most importantly, this fact sheet discusses how to integrate EJ into the National Environmental Policy Act (NEPA) process.

History of Environmental Justice

EJ became a widely recognized national issue in 1982 when approximately 500 demonstrators gathered in Warren County, North Carolina, to protest the siting of a polychlorinated biphenyl (PCB) landfill in a predominately African-American and low-income community. This protest led to a 1983 investigation by the U.S. General Accounting Office (GAO), which found that 3 of the 4 major hazardous waste landfills in the South were located in minority (predominantly black) and low-income communities. Also in 1983, the United Church of Christ's Commission for Racial Justice released the report of a nationwide study that found there was a national pattern of "disproportionate location" of commercial hazardous waste facilities in minority communities. Two major environmental conferences were held in the early 1990s, which further increased awareness of EJ: *The First National People-of-Color Environmental Leadership Summit* and *The University of Michigan School of Natural Resources Conference on Race and the Incidence of Environmental Hazards.*

As a result of these studies and conferences, government policy-makers at multiple levels became increasingly aware and involved in environmental equity discussions. The Michigan Conference brought EJ to the attention of then Environmental Protection Agency (EPA) Administrator, Mr. William Riley. Mr. Riley formed an internal agency workgroup to investigate the issue of EJ and the drafting of policy on the issue. As a result, the EPA created the Office of Environmental Equity in 1992 to better coordinate their efforts to address EJ. The office was renamed the Office of Environmental Justice (OEJ) in 1994.

In February 1994, President Clinton issued EO 12898, "Federal Actions to Address Environmen-

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tal Justice in Minority Populations and Low-Income Populations." This executive order was the first presidential effort to direct Federal agencies to make EJ part of their policies and activities.

Executive Order 12898

Provisions of the Order and Presidential Memorandum

EO 12898 requires Federal agencies that are members of the interagency Federal Working Group on Environmental Justice (Working Group) to identify and address, as appropriate, "disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations," and directs these Federal agencies to make EJ part of their mission. Although GSA is not a member of the Working Group, EO 12898 requests that all independent Federal agencies comply with the provisions of the Order.

EO 12898 recognizes the importance of research, data collection, and analysis of environmental hazards on diverse segments of the population, including EJ communities. Federal agencies that are members of the Working Group are directed to "use this information to determine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations." The Order further requires these agencies to work to ensure that EJ communities have access to information and are given an opportunity to effectively participate in agency actions affecting them.

In his February 11, 1994 memorandum issued with the EO, President Clinton specifically recognized the importance of procedures under NEPA to identify and address EJ concerns. The memorandum states that "each Federal agency shall analyze the environmental effects, including human health, economic and social effects, of Federal actions, including effects on minority communities and low-income communities, when such analysis is required by [NEPA]." The memorandum emphasizes the importance of NEPA's public participation process by instructing Federal agencies to provide opportunities for community input in the NEPA process, and improve the accessibility of meetings, crucial documents, and notices. Agencies are further instructed to consult with affected EJ communities to identify potential effects and mitigation measures.

Minority: Individuals who are members of the following population groups: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic

Source: Guidance for Federal Agencies on Key Terms in Executive Order 12898, Federal Working Group on Environmental Justice.

The Roles of EPA, CEQ, and DOJ

The OEJ was created in 1992 to coordinate EPA efforts to address EJ issues. The OEJ is the primary source of information and assistance for EJ information. It develops partnerships and provides assistance to many organizations across the United States to identify EJ communities, and any disproportionately high and adverse human health or environmental effects associated with these populations. OEJ staff have served on many policy and rulemaking workgroups and committees, such as the National Indian Workgroup and the National Performance Review Team on Environmental Justice. Through this type of involvement, OEJ helps ensure that the principles of EJ are incorporated into policy documents and regulations.

In addition, the OEJ:

- ✓ Makes EJ information available to the public, including information from the National Environmental Justice Advisory Council (NEJAC);
- ✓ Conducts education and outreach programs;
- ✓ Sponsors community EJ projects through both community and community/university grants;
- ✓ Provides technical assistance both inside and outside EPA; and
- ✓ Trains government and non-government personnel in EJ.

The EPA established NEJAC in 1993 to provide independent advice, consultation, and recommendations to the EPA on EJ matters. NEJAC is made up of 25 members representing a spectrum of EJ constituencies. Members fill subcommittees entitled Enforcement, Health and Research, Indigenous Peoples, International, Public Participation, and Waste and Facility, which provide independent advice to the EPA and Executive Council of the NEJAC.

