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Travis D. Jones

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## HUMANS LONG IGNORED: REVISITING NEPA'S DEFINITION OF "HUMAN ENVIRONMENT" IN THE ERA OF BLACK LIVES MATTER

TRAVIS D. JONES\*

### I. INTRODUCTION

In 2020, the Black Lives Matter movement brought state-sanctioned violence against African Americans to the forefront of public discourse. In the wake of the horrific killing of George Floyd, highly charged protests exploded around the country, from Washington D.C. to Dallas to Portland. Across the internet, social media timelines and profile pictures turned black. In the midst of a global pandemic, America's reintroduction to professional sports was marked by athletes taking a knee in solidarity with the African American community. While awareness of state-sanctioned violence has increased, state-sanctioned discrimination against African Americans and other racial minorities, in the form of environmental racism, has continued to insidiously lurk outside of public awareness.

This article reviews how the National Environmental Policy Act ("NEPA") of 1969<sup>1</sup> and its narrow definition of "human environment" has contributed to disproportionate exposure of minority communities to toxic waste, air pollution, and unsafe drinking water, often resulting in crippling psychological and socio-economic impacts. It concludes that NEPA's definition of "human environment" should be broadened to encompass these adverse psychological and socio-economic considerations. Specifically, the definition of "human environment" should include the potential

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\* B.A. (2011), Pepperdine University; J.D. (2016), Southern Methodist University Dedman School of Law. LT Travis Jones serves in the Judge Advocate General Corps of the United States Navy. The author acknowledges the helpful editorial assistance of Michael Andrews and Allen Tolleth.

1. National Environmental Policy Act of 1969, 42 U.S.C. § 4321 (2018).

impact on local minorities' mental health and businesses, as well as long-term public health considerations. Additionally, provisions should be added to NEPA instructing federal agencies to consider and publish available alternative project sites that would mitigate harm to local minority communities. Finally, this article proposes the creation of an enforcement action mechanism that permits citizens to bring enforcement suits to compel federal agencies to take remedial actions that mitigate harm to communities of color.

## II. THE HISTORY OF "HUMAN ENVIRONMENT"

On January 1, 1970, NEPA was signed into law by the 91<sup>st</sup> United States Congress.<sup>2</sup> The purpose of NEPA remains to preserve a national policy that encourages "productive and enjoyable harmony between man and his environment . . ."<sup>3</sup> The drafters of NEPA recognized the considerable impact of human activity on the physical environment, particularly "the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances. . ."<sup>4</sup> In an effort to curtail the potentially devastating effects of human influence on the environment, Congress passed NEPA to create conditions under which man and nature could co-exist, while also fulfilling "the social, economic, and other requirements of present and future generations of Americans."<sup>5</sup>

NEPA remains a central component of environmental law due to its action-forcing provision, Section 102(2)(C).<sup>6</sup> This provision requires agencies to evaluate the impact of "major Federal actions significantly affecting the quality of the human environment" by preparing Environmental Impact Statements ("EIS") for proposed federal actions.<sup>7</sup> Not all proposed federal actions require an EIS.<sup>8</sup> Before drafting an EIS, an agency must first answer the threshold question of whether Section 102(2)(C) even necessitates the creation of an EIS for any particular federal project.<sup>9</sup> NEPA only man-

2. *Id.*

3. *Id.* (describing NEPA's purpose).

4. *Id.* § 4331 (describing Congress's concerns for environment resulting from rapid human development).

5. *Id.* (stating purpose of NEPA is to create harmony between human beings and their environment).

6. 42 U.S.C. § 4332 (explaining federal agencies' responsibility to analyze environmental impact of proposed actions).

7. *Id.*

8. *See* 40 C.F.R. §§ 1501.4(e), 1508.13 (noting lack of universal EIS requirement).

