

Environmental justice issues arise most frequently when:

- *Some communities get the benefits of improved accessibility, faster trips, and congestion relief, while others experience fewer benefits;*
- *Some communities suffer disproportionately from transportation programs/negative impacts, like air pollution;*
- *Some communities have to pay higher transportation taxes or higher fares than others in relation to the services that they receive;or*
- *Some communities are less represented than others when policy-making bodies debate and decide what should be done with transportation resources.*

Racial and ethnic minority groups, low-income people, the elderly, and people with disabilities have all been the victims of environmental injustices in transportation. Sometimes an affected community is primarily geographic, consisting of those living in a particular corridor or in a neighborhood near a certain transportation facility. Or those affected might share similar racial, ethnic, or economic characteristics. These groups are often referred to as “environmental justice communities.” But because power and needs change over time and space, the term “environmental justice communities” is problematic. Environmental justice is used to protect the needs of the powerless, whomever they might be, and as they change.

Many community members are becoming involved with transportation decisions that impact their mobility needs, health, and overall quality of life. A member of the public concerned with environmental justice might be involved with making transportation decisions as:

- *A citizen appointed to an environmental justice task force or committee;*
- *A member of a disempowered group, representing the group's interests to an advisory committee for the purpose of discussing and influencing transportation policy choices;*
- *A member of an advocacy group active in transportation issues;*
- *An employee of a non-profit agency that wants to be involved because of the effect that transportation policies have on its constituents;or*
- *A resident or business owner affected by a transportation decision.*

Although there is no substitute for the knowledge that can be gained over time through experience, this handbook will help those who are new to transportation decision processes influence how environmental justice is incorporated into decisions about transportation policy and projects. Various approaches to environmental justice are discussed, along with steps in the planning process when citizen involvement is particularly effective, suggestions for how environmental justice can be incorporated into a project, and legal requirements for environmental justice.

THE GOAL OF ENVIRONMENTAL JUSTICE

State and local transportation agencies have a legal obligation to prevent discrimination and to protect the environment through their plans and programs. The details of these obligations are discussed in the box titled “Legal History” on page 4. Although this requirement is non-negotiable, agencies can decide how they want to promote environmental justice. Irrespective of how agencies promote environmental justice, the fundamental goal is to foster a more just and equitable society. This goal is based on our civil rights laws. Still, exactly what justice and equity mean and how they are achieved is the subject of much debate.

The following approaches to managing benefits and burdens offer examples of how some people and agencies work toward environmental justice. These examples focus on how the benefits are spread among people, but an equally important concern is how burdens are distributed. Frequently encountered burdens from transportation are air pollution, noise, vibrations, crash-related injuries and fatalities, dislocation of residents, and division of communities.

Equity Within Transportation Programs

Individuals and agencies often don't have a single policy for reaching a just and equitable society. Instead, how this goal is reached depends on the situation

at hand. In the case of transportation, one approach to environmental justice might be to promote equity within specific transportation programs. Providing the same amount of the same service to each person could accomplish this. An example is supplying transit service to everyone regardless of where they live, where they need to travel, whether they own a car, or whether they use transit. This happens when people advocate extending commuter rail service to an outlying suburb in the transit district based solely on the belief that everyone in the district should have equal access to the commuter rail service. Such a policy treats everyone equally, but is likely to produce an inefficient and excessively expensive transportation system.

Another way to promote equity in transportation is to spend the same amount of money per person on different types of service according to needs and preferences. A portion of funds would be given to roads, a portion to buses, and a portion to train service, depending on how many people used each. A transportation system of this type responds to people's differing needs and circumstances, but reinforces current travel patterns, which limits travel choice.

An attempt at equity within transportation also happens when governments—states, counties or municipalities—receive back in transportation funds what their citizens contributed in the form of taxes. This is called “return to source.” One limitation of this approach is that when applied to transportation alone, the

LEGAL HISTORY

Even though the words “environmental justice” haven’t made it into legislation, the concept has made it into court decisions. These decisions form the foundation of future legal interpretations and are part of the common law of the United States.

