

## Overview of Benchmarking Effort for the Environmental Justice Review

In Staff Requirements Memorandum M210218B (ADAMS Accession No. [ML211130A07](#)), the Commission directed the staff to assess whether environmental justice (EJ) is appropriately considered and addressed in the agency's programs, policies, and activities. In evaluating the U.S. Nuclear Regulatory Commission's (NRC's) current EJ approach, the Commission directed the staff to consider the practices of other agencies and evaluate whether the NRC should incorporate EJ beyond implementation through the National Environmental Policy Act (NEPA). As discussed below, in its EJ review, the staff considered the statutory authorities of other Federal agencies related to their consideration of EJ issues. The staff also benchmarked the programs, policies, and activities other agencies use for implementing EJ and compared those to the NRC's EJ programs, policies, and activities.

### Statutory Authorities of Other Federal Agencies

As part of its assessment of the legal landscape, the staff considered the statutory authorities of other Federal agencies related to consideration of EJ issues in their programs, policies, and activities to help assess whether there are opportunities to incorporate EJ beyond implementation through NEPA. Consistent with the Presidential Memorandum accompanying Executive Order (EO) 12898 underscoring the importance of using existing law, specifically Title VI of the Civil Rights Act and NEPA to address EJ issues,<sup>1</sup> many Federal agencies, including the Environmental Protection Agency (EPA),<sup>2</sup> the Department of Energy (DOE),<sup>3</sup> the Department of Transportation (DOT),<sup>4</sup> and the Department of Homeland Security,<sup>5</sup> implement EJ through both NEPA and Title VI.

For example, with respect to Title VI, the EPA notes that “[a]gencies’ Title VI enforcement and compliance authority includes the authority to ensure the activities they fund that affect human health and the environment, do not discriminate on the basis of race, color, or national origin. Therefore, agencies can use their Title VI authority, when appropriate, to address EJ concerns.”<sup>6</sup> Similarly, DOE’s EJ Strategy recognizes that Title VI is a critical component to advancing EJ and that DOE is committed to protecting people from discrimination based on

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<sup>1</sup> Memorandum from The White House to the Heads of All Departments and Agencies, “Executive Order on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (Feb. 11, 1994).

<sup>2</sup> EPA, Plan EJ 2014 Legal Tools (Dec. 2011) (EPA EJ Legal Tools), available at <https://www.epa.gov/sites/default/files/2016-07/documents/ej-legal-tools.pdf> (last visited Jan. 20, 2022).

<sup>3</sup> Department of Energy, “Environmental Justice Strategy” (January 2017) (DOE EJ Strategy), available at [https://www.energy.gov/sites/default/files/2017/01/f34/201708\\_EJStrategy.pdf](https://www.energy.gov/sites/default/files/2017/01/f34/201708_EJStrategy.pdf) (last visited Jan. 20, 2022).

<sup>4</sup> Department of Transportation, Order 5610.2C, “U.S. Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” (May 16, 2021), (DOT Order 5610.2C), available at <https://www.transportation.gov/sites/dot.gov/files/Final-for-OST-C-210312-003-signed.pdf> (last visited Jan. 20, 2022).

<sup>5</sup> Department of Homeland Security Environmental Justice Strategy (February 2012), available at <https://www.dhs.gov/xlibrary/assets/mgmt/dhs-environmental-justice-strategy.pdf> (last visited Jan. 20, 2022).

<sup>6</sup> Title VI and Executive Order 12898 Comparison (Apr. 3, 2004), available at <https://www.epa.gov/environmentaljustice/title-vi-and-executive-order-12898-comparison> (last visited Jan. 13, 2022).

race, color, or national origin in programs or activities that receive Federal financial assistance.<sup>7</sup> In addition, DOT recently issued an Order outlining its EJ Policy, which explains that the DOT will incorporate EJ principles in its programs policies and activities through NEPA, Title VI, and other relevant authorities.<sup>8</sup>

Some agencies also consider EJ under their organic statutes that relate to human health and environmental impacts. For example, EPA has discretionary authority to consider EJ under various environmental statutes including the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act (RCRA), and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).<sup>9</sup> Similarly, DOE also considers EJ in remediation and cleanup decisions made under RCRA and CERCLA.<sup>10</sup>

The staff also considered independent agencies in its benchmarking review, including the Federal Energy Regulatory Commission (FERC). FERC currently considers EJ issues under NEPA.<sup>11</sup> Similar to the NRC, FERC is undertaking a review of its EJ activities.<sup>12</sup> For a discussion of statutory authorities relevant to the NRC's programs, policies, and activities, see Enclosure 1.