While the order does not "create any right, benefit or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person," the order interprets Federal agency responsibilities under NEPA and other environmental laws. It suggests that EJ is an aspect of civil rights, and that discrimination in the placement or location of environmentally hazardous facilities or activities may be a basis for litigation under Title VI of the Civil Rights Act of 1964 (CRA). Title VI prohibits discrimination by recipients of federal financial assistance. The EPA Office of Civil Rights (OCR) is responsible for enforcing Title VI of the CRA, implementing the non-discrimination provisions in EO 12898, and processing Title VI complaints filed with the EPA.

The CEQ has oversight of the Federal Government's compliance with NEPA. The CEQ has developed EJ guidance to assist Federal agencies with NEPA procedures to ensure EJ concerns are addressed. This guidance is discussed in the next section. For a copy of this guidance, please contact NEPA Call-In at (202) 208-6228.

The Department of Justice (DOJ) serves as legal counsel for the Federal Government, and in certain instances, the citizens of the United States. DOJ promotes government-wide implementation of EO 12898 and provides technical assistance and training to improve the enforcement programs of individual agencies. DOJ also handles both defensive and enforcement litigation concerning environmental violations in EJ communities. DOJ and EPA co-sponsored a conference on EJ in May 1995, which provided cross-training in civil rights and environmental laws to personnel responsible for EO 12898 implementation. The conference was attended by more than 150 Federal agency staff.

GSA's Role

Although EO 12898 requires only members of the Working Group to develop agency-specific EJ strategies, it requests that other agencies follow its directives. Since GSA is not a member of the Working Group, it has not been required to develop a specific EJ strategy, but it has integrated EJ into the PBS NEPA Desk Guide, Interim Guidance, September 1997. The Presidential Memorandum provides direction to all agencies about how EJ issues are to be addressed under NEPA. The PBS NEPA Desk Guide can be found on the NEPA Call-In world wide web site at http://www.gsa.gov/pbs/pt/call-in/erl/deskref/deskref.htm, or by contacting NEPA Call-In at (202) 208-6228.

Environmental Justice and NEPA

Environmental Justice and Environmental Impact Assessments

NEPA provides a major planning context in which EJ issues can be addressed, though such issues should be considered under other environmental review authorities as well (e.g., the National Historic Preservation Act and the Endangered Species Act). The Presidential Memorandum identifies four important ways to consider EJ under NEPA, which are summarized in the CEQ's EJ guidance as follows:

- "Each Federal agency should analyze the environmental effects, including human health, economic, and social effects of Federal actions, including effects on minority populations, low-income populations, and Indian tribes, when such analysis is required by NEPA.
- Mitigation measures identified as part of an environmental assessment (EA), a finding of no significant impact (FONSI), an environmental impact statement (EIS), or a record of decision (ROD), should, whenever feasible, address significant and adverse environmental effects of proposed Federal actions on minority populations, low-income populations, and Indian tribes.
- Each Federal agency must provide opportunities for effective community participation in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of public meetings, crucial documents, and notices.
- Review of NEPA compliance (such as EPA's review under § 309 of the Clean Air Act) must ensure that the lead agency preparing NEPA analyses and documentation has appropriately analyzed environmental effects on minority populations, low-income populations, or Indian tribes, including human health, social, and economic effects."

CEQ's guidance outlines six principles that should be addressed in the course of NEPA review to ensure consideration of EJ, which can be paraphrased as follows:

- Consider the human composition of the affected area — that is, its population and how it is used by human communities, and determine whether any such communities are characterized by low-income levels or high-minority composition. If so, determine whether there may be disproportionately high and adverse effects on such populations.

- Consider not only direct impacts on the health and environmental quality of EJ communities, but indirect, multiple, and cumulative effects as well, including effects that are not within our control or subject to GSA discretion.

- Recognize that the cultural, social, occupational, historical, and economic characteristics of an EJ community may amplify the environmental effects of an action. Such a population may be more sensitive to such effects, and less resilient in adapting to them, than another community.

- Implement effective public participation strategies that seek to overcome linguistic, cultural, institutional, geographic and other barriers to meaningful participation, and that include active outreach.