9. 42 U.S.C. § 4332 (describing when impact of federal action requires EIS).

dates an EIS when (1) the proposed action is a “major federal action,” (2) the action will “significantly affect” the quality of the environment, and (3) the environment affected is the “human environment.”<sup>10</sup> If a proposed action does not satisfy all three prongs of the Section 102(2)(C) analysis, an EIS is not required.<sup>11</sup> When a federal agency determines an EIS is unnecessary, the agency will draft a Finding of No Significant Impact (“FONSI”).<sup>12</sup> A FONSI explains “why the proposed agency action will not have a significant impact on the environment.”<sup>13</sup>

Essentially every word in NEPA’s action-forcing provision has been the subject of extensive litigation and controversy, and the term “human environment” is no exception. Following the Council on Environmental Quality’s (“CEQ”) 2020 revision of the NEPA regulations, “human environment” is defined as “comprehensively the natural and physical environment and the relationship of present and future generations of Americans with that environment.”<sup>14</sup> Section 1502.16(b) of the NEPA regulations adds further context to the definition of “human environment,” stating:

Economic or social effects by themselves do not require preparation of an environmental impact statement. However, when the agency determines that economic or social and natural or physical environmental effects are interrelated, the environmental impact statement shall discuss and give appropriate consideration to these effects on the human environment.<sup>15</sup>

Consistent with the regulatory definition of “human environment,” the Supreme Court has reiterated the narrow definition of the term, explicitly rejecting broader interpretations. In *Metropolitan Edison v. People Against Nuclear Energy*,<sup>16</sup> the Nuclear Regulatory Commission (“NRC”) appealed a judgment from the D.C. Circuit finding the NRC failed to consider the psychological effects of re-summing operations at the Three Mile Island after the nuclear power plant suffered a partial meltdown.<sup>17</sup> Judge Rehnquist, delivering

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10. *Id.* (listing elements of mandatory EIS).

11. *See, e.g.* *Coliseum Square Association, Inc. v. Jackson*, 465 F.3d 215, 224 (5th Cir. 2006) (finding proposed action did not require EIS under statute).

12. *See* 40 C.F.R. §§ 1501.4(e), 1508.13 (introducing concept of FONSI).

13. *Coliseum Square*, 465 F.3d at 224.

14. 40 C.F.R. § 1508.1(m) (elaborating on FONSI and their function).

15. *Id.* § 1502.16(b) (emphasis added).

16. *Metropolitan Edison v. People Against Nuclear Energy*, 460 U.S. 766 (1983) (quoting NEPA’s human environment definition).

17. *Id.*

the opinion for a unanimous court, held that the psychological effects to the surrounding community did not constitute an impact on the human environment.<sup>18</sup> Considering the context of NEPA, the Court noted, “Congress was talking about the physical environment — the world around us, so to speak,” and the statute was meant to protect the physical environment from the effects of proposed government actions.<sup>19</sup> Consequently, the scope of “human environment” under NEPA has been narrowed to primarily encompass the “physical environment” and categorically exclude psychological considerations, such as the local community’s feelings of depression, powerlessness, or oppression.<sup>20</sup>

Similarly, the courts have rejected economic considerations in the definition of “human environment,” such as employment rates or the closure of local businesses. In *Image of Greater San Antonio v. Brown*,<sup>21</sup> Appellants challenged the Secretary of Defense’s proposed reduction in force at Kelly Air Force Base and the United States Air Force’s failure to file a related EIS.<sup>22</sup> In support of their action, Appellants focused on the “significant socio-economic effects that the discharge of some 1,200 civilian employees from Kelly [Air Force Base] would have.”<sup>23</sup> However, because the Appellants “presented no evidence of any significant effects on natural resources,” the Fifth Circuit rejected the argument, finding socio-economic effects were not part of the “human environment.”<sup>24</sup> The court noted NEPA was enacted in recognition of “the effect that man’s activities . . . have on the ‘natural environment[ ]’ [and its] primary concern was with the physical environmental resources of the nation.”<sup>25</sup> However, in *Brown*, the court did not discount the consideration of socio-economic impacts entirely, stating, “[w]hen

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18. *Id.* at 778-79.

