

Environmental (In)justice:

NEPA and TITLE VI:

From Recommendations to Regulations

Veronica P. McBeth, MSL
Associate Planner
Kittelson & Associates, Inc.



OVERVIEW & TERMS

NEPA – National Environmental Policy Act

Title VI – Title VI of The Civil Rights Act of 1964

EJ – Environmental Justice

E.O. – Executive Order

FHWA – Federal Highway Administration

B&P Tunnel – Baltimore and Potomac Tunnel

History of EJ and NEPA

Executive Order 12898

Federal Guidance for EJ
and NEPA

The Presidential
Memorandum (E.O. 12898)

EJ and NEPA Framework

Refinery Rule

Legal Issues and
Challenges

B&P Tunnel Project (2014-
2016)

What's Next?

ABSTRACT & PROBLEM

Can these statutes remedy the disproportionate harm inflicted upon People of Color in America (minorities, low-income, rural and tribal populations) through concentrating on polluters in their community and provide Environmental Justice?

Source: Mayra Beltran, Houston Chronicle



DEFINITIONS & HISTORY

NEPA –

National Environmental Policy Act of 1969

The purposes of this Act are:

- **Declare** a national policy which will encourage productive and enjoyable harmony between man and his environment
- **Promote efforts** which will:
 - **Prevent or eliminate damage** to the **environment** and biosphere and **stimulate** the **health and welfare** of man
 - **Enrich the understanding** of the **ecological systems** and **natural resources** important to the Nation
 - **Establish a Council on Environmental Quality**



DEFINITIONS & HISTORY

CIVIL RIGHTS ACT OF 1964

An act to **enforce** the constitutional **right to vote**, to confer jurisdiction upon the district courts of the United States of America to **provide injunctive relief against discrimination** in public accommodations, to authorize the Attorney General to institute suits to **protect constitutional rights** in public facilities and public education, to extend the Commission on Civil Rights, to **prevent discrimination** in federally assisted programs, to **establish a Commission on Equal Employment Opportunity**, and for other purposes.



DEFINITIONS & HISTORY

TITLE VI

A statute that **focuses on non-discrimination**. More specifically, the rule of implementation put in U.S. Code 28 C.F.R. §42.401 – Title VI, as amended, states: **No person** in the United States shall, on the ground of **race, color, national origin, sex, age, or disability**, be **excluded** from **participation** in, be **denied** the **benefits** of, or be **subjected to discrimination** under any program or activity **receiving financial assistance**.



DEFINITIONS & HISTORY

EJ

A strategy that focuses **on identifying and addressing** disproportionately high and adverse effects of programs, policies, and activities on **minority populations and low-income populations to achieve an equitable distribution of benefits and burdens.**



HISTORY

1960s

Civil Rights Act of 1964 is passed; Title VI prohibits the use of federal funds to discriminate based on race, color, and national origin.

1970s

U.S. Public Health Service acknowledges inequality and the disproportionate negative affects of lead poisoning on African-American and Hispanic children.

1980s

Residents in Warren County, North Carolina protest the construction of a hazardous waste landfill in a predominantly African-American neighborhood.



1990s

- EPA establishes Environmental Equity Work Group (EEWG)
- First National People of Color Environmental Leadership Summit
- President Clinton issues Executive Order 12898; requiring each Federal agency achieving environmental justice a part of its mission

1980s

United Church for Christ Commission for Racial Justice issues the Toxic Waste and Race in the United States report.

HISTORY



1994

President Bill Clinton signs Executive Order 12898 (February) This Executive Order outlines the guidance for Federal Agencies to look at disparate populations, including: minority and low-income populations with respect to environmental justice (EJ) issues.

HISTORY



Environmental Justice & NEPA Framework

1997

- White House Council on Environmental Quality (CEQ), created a guidance document for environmental justice and NEPA
- The guidance document highlights six (6) principles that help navigate analyses of environmental justice issues, such as:
 - environmental effects on tribal populations, low-income, minority, and disproportionately high and adverse human health

<https://www.epa.gov/environmentaljustice/ceq-environmental-justice-guidance-under-national-environmental-policy-act>



HISTORY

2000's

EPA Administrator issues a memorandum reaffirming the Agency's commitment to environmental justice and recommends its integration into all programs, policies, and activities consistent with existing environmental laws and regulations

2010's

- EPA creates Plan EJ 2014, a roadmap that will help integrate environmental justice into the EPA's policies, programs, and activities
- 17 Federal Agencies signed an MOU on Environmental Justice and Executive Order 12898 (Clinton era); committing each agency to finalize and release environmental justice strategies by February 2012



The importance of the NEPA process in ensuring environmental justice was further perpetuated by the Presidential Memorandum to accompany E.O. 12898

