EPA Environmental Justice Webinar Series for Tribes and Indigenous Peoples

The National Environmental Policy Act (NEPA) and Environmental Justice (EJ)

August 26, 2021

Please note that this webinar is being recorded and will be posted on an EPA webpage
Background

➢ Federal EJ Practice
➢ EJ and NEPA Alignment

NEPA EJ Analyses

➢ EJ Opportunities in the NEPA Process
➢ Promising Practice Report
➢ Other EJ Resources for NEPA

Tribal Perspective
PRESENTERS

Danny Gogal, Tribal and Indigenous Peoples Program Manager, Office of Environmental Justice, USEPA (Facilitator & Presenter)

Stan Buzzelle, Attorney-Advisor, Office of Environmental Justice, USEPA

Phil Rigdon, Superintendent, Department of Natural Resources, Yakama Nation
DEFINITION

**Environmental Justice:**
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.
Executive Order 12898

Issued in 1994 - 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.
Executive Order 14008 –
Tackling the Climate Crisis at Home and Abroad (2021)

Sec. 220. Creates White House Environmental Justice Interagency Council – federal coordination body for EJ

Sec. 221. Creates White House Environmental Justice Advisory Council to obtain advice on how Federal Government should address current and historic environmental injustice.

Sec. 222. Calls for the creation of a geospatial Climate and Economic Justice Screening Tool and interactive maps highlighting disadvantaged communities.

Section 223  Seeks to achieve the goal that 40 percent of the overall federal benefits flow to disadvantaged communities.
EPA Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples

Issued in 2014 to clarify and integrate EJ Principles in a consistent manner in the Agency’s work with federally recognized tribes, indigenous peoples and others living in Indian country.

Scope: Federally recognized tribes, state recognized tribes, tribal members, indigenous community organizations, Native Hawaiians, Pacific Islanders, individual Native Americans, and others living in Indian country.
 Declare a national policy which will encourage productive and enjoyable harmony between man and his environment.

**CONSISTENT PROCESS**

National Environmental Policy Act *defines a process* that *federal agencies* must follow when proposing to take actions that may have environmental impacts.
Presidential Memorandum
Consider the following for minority and low-income communities during NEPA reviews:

- Analyze environmental effects, including human health, economic, and social effects
- Develop mitigation measures to address significant and adverse environmental effects
- Provide opportunities for effective community participation
- During EPA 309 Reviews, fully analyze effects on minority communities and low-income communities.
## Cross-Walking NEPA and EJ

<table>
<thead>
<tr>
<th>EJ</th>
<th>NEPA</th>
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<tr>
<td>Fair Treatment</td>
<td>Solicit appropriate information from the public</td>
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<tr>
<td>Meaningful Involvement</td>
<td>Assure for all Americans safe and healthful surroundings</td>
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<td>Hold public meetings or other opportunities for public involvement whenever appropriate</td>
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<td>Preserve historic, cultural, and natural aspects of our heritage</td>
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EJ

People of Color Communities

Low-Income Communities

NEPA

SOCIO-ECONOMIC

Ensure that everyone is treated equitably
Inform the decision-making process
Promote healthy and sustainable communities
Identify and mitigate adverse impacts

HEALTH

ENVIRONMENT
NEPA EJ ANALYSES
NEPA Process

Proposed Action

Significant Impact?

Categorical Exclusion

Environmental Assessment

Significant Impact?

Finding of No Significant Impact (FONSI)

Agency Decision

Extraordinary Circumstances?

Scoping and Notice of Intent

Draft EIS

Final EIS

Record of Decision (ROD)

Yes

Unsure

Mitigated

Yes

No

No

Yes

Yes
Builds on existing NEPA guidance and practice

Represents professional knowledge and expertise

Captures collective thinking and thoughtful deliberation

Does NOT establish new requirements for NEPA analyses

Is NOT formal agency Guidance

Is NOT intended to be legally binding or create rights or benefits for any person(s)
Promising Practices Elements

- Meaningful Engagement
- Alternatives
- Impacts
- Scoping
- Minority Populations
- Disproportionate Impacts
- Affected Environment
- Low-Income Populations
- Mitigation
Meaningful Engagement
Scoping for EJ
The Affected Environment

The NEPA Project
Developing Alternatives

A

B

C

?
Identifying EJ Populations

Minority Populations

Low-Income Populations

Reference Community

County State Nation
Minority Population Analyses

**No Threshold**

- Determine percent minority in analysis area
- Minority population if percent more than zero

**Fifty Percent**

- Determine percent minority in analysis area
- Minority population if 50% or more

**Meaningfully Greater**

- Determine reference community
- Determine meaningfully greater threshold
- Compare analysis area to reference community
- Minority population if threshold is met
## Low-Income Analyses

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<th>Alternative Criteria</th>
<th>Threshold Criteria</th>
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<td>Determine low-income qualifying level (e.g. at or below poverty)</td>
<td>Determine reference community (e.g. county or state)</td>
</tr>
<tr>
<td>Low-income population if percent of area meeting low-income level is more than zero.</td>
<td>Determine low-income qualifying level (e.g. at or below poverty)</td>
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<td></td>
<td>Determine percent of reference community and analysis area meeting low-income level</td>
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<tr>
<td></td>
<td>Low-income population if percent of analysis area meeting low-income level is equal or greater than reference community</td>
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Additional Concepts

