

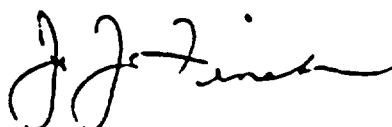


UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D C. 20555-0001

April 21, 1995

MEMORANDUM TO: NMSS Division Directors
NMSS Branch Chiefs
NMSS Section Leaders

FROM: John J. Linehan,
Program Management, Policy Development
and Analysis Staff
Office of Nuclear Material Safety
and Safeguards 

SUBJECT: NMSS POLICY & PROCEDURES LETTER 1-50, Revision 1
"ENVIRONMENTAL JUSTICE IN NEPA DOCUMENTS"

The attached NMSS Policy & Procedures (P&P) Letter 1-50, Revision 1 provides revised guidance for addressing the issue of environmental justice in NEPA reviews. Environmental justice will still be addressed in all Environmental Impact Statements, but will only be considered for special case Environmental Assessments. Management (Division Directors/Branch Chiefs) will make the determination that an environmental justice evaluation should be included in an Environmental Assessment. The agency will consider the Council on Environmental Quality (CEQ) guidance on environmental justice once it is issued, and this interim procedure will be revised as appropriate.

Please review this revised procedure and disseminate the information to the appropriate staff. This procedure is effective immediately and will remain in effect until the CEQ guidelines are issued.

If you have any questions, please contact Merri Horn, FCSS, at 415-8126.

Attachment: NMSS P&P Letter 1-50, Revision 1

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ENVIRONMENTAL JUSTICE IN NEPA DOCUMENTS

BACKGROUND:

On February 11, 1994, The President signed Executive Order 12898 "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population" which directs all Federal agencies to develop strategies for considering environmental justice in their programs, policies, and activities. Environmental justice is described in the Executive Order as "identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." The NRC will consider the Council on Environmental Quality (CEQ) guidelines on how to take environmental justice into account when preparing documents under the National Environmental Policy Act (NEPA) when they are issued. This procedure provides interim guidance on where and how environmental justice is to be handled in NEPA documents. When the CEQ guidelines are available, this interim procedure will be revised, as required.

POLICY:

It is the policy of NMSS to address environmental justice in every Environmental Impact Statement (EIS) and every supplement to an EIS that is issued by NMSS. Except in special cases, environmental justice need not be addressed for Environmental Assessments (EA) in which a Finding of No Significant Impact (FONSI) is made.

For EAs with a FONSI determination, the staff concludes as part of its analysis that there will be no significant impacts from the action. Therefore, there would be no disproportionately high and adverse effects or impacts on members of the public, including minority or low-income populations. Generally, no environmental justice evaluation need be performed. However, there will be special cases where environmental justice reviews will be required for actions in which an EA/FONSI is prepared. These cases may include regulatory actions that have substantial public interest, decommissioning cases involving onsite disposal in accordance with 10 CFR 20.2002, decommissioning/decontamination cases which allow residual radioactivity in excess of release criteria, or cases where environmental justice issues have been previously raised. Management (Division Director/Branch Chief level) will decide on a case-by-case basis when special circumstances exist that require the staff to perform an environmental justice review for an EA.

The level of discussion on environmental justice will vary based on the circumstances of each action. The actual determination of impacts will not change, the evaluation and analysis will be expanded. Environmental justice is a different manner of characterizing the impacts; it does not identify new impacts to analyze, although it does involve the collection of additional data. Each EIS or special case EA should contain a section that fully describes the environmental justice review process; the length of the section depends on the circumstances. Guidance is provided below.

PROCEDURES:

1. The first step in evaluating environmental justice potential is to obtain demographic data (census data) for the immediate site area and surrounding communities. Data for the State, county, and town will also be necessary. The demographic data should consist of income levels and minority breakdown. For the purpose of this procedure, minority is defined as individuals classified by the U.S. Bureau of the Census as Negro/Black/African American, Hispanic, Asian and Pacific Islander, American Indian, Eskimo, Aleut and other non-White persons. Low-income is defined as being below the poverty level as defined by the U.S. Census Bureau.

Guidelines for determining the area for assessment are provided in the following discussion. If the facility is located within the city limits, a 0.56 mile radius (1 square mile) from the center of the site is probably sufficient for evaluation purposes; however, if the facility itself covers this much area, use a radius that would be equivalent to 0.5 miles from the site. If the facility is located outside the city limits or in a rural area a 4 mile radius (50 square miles) should be used. (EPA is currently using 1 square mile and 50 square miles for their environmental justice profiles; they use both for each site.) These are guidelines, the geographic scale should be commensurate with the potential impact area (i.e. if impacts are predicted out to 5 miles, a 5 mile radius should be used.) The goal is to evaluate the "communities", neighborhoods, or areas that may be disproportionately impacted. You may want to consider an incremental radius (for example, if a 4 mile radius is chosen, also obtain data for the 1, 2, and 3 mile radii.) The specific census data may be difficult to obtain; one possible source is the Geographic Information System. Other sources include the applicant, local governments, state agencies, or local universities. It is recommended that you utilize the Census Bureau's 10-year census for data on minorities and income level. The Census Bureau's 10-year census data has poverty thresholds that should be used for determining the number of economically stressed households.

