Environmental (In)justice:
NEPA and TITLE VI: From Recommendations to Regulations

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OVERVIEW & TERMS

NEPA – National Environmental Policy Act
Title VI – Title VI of The Civil Rights Act of 1964
EJ – Environmental Justice
E.O. – Executive Order
FHWA – Federal Highway Administration

History of EJ and NEPA
Executive Order 12898
Federal Guidance for EJ and NEPA
The Presidential Memorandum (E.O. 12898)
EJ and NEPA Framework
Refinery Rule
Legal Issues and Challenges
COVID-19 & Minority Populations
What’s Next?
**ABSTRACT & PROBLEM**

Can these statutes remedy the disproportionate harm inflicted upon People of Color in America (minorities, low-income, rural and tribal populations) through concentrating on polluters in their community and provide Environmental Justice?

Source: Mayra Beltran, Houston Chronicle
The purposes of this Act are:
- **Declare** a national policy which will encourage productive and enjoyable harmony between man and his environment
- **Promote efforts** which will:
  - **Prevent** or **eliminate damage** to the **environment** and biosphere and **stimulate** the **health** and **welfare** of man
  - **Enrich** the **understanding** of the **ecological systems** and **natural resources** important to the Nation
  - **Establish** a **Council on Environmental Quality**
An act to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States of America to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.
DEFINITIONS & HISTORY

TITLE VI

A statute that focuses on non-discrimination. More specifically, the rule of implementation put in U.S. Code 28 C.F.R. §42.401 – Title VI, as amended, states: No person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving financial assistance.
A strategy that focuses on identifying and addressing disproportionately high and adverse effects of programs, policies, and activities on minority populations and low-income populations to achieve an equitable distribution of benefits and burdens.
1960s
Civil Rights Act of 1964 is passed; Title VI prohibits the use of federal funds to discriminate based on race, color, and national origin.

1970s
U.S. Public Health Service acknowledges inequality and the disproportionate negative affects of lead poisoning on African-American and Hispanic children.

1980s
Residents in Warren County, North Carolina protest the construction of a hazardous waste landfill in a predominantly African-American neighborhood.

1980s

1990s

• EPA establishes Environmental Equity Work Group (EEWG)
• First National People of Color Environmental Leadership Summit
• President Clinton issues Executive Order 12898; requiring each Federal agency achieving environmental justice a part of its mission
President Bill Clinton signs Executive Order 12898 (February) This Executive Order outlines the guidance for Federal Agencies to look at disparate populations, including: minority and low-income populations with respect to environmental justice (EJ) issues.
• White House Council on Environmental Quality (CEQ), created a guidance document for environmental justice and NEPA
• The guidance document highlights six (6) principles that help navigate analyses of environmental justice issues, such as: environmental effects on tribal populations, low-income, minority, and disproportionately high and adverse human health

EPA Administrator issues a memorandum reaffirming the Agency’s commitment to environmental justice and recommends its integration into all programs, policies, and activities consistent with existing environmental laws and regulations.

2000’s

EPA creates Plan EJ 2014, a roadmap that will help integrate environmental justice into the EPA’s policies, programs, and activities.

2010’s

- EPA creates Plan EJ 2014, a roadmap that will help integrate environmental justice into the EPA’s policies, programs, and activities.
- 17 Federal Agencies signed an MOU on Environmental Justice and Executive Order 12898 (Clinton era); committing each agency to finalize and release environmental justice strategies by February 2012.
The importance of the NEPA process in ensuring environmental justice was further perpetuated by the Presidential Memorandum to accompany E.O. 12898.
The Memorandum calls for agencies to address significant adverse environmental effects on these communities in mitigation measures outlined or analyzed in:

- Environmental assessments (EAs)
- Findings of no significant impact (FONSIs)
- Environmental impact statements (EISs)
- Records of decision (RODs)
The Trump Administration

Has taken several significant steps to deregulate the NEPA process

Executive Order 13807 by authority of ‘establishing discipline and accountability in the environmental review and permitting process for infrastructure projects.’

Whereas, in E.O. 13807 the order establishes principles to address ‘inefficiencies in current infrastructure project decisions, including management of environmental reviews and permit decisions or authorizations...’
Consider the composition of the affected area to determine whether low-income, minority or tribal populations are present.

Consider relevant public health and industry data concerning the potential for multiple exposures or cumulative exposure to human health or environmental hazards.

Recognize the interrelated cultural, social, occupational, historical, or economic factors.
Six Guidance Principles

Develop effective public participation strategies

Assure meaningful community representation in the process, beginning at the earliest possible time

Seek tribal representation in the process

COVID-19 & Impacts on Minority Populations

• Discrimination
• Healthcare Access and Utilization
• Occupation
• Educational, Income, Wealth Gaps
• Housing
• Transportation Disparities
• Telecommuting Disparities

COVID-19 & Impacts on Minority Populations

- Inaccessibility to Testing
- Essential Worker
- Exposure to Pollution
- Reside in High Density Areas
- Pre-existing Conditions
- Telecommuting Disparities
- Food Deserts
- Lack Access to Clean Water

Figure 1: COVID-19 is hitting certain communities harder than others. Data from CDC and APM research labs both show corroborating evidence that COVID-19 mortality rates are higher among BIPOC communities. These numbers are age-adjusted data from APM research lab.

Equity Zones & Essential Services

Figure 13: Percentage of Total Dockless Vehicle Trips Originating from the Equity Zones and Total Number of Trips Originating from Equity Zones

Figure 16: Rides Beginning or Ending at Essential Services as a Proportion of All Daily Trips

https://transportation.baltimorecity.gov/sites/default/files/Year%202020Evaluation%20Report%20APPENDIX%203%20FINALFINAL.pdf
Low-Income Minority Neighborhood shared with oil refinery on the Texas Gulf Coast
Initially environmental justice was perceived to be for wilderness protection and wildlife preservation.

Lots of environmental justice lawsuits are based on perceived civil rights law violations; Equal Protection Clause of the 14th Amendment has been used in environmental justice lawsuits (i.e. Flint Michigan Water Crisis (civil and criminal cases)).
What’s Next???
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