

EPA NEPA Environmental Justice (EJ) Review for SPAPs Grants

In accordance with Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” EPA has issued its “Final Guidance For Incorporating Environmental Justice Concerns in EPA’s NEPA Compliance Analyses,” April 1998. ***The following is a brief summary of these requirements as they relate to the preparation of Environmental Information Documents (EIDs) and Environmental Assessments (EAs) for wastewater and drinking water construction projects.*** The preparer of the EID (the grantee or their representative) should read the guidance and any supporting information. Additional information and updates on Environmental Justice can be obtained from the EPA Region 4 website (<http://www.epa.gov/region4/ead/> or <http://www.epa.gov/region4/water/>). The full document can be found at: <http://ceq.eh.doe.gov/nepa/regs/ej/justice.pdf>

In preparing the EID, the grantee must identify any minority populations and low-income populations which exist within the overall planning area or which may otherwise be impacted by the project (e.g. downstream or downwind communities). Native American communities, including their traditional resource areas are included. Once identified the grantee must determine the impact of the proposed project on these EJ communities. The following questions must be addressed in the EID. [Note: In evaluating the project’s impact, the grantee must be aware of EJ communities which are outside of the service area of the proposed project. The grantee may need to address why such areas were not included in the proposed project, as well as other impacts on these EJ communities.]

1) Does there exist a potential for disproportionate risk?

This question needs to be answered for all the alternatives which are being evaluated. If one or more alternatives may pose a risk, then mitigative measures should be included for those alternatives. In evaluating the alternatives, mitigative measures should be taken into account including any barriers (e.g. funding limitations) to implementing these mitigative measures. If an alternative with mitigative measures is selected, then there must be a commitment, including adequate funding, to undertake these mitigative measures. A disproportionate risk may also be one of exclusion. As an example, a sewerline project serving a portion of the community, but not serving an EJ community may increase the relative risks to that EJ community. Other impacts, such as cultural, historical, or protected resources of value to the EJ community must also be considered even when these resources are located apart from those communities. It should be noted that the goal of developing reasonable alternatives is not to move the impacts around, but to identify viable alternative actions that meet the program goals.

2) Have the identified EJ communities been sufficiently involved in the decision-making process?

Following identification of EJ communities, the grantee must evaluate how these communities are currently involved in local decision-making processes (e.g representation

on elected councils, commissions, etc.) and identify any barriers which might exist to bringing these communities into the decision-making process (e.g. language barriers, literacy levels, etc.).

3) Do the identified EJ communities currently suffer or have they historically suffered from environmental and health risks or hazards?

In answering this question, the impacts of the proposed project on the environment and public health should be the starting point. Since drinking water and wastewater projects are generally beneficial to the public health, the grantee may be able to show a positive impact. Issues may arise relating to new or increased discharges of pollutants. EJ communities may have a greater dependence on natural resources (e.g. subsistence fishing), they generally have less access to adequate health care, and they may have a higher exposure to other pollutants (e.g. pesticides in farming communities).

If disproportionately high or adverse impacts on EJ communities are identified, then the grantee should reevaluate the alternatives and mitigative measures. Additional public participation should be undertaken. Effective public involvement strategies have four common characteristics: inclusiveness (all affected communities and stakeholders are represented), representation (representatives must truly reflect the community's or stakeholder's views), parity (all stakeholder groups have equal opportunity and capacity), and communication (account for differences between groups).

The identification of EJ communities should be done early in the process. Since the project can not go forward until the reviewer is satisfied that any EJ issues have been identified and any adverse risks addressed, this analysis should be done as soon as possible. If the need arises to revise the EID, or to have additional public participation or hearings, or to prepare an EIS, then additional time will be needed to complete the process. If the grantee identifies disproportionately high risks early in the project development then mitigative measures can more easily be incorporated into the project. Or if the risks can not be mitigated, and they are identified early on, the preparation of an EIS can proceed with fewer delays.

Procedures

A) In preparing the EID, an ecological assessment is conducted identifying the natural resources that will be used by the project and the potentially affected environments that may be impacted by the project. Then the potential changes and impacts of the proposed action and alternative actions are assessed.

Minority populations and low-income populations are identified which either are located within the general area served by the project or use resources within the general area. Information on these populations is compiled including socioeconomic factors, resource uses, special health concerns, etc. If minority and/or low-income populations are identified, then

public participation efforts are developed to involve these communities. The public participation program should take extra steps to involve the affected communities and should take into consideration any barriers (e.g. language, literacy, etc.) which might limit participation. The public participation program should continue during the implementation of the project.

B) If environmental impacts are quantified, then the distribution of impacts on geographical areas and communities can be evaluated. If the environmental impacts are not quantified, then special consideration should be given to whether potential impacts could be borne by minority or low-income communities residing within the larger area. If necessary, separate analyses should be designed and conducted to assess the potential impacts on these communities. The study should attempt to estimate the proportion of impacts borne by low-income and/or minority populations within the area of the project's impact compared to the general population in and around the project.

When tailoring risk management tools to consider the distribution of impacts to low-income and/or minority communities, differential patterns of subsistence consumption of natural resources should be considered, including differences in rates of consumption of fish, vegetation, water, and wildlife among ethnic groups and among cultures. Further, it should be recognized that land and water resources not predominately used by the general population may be important sources of consumption, economy, cultural use, and/or recreation for minority and/or low-income populations.

Although economic and social effects alone do not trigger an Environmental Impact Statement (EIS), an analysis and understanding of these impacts is also important. If environmental justice concerns are identified, then the potential interrelated socioeconomic impacts to both the total affected population and to the low-income and/or minority communities of concern should be evaluated. Standard socioeconomic models may need to be modified to properly take into account the special issues which may impact the low-income and/or minority communities.

C) After completion of the analysis, the three questions (above) should be answered, by the grantee, in the Environmental Information Document. If minority and/or low-income communities are affected and have not been sufficiently involved in the decision making process then additional public participation activities should be undertaken and the EID should be revised. Based upon the EID, an Environmental Assessment (EA) of the project is prepared by the reviewer. The conclusions in the EA will determine if a Finding of No Significant Impact (FNSI) can be issued for the project.

If the risks can be mitigated and the grantee commits the funding and resources for this mitigation or if disproportionate risks are not identified, then a FNSI can be issued for the project (assuming that other significant impacts have not been identified). If disproportionate risks and their mitigative actions are identified in the FNSI/EA, then it is recommended that a draft FNSI/EA be prepared and distributed for a thirty day comment period prior to the FNSI being signed. In addition, extra efforts should be made to distribute the FNSI/EA to the affected

communities. After this initial comment period, if the FNSI is signed, an additional thirty day comment period will occur after issuance of the FNSI/EA and prior to Agency action on the project.

If a disproportionate risk is identified, which can not be mitigated, then either the project must be reevaluated and modified as necessary and the EID revised accordingly or an EIS must be prepared. Since the primary criteria for issuing a FNSI is that there are “no significant impacts,” the presence of unmitigated risks precludes the program office from issuing a FNSI. The preparation of the EIS is the responsibility of the Agency. The preparation of an EIS includes several formal procedures and requires substantially longer time than an EID/EA/FNSI. Information in the EID may be used, but must be independently confirmed. Additional public scoping meetings to develop the EIS and a formal public hearing on the completed EIS must be held. The outcome of the EIS is a Record of Decision (ROD) by the Agency to proceed or not to proceed with the project.