



EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY AND LOW-INCOME POPULATIONS

BACKGROUND: On February 11, 1994, President Clinton signed Executive Order (EO) 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*. The Order is designed to focus federal attention on the environmental and human health conditions in minority communities and low-income communities with the goal of achieving environmental justice. The Order is also intended to promote nondiscrimination in federal programs substantially affecting human health and the environment. In addition it places emphasis on providing minority communities and low-income communities access to public information on, and an opportunity for public participation in, matters relating to human health or the environment. This information brief provides an overview of the requirements of EO 12898 and their implications for the conduct of DOE activities. In addition, it calls attention to ongoing environmental justice activities within the Department in an effort to raise staff awareness of what is already being done. The provisions of the EO as they relate to the public participation requirements of existing federal environmental statutes underscore the importance of including environmental justice considerations in the Department's efforts to promote open and early dialogue with community members during the environmental clean-up decision making process.

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

U.S. Department of Energy Environmental Justice Strategy, April 1995

U.S. Department of Energy, *Progress Report to the President on Implementation of Environmental Justice Strategy, Executive Order 12898*, April 1996

Secretary of Energy Memorandum, *Designation of Corlis S. Moody to Lead Environmental Justice Efforts*, April 14, 1994

RCRA Public Participation Manual, U.S. EPA, Office of Solid Waste and Emergency Response, EPA 530-R-96-007, September 1996.

Final Report of The Federal Facilities Environmental Restoration Dialogue Committee, April, 1996 (available through the Federal Facilities Restoration and Reuse Office USEPA, (202) 260-5646)

Secretary of Energy Memorandum, *Guidance on Implementation of the Department's Public Participation Policy*, July 29, 1994.

What is Environmental Justice?

The Environmental Protection Agency's (EPA's) Office of Environmental Justice offers the following definition:

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, policies. Fair treatment means that no group of people, including racial, ethnic or socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.

What is Executive Order 12898?

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, was signed by President Clinton on February 11, 1994. This Order broadly states that federal activities, programs, and policies should not produce disproportionately high and adverse impacts on minority and low-income populations. The Order also indicates that these populations should not be denied the benefits of or excluded from participation in these activities, programs, and policies.

The Order directs federal agencies to create strategies to achieve environmental justice goals. An

Interagency Working Group was established to coordinate the agencies' implementation activities. The Order also directs federal agencies to include a number of environmental justice related issues in their research and data collection activities. Agencies are directed to encourage public involvement in the implementation of the Order by ensuring that public documents are easily accessible and understood, including translations where practicable and appropriate. Further opportunities for public involvement are to be provided through public meetings sponsored by the Interagency Working Group.

How is the Executive Order on environmental justice related to environmental statutes?

Environmental justice issues that potentially affect federal agency activities can be categorized generally as matters concerning the fairness of the decision-making process or the distribution of impacts. Within the environmental statutes, the major impact may be associated with the process issues surrounding public participation during decision making and the dissemination of information. Distribution of risk and impact (e.g., multiple and cumulative exposure, differential patterns of natural resource consumption) are related to provisions that will affect entry of pollutants into the environment such as siting criteria, permitting requirements, prioritization of clean up activities, or emission/effluent standards.

A Presidential Memorandum accompanying the Order stated that National Environmental Policy Act (NEPA) documents should begin to address environmental justice issues immediately and should provide opportunities for community input to the NEPA process. In addition, EPA is to ensure that federal agency actions being reviewed under Section 309 of the Clean Air Act have been planned based on a full analysis of environmental effects on low-income communities and minority communities. Each federal agency is to ensure that the public, including low-income and minority populations, have adequate information on human health and environmental planning, regulations, and enforcement when required under the Emergency Planning and Community Right-to-Know Act (EPCRA), Title III of the Superfund Amendments and Reauthorization Act (SARA).

In addition, the federal government's other environmental protection statutes, such as the Resource Conservation and Recovery Act (RCRA), Clean Air Act (CAA), the Clean Water Act (CWA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by SARA, and Safe Drinking Water Act (SDWA) contain public participation requirements to

which environmental justice principles are relevant, even though these provisions were not explicitly called out in the Memorandum. In addition, these statutes often delegate rule making or enforcement authority to state and tribal governments, and several states have enacted environmental justice statutes, or incorporated measures to enhance environmental justice into existing state laws and regulations.

RCRA, requires public participation activities during permitting and certain corrective action activities. EPA's recent expansion of public participation regulations for RCRA permitting activities (see 60 FR 62417-63434, Dec 11, 1995), contains requirements that will result in the public's being involved much earlier in the decision making process. In addition, EPA solicited comments on several key environmental justice issues for future Agency action on RCRA permitting process. The *RCRA Public Participation Manual* addresses environmental justice specifically and strongly encourages facilities and permitting agencies to undertake specific actions such as translation, identifying internal community channels of communication, or formation of citizen advisory groups to ensure "equitable participation."