The principles of environmental justice have their basis in both the Constitution of the United States—notably the Equal Protection Clause of the Fourteenth Amendment—and United States civil rights laws. (On the state level, many states have similar provisions in their constitutions.) Titles Six (VI) and Nine (IX) of the Civil Rights Act of 1964 provide protection from discriminatory actions or results from federal, or federally assisted or approved, actions.

Intentional discrimination can be very hard to prove. The U.S. Department of Justice’s Civil Rights Division’s “Title VI Legal Manual” (September 1998) states that

“[t]his requires a showing that the decisionmaker was not only aware of the complainant’s race, color, or national origin, but that the recipient acted, at least in part, because of the complainant’s race, color, or national origin.”

Because proving intentional discrimination is so difficult, people have sought other ways to enforce nondiscrimination. An alternative approach has been to charge that Title VI was violated by unintentional discrimination that caused disparate impacts. When an otherwise nondiscriminatory policy or program causes unequal effects (on protected individuals—for example minorities, women, and disabled persons) without a legitimate reason, the policy or program is having a disparate impact. Whether this approach is valid has been argued in recent court cases.

Environmental justice claims are being made on the basis of rights established years ago, but how those rights will be enforced is still being decided through the courts.

During the sixties it became increasingly obvious that people’s rights and freedoms are closely tied to the well being of their environment. Also during this time, legislators acknowledged that economic and social environments, in addition to the physical environment, determine a person’s quality of life and ability to thrive in society. These realizations shaped the National Environmental Policy Act of 1969 (NEPA), which established the national policy for the environment. NEPA requires federal agencies to take a “systematic, inter-disciplinary approach” to planning and decision making when the results may have an impact on the environment.

The Federal-Aid Highway Act of 1970 requires that states and metropolitan planning organizations (MPOs), which develop long-range plans, consider the “overall social, economic, energy, and environmental effects of transportation decisions.” (23 CFR. 450.208) Federal money may not fund programs or activities that result in the intentional or unintentional unequal treatment of persons solely based on their race, color, religion, sex, or national origin.

In spite of all these laws, several presidents have felt that discrimination and environmentally destructive practices still persist. In response, they issued Executive Orders (EOs) that require federal agencies to take specific measures to better achieve these goals. Executive orders 11063, 12259, and 10479 all seek to provide equal opportunity in housing while EO 10482 provides for equal employment opportunities in the government. Most recently, former President Clinton issued Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” which extends federal environmental and nondiscriminatory protections to low-income people. This order directs each federal agency to develop a strategy for preventing its actions from having “disproportionately high and adverse human health or environmental effects” on low-income and minority populations. However, it is important to realize that an executive order does not create any new rights or benefits that are enforceable by law. Federal agencies’ compliance can’t be enforced in court.

Executive orders and federal agency regulations have detailed how avoiding discrimination and environmental concerns should be built into federal decision making in order to implement these laws more rigorously. The Department of Transportation’s final Environmental Justice Order in 1997 directed agencies about ways to incorporate environmental justice into their activities. Operating agencies within the department often give more detailed information. For example, the Federal Highway Administration and the Federal Transit Administration issued a joint memorandum in 1999 titled “Implementing Title VI Requirements in Metropolitan and Statewide Planning.” In it, the administrators announced that compliance with Title VI is required, and non-compliance would mean that all federal funding for the region could be withheld.

Over time, the federal government has created increasingly specific requirements for non-discrimination and environmental protection, but states can decide how to implement them. If they do not follow these directives they risk losing their federal money, which is usually a sizable share of their transportation funding.

The following DEFINITIONS are excerpts from the appendix of the Department of Transportation’s final Environmental Justice order:

LOW-INCOME means that a person’s household income is at or below the poverty level;

THE PROTECTED LOW-INCOME AND MINORITY POPULATION can be defined as a group of persons within geographic proximity of each other or a group that is dispersed but would be similarly affected by a proposal;

ADVERSE EFFECTS include those on human health, the environment, and a group’s social and economic well-being; and

DISPROPORTIONATELY HIGH AND ADVERSE EFFECTS ON MINORITY OR LOW-INCOME POPULATIONS are effects that are predominantly borne by a minority or low-income population, or effects borne by minority and low-income populations that are more severe than those borne by others.

