
Final Guidance For Incorporating
Environmental Justice Concerns
in EPA's NEPA Compliance Analyses

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DISCLAIMER AND ACKNOWLEDGMENTS

The mention of company or product names is not to be considered an endorsement by the U.S. Government or by the Environmental Protection Agency. With the technical assistance of Science Applications International Corporation (SAIC), this document was prepared in partial fulfillment of EPA Contract 68-WE-0026, Work Assignment 72-IV.

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income members of the larger community. Methodological approaches for conducting analyses appear in Chapter 5.

2.1 Defining Minority and/or Low-Income Population

The purpose of this section is to assist the analyst in determining whether there is a minority community or low-income community that may be addressed in the scope of EPA's NEPA analysis.

2.1.1 Minority and Minority Population

The first part of the guidance on minority population provided by the IWG provides a numeric measure: over 50 percent of the affected area. The remainder of the guidance calls for the analyst to use his or her best judgment in evaluating the potential for EJ concerns. It is important that the EPA NEPA analyst consider both the circumstances of any groups residing within the affected area, as well as the percentage of the affected community that is composed of minority peoples.

Within its guidance, the IWG explains that a minority population may be present if 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." The term "affected area," although not defined by the guidance, should be interpreted as that area which the proposed project will or may have an effect on. The IWG guidance also advises agencies not to "artificially dilute or inflate" the affected minority population when selecting the appropriate unit of geographic analysis. Clearly, a key element here is the selection of the appropriate level of geographic analysis; that is, selecting a comparison population to which the population in the affected area will be compared to identify if there are "meaningfully greater" percentages. The selection of the appropriate unit of geographic analysis may be a governing body's jurisdiction, a neighborhood census tract, or other similar unit. This is done to prevent artificial dilution or inflation of the affected minority population. In an EPA NEPA analyses, the analyst should use the potentially affected population under various alternatives as a benchmark for comparison wherever possible. In addition, a simple demographic comparison to the next larger geographic area or political jurisdiction

should be presented to place population characteristics in context and allow the analyst to judge whether alternatives adequately distinguish among populations. For example, all preliminary locations for a project could fall in minority neighborhoods, therefore, a comparison among them would not reveal any population differences. Consequently, an additional alternative would be necessary to allow any disproportionately high and adverse effects to be identified.

The fact that census data can only be disaggregated to certain prescribed levels (*e.g.*, census tracts, census blocks) suggests that pockets of minority or low-income communities, including those that may be experiencing disproportionately high and adverse effects, may be missed in a traditional census tract-based analysis. Additional caution is called for in using census data due to the possibility of distortion of population breakdowns, particularly in areas of dense Hispanic or Native American populations. In addition to identifying the proportion of the population of individual census tracts that are composed of minority individuals, analysts should attempt to identify whether high concentration "pockets" of minority populations are evidenced in specific geographic areas.

The IWG guidance also advises agencies to consider both groups of individuals living in geographic proximity to one another, or a geographically dispersed/transient set of individuals, where either type of group "experiences common conditions" of environmental exposure or effect within the guidance provided for minority population. This can result from cultural practices, educational backgrounds, or the median age of community residents (*e.g.*, disproportionate numbers of elderly residents, children, or women of child bearing age may be more susceptible to environmental risks).

A factor that should be considered in assessing the presence of a minority community is that a minority group comprising a relatively small percentage of the total population surrounding the project may experience a disproportionately high and adverse effect. This can result due to the group's use of, or dependence on, potentially affected natural resources, or due to the group's daily or cumulative exposure to environmental pollutants as a result of their close proximity to the source. The data may show that a distinct minority population may be below the

thresholds defined in the IWG key terms guidance on minority population. However, as a result of particular cultural practices, that population may experience disproportionately high and adverse effects. For example, the construction of a new treatment plant that will discharge to a river or stream used by subsistence anglers may affect that portion of the total population. Also, potential effects to on- or off-reservation tribal resources (e.g., treaty-protected resources, cultural resources and/or sacred sites) may disproportionately affect the local Native American community and implicate the federal trust responsibility to tribes.⁽⁵⁾

The EPA NEPA analyst should look at each situation on a case-by-case basis to determine if there may be disproportionately high and adverse effects on a minority population.