- Assure early and meaningful community representation in the process of NEPA analysis and review, recognizing that there may be diverse constituencies within a given community and seeking complete representation.

- Where Indian tribes may be involved, make sure that interactions with tribes are consistent with the government-to-government relationship between the U.S. and tribal governments, the U.S. government's trust responsibility to tribes, and any pertinent treaty rights.

Integrating Environmental Justice Into NEPA

Some level of EJ study should be performed as part of each GSA NEPA review. This means considering the potential for disproportionate adverse health or environmental effects on EJ communities at each level and in each kind of NEPA analysis, including:

- Screening a potential categorical exclusion (CATEX) to ensure that no extraordinary circumstances exist that require an EA or EIS. (Disproportionate adverse health or environmental effects on EJ communities would usually constitute an extraordinary circumstance, and require more review);

- Formal scoping for an EIS, and informal scoping for an EA;

- Conducting NEPA analyses;

- Circulating reports for review and comment;

- Designing mitigation measures; and

- Implementing mitigation.

Categorical Exclusions:
When completing a CATEX checklist (see PBS NEPA Desk Guide, pages 5-5 through 5-12), be sure to consider the possibility of EJ issues. CATEX Checklist Question "E" asks specifically for consideration of EJ matters (see Desk Guide, page 5-8). If you are not sure about the answer to a question from an EJ point of view, try consultation as discussed below under "scoping" to find out.

Scoping:
As with other environmental issues, scoping is critical to identifying the potential for EJ problems so they can be addressed in NEPA analyses and under other environmental review authorities. In formal scoping for an EIS, and in informal scoping for an EA, you should ask yourself, your research data, your consultants, other knowledgeable parties, and the potentially affected community about whether disproportionate impacts on EJ communities may occur. Some sources of information and assistance in reaching out to potentially affected communities include State, local, and tribal government agencies, legal aid providers, civic associations, religious organizations, civil rights groups, and community and social service organizations, as well as the local media.

In determining whether EJ communities may be affected, you will need to consider both residents and people who use the affected area. In most cases, these will be the same population, but sometimes they will be different. For example, the residents of a downtown commercial area might be predominantly Hispanic, but the area might contain small businesses like grocery stores that are heavily used by members of a Southeast Asian community who reside elsewhere.

The composition of the resident community can be determined using BOC data and information from local social service agencies. CEQ guidance provides that low-income populations be identified with reference to the annual statistical poverty thresholds from the BOC Current Population Reports, Series P-60 on Income and Poverty, and that minority populations should be identified where either: (a) the minority population of the affected area exceeds 50 percent or (b) the minority population percentage of the affected area is meaningfully greater than the minority population percentage in the general population or other appropriate unit of geographic analysis.

People who use the affected area may be harder to identify, since they will not appear in census data pertinent to the defined affected area. Discussions with local sources of expertise and the community itself may identify such groups.

Public participation is a critical part of scoping, and an important technique for identifying potentially affected populations. In designing public participation efforts, the EO reminds us to make every reasonable effort to overcome linguistic, institutional, cultural, economic, historical, and other possible barriers to effective participation by EJ communities. In designing a scoping effort, and public participation aspects of the rest of a NEPA review, you should consult experts who know how to communicate with potentially affected EJ communities, or make sure such experts are included on the planning team. The CEQ guidelines list a number of ways to ensure effective participation, including the translation of significant documents; the use of facilities and locations that are local, convenient, and accessible; and the use of meeting sizes and formats that are tailored to the community or population. Scheduling meetings to avoid conflict with work schedules and community social events may be important. It may also be important to find out something about the affected community's communication styles and principles, and design your public participation program with these in mind. People will not participate if they feel they are being asked to do so in an inappropriate or offensive manner. In accommodating the needs of EJ communities, the CEQ guidance reminds us to ensure accessibility by and assistance to hearing-impaired, vision-impaired, and other disabled people.

Establishing the Affected Environment:
Think about where the proposed action could have impacts of any kind — physical, social, cultural, health — on people and their environments, and include these areas in the affected environment.