Project Area

- General Population
- Low-Income
- Minority
- Pockets
- Transient Populations
Identifying Impacts
Applying an EJ Lens to Impacts

General Population

EJ Population
Disproportionately High and Adverse
Proximity and Exposure
Cumulative Impacts
Physical Infrastructure
Susceptible Populations
Exposure Pathways
Decision Making
Mitigation and Monitoring
Disproportionate Impact

Impacts

Affected Environment

Disproportionate Impact

Identifying EJ Populations

Meaningful Engagement

Scoping

Alternatives

Mitigation & Monitoring

EJ Analysis Framework
Companion to Promising Practices Report
EPA’S EJSCREEN TOOL

- EPA’s web-based GIS tool for nationally consistent EJ screening and mapping
- Combines environmental and demographic data to highlight areas where vulnerable populations may be disproportionately impacted by pollution
Additional EJ Resources for NEPA

CEQ

• Environmental Justice: Guidance Under the National Environmental Policy Act (1997)


EPA

• Final Guidance for Incorporating Environmental Justice in EPA’s NEPA Compliance Analyses (1998)

• Final Guidance for Consideration of Environmental Justice in Clean Air Act 309 Reviews (1999)
PART THREE

Tribal Government Perspective on the Value of NEPA

Phil Rigdon, Superintendent, Department of Natural Resources, Yakama Nation
Yakama Nation
Philip Rigdon, DNR Superintendent

Mt. Adams,
Yakama Nation
Treaty of 1855:
“...for the exclusive use and benefit of the Confederated Tribes and Bands of the Yakama Nation.”

1) Palouse
2) Pisquouse
3) Yakama
4) Wenatchapam
5) Klinquit
6) Oche Chotes
7) Kow was say ee

8) Sk’ in-pah
9) Kah-miltpah
10) Klickitat
11) Wish ham
12) See ap Cat
13) Li ay was
14) Shyiks
Since Time Immortal...

The sacred relationship with the Yakama people, the Salmon, and the Columbia River was established in ancient time.
The Yakama Treaty of 1855: Article III

• The Reservation, Ceded Lands, and Usual & Accustomed Areas

Since time immemorial, the health, spirit, and cultures of the Yakama have been sustained by the water, salmon, game, roots, and berries of our homeland— our sacred First Foods.
Impacts to Our Reserved Resources

• Impacts to Our Natural & Cultural Resources
  – Loss and fragmentation of access
  – Known and unknown cumulative effects

• Significance of Resources
  – Our Natural resources are our Cultural Resources
  – We have a responsibility to protect them for generations yet born.
  – We continue to hunt, fish and gather for subsistence and ceremonial purposes

• Significance of Archaeological Resources
  – Sacred and sensitive resources
  – Part of a living Culture; Irreplaceable
  – Protected by Treaty, State and Federal Law
Washington State Fish Consumption Rate

- Washington State was proposing to raise fish consumption rate to 175 grams/day
Hanford
SUPERFUND – CERCLA & Contaminated Sites

- Portland Harbor
- Bradford Island
- Holden Mine – US Forest Service
- AMCCO Site
- Goldendale Aluminum
The Degradation and Injustice to Our Land and Resources Continues with Fossil Fuel Transportation
Hawaii Waste

In 2010 USDA-APHIS proposed to allow Hawaiian Waste Systems to import at least 150,000 and perhaps up to 1 million tons of Hawaiian municipal solid waste to the Roosevelt Landfill, via the Port of Longview, annually and indefinitely.

Roosevelt Landfill is within the 10 million acres of land that the Yakama Nation ceded to the United States pursuant to the Yakama Treaty of 1855, in exchange for guaranteed rights to fish, hunt and gather in those lands.
Wind Power Interference with Yakama Nation’s ability to Exercise its Treaty Reserved Rights

• The use of public land for wind development is impacting Yakama Nation’s Treaty Reserved Rights to access its natural and cultural resources.

• Access is restricted due to:
  – Companies’ public/Tribal access policies; and
  – Safety concerns (ice throw)

• Loss of habitat

• Yakama Nation requests:
  – To discuss potential wind development sites prior to major investments;
  – To discuss Tribal access agreements
Protecting our Treaty Reserved Rights and Resources

- In the Yakama Language, there is no word for “Mitigation” – No word to describe repairing the Lands and Waters that have been Degraded or Destroyed.
Protecting our Treaty Reserved Rights and Resources

- The Yakama Nation has demonstrated success in protecting Treaty resources through litigation:
  - US v Oregon
  - US v Washington
- The Yakama Nation is prepared to take all necessary measures to protect its resources guaranteed by the Treaty of 1855 (12 Stat. 951).
Honor. Protect. Restore.
Questions and Answers

Please complete the online webinar evaluation found here:

https://forms.gle/GYsMon2wkqTKtnNT9
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