19. *Id.* at 772.

20. *See id.* at 779. *See also* Breckinridge v. Rumsfeld, 537 F.2d 864, 866 (6th Cir. 1976) (holding impact of federal action on unemployment not within scope of NEPA’s definition of “human environment”); Pac. Nw. Bell Tel. Co. v. Dole, 633 F. Supp. 725, 727-28 (W.D. Wash. 1986) (holding telephone service disruptions resulting from proposed federal action are not within NEPA’s scope of “human environment”); Metlakatla Indian Cmty. v. Adams, 427 F. Supp. 871, 875 (D.D.C. 1977) (noting socio-economic effects of proposed federal action are secondary to physical impact on environment); Nat’l Ass’n of Gov’t Emps. v. Rumsfeld, 413 F. Supp. 1224, 1229 (D.D.C. 1976) (holding economic impact, specifically increased unemployment, not within NEPA’s definition of “human environment”).

21. *Image of Greater San Antonio v. Brown*, 570 F.2d 517 (5th Cir. 1978).

22. *Id.* at 518 (explaining Appellant’s argument).

23. *Id.* at 522 (highlighting Appellants focus on narrow claim).

24. *Id.*

25. *Id.*

an action will have a primary impact on the natural environment, secondary socio-economic effects may also be considered.”<sup>26</sup> Still, the court emphasized that “socio-economic effects are insufficient to trigger an agency’s obligation to prepare an EIS,” if there is no impact on the physical environment.<sup>27</sup> Thus, if there is no effect on the physical environment, the analysis ends and socio-economic impacts are disregarded.<sup>28</sup>

In addition to socio-economic and psychological considerations, the courts have held the influx of people from a different racial or socioeconomic class, also known as “people pollution,” is not cognizable as an environmental impact under NEPA.<sup>29</sup> In *Maryland-National Capital Park & Planning Commission v. U.S. Postal Service*,<sup>30</sup> Appellants were disgruntled by the prospect of “an influx of low-income workers into the” community.<sup>31</sup> The court held “this type of effect cannot fairly be projected as having been within the contemplation of Congress.”<sup>32</sup> In this sense, the courts got it right. They rejected a concept that would constitute *overt* racism and prejudice against low-income workers as a valid consideration under NEPA. A local community cannot halt federal agency action solely based on its desire to avoid an inflow of racial minorities or low-income workers to the area.

Occasionally, courts have considered impacts tangentially related to the physical environment, such as effects on public safety, social services, and urban growth, but only if the primary impact is to the physical environment.<sup>33</sup> In *Hanly v. Kleindienst*,<sup>34</sup> for example, Appellants were residents and business owners from lower Manhattan.<sup>35</sup> Appellants twice sought injunctive relief to prevent the construction of a jail in their neighborhood.<sup>36</sup> The Second Circuit Court of Appeals was called upon to determine whether construction of the jail “significantly affect[ed] the quality of the

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26. *Brown*, 570 F.2d. at 522.

27. *Id.*

28. *See id.*

29. *See Maryland-Nat’l Capital Park & Planning Comm’n v. United States Postal Serv.*, 487 F.2d 1029, 1037 (D.C. Cir. 1973) (holding Congress did not mean to include “people pollution” as adverse environmental effect under NEPA).

30. 487 F.2d 1029 (D.C. Cir. 1973).

31. *Id.* at 1037.

32. *Id.*

33. *See Hanly v. Kleindienst*, 471 F.2d 823 (2d Cir. 1972); *see also Como-Falcon Coal., Inc. v. United States Dep’t of Labor*, 465 F. Supp. 850, 859 (D. Minn. 1978).

34. 471 F.2d 823 (2d Cir. 1972).

35. *Id.* at 826.

36. *Id.*

human environment,” necessitating a formal EIS.<sup>37</sup> Consistent with other judicial holdings, the court held the term “human environment” did not encompass “psychological and sociological effects upon neighbors.”<sup>38</sup> The court did, however, break with other courts by noting that the “potential increase in crime might tip the scales in favor of a mandatory detailed impact statement.”<sup>39</sup> Notwithstanding the holding in *Hanly*, the courts have been clear that if the primary impact is not to the physical environment, then secondary socio-economic and psychological effects are irrelevant and will not force a federal agency to draft an EIS.<sup>40</sup>

To make matters worse, even if an agency drafts an EIS, NEPA has no enforcement mechanism that requires federal agencies to reject the proposed project or mitigates the adverse harms to local communities.<sup>41</sup> Instead, the EIS is only meant to force the federal agency to (1) take a “hard look” at significant environmental impacts and (2) make the information available to the public.<sup>42</sup> Regardless of what the agency ultimately discovers in its study, it is not required to adopt an alternative course of action or scrap the proposed action altogether.<sup>43</sup> Under the current version of NEPA, even if an agency discovered potentially detrimental harm to a local community, NEPA does not compel the agency to alleviate the harm.

Consequently, NEPA and its definition of “human environment” continue to be ineffective in protecting the most vulnerable humans in our society. NEPA does not take into account the psychological impact to minority communities, such as the fear and anxiety of exposure to harmful emissions and waste, or the socio-economic effects to people of color, such as unemployment or damage to local businesses. Additionally, NEPA fails to consider the disproportionate rate in which African Americans are being

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37. *Id.* at 829.

38. *Id.* at 833.

39. *Hanly*, 471 F.2d at 835.

40. *See* *Image of Greater San Antonio v. Brown*, 570 F.2d 517, 522 (5th Cir. 1978).

41. *See* *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 359 (1989) (holding NEPA does not require federal agencies to develop detailed mitigation plans); *see also* *Balt. Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 97-98 (1983) (noting NEPA requires federal agencies to only take “hard look” at environmental impact of proposed projects); *Mayo v. Jarvis*, 177 F.Supp.3d 91, 107 (D.D.C. 2016) (explaining NEPA does not require federal agencies to take particular course of action but instead to take “hard look” at environmental impacts).

42. For a discussion of the EIS “enforcement mechanism,” *see supra* note 41.

43. *See id.*

targeted and exposed to harmful environmental pollutants.<sup>44</sup> Finally, NEPA lacks an enforcement mechanism. Thus, even if comprehensive EIS were completed examining the psychological, socio-economic, and discriminatory effects of a proposed federal action, there would be no way to compel federal agencies to take alternative action to mitigate harm to local minority communities.

### III. ENVIRONMENTAL RACISM

Over the past four decades, experts from a variety of fields have concluded that African Americans and other ethnic minorities from low-income communities across the United States are exposed to disproportionately high levels of air pollution, toxic waste, and other environmental hazards.<sup>45</sup> These discriminatory practices have been coined “environmental racism.”<sup>46</sup> The term “environmental racism” is defined as “environmental policies, practices, or directives that differentially affect or disadvantage individuals, groups, or communities based on race and [color].”<sup>47</sup>

The first major study revealing the existence of environmental racism was published in 1983 by the U.S. General Accounting Office (“GAO”), now known as the Government Accountability Office.<sup>48</sup> The GAO concluded low-income, black communities made up the majority of the populations living in areas with waste sites.<sup>49</sup> Four years later, the United Church of Christ (“UCC”) Commission for Racial Justice published *Toxic Wastes and Race in the United States*.<sup>50</sup> This landmark study concluded that on average, people of color made up twenty-four percent of the population of neighborhoods with a single hazardous waste site.<sup>51</sup> For neighborhoods that

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44. For a discussion of NEPA’s limited considerations, see *infra* notes 48, 50, 55, 59, 62-3, and 72.

45. See Alejandro Colsa Perez ET AL., *Evolution of the environmental justice movement: activism, formalization and differentiation*, ENVTL. RES. LETTERS (Oct. 13, 2015), <https://iopscience.iop.org/article/10.1088/1748-9326/10/10/105002/pdf> (analyzing environmental impact on minority, low-income communities in United States).

46. Robert D. Bullard, *Confronting Environmental Racism in the Twenty-First Century*, GLOBAL DIALOGUE (2002) (parentheticals omitted).

47. *Id.*

48. *Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities*, U.S. GEN. ACCOUNTING OFFICE (June 1, 1983), <https://www.gao.gov/assets/150/140159.pdf>.

49. *See id.*

50. United Church of Christ Commission for Racial Justice, *Toxic Wastes and Race in the United States*, U.S. NUCLEAR REGULATORY COMM’N (1987), <https://www.nrc.gov/docs/ML1310/ML13109A339.pdf>.

51. *Id.*

did not have any hazardous waste sites, the minority population was half that amount at twelve percent.<sup>52</sup> Further, where a community had more than one hazardous waste site or was one of the nation's largest waste sites, the minority population spiked up to thirty-eight percent.<sup>53</sup> Communities with multiple waste sites, or a particularly large waste site, possessed a minority population of more than three times that of communities without a hazardous waste facility.<sup>54</sup>

The UCC's *Toxic Wastes and Race in the United States* drew attention to environmental racism and "spurred academic researchers to take a close look at the extent, causes and consequences of disproportionate environmental burdens in poor and people of color communities . . . ."<sup>55</sup> Subsequently, several organizations initiated studies exploring prejudicial environmental policies and practices, including the National Association for the Advancement of Colored People ("NAACP") and the Environmental Protection Agency ("EPA"). The significant progress of these organizations led to President Bill Clinton's 1994 Executive Order 12898, which sought to "improve research and data collection relating to the health of and environment of minority populations and low-income populations."<sup>56</sup> Since 1994, scholarship related to environmental racism has continued to grow, but the discriminatory practices against people of color persist.

In 2014, a study revealed "significant disparities in [air pollution] concentrations for specific socioeconomic groups."<sup>57</sup> Notably, air pollution exposure was thirty-eight percent higher for minorities than for whites.<sup>58</sup> In 2018, scientists affiliated with the National Center for Environmental Assessment studied the burden of air pollution on various groups according to race.<sup>59</sup> Their study revealed minorities had a twenty-eight percent higher burden than the overall population.<sup>60</sup> African Americans alone had a fifty-four

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52. *Id.*

53. *Id.*

54. *Id.*

55. United Church of Christ Commission Justice & Witness Ministries, *Toxic Wastes and Race at Twenty: 1987-2007*, NAT. RES. DEF. COUNCIL (Mar. 2007), <https://www.nrdc.org/sites/default/files/toxic-wastes-and-race-at-twenty-1987-2007.pdf>.

56. Exec. Order No. 12898, 5932 C.F.R. § 651.1759 7629 (1994) (outlining strategy to tackle environmental injustice in United States).

57. Lara P. Clark ET AL., *National Patterns in Environmental Injustice and Inequality: Outdoor NO2 Air Pollution in the United States*, 9 PLOS ONE 1, 2 (2014).

58. *Id.* at 7.

59. Ihab Mikati ET AL., *Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status*, 108 AM. J. OF PUB. HEALTH 480 (2018).

60. *Id.* at 482.

percent higher burden than the overall population.<sup>61</sup> In 2019, the Union of Concerned Scientists found air pollution exposure for African Americans was “[sixty-one] percent higher than for white residents.”<sup>62</sup> Ostensibly, these trends indicate harmful emissions on African Americans and other racial minorities continue to worsen.

While the exposure to higher levels of air pollution is alarming, the available data concerning the harm from such exposure is even more distressing. African Americans in the United States face a higher risk of cancer due to toxic air emissions than the rest of the population.<sup>63</sup> A 2017 study found “[o]ver [one] million African Americans live in counties that face a cancer risk above EPA’s level of concern from toxics emitted by natural gas facilities.”<sup>64</sup> Additionally, approximately 7.3 percent of Caucasian children are diagnosed with asthma.<sup>65</sup> By comparison, that number is almost doubled at 13.4 percent for African American children.<sup>66</sup> Similarly, the study found “the death rate for African American children with asthma is one per [one] million, while for white children it is one per [ten] million.”<sup>67</sup>

Air pollution is not the only environmental hazard that disproportionately imperils minorities. A 2007 study conducted by the UCC “reveal[ed] racial and socioeconomic disparities in the location of the nation’s commercial hazardous waste facilities are greater than previously reported.”<sup>68</sup> The study found the proportion of minorities in an area increased with proximity to the nation’s hazardous waste treatment, storage, and disposal facilities. As noted in the study:

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61. *Id.*

62. Maria Cecilia Pinto de Moura & David Reichmuth, *Inequitable Exposure to Air Pollution from Vehicles in the Northeast and Mid-Atlantic*, UNION OF CONCERNED SCIENTISTS (June 2019), <https://www.ucsusa.org/sites/default/files/attach/2019/06/Inequitable-Exposure-to-Vehicle-Pollution-Northeast-Mid-Atlantic-Region.pdf>.

63. *Fumes Across the Fence-Line: The Health Impacts of Air Pollution from Oil & Gas Facilities on African American Communities*, CLEAN AIR TASK FORCE (Nov. 4, 2017), [https://www.catf.us/wp-content/uploads/2017/11/CATF\\_Pub\\_FumesAcrossTheFenceLine.pdf](https://www.catf.us/wp-content/uploads/2017/11/CATF_Pub_FumesAcrossTheFenceLine.pdf) (relaying increased risk of cancer for U.S. African American population).

64. *Id.* (describing study findings on increased cancer risk in African American community).

65. *Id.* at 8.

66. *Id.*

67. *Id.* (comparing asthma death rates of Caucasian and African American children).

68. See United Church of Christ Commission for Racial Justice, *supra* note 55, at 49.

Beyond five kilometers of the nation's hazardous waste facilities the proportion of people of color is only 22.2%. However, at distances between three and five kilometers, the proportion of people of color increases to 35.7%. It increases again to 46.1% between the distances of one and three kilometers, and reaches 47.7% within a distance of one kilometer.<sup>69</sup>

Similarly, a study by the NAACP and Clean Air Task Force discovered oil refineries were built in African American communities at a disproportionately high rate compared to the rest of the population.<sup>70</sup> The joint study found “[m]ore than [one] million African Americans live within a half mile of existing natural gas facilities” and “6.7 million African Americans live in [counties] with oil refineries.”<sup>71</sup>

In 2019, the Natural Resources Defense Council (“NRDC”) partnered with the Environmental Justice Health Alliance for Chemical Policy Reform (“EJHA”) to analyze nationwide violations of the Safe Drinking Water Act (“SDWA”) from 2016 to 2019.<sup>72</sup> Their study revealed minority populations were disproportionately exposed to unsafe drinking water.<sup>73</sup> The NRDC and EJHA found “race, ethnicity, or language spoken had the strongest relationship to slow and inadequate enforcement of the SDWA of any sociodemographic characteristic analyzed.”<sup>74</sup> Being perpetually subjected to harmful environmental substances has both a physical and psychological impact on local minorities. A 2011 study found that “residential proximity to industrial activity has a direct, positive association with perceptions of neighborhood disorder, feelings of personal powerlessness, and psychological distress.”<sup>75</sup> It also included the following findings:

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69. *Id.* at 43. (relaying kilometer distances of toxic waste sites and proximity to minority communities).

70. See *Fumes Across the Fence-Line: The Health Impacts of Air Pollution from Oil & Gas Facilities on African American Communities*, *supra* note 63, at 4 (stating similar close proximity of minority communities to oil refineries).

71. *Id.*

72. Kristi Fedinick, Steve Taylor, & Michele Roberts, *Watered Down Justice*, NRDC (Sept. 2019), <https://www.nrdc.org/sites/default/files/watered-down-justice-report.pdf> (introducing Safe Drinking Water Act analysis by NRDC).

73. *Id.* at 4 (highlighting investigation conclusions).

74. *Id.* (quoting suspected reasons for slow response to safe drinking water availability).

75. Liam Downey & Marieke Van Willigen, *Environmental Stressors: The Mental Impacts of Living Near Industrial Activity*, J. OF HEALTH AND SOC. BEHAV. (Sept. 2005), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3162363/> (relating industrial sites to feelings of disorder and powerlessness).

Individuals who live in tracts with high average facility levels report more symptoms of depression, perceive their neighborhoods to have greater levels of disorder, and feel that they have less control over their lives than do individuals who live in tracts with lower average facility levels. Likewise, individuals who live in Census tracts with high levels of average waste report higher levels of depression symptoms, higher levels of disorder, and lower levels of control than do individuals who live in tracts with lower average waste levels.<sup>76</sup>

A 2016 study found the placement of major facilities near minority and low-income communities has “broad and complicated” psychological implications.<sup>77</sup> Participants in the study discussed living near refineries and specifically noted feelings of “oppression,” “guilt,” “self-blame,” “anxiety,” and “depression.”<sup>78</sup>

Despite the increase in studies exploring the national issue of environmental inequality, the disproportionate exposure of minority communities to harmful pollution remains largely unnoticed by the American public. Communities of color continue to be targeted as dumping grounds for toxic waste and building sites for new hazardous facilities, resulting in higher rates of illness, adverse socio-economic impacts, and the deterioration of their mental health. NEPA’s current provisions have done little to mitigate these harms or bring these injustices to light.

#### IV. NEPA’S PROPOSED REVISIONS

On September 14, 2020, the CEQ’s 2020 revisions to NEPA, which include enormous overhauls, went into effect.<sup>79</sup> These changes are steps in the wrong direction because they make it easier for federal agencies to initiate major federal actions with less oversight and less public awareness. The revisions reduce the instances requiring a federal agency to draft an EIS and create less opportunity for the American public to become aware of state-sanctioned projects discriminating against racial minorities. This deteri-

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76. *Id.* at 10 (echoing that proximity to waste sites leads to negative sense of self).

77. Elizabeth Gonzalez, *Toxic Stress: Exploring Mental Health Narratives Of Environmental Justice in Richmond, California*, SMITH COLL. (2016), <https://scholarworks.smith.edu/theses/1771/> (furthering contention that proximity to industrial facilities is harmful).

78. *Id.* at 52-53 (citing specific negative feelings noted by those living near industrial sites).

79. *See* 85 Fed. Reg. 43304 (proposed July 6, 2020).

oration in accountability is likely to result in increased exploitation of racial and ethnic minorities by federal agencies.

Among the alterations was a change to the definition of “human environment,” which involved removing the word “people” and replacing it with “present and future generations of Americans.”<sup>80</sup> This modification serves little purpose other than to systematically exclude aliens, who are often racial minorities, from consideration under NEPA. Similarly, the CEQ added specific language to Section 1502.16(b), which addresses when an EIS is required, describing how economic or social effects by themselves do not require preparation of an EIS.<sup>81</sup> The rejection of socio-economic impacts codified in Section 1502.16(b) will further encourage agencies to ignore non-physical factors, such as psychological effects, when determining whether an EIS is necessary.

Additionally, the 2020 revisions to NEPA eliminate the language directing agencies to consider “direct, indirect, and cumulative effects,” and replaces it with a vague requirement to consider “those effects that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action.”<sup>82</sup> This alteration codifies a further reduction of federal agencies’ obligation to consider the long-term health and safety effects of their proposed actions.<sup>83</sup> Limiting federal agencies’ responsibility to acknowledge effects that have “a reasonably close causal relationship” absolves them of having to consider the complex and long-term health and safety effects that their actions will have on local communities.<sup>84</sup> The proposed revisions will only exacerbate the overwhelming environmental burdens currently placed on minority communities. Moreover, the modifications will open the floodgates to even more discriminatory practices by the federal government and further dilute the already minimal amount of public awareness of these inequitable practices.

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80. *Id.* at 43344-45, 43375 (relaying facial edits of NEPA as ineffectual).

81. *Id.* at 43344-45 (cataloging additional proposed edits from CEQ).

82. *Id.* at 43343 (criticizing NEPA’s foreseeability approach adopted in recent revisions).

83. *See Ctr. for Biological Diversity, Manasota-88, Inc. v. United States Army Corps of Eng’rs*, 941 F.3d 1288, 1295 (11th Cir. 2019) (explaining impact of “close causal relationship” language on agencies’ responsibilities under NEPA).

84. *See supra* note 79, at 43343 (defining and discussing “close causal relationship” standard proposed by CEQ).

## V. CONCLUSION

NEPA, the federal law created to lessen the harmful effects of man's impact on the "human environment," has been ineffective in protecting an entire class of people and enables the expansion of existing systemic racism against people of color. African American and other racial minority communities continue to be oppressed and targeted by discriminatory practices resulting in harmful exposure to air pollution, unsafe drinking water, and lethal waste. In essence, NEPA's definition of "human environment" has rendered the word "human" meaningless. While courts reject explicit racism from their EIS analysis, they continue to ignore the surreptitious socio-economic, psychological, and long-term health impacts of major federal actions on communities of color.

Changes should be made to undo the CEQ's unsafe 2020 revisions and NEPA's long history of neglecting minority communities. In light of the continuing exposure of minority communities to harmful pollution, NEPA should require federal agencies to conduct more stringent, frequent, and thorough analyses on the environmental impact of proposed projects. NEPA should also mandate that federal agencies include an in-depth study of the racial and ethnic demographics in the area surrounding the site of a proposed federal project in the EIS. Moreover, the public should be informed of minority communities being targeted by federal actions and the potential harm to which these neighborhoods will be exposed. Further, the EIS analysis should incorporate an examination of the non-physical and long-term health effects of proposed actions. Specifically, the EIS should be required to include considerations of the psychological well-being of communities, impacts on the local economy, and potential long-term health and safety effects, including increases in health conditions and crime rates. Next, NEPA should mandate that agencies consider available alternatives to the proposed project site and whether the proposed action is in a community whose population primarily consists of racial and ethnic minorities. Likewise, federal agencies should be required to include in the EIS adequate alternatives to the project site that have the ability to mitigate the potential harm to low-income and minority communities.

Finally, the inclusion of an enforcement mechanism in NEPA is long overdue. Currently, NEPA does nothing more than make federal agencies take a "hard look," at the potential impacts of a proposed action. Even if a federal agency's findings are distressing, it is free to move forward with the federal action, as long as the EIS

is completed. This results in a hollow requirement that does nothing to protect minority communities. Opponents to enforcement action mechanisms argue federal agencies are deterred from taking major federal actions that have adverse impacts on the environment because the public is made aware of this impact through the EIS. However, in practice, this argument fails as the public largely remains ignorant of the detrimental toll these discriminatory policies have on communities of color.

African American and other minority communities are relentlessly subjected to contaminated water, putrid air, and toxic waste. They carry this burden at a demonstrably higher rate than the Caucasian population. NEPA was passed not only to protect the physical environment but also the “human environment,” the humans of our nation. For too long, an entire class of humans has been ignored by the definition of “human environment.” Further, the Trump administration’s 2020 revisions to NEPA only perpetuate further maltreatment of minority communities. These amendments should be rolled back and the long history of narrowly interpreting “human environment” corrected in the form of new revisions requiring comprehensive impact studies, express expansion of the definition of “human environment,” more transparent reporting requirements, and an enforcement mechanism allowing proposed federal actions to be replaced by adequate alternative options. NEPA’s definition of “human environment” has long disregarded African Americans and other racial minorities. Improvements reconciling these deficiencies should be implemented without delay.