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Federal Assistance and Information

Council on Environmental Quality (CEQ)
Executive Office of the President
722 Jackson Place
Washington, DC 20530
Internet address: http://www.whitehouse.gov/CEQ
Phone: (202) 395-5750

Office of Environmental Justice (OEJ)
401 M Street, SW
Room 2226, Mail Code 2201A
Washington, DC 20460
Internet address: http://www.epa.gov/envirosense/oeca/oej.html
Phone: (800) 962-6215

National Environmental Justice Advisory Council (NEJAC)
401 M Street, SW
Room 2226, Mail Code 2201A
Washington, DC 20406
Internet address: http://www.prcemi.com/nejac/
Phone: (800) 962-6215

Office of Civil Rights (OCR)
401 M Street, SW
Mail Code 1201
Internet address: none
Phone: (202) 260-4575

U.S. Bureau of the Census
Population Information
Washington, DC 20233-0001
Internet address: http://www.census.gov/
Phone: (301) 457-2422

National Health and Nutrition Examination Survey (NHANES)
National Center for Health Statistics
Centers for Disease Control
6525 Belcrest Road
Hyattsville, MD 20782
Internet address: http://www.cdc.gov/nchswww/about/major/nhanes/nhanes.htm
Phone: (301) 436-8500

Establishing the Affected Environment:
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The CEQ guidance reminds us that: "the impacts within minority populations, low-income populations, or Indian tribes may be different from impacts on the general population due to a community's distinct cultural practices. For example, data on different patterns of living, such as subsistence fish, vegetation, or wildlife consumption and the use of well water in rural communities may be relevant to the analysis." In the case of new construction, GSA should consider impacts on EJ communities that are not adjacent to the project site but whose residents use the vicinity of the project site for business, social, or cultural purposes. Surplus Federal property that has been used for recreation by a nearby or more distant community is another example where impacts may extend to EJ communities not in the immediate area of the project.

Environmental Assessments:
As discussed in the PBS NEPA Desk Guide, an EA examines the intensity of a project's environmental consequences, their significance, and determines whether an EIS is necessary.

The interests of potentially affected EJ communities makes up one of the contexts within which the intensity of impacts must be considered (see Title 40 Code of Federal Regulations (CFR) 1508.27(a)). Based on Title 49 CFR 1508.27(b), GSA should consider measures of intensity with regard to the following:

- Both beneficial and adverse effects on aspects of the environment important to EJ communities.
- The degree to which the proposed action may affect the safety and health of such communities, and whether such effects are disproportional with those on the rest of the population.
- The degree to which the action may affect unique environmental characteristics valued by the affected communities, such as farm lands, recreation areas, historic places, and culturally valued neighborhoods or businesses.
- The potential for impacts to be controversial in the eyes of the affected community.
- The potential for uncertain or unknown risks to the community, for example, from the release of chemicals that may or may not have human health implications.
- The degree to which the action may set precedents for carrying out other similar actions in the potentially affected community, or in other similar communities.
- The contribution the proposed action could make to cumulative impacts on the affected community, including exposure to one or more chemical, biological, physical, or radiological agents across air, water, soil, or other environmental media over time, from single or multiple sources.
- The extent to which the action could affect historic properties or other cultural resources important to the potentially affected communities.
- Whether the proposed action could result in violation of a Federal, State, Indian tribal, or local law designed to protect the potentially affected communities, or communities in general, from disproportionate adverse environmental impacts.

Under Title 40 CFR Part 1508.14, "Human environment," economic or social effects by themselves are not enough to require preparation of an EIS. However, if economic or social effects are disproportionate and adverse, and linked to one of the measures of intensity listed above, then they may indicate the need for a higher level of analysis, including the possibility of preparing an EIS.

For example, if a proposed lease construction project will drive up property tax rates to such an extent that low-income homeowners or business people will be driven out, this would not require GSA to prepare an EIS unless the socioeconomic effect of displacement by rising property taxes was related to environmental impacts like exposure to toxic materials or impacts on the community's cultural resource, even if the socioeconomic effect fell disproportionately on the EJ community. It would be appropriate to include measures to mitigate socioeconomic impacts in the FONSI, however, and to include measures to ensure that mitigation was completed. Where socioeconomic effects are disproportionate and related to one or more of the kinds of environmental impact types listed above, an EIS may be necessary unless acceptable mitigation measures can be developed and included in the FONSI.

Analysis:
In the analysis performed for an EA or EIS, the points outlined above should be considered in detail, and the distribution of environmental and health effects within the affected community should be considered. Social impact assessments (SIAs) conducted as part of NEPA

analysis should include efforts to define both resident and user populations and analyze impacts on them. The severity of impacts should be determined as clearly as possible, as should the extent to which an impact is disproportionate when compared with similar impacts on the population as a whole.

