

February 10, 2003

Robert W. Bishop, Esq.
Vice President and General Counsel
Nuclear Energy Institute
1776 I Street, N.W., Suite 400
Washington, D.C. 20006

Dear Mr. Bishop:

I am responding on behalf of the U.S. Nuclear Regulatory Commission (NRC) to your letter of December 20, 2002, to the Secretary of the Commission concerning the NRC's voluntary implementation of Executive Order (E.O.) 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations*.

In your letter and the attached analysis of E.O. 12898, you argue that the E.O. does not create any new legal rights or responsibilities, does not provide a legal basis for contentions in NRC licensing proceedings, was intended only to provide guidance to Federal agencies for implementation of Title VI of the Civil Rights Act in those activities receiving "federal financial assistance," and is being mistakenly interpreted and misapplied by the Commission in NRC's licensing actions. You also express concerns about current NRC staff guidance on the detailed data the staff believes it needs to conduct an "environmental justice" evaluation and point out that all of this has immediate implications for three companies currently preparing early site permit applications for submittal in 2003. In light of your analysis and concerns, you recommend that the Commission reconsider its application of E.O. 12898, develop and issue a Policy Statement to articulate clearly the Commission's expectations on implementation of the E.O., direct the NRC staff to revise its guidance, and direct all Atomic Safety and Licensing Boards to dismiss any contentions related to environmental justice currently in litigation and to reject such contentions in future licensing proceedings.

At the outset, I would acknowledge that the NRC is not required to comply with E.O. 12898 and that the Commission has rather broad discretion and flexibility in the manner in which it treats environmental justice matters in its licensing actions. That said, I will also point out that the Commission has chosen to "endeavor to carry out the measures set forth in Executive Order 12898 and the accompanying Memorandum For the Heads of all Departments and Agencies" and to do so as part of its efforts to comply with the requirements of the National Environmental Policy Act (NEPA). Letter to the President from Ivan Selin, March 31, 1994.

At bottom, the E.O. simply calls on each Federal agency to "analyze the environmental effects, including human health, economic and social effects, of Federal actions, including effects on minority communities and low-income communities, when such analysis is required by the National Environmental Policy Act of 1969 (emphasis added)." Memorandum For the Heads of all Departments and Agencies (February 11, 1994), p.2. The NRC has always

recognized that the E.O. deals primarily with a Federal agency's fulfillment of its NEPA responsibilities and that is how the NRC has attempted to voluntarily implement the E.O. In general, the NRC's environmental impact statements have included an assessment of whether the proposed action will result in disparate impacts on low income or minority groups. But the examination is not without limits.

In the time since the issuance of the E.O., the Commission has provided guidance and directives on environmental justice matters when it has determined that there is a clear need for such guidance. Nonetheless, the Commission's actions in this regard have been taken on an ad hoc basis and have been limited to particular issues and contexts. The Commission recognizes that it could benefit from a more comprehensive assessment of, and guidance on, its approach to the consideration of environmental justice matters. Thus, we intend to ask the NRC staff to develop and propose for our consideration a draft policy statement on the treatment of environmental justice matters in NRC licensing, taking into consideration the comments in your letter, as appropriate.

I thank you for your interest in those matters and for the thoughtful analysis of E.O. 12989 that you provided.

Sincerely,

/RA/

Richard A. Meserve