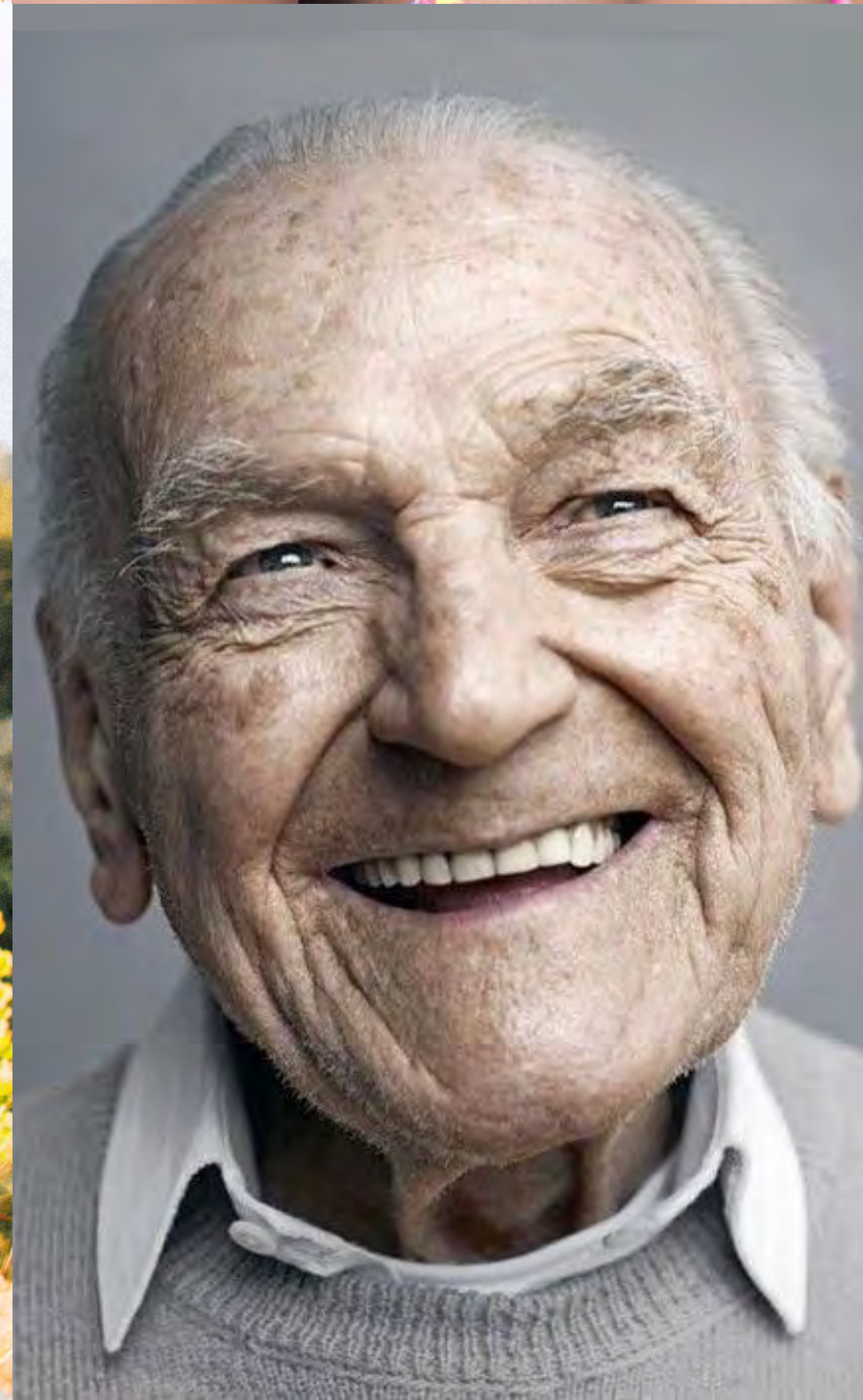
FEDERAL GUIDANCE FOR EJ AND NEPA

FHWA TITLE VI PROGRAM COVERAGE

PRESIDENTIAL MEMORANDUM

The Memorandum calls for agencies to address significant adverse environmental effects on these communities in mitigation measures outlined or analyzed in:

- Environmental assessments (EAs)
- Findings of no significant impact (FONSI)
- Environmental impact statements (EIS)
- Records of decision (RODs)