Use the best available information.

Use the demographic data to determine the percent minority representation and the percent of economically stressed households. These percentages should be calculated for the site area, town, county and State. Describe the demographic data in the environmental justice section of the document.

The next step is to compare the area's percent of minority population to the state and county percentage of minority population and to compare the area's percent economically stressed households to the state percent of economically stressed households. Note that the jurisdiction that the area percentage is compared to is dependent on the geographic area used in describing the demographics. (It is possible that the geographic area could cross county and state lines and this should be considered when making comparisons.) If the area percentage exceeds that of the state or county percentage (or the comparison base used) for either minority population or economically stressed households by 20 percent, the site does have an environmental justice potential and environmental justice will have to be considered in greater detail. Additionally, if either the minority or low-income population percentage exceeds 50 percent, environmental justice will have to be considered in greater detail. If neither criterion is met, the site does not have an environmental justice potential and no further evaluation is necessary. Document the conclusion in the environmental justice section.

2. Once it is determined that a site does have a potential for an environmental justice concern, it is then necessary to determine if there is a "disproportionately high and adverse" impact (human health or environmental effect) to the minority or low-income population surrounding the site. This does not involve determining if there are any new impacts; impacts of the proposed action are to be determined in the usual manner. The impacts should be evaluated to determine those that affect these populations. In considering the impacts to the populations, differential patterns of consumption of natural resources should be considered (i.e. differences in rates and/or pattern of fish, vegetable, water and/or wildlife consumption among groups defined by demographic factors such as socioeconomic status, race, ethnicity, and/or cultural attributes.) The impacts to the local area surrounding the site should be summarized in the environmental justice section. It is not necessary to discuss the impacts at the same level of detail as in the impact sections. It is acceptable to briefly mention the impact and reference the section where it is discussed in greater detail.

The next step is to determine if the impacts disproportionately impact the minority or low-income population. Are the impacts greater for these populations? Are there any impacts experienced by these populations that are not experienced by others? In cases where the population is located next to the site, the impacts or potential for impact will likely be disproportionate for these populations. For instance, potential exposure to effluents may be greater to those living closest to the facility, noise and traffic may disrupt nearby residents to a greater extent than those living far from the site, and the potential risk due to accidents may be greater for nearby residents. If there are no disproportionate impacts, environmental justice is not an issue, no further analysis would be needed. Document the findings in the environmental justice section.

Next, it is necessary to determine if the impacts are high and adverse. Another way of stating this is: are the impacts significant, unacceptable or above generally accepted norms such as regulatory limits or state and local statutes and ordinances. Each impact should be reviewed for significance. If the statement can be made that none of the impacts are significant, then there are no disproportionate adverse and high impacts on the minority or low-income populations. Document the conclusion in the environmental justice section.

3. If there are significant impacts to the minority or low-income population, it is then necessary to look at mitigative measures and benefits. Determine if there are any mitigative measures that could be taken to reduce the impact. Discuss the measures. Discuss the benefits of the project to surrounding communities. Benefits to a specific group may be difficult to determine, particularly economic benefits. The conclusion at this point is project specific. The conclusion may be that there are disproportionately high and adverse impacts to minority and low-income populations; however, the mitigative measures and/or the benefits of a project outweigh the disproportionate impacts. If this is not the case, the facts should be presented so that the ultimate decision maker can weigh all aspects in making the agency decision. The Executive Order does not prohibit taking an action where there are disproportionate high and adverse impacts to minority and low-income populations.
4. The results of an environmental justice evaluation should be documented in the EIS or special case EA. The document should contain a distinct section on environmental justice even if the demographics do not indicate a potential for an environmental justice concern. If a site has already received an environmental justice evaluation, it is

acceptable to reference the previous evaluation and provide a summary of the findings and then add any new information that results from the proposed action. For instance, if environmental justice is included in a license renewal, it would not need to be completely readdressed for a license amendment.

Staff should look at the demographics of a site early in the review process. This will enable the staff to identify affected populations and try to include the affected population in the process. If public meetings are held concerning a specific site, an attempt should be made to include any minority or low-income community in the meeting. Extra measures should be taken to ensure that minority and low-income populations are given the opportunity to participate. This may include holding public meeting in the evenings or weekends or translating notices (and other documents) into a language other than English. If a representative(s) of the affected population has been identified such as an officer of an organized local group or a community leader, the individual(s) should receive notices of meetings and copies of Federal Register notices. During scoping meetings for an EIS, NMSS staff will solicit input on environmental justice issues.