

***ENVIRONMENTAL JUSTICE***  
***Guidance Under the***  
***National Environmental Policy Act***



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**December 10, 1997**

**Exhibit 8009**

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## II.

### **Executive Order 12898 and the Presidential Memorandum**

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In addition to the general directive in Executive Order 12898 that each agency identify and address, as appropriate, "disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations,"<sup>4</sup> there are several provisions of the Executive Order and a number of supporting documents to which agencies should refer when identifying and addressing environmental justice concerns in the NEPA process.

First, the Executive Order itself contains particular emphasis on four issues that are pertinent to the NEPA process:

- The Executive Order requires the development of agency-specific environmental justice strategies.<sup>5</sup> Thus, agencies have developed and should periodically revise their strategies providing guidance concerning the types of programs, policies, and activities that may, or historically have, raised environmental justice concerns at the particular agency. These guidances may suggest possible approaches to addressing such concerns in the agency's NEPA analyses, as appropriate.
- The Executive Order recognizes the importance of research, data collection, and analysis, particularly with respect to multiple and cumulative exposures to environmental hazards for low-income populations, minority populations, and Indian tribes.<sup>6</sup> Thus, data on these exposure issues should be incorporated into NEPA analyses as appropriate.<sup>7</sup>
- The Executive Order provides for agencies to collect, maintain, and analyze information on patterns of subsistence consumption of fish, vegetation, or wildlife.<sup>8</sup> Where an agency action may affect fish, vegetation, or wildlife, that agency action may

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<sup>4</sup> Executive Order No. 12898, 59 Fed. Reg. at 7630 (Section 1-101).

<sup>5</sup> *Id.* at 7630 (Section 1-103).

<sup>6</sup> *Id.* at 7631 (Section 3-3).

<sup>7</sup> For further information on considering cumulative effects, see *Considering Cumulative Effects Under The National Environmental Policy Act* (Council on Environmental Quality, Executive Office of the President, Jan. 1997)

<sup>8</sup> *Id.* at 7631 (Section 4-401).

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also affect subsistence patterns of consumption and indicate the potential for disproportionately high and adverse human health or environmental effects on low-income populations, minority populations, and Indian tribes.

- The Executive Order requires agencies to work to ensure effective public participation and access to information.<sup>9</sup> Thus, within its NEPA process and through other appropriate mechanisms, each Federal agency shall, "wherever practicable and appropriate, translate crucial public documents, notices and hearings, relating to human health or the environment for limited English speaking populations." In addition, each agency should work to "ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public."<sup>10</sup>

Second, the memorandum accompanying the Executive Order identifies four important ways to consider environmental justice under NEPA.

- Each Federal agency should analyze the environmental effects, including human health, economic, and social effects of Federal actions, including effects on minority populations, low-income populations, and Indian tribes, when such analysis is required by NEPA.<sup>11</sup>

- Mitigation measures identified as part of an environmental assessment (EA), a finding of no significant impact (FONSI), an environmental impact statement (EIS), or a record of decision (ROD), should, whenever feasible, address significant and adverse environmental effects of proposed federal actions on minority populations, low-income populations, and Indian tribes.<sup>12</sup>

- Each Federal agency must provide opportunities for effective community participation in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of public meetings, crucial documents, and notices.<sup>13</sup>

- Review of NEPA compliance (such as EPA's review under § 309 of the Clean Air Act)

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<sup>9</sup> *Id.* at 7632 (Section 5-5).

<sup>10</sup> *Id.* at 7632 (Section 5-5).

<sup>11</sup> Memorandum from the President to the Heads of Departments and Agencies. Comprehensive Presidential Documents No. 279. (Feb. 11, 1994).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

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an area potentially affected by a proposed agency action may include low-income populations, minority populations, or Indian tribes, and seek input accordingly. When the scoping process is used to develop an EIS or EA, an agency should seek input from low income populations, minority populations, or Indian tribes as early in the process as information becomes available.<sup>26</sup> Any such determination, as well as the basis for the determination, should be more substantively addressed in the appropriate NEPA documents and communicated as appropriate during the NEPA process.

If an agency identifies any potentially affected minority populations, low-income populations, or Indian tribes, the agency should develop a strategy for effective public involvement in the agency's determination of the scope of the NEPA analysis. Customary agency practices for notifying the public of a proposed action and subsequent scoping and public events may be enhanced through better use of local resources, community and other nongovernmental organizations, and locally targeted media.

**Agencies should consider enhancing their outreach through the following means:**

- Religious organizations (e.g., churches, temples, ministerial associations);
- Newspapers, radio and other media, particularly media targeted to low-income populations, minority populations, or Indian tribes;
- Civic associations;
- Minority business associations;
- Environmental and environmental justice organizations;
- Legal aid providers;
- Homeowners', tenants', and neighborhood watch groups;
- Federal, state, local, and tribal governments;
- Rural cooperatives;
- Business and trade organizations;
- Community and social service organizations;
- Universities, colleges, vocational and other schools;
- Labor organizations;
- Civil rights organizations;
- Local schools and libraries;
- Senior citizens' groups;
- Public health agencies and clinics; and
- The Internet and other electronic media.

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<sup>26</sup> For more information on scoping, see Memorandum from Nicolas C. Yost, Scoping Guidance (Council on Environmental Quality, Executive Office of the President, April 30, 1981).