HOW ARE TRANSPORTATION PROJECTS AND PLANS EVALUATED?

Although the focus of this handbook is environmental justice and its role in transportation decision making, it is not the only factor considered. In addition to environmental justice, programs and projects are evaluated for their effectiveness and efficiency. How a program performs with respect to all three measures ultimately decides whether it is implemented.

- **Effectiveness refers to how well a proposal meets its objectives.**
For example, in a congestion relief plan, an alternative that reduces congestion by 25% is more effective than one that reduces it by 10%, all else being equal.
- **Efficiency refers to the cost of a project relative to its benefits.**
The most efficient project is the one with the highest benefit per dollar spent.

When choosing what projects or alternatives to invest in, the preferred option is effective, efficient, and, of course, just. In the example above, the alternative that reduces congestion by 10% might cost 10 times what the other alternative costs, meaning that it is neither the most effective nor the most efficient. However, if the alternative reducing congestion by 25% costs 10 times more than the other alternative, the choice is not as clear. When alternatives are judged on how just they are, the decisions become even more complicated.

results of this policy do not respond to any history of inequality or any inequality in another part of society. For example, inadequate transportation service in a community may limit its citizens' ability to reach well-paying jobs, resulting in lower average incomes, smaller tax contributions, and a smaller return of transportation funds. A policy that directs transportation investment to populations according to how much tax they pay may perpetuate a vicious cycle of high funding to rich communities and low funding to poor ones.

Using Transportation as a Tool

A different approach to environmental justice might use transportation services to compensate for inequalities in other areas of society. Instead of equally distributing transportation resources (be it funding, miles of road or track, number of buses, or the like) to promote environmental justice, this approach is to use the transportation system as a tool for improving justice in society as a whole. This could mean

spending user fees and taxes from some citizens on services that benefit other citizens. But this should always be done with caution. In keeping with the spirit of environmental justice, this should only be used to protect the needs of the disadvantaged, whomever they might be and as they change. In order to ensure that the needs of the disadvantaged are protected, specific requirements should be met.

First, everyone must be able to benefit from the policy. In the case of a bridge used by cars and trains, fares from train riders shouldn't be used to resurface the bridge deck because some of the riders can't use cars and therefore couldn't benefit from the resurfaced deck. On the other hand, tolls collected from the cars could be used to improve the train service because everyone crossing the bridge could benefit from the improved train service (either by riding the train, or because people riding the train reduce congestion for car users). The important distinction between the two cases is that all car drivers could benefit from rail improvements but not all rail users could benefit from the deck resurfacing.

Second, this approach should only be used when the least advantaged group of community members benefits the most. Take transit: quite often the debate is not whether to fund transit, but which transit to fund. In theory, everyone could benefit from an inequality favoring transit (such as the train example above). However, funding rail service used by upper-income commuters at the expense of buses serving transit-dependent low-income commuters does

not constitute environmental justice. The least advantaged are the transit-dependent, not those who have alternatives to transit.

Working toward environmental justice doesn't mean that advantaged members of society should never be provided projects that serve their needs and interests, nor should the wealthy and powerful be required to bear all of the costs of the transportation system. However, any unequal distribution of benefits and burdens should help the least advantaged.

Clarify the Approach

In actual policy-making situations, some combination of the approaches outlined above will probably be implemented, working together to promote a just society. Other approaches might also surface in community discussions. For example, a group might want money generated from transportation sources (like gas taxes or bridge tolls) or money earmarked for transportation to be spent on non-transportation-related social services, such as healthcare or education. This may be seen as controversial, but it happens regularly with other revenue sources. For example, property taxes fund primary and secondary schools even though some property owners do not have children. Regardless of the approach, it is important that participants are clear about which one they are taking when they advocate a position.