FHWA CONSIDERS EJ IN ALL STAGES OF PROJECT DEVELOPMENT

Planning

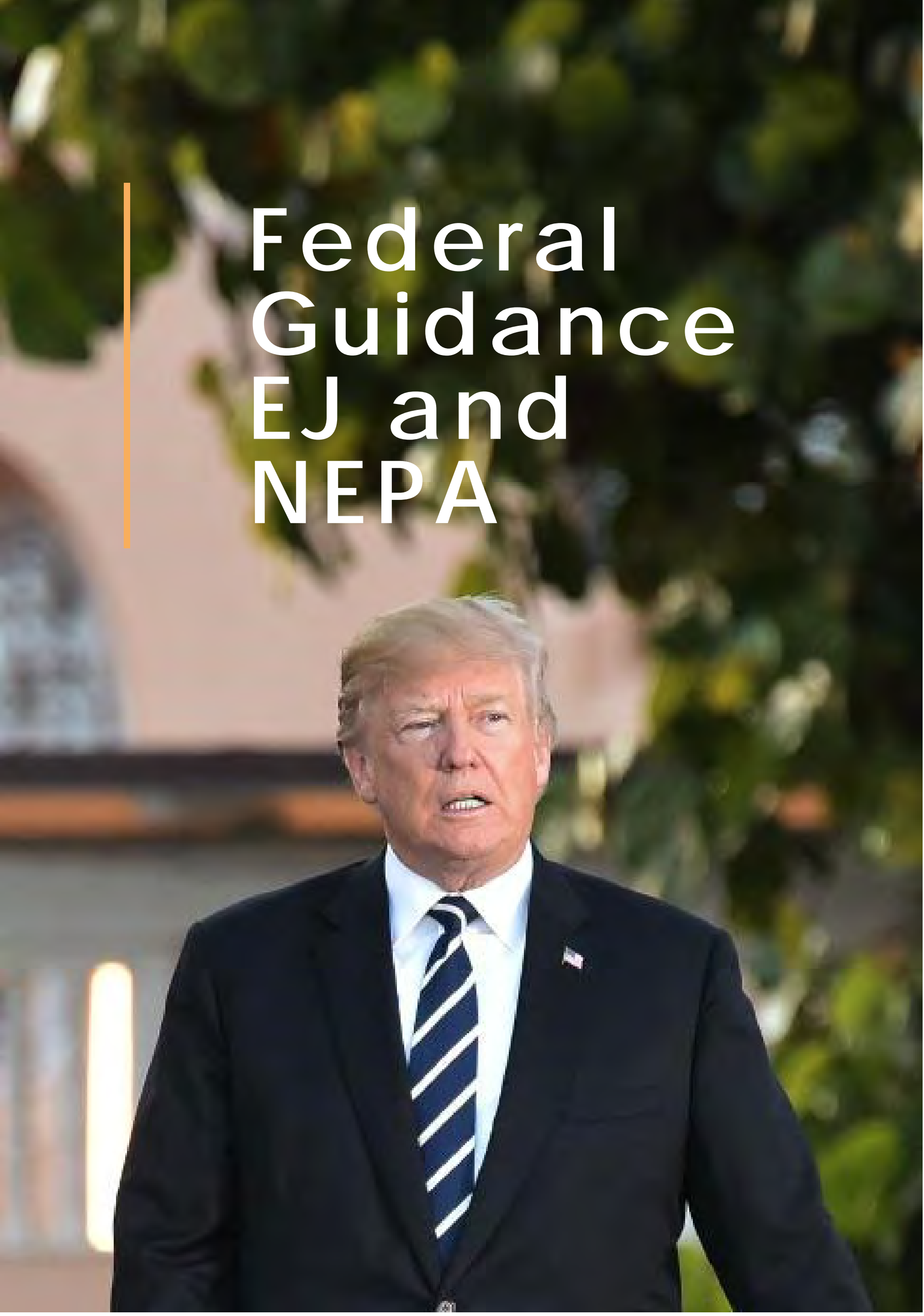
Environmental
Review

Design

Right-of-Way

Construction

Maintenance
and Operation



Federal Guidance EJ and NEPA

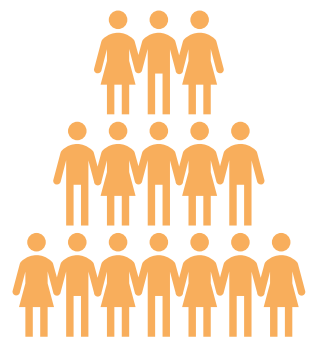
The Trump Administration

Has taken several significant steps to deregulate the NEPA process

Executive Order 13807 by authority of 'establishing discipline and accountability in the environmental review and permitting process for infrastructure projects.'

Whereas, in E.O. 13807 the order establishes principles to address 'inefficiencies in current infrastructure project decisions, including management of environmental reviews and permit decisions or authorizations...'

Six Guidance Principles



Consider the composition of the affected area to determine whether low-income, minority or tribal populations are present



Consider relevant public health and industry data concerning the potential for multiple exposures or cumulative exposure to human health or environmental hazards



Recognize the interrelated cultural, social, occupational, historical, or economic factors

Six Guidance Principles



Develop effective public participation strategies



Assure meaningful community representation in the process, beginning at the earliest possible time



Seek tribal representation in the process

Baltimore & Potomac Tunnel Project (West Baltimore)

- The NEPA process for this project took approx. 2 years to complete the Record of Decision (ROD)
- As part of the mitigation for the tunnel alignment and vent shafts, there were funds allocated in the ROD
- As a part of this NEPA process from start to finish, there was significant community engagement efforts with those who live in the affected area





Contact Information

Veronica P. McBeth, MSL

Associate Planner

Kittelson & Associates, Inc.

Email: vmcbeth@Kittelson.com

Baltimore Office:

443-524-9405