The EPA NEPA analyst should make every effort to identify the presence of distinct minority communities residing both within, and in close proximity to, the proposed project, and to identify those minority groups which utilize or are dependent upon natural resources that could be potentially affected by the proposed action. Non-traditional data gathering techniques, including outreach to community-based organizations and tribal governments early in the screening process, may be the best approach for identifying distinct minority communities and/or tribal interests within the study area. See Chapter 4 for a discussion of public outreach techniques.

2.1.2 Low-Income Population

This guidance recommends that pursuant to the CEQ guidance, low-income populations in an affected area (that area in which the proposed project will or may have an effect) should be identified with the annual statistical poverty thresholds from the Bureau of the Census' Current Population Reports, Series P-60 on Income and Poverty. In conjunction with census data, the EPA NEPA analyst should also consider state and regional low-income and poverty definitions as appropriate. In identifying low-income populations, agencies may consider as a community a group of individuals living in geographic proximity to one another or set of individuals (such as migrant workers or Native Americans) where either type of group

experiences common conditions of environmental exposure.

As with the identification of minority communities, the level of aggregation of available data is an issue of concern when seeking to determine whether one or more low-income communities may be affected by a project. Also, as with minority communities, "pockets" of low-income individuals may be masked by aggregated data. The level of aggregation of data, as well as how current the available data are, should be taken into account by the EPA NEPA analyst.

Determining the existence and location of low-income and minority communities within the reaches of a projects' influence can be a difficult task. Several means of gathering this information are available; however, it is up to the EPA NEPA analyst to ascertain which techniques will best suit the project at hand. Further, the EPA NEPA analyst must be flexible and open to consider additional avenues which may be unique to select projects or geographic areas. The use of national decennial census data in depicting low-income/poverty and minority statistics is one of the most common methods used. While the census provides valuable information for the EPA NEPA analyst, there are often many gaps associated with the information. Therefore, it may be necessary for the EPA NEPA analyst to validate this information with the use of additional sources. The additional methods available in locating the populations of interest include contacting local resources, government agencies, commercial database firms, and the use of locational/distributional tools. (Please see Chapter 5 regarding the use of locational/distributional tools.)

Local resources should be sought for local and up-to-date knowledge of a given area and its inhabitants as well as a lead to other sources of information. Examples of local resources include: community and public outreach groups, community leaders, and state universities (i.e., economic departments).

State government agencies such as the Department of Economic Development, Planning and Development Department, State Minority Business Office, and State Enterprise Zone Offices are also valuable resources to contact. For example, if an area is designated as an

"enterprise zone", unique economic and demographic data may exist in that particular area, access to which could enhance the EPA NEPA analyst's ability to assess the economic situation of a given area.

Local resources and state governments can both be contacted for information regarding factors that are characteristic of low-income communities and which may assist in identifying these communities. These factors may include: limited access to health care, an inadequate, overburdened or aged infrastructure, and particular dependence of the community, or components of the community, on subsistence living (*e.g.*, subsistence fishing, hunting, gathering or farming). In some cases, these factors can be evaluated directly from traditional information sources. For example, the age and condition of water treatment facilities and presence of lead service lines should be available from municipal utilities. Outreach to community groups may be the most reliable data collection method in other cases, such as those where the degree to which the cultural and dietary habits of low-income or minority families and their economic condition dictate subsistence living. Consequently, where the community median household income may exceed that of the poverty line, conditions generally associated with low-income communities may be present, resulting in cumulative effects that may meet the threshold for environmental justice concerns.

Commercial database firms are often capable of tailoring census data information of human communities and income/poverty level to specified areas of geographic detail. For example, by manipulating specified census bureau tract data with customized buffer areas, statistics can be generated to accommodate current growth estimates from local government agencies or planning departments. Locational/distributional tools are also capable of determining the locations of certain human communities. Examples include maps, aerial photographs, and geographical information systems (GIS). Further explanations of these tools are presented in Chapter 5.

2.2 Considering Effects

This section discusses the term "disproportionately high and adverse human health or environmental effects" and