

NRR PROCEDURE FOR ENVIRONMENTAL JUSTICE REVIEWS

BACKGROUND

This procedure provides guidance to the Office of Nuclear Reactor Regulation (NRR) staff on conducting environmental justice (EJ) reviews for proposed actions as part of NRC's compliance with the National Environmental Policy Act (NEPA). This guidance does not create any new substantive or procedural NEPA-related requirements. The guidance is merely intended to improve internal NRR functions by helping to ensure that NRC is fully discharging its existing NEPA responsibilities. Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 FR 7629 (1994), directs Federal agencies in the Executive Branch to consider environmental justice so that their programs and activities will not have "... disproportionately high and adverse human health or environmental effects..." The NRC, although an independent agency, indicated its willingness to comply with the Executive Order.

The Council on Environmental Quality (the Council) finalized guidelines for Federal agencies on how to integrate EJ into the NEPA process. The guidelines are contained in Council's December 10, 1997, document, "Environmental Justice Guidance Under the National Environmental Policy Act." The Council's guidance is not binding on NRC activities; however, much of the Council's guidance has been incorporated in this procedure.

SCOPE

Environmental justice reviews will be performed for all regulatory actions, including licensing actions and rulemaking activities, requiring preparation of an environmental impact statement (EIS), a supplement to an EIS, or a generic EIS (GEIS). An EIS is required for those regulatory actions identified in 10 CFR 51.20 or when there is a sufficient impact on the physical or natural environment to be "significant" within the meaning of NEPA. Agency consideration of impacts on minority or low-income populations may lead to the identification of disproportionately high and adverse human health or environmental effects that are significant and that otherwise would be overlooked.

For environmental assessments (EAs) with a Finding of No Significant Impact (FONSI) determination, the staff concludes, as part of its analysis, that there will be no significant offsite impacts from the action. If no significant offsite impacts will occur, no member of the public will be substantially affected. Therefore, in most cases, there can be no disproportionately high and adverse effects of impacts on any member of the public including minority or low-income populations. In these instances, no environmental justice review will be performed. However, under special circumstances, environmental justice reviews may be needed for actions in which an EA/FONSI is prepared if there is the potential that an analysis of environmental justice issues may identify significant environmental impacts that would be otherwise not identified. In these cases, the staff will inform NRR senior management and a decision will be made on a case-by-case basis whether the circumstances warrant an environmental justice review for an EA.

Under NEPA, the identification of a disproportionately high and adverse human health or environmental effect on a minority or low-income population does not preclude a proposed agency action from going forward, nor does it necessarily compel a conclusion that a proposed action is environmentally unsatisfactory. Rather, the identification of such an effect should heighten agency attention to alternatives (including alternative sites), mitigation strategies, monitoring needs, and preferences expressed by the affected community or population.

A graduated evaluation of impacts may be performed, if appropriate, if the nature of the impact has an identifiable variation within the area or with distance from the source (for example, radiation exposure).

DOCUMENTATION

Each EIS, EIS supplement, or GEIS shall contain a section titled, "Environmental Justice," which will either contain the complete environmental justice review or a reference to another document containing the review. If a reference to another document is used, a summary of the review and its conclusions should be included in the EIS section. An EA will only have an environmental justice section in the rare and unusual situation in which a review was performed.

GENERAL PRINCIPLES OF ENVIRONMENTAL JUSTICE

Environmental justice issues encompass the usual broad range of impacts normally covered by NEPA. The staff should be sensitive to the fact that environmental justice issues may arise at any step of the NEPA process.

The staff should consider the composition of the affected area to determine whether minority or low-income populations are present in the area and affected by the proposed action. If there are significant impacts from the proposed action, the staff needs to determine whether there may be disproportionately high and adverse human health or environmental effects on minority or low-income populations.

As with all EIS reviews, the staff should consider relevant public health data and industry data concerning the potential for multiple or cumulative exposure to human health or environmental hazards in the affected population and historical patterns of exposure to environmental hazards, to the extent such information is reasonably available. The staff should consider multiple or cumulative effects, where appropriate, even if certain effects are not within the control or subject to the discretion of the agency proposing the action. This means that cumulative impacts from other facilities in the same area not licensed by the NRC should be included in the review. Impacts from other facilities licensed by the NRC should be considered to the extent possible.

