

Requested  
Item 2



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

September 7, 1999

MEMORANDUM TO: NMSS Division Directors

FROM: Carl J. Paperiello, Director  
Office of Nuclear Material Safety  
and Safeguards *[Signature]*

SUBJECT: NMSS POLICY AND PROCEDURES LETTER 1-50,  
"ENVIRONMENTAL JUSTICE IN NEPA DOCUMENTS," REVISION 2

I am issuing the second revision to the Office of Nuclear Material Safety and Safeguards (NMSS) Policy and Procedures Letter 1-50, "Environmental Justice in NEPA Documents." The Letter was revised to ensure consistency with Environmental Justice guidance issued by the Council on Environmental Quality in December 1997. Please direct your staff to replace any earlier versions of the Letter with Revision 2.

Attachment: Policy and Procedures Letter 1-50, Rev. 2

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## ENVIRONMENTAL JUSTICE IN NEPA DOCUMENTS

### I. BACKGROUND

On February 11, 1994, The President signed Executive Order 12898 "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" 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." On December 10, 1997, the Council on Environmental Quality (the Council) issued, "Environmental Justice Guidance Under the National Environmental Policy Act." The Council developed this guidance to, "...further assist Federal agencies with their National Environmental Policy Act (NEPA) procedures." As an independent agency, the Council's guidance is not binding on the NRC; however, the NRC considered the Council's guidance on environmental justice while revising this policy and procedure letter, and the Council's guidance is included as an informational attachment to this letter.

### II. POLICY

This procedure provides guidance to the Office of Nuclear Materials Safety and Safeguards (NMSS) staff on conducting environmental justice reviews for proposed actions as part of NRC's compliance with NEPA. This guidance does not create any new substantive or procedural NEPA related requirements. The guidance is merely intended to improve internal NMSS management by helping to ensure that NRC is fully discharging its existing NEPA responsibilities.

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. Under most circumstances, no environmental justice review should be conducted where an Environmental Assessment (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 or circumstances, the reviewer may recommend to management that staff conduct an environmental justice analysis in preparing an EA. Such determinations 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. Management (Division Director/Branch Chief level) will decide on a case-by-case basis when special cases or 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, but the evaluation and analysis may be expanded. 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. Policy implementation guidance is provided in Section III. for licensing actions and Section IV for rulemakings.

ATTACHMENT

### III. POLICY IMPLEMENTATION FOR LICENSING ACTIONS

- A. 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. In our experience, the recommended geographic area for evaluating census data is the census block group. The U.S. Census Bureau does not report information on income for blocks, the smaller geographic area, and census tracts are too large to identify minority or low income communities. A minority or low-income community may be considered as either a population of individuals living in geographic proximity to one another or a dispersed/transient population of individuals (e.g., migrant workers) where either type of group experiences common conditions of environmental exposure. For the purpose of this procedure, minority is defined as individual(s) who are members of the following population groups: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic. Low-income is defined as being below the poverty level as defined by the U.S. Census Bureau (e.g., the U.S. Census Bureau's Current Population Reports, Series P-60 on Income and Poverty).

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. These are guidelines; the geographic scale should be commensurate with the potential impact area, and should include a sample of the surrounding population, e.g., at least several block groups. 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.) One source of the census data is the Landview computer software by the U.S. Environmental Protection Agency and the U.S. Department of Commerce, Bureau of the Census. This software is updated after each 10-year census. 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 reviewer should use the best available information.

2. 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 of 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 significantly exceeds that of the state or county percentage (or the comparison base used) for either minority population or economically stressed households, environmental justice will have to be considered in greater detail. As a general matter (and where appropriate), staff may consider differences greater than 20 percent to be

significant. 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, no further evaluation is necessary. The reviewer should document the appropriate conclusion in the environmental justice section.

- B. Staff should look at the demographics of a site early in the review process. Scoping and public participation are a fundamental part of the NEPA process. Staff's approach will depend on the nature of the regulatory action and the demographics at the proposed location. When a potentially affected minority or low-income population is identified, NMSS staff should ensure that minority and low-income populations are given the opportunity to participate. The NRC's regulations require that any affected Indian tribe be invited to participate in the scoping process for an EIS. During scoping meetings for an EIS, for example, staff will solicit input on environmental issues, and the affected communities should be encouraged to develop and comment on possible alternatives to the proposed agency action. As with any scoping activities under NEPA, the measures staff may consider for increasing participation of minority and low-income populations include outreach through groups such as minority business and trade organizations, schools and colleges, labor