### *Benchmarking of Other Agencies' Programs, Policies, and Activities*

The staff assessed how EJ is addressed in programs, policies, and activities at Federal agencies (independent and other executive branch agencies) and State agencies. Given the Commission's direction to consider whether establishing formal mechanisms to gather external stakeholder input would benefit any future NRC EJ efforts, the staff paid particular attention to identifying formal mechanisms.<sup>13</sup> Programs, policies, and activities were identified through a review of publicly available information, discussions with agency and Tribal government representatives, and extensive outreach efforts. Organizations considered are listed in Table E10-1, and examples of programs, policies, and activities they use are provided in Table E10-2. Note that the information provided in Table E10-2 includes some but not necessarily every

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<sup>7</sup> DOE EJ Strategy at 17.

<sup>8</sup> DOT Order 5610.2C ("It is the policy of DOT to promote the principles of environmental justice (as embodied in the Executive Order) through the incorporation of those principles in all DOT programs, policies, and activities. This will be done by fully considering environmental justice principles throughout planning and decision-making processes in the development of programs, policies, and activities, using the principles of the National Environmental Policy Act of 1969 (NEPA), Title VI of the Civil Rights Act of 1964 (Title VI), . . . and other DOT statutes, regulations and guidance that address or affect infrastructure planning and decision-making; social, economic, or environmental matters; public health; and public involvement.").

<sup>9</sup> See *generally* EPA EJ Legal Tools.

<sup>10</sup> DOE EJ Strategy at 8.

<sup>11</sup> See Enclosure 1 (noting EJ issues in Federal caselaw consistently arise from NEPA litigation, including at FERC).

<sup>12</sup> FERC recently sought public comment on its consideration of EJ including its statutory authority under the Natural Gas Act, NEPA, and other Federal statutes regarding EJ and mitigation, among other items. See Certification of New Interstate Natural Gas Facilities, Notice of Inquiry, 86 Fed. Reg. 11,268 (Feb. 24, 2021).

<sup>13</sup> For the purposes of this review, the staff considers "formal mechanisms" to be means for consistently engaging with external stakeholders and Tribal nations to receive and provide information in support of agency mission-related activities. Examples may include external advisory committees. See Enclosure 5 for additional information regarding formal mechanisms.

program, policy, and activity across the organizations considered. To support the benchmarking effort, the staff used a contractor, Pacific Northwest National Laboratory (PNNL), to validate the staff's identification of external EJ programs, policies, and activities. PNNL which has experience conducting EJ reviews for the NRC and other Federal agencies, prepared a report identifying for staff consideration mechanisms or practices that could potentially enhance the consideration of EJ at the NRC, given the agency's existing statutory authorities and mission.<sup>14</sup>

The staff also assessed existing NRC programs, policies, and activities (see Table E10-3).

The staff compared the NRC's programs, practices, and activities with those of other agencies to identify potential enhancements that could be implemented to benefit future NRC EJ efforts. As indicated in Table E10-2, through these benchmarking efforts, the staff identified a number of mechanisms employed by other agencies to implement EJ that could prove beneficial to the NRC, such as establishing an EJ coordinator, program, or both, and a Federal advisory committee.

Table E10-1: External Organizations Reviewed

California Air Resource Board	Department of Homeland Security	General Services Administration
Department of Agriculture	Department of Justice	Maryland Department of the Environment
Department of Commerce	Department of Labor	Michigan's Office of the Environmental Justice Public Advocate
Department of Defense	Department of the Interior	Pennsylvania's Office of Environmental Justice in the Department of Environmental Protection
Department of Education	Department of Transportation	Small Business Administration
Department of Energy	Environmental Protection Agency	South Carolina Department of Health and Environmental Control
Department of Health and Human Services	Federal Energy Regulatory Commission <sup>15</sup>	Veterans Administration

<sup>14</sup> "Enhancing Environmental Justice Activities at the U.S. Nuclear Regulatory Commission," (PNNL-32301), December 2021, ([ML22048A519](#)).