The staff should recognize the interrelated cultural, social, occupational, historical, or economic factors that may amplify the natural and physical environmental effects of the proposed agency action. These factors should include the physical sensitivity of the community or population to

particular impacts; the effect of any disruption on the community structure associated with the proposed action; and the nature and degree of impact on the physical and social structure of the community.

The staff should develop effective public participation strategies. The staff should acknowledge and seek to overcome linguistic, cultural, institutional, geographic, and other barriers to meaningful participation and should incorporate active outreach to affected groups.

The staff should strive for meaningful community representation in the process. The staff should be aware of the diverse constituencies within any community and should endeavor to have complete representation of the community as a whole. The staff should be aware that community participation must occur as early as possible if it is to be meaningful.

The staff should seek tribal representation in the process in a manner that is consistent with government-to-government relations.

The review should focus on the action being taken. If the action is, for example, a license amendment, only the activities covered by the amendment, and not the overall impact from the issuance of the original license, should be reviewed. This applies even if an EJ review was not performed for the original action.

PROCEDURES FOR LICENSING ACTIONS

The following guidance should be used when performing an environmental justice review. This procedure may not address all situations that may occur. Project managers should consult with the Generic Issues, Environmental, Financial and Rulemaking Branch (RGEB) whenever an environmental justice review is undertaken.

1. Determine whether the regulatory action will be supported by an EIS or by an EA. When the regulatory action requires the preparation of an EIS or a supplement to an EIS, an EJ review must be prepared using the process discussed in paragraphs 2 through 9 below. When the regulatory action involves the siting of new facilities or requires the evaluation of alternative sites, environmental justice information must be developed for each site.

Under most circumstances, no environmental justice review should be conducted where an EA is prepared. If it is determined that a particular action will have no significant environmental impact, then there is no need to consider whether the action will have disproportionately high and adverse impacts on certain populations. However, in special cases, the reviewer may recommend to management that staff conduct an environmental justice analysis in preparing an EA. Such determination will be made on a case-by-case basis and only where there is an obvious potential that the consideration of specific demographic information at the site may identify significant impacts that would not otherwise be considered. In the rare situation that an environmental justice analysis is performed for an EA, the process outlined in paragraphs 2 through 9 should be followed.

2. During the public scoping process for the EIS, include environmental justice as a discussion topic along with other topics normally addressed in the EIS scoping process. Solicit input from populations potentially affected by the action.
3. Using the input received from the public scoping process and the evaluation of environmental impacts for the EIS, determine the location of all adverse human health or environmental impacts that are known to be significant or perceived as significant by groups and/or individuals (typically up to 80 kilometers or 50 miles). The locations that are impacted by the proposed action are called environmental impact sites or affected areas. More than one environmental impact site may exist if multiple impacts can occur from the proposed action. The size of the environmental impact site or affected area will vary according to the nature of the impacts and should be consistent with the areas used to review environmental impacts in the EIS. See Figure 1 for examples.
4. Determine the geographic area to be used for the comparative analysis in determining whether a minority or low-income population exists. The area used for the comparative analysis is a larger area that encompasses all of the environmental impact sites (and is called the geographic area). See Figures 1 and 2 for examples.

When a regulatory action is being considered that involves alternative site locations, in addition to determining the individual geographic area for each site as defined above, determine an overall geographic area that encompasses all of the alternative site geographic areas. See Figure 2 for an example.

If the environmental impact sites overlap several States, then the geographic area will encompass parts of each State. The geographic area does not have to follow established boundaries such as county or State lines.

5. Determine minority and low-income composition in the geographic area:

Determine the percentage of the total population within the geographic area for each minority and low-income category.

The staff may use the most recent demographic data available from the Bureau of the Census (the Bureau) to identify the composition of the potential geographic area. Geographic distribution by race, ethnicity, and income, as well as delineation of tribal lands and resources, should be examined. Census data are available in published formats, and on CD-ROM available through the Bureau. These data are also available from a number of local, college, and university libraries, and the World Wide Web. Information may also be found through demographic information and studies, such as the Landview system, which is used by the Bureau to assist in utilizing data from a geographic information system.

Minority is defined as: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic.

Low-income households should be identified using the annual statistical poverty thresholds from the Bureau.