The requirements of CERCLA may also have environmental justice implications for the Department. DOE is brought under the jurisdiction of CERCLA in Section 120, which was added with the passage of SARA in 1986. The implementing regulations, the National Contingency Plan (40 CFT Part 300), require that a public participation plan be developed and followed with any remedial investigation and response at a federal facility. The *Final Report of the Federal Facilities Environmental Restoration Dialogue Committee* provides specific guidance concerning the integration of environmental justice principles into public participation activities during the cleanup process. Additional public participation guidance may be found in Secretarial Policy Memorandum entitled *Guidance on Implementation of the Department's Public Participation Policy*, July 29, 1994.

How is environmental justice to be integrated with NEPA activities?

In soon-to-be-released guidance on the role of environmental justice in the NEPA process, the Council on Environmental Quality (CEQ) characterizes appropriate agency response to the Executive Order as requiring a more thorough and intensive focus on and sensitivity to areas related to environmental justice (such as community outreach and awareness of the impacts of previous activities) during the conduct of NEPA actions. As a means of furthering the goals of the Executive Order, agencies are encouraged, for example, to consider social and interrelated economic impacts during Environmental Assessments (EAs), even though they are not required by the statute to do so, as they are when preparing Environmental Impact Statements (EISs).

The CEQ guidance offers a set of principles to guide agency implementation of the Executive Order in the context of a NEPA investigation. In addition, the guidance suggests opportunities and strategies that are useful during individual stages of the NEPA process. It should be understood that environmental justice considerations will not affect the existing thresholds of the NEPA process, although more intense scrutiny may identify factors that will affect the outcome.

What requirements of the EO are applicable to DOE?

Executive Order 12898 contains six sections that detail the requirements each federal agency must meet to address environmental justice in minority and low-income populations. Section 1-1 addresses agency responsibilities regarding implementation of the EO. Section 2-2 provides guidance to agencies concerning their responsibilities for incorporating environmental justice into their activities. Section 3-3 outlines research, data collection and analysis requirements. Section 4-4 addresses the need to develop and analyze data to identify subsistence consumption patterns among populations that principally rely on fish and wildlife. Section 5-5 provides guidance on public participation and access to information. Lastly, Section 6-6 defines the relationship to other Executive Orders and to relevant existing statutes.

How is the Department implementing EO 12898?

Environmental justice concerns for the Department are centered in the large-scale site cleanup efforts and in energy resource development challenges (e.g., fossil fuels, renewable resources, and energy efficiency initiatives) that will require the Department to consider the equitable distribution of cleanup and development burdens and benefits.

The Office of Economic Impact and Diversity (ED) was designated by the Secretary of Energy in an April 14, 1994, memorandum as the lead for Departmental efforts with technical assistance from the Offices of Environment, Safety and Health (EH) and Environmental Management (EM). The Department is committed to a *partnership in participation* approach for its environmental justice efforts. Under this approach, external government representatives -- tribal, state, and local -- and community-based organizations will be involved in the Department's decision-making. Internally, the Department has formed a Working Group whose membership spans the Department's major program and Field organizations. The Working Group's main task is to review and assist with the development and implementation directives in Executive Order 12898.

A specific strategy has been developed to guide the Department's environmental justice activities. Emphasizing the *partnership in participation* approach, some strategies are being implemented on a Department-wide basis, while others relate to specific program elements. The strategy's main goals include:

- GOAL 1:** Identify and address programs, policies, and activities of the Department that have disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- GOAL 2:** Enhance the credibility and public trust of the Department by making public participation a fundamental component of all program operations, planning activities, and decision making.
- GOAL 3:** Improve research and data collection methods relating to human health and the environment of minority and low income populations by incorporating full characterizations of risks, including the identification of differential patterns of consumption of natural resources among such populations.
- GOAL 4:** Further Departmental leadership by integrating environmental justice criteria, as appropriate, with activities and processes related to human health or the environment.

Implementation of the Department's Environmental Justice Strategy continues to be a priority as it provides a catalyst for a new approach to programmatic decision making and enables the Department to enhance its credibility with stakeholders.

How can I find out more about the Department's environmental justice program?

The Department has established an Environmental Justice Information Clearinghouse, which is accessible via a toll-free number, (800) 586-3612. Hours of operation are Monday through Friday, 9:00 AM to 7:00 PM, Eastern time.

Copies of the Department's *Environmental Justice Strategy* document are available from the Clearinghouse, along with many other relevant documents. In addition, the *Strategy* is available electronically at the DOE World Wide Web site, (<http://www.em.doe.gov/stake/envirjus.html>).

NEPA Environmental Justice Guidance (Interim) will be issued in early 1997. For more information on this guidance, please contact the Office of NEPA Policy and Assistance (EH-42) at (202) 586-4600.

For More Information

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