<sup>15</sup> The Federal Energy Regulatory Commission's mission, roles, and responsibilities are similar to those of the NRC.



Table E10-2: Examples of Programs, Policies, and Activities Used Outside of the NRC to Address EJ

<b>Mechanism</b>	<b>Program, Policy, and/or Activity</b>		
Federal Financial Assistance	EJ Small Grants Program (EPA)	EJ Program internships (DOE)	Historic Preservation Fund Grants (Department of the Interior)
Outreach and Consultation Program with Tribal Nations	Relationship building with Indian Country - consultations, listening sessions (DOE)	Office of Native American Business Development coordinates Tribal consultation (Department of Commerce)	Native American Indigenous Peoples Committee (multiple, Department of Justice/U.S. Department of Agriculture co-chairs)
Outreach Program: General	Build joint capacity with State/local authorities to address EJ concerns (EPA)	Office of Partnership and Engagement (Department of Homeland Security)	Office of Public Participation (FERC)
Identify and Address EJ Issues: External Focus (Concern, Allegation, Grievance)	EJ Collaborative Problem-solving Cooperative Agreement Program (EPA)	Has a grievance procedure (Michigan)	
Training (internal)	EJ Training for staff implementing NEPA (EPA)	Integrates EJ training into outreach programs (Department of Defense)	NEPA Interim Guidance for Projects notes EJ (Department of Veterans Affairs)
Training (external)	Capacity building on specific topics (EPA)	Webinar to assist external organizations with EJ issues (U.S. Department of Agriculture)	
Interagency Collaboration	Co-Sponsor annual National EJ Conference and Training Program (EPA)	2011 Memorandum of Understanding on EO 12898 and EJ IWG (17 Federal agencies)	
Policy Statement/EJ Strategic Plan	EJ Strategy (multiple)		
EJ Coordinator/Program	EJ Program Manager (DOE)	EJ Advisory Board - implements Pennsylvania Department of Environmental Protection's enhanced public participation policy (Pennsylvania)	Senior Counsel for EJ and Equity (FERC)
Advisory Committee	National Environmental Justice Advisory Council (EPA)	EJ Advisory Board - implements Pennsylvania Department of Environmental Protection's enhanced public participation policy (Pennsylvania)	EJ Advisory Committee - advises Board in developing scoping plan (California Air Resources Board)
EJ Issues/Analysis--NEPA	Conducts an analysis under NEPA documenting EJ issues (multiple)	Office of NEPA Policy and Compliance (DOE)	
Tools for EJ Analyses	EJ Mapping and Screening Tool - EJSCREEN (EPA)	Generates high quality income and population data (Department of Commerce)	

Table E10-3: Examples of Programs, Policies, and Activities Used by the NRC to Address EJ

Mechanism	Program, Policy, and/or Activity		
Federal Financial Assistance	Minority Serving Institutions Program to produce a diverse STEM workforce		
Outreach or Consultation Activities with Tribal Nations	Tribal Policy Statement	Tribal protocol manual	Guidance documents (e.g., TR-100, NRC Management Directive 5.1)
Outreach Program: General	Model Plan for Public Participation	NRC In-House Meeting Facilitator & Advisor Program	Public Meetings & Involvement web page at <a href="https://www.nrc.gov/public-involve.html">https://www.nrc.gov/public-involve.html</a> .
Identify and Address EJ Issues: External Focus (Concern, Allegation, Grievance)	Opportunity to petition for hearing	Opportunity to petition for rulemaking	
Training (Internal)	Introduction to Environmental Reviews and NEPA at the NRC - Seminar	Guidance documents (e.g., NUREG-1555 and Supplement 1, NUREG-1748, and LIC-203)	
Training (External)	Agreement State Assistance	State Agreement Procedure SA-600	
Interagency Collaboration	White House EJ Interagency Council, NEPA Committee	White House Environmental Justice Advisory Council (WHEJAC)	
Policy Statement / EJ Strategic Plan	EJ Policy Statement, 2004	EJ Implementation Strategy, 1995 (EO 12898)	
EJ Coordinator / Program			
EJ Advisory Committee			
EJ Issues / Analysis - NEPA	National Historic Preservation Act, Section 106 Tribal Consultation	NEPA reviews	
Tools for EJ Analyses	EJSCREEN, other geographic information systems (GIS), Census data		