Where a potential EJ issue is identified, GSA should state clearly in the EIS or EA whether a disproportionately high and adverse human health or environmental impact will likely occur on EJ communities as a result of the proposed action. The rationale for this conclusion, and its underlying analysis, should also be included in the EIS or EA.

Draft NEPA documents, as well as preliminary information and findings, should be shared with affected communities and groups, and their comments solicited. GSA should use media targeted to low-income, minority, or culturally distinct communities such as posters and exhibits, bulletin boards, surveys, telephone hotlines, and local newspapers. GSA should seek to overcome language barriers by providing adequate translation of documents, and bilingual translators who are trained in EJ issues. Always consider the literacy level of the audience and speak to them on their level, using layman's language, and avoiding technical jargon. It is important to provide opportunities for participation other than written such as personal interviews or audio/video recording.

Alternatives:
EJ communities who may suffer disproportionate and adverse effects from the proposed action should be encouraged to participate in the development of alternatives, and in the identification of an environmentally preferred alternative in the ROD. Involving EJ communities in the development of alternatives may lead to the identification of alternatives with fewer adverse EJ and other environmental effects.

When GSA prepares an EIS, the CEQ regulations require that the ROD identify an environmentally preferable alternative. When determining an environmentally preferred alternative, GSA should consider the views of affected EJ communities as well as the distribution and magnitude of any disproportionate and adverse impact on those communities. The CEQ guidance also suggests that the magnitude of environmental impacts on alternatives with fewer disproportionate and adverse effects on EJ communities be considered when choosing an environmentally preferred alternative.

Mitigation of Adverse Effects:
If GSA finds its actions will have a disproportionately high and adverse effect on an EJ community or any impact to tribal, cultural, natural resources, or treaty rights, it should develop measures to mitigate these effects. Mitigation measures for inclusion in EAs, EISs, FONSIs, and RODs should be developed in consultation with affected communities and groups, and should provide for ongoing participation and coordination as the measures are implemented. Mitigation measures include steps to avoid, mitigate, minimize, rectify, reduce, or eliminate the impact associated with a proposed agency action. For example, EPA identifies the following potential mitigation measures in its EJ guidance:

- "Planning for and addressing indirect impacts prior to project initiation (e.g., planning for alternative public transportation if the project may result in increased population growth);
- Providing assistance to an affected community to ensure that it receives at least its fair (i.e., proportional) share of the anticipated benefits of the proposed action (e.g., through job training, community infrastructure improvements); and
- Changing the timing of impact causing actions (e.g., noise pollutant loadings) to reduce effects on minority communities and low-income communities."

Record of Decision:
The ROD should include a concise discussion of all environmental impacts, including disproportionate and adverse impacts on EJ communities, that the EIS found to be significant. The ROD should also include a discussion of any mitigation measures the agency has committed itself to adopt, and whether all practicable mitigation measures have been adopted and, if not, why not. This should include mitigation measures for disproportionate and adverse impacts on EJ communities. For mitigation measures that are adopted, a monitoring and enforcement program must also be adopted and summarized in the ROD.

The ROD can serve not only as the decision document for GSA, but also as a means to inform the public of how EJ concerns were addressed in the NEPA process. GSA should provide RODs to the public in simple non-technical language for limited-English speakers, and provide translated RODs for non-English speakers where appropriate.

References

" Environmental Justice Guidance Under the National Environmental Policy Act," Council on Environmental Quality, April 10, 1997.

Environmental Law and Policy, Peter S. Menell, Richard B. Stewart, Little, Brown and Company, 1994.

"Environmental Protection – Has It Been Fair?" EPA Journal, Volume 1, Number 1, March/April 1992.

"Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," Executive Order 12898, February 11, 1994.

"Guidance For Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analysis," Review Draft, EPA, July 12, 1996.

"Memorandum for the Heads of All Departments and Agencies: Executive Order on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," The White House, February 11, 1994.

"The Model Plan For Public Participation," developed by the Public Participation and Accountability Sub-committee of the National Environmental Justice Advisory Council, November 1996.

PBS NEPA Desk Guide, Interim Guidance, September 1997.

NEPA Call-In is GSA's National Environmental Policy Act (NEPA) information clearinghouse and research service. NEPA Call-In is designed to meet the NEPA compliance needs of GSA's realty professionals.

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