6. For each environmental impact site, determine the percentage of the minority population within the environmental impact site for each minority category. Likewise, determine the percentage of the households within the environmental impact site that are below the poverty level (low-income). The selection of the appropriate unit of geographic analysis may likely be a census block group or a governing body's jurisdiction, a neighborhood, census tract or similar unit.

If no minorities or low-income households are identified for any environmental impact site, document the conclusion. The environmental justice review is complete.

7. An environmental justice review must be performed if the following exists:

A minority population exists if (1) the minority population of the environmental impact site exceeds 50 percent or (2) the minority population percentage of the environmental impact site is significantly greater (typically at least 20%) than the minority population percentage in the geographic area chosen for the comparative analysis.

A low-income population is considered to be present if the percentage of households below the poverty level in an environmental impact site is significantly greater (typically at least 20%) than the low-income population percentage in the geographic area chosen for the comparative analysis.

In identifying minority or low-income populations, reviewers may consider as a community either a group of individuals living near one another or a group of individuals that experience common conditions of environmental exposure or effect.

8. When the review identifies minority or low-income populations, the staff needs to identify whether disproportionately high and adverse effects result from the proposed action. This is determined by completing the following steps:

(a) Are the radiological health effects significant or above generally accepted norms? Is the risk or rate of hazard significant and appreciably in excess of the general population? Do the radiological health effects occur in groups affected by cumulative or multiple adverse exposures from environmental hazards?

(b) Is there an impact on the natural or physical environment that significantly and adversely affects a particular group? Are the environmental effects significant? Are they having or may they have an adverse impact on a group that appreciably exceeds or is likely to appreciably exceed those on the general

population? Do the environmental effects occur or would they occur in groups affected by cumulative or multiple adverse exposure from environmental hazards?

(c) Reviewers should recognize that the impacts within minority or low-income populations may be different from impacts on the general population due to a community's distinct cultural practices. In addition, reviewers should take into account different patterns of living and consumption of natural resources, such as subsistence consumption.

(d) Assess the significance or potential significance of such adverse impact on each minority or low-income population.

Provide an assessment of the degree to which each minority or low-income population is disproportionately receiving any benefits compared to the entire geographic area.

Discuss any mitigative measures for which credit is being taken to reduce disparate impacts.

9. The staff should clearly state the conclusion regarding whether the proposed action will have disproportionately high and adverse environmental impacts on minority or low-income populations. This statement should be supported by sufficient information for the public to understand the rationale for the conclusion. The underlying information should be presented as concisely as possible, using language that is understandable to the public and minimizes use of acronyms or jargon.

PROCEDURES FOR RULEMAKING ACTIVITIES

1. The staff responsible for rulemaking should integrate EJ into the proposed and final rules that require an EIS, EIS supplement, or generic EIS to the same extent that it integrates other relevant environmental considerations.
2. If it is known in advance that a particular rulemaking might impact a specific population disproportionately, the NRC staff should ensure that the population knows about the rulemaking and is given the opportunity to participate. Such actions may include translating the Federal Register Notice (FRN) into a language other than English for publication in a local newspaper and holding public outreach meetings in the affected area.
3. As noted in the "Scope" section, there may be special circumstances under which a rulemaking that has an EA/FONSI prepared or is categorically excluded from a NEPA review may identify special environmental impacts not otherwise identified. In these cases, the staff will inform NRR senior management and a decision will be made on a case-by-case basis whether the circumstances warrant an environmental justice review for an EA.

4. If an environmental justice analysis is performed for a rulemaking activity, the staff should include language contained in NUREG/BR-0053, Revision 4, Sections 3.13 and 5.13 in the FRN to seek and welcome public comments on environmental justice. The staff should follow steps 2-9 of "Procedures for Licensing Actions" (above), to perform the environmental justice review.
5. Public comments received pertaining to environmental justice on rulemaking should be addressed in the final FRN in the same section and at the same level of detail as comments received on other aspects of the environmental considerations for the rule.
6. When a rule is being modified or developed that contains siting evaluation factors or criteria for siting a new facility, the staff should consider including specific language in the rule or supporting regulatory guidance to state that an environmental justice review will be included as part of the normal environmental analysis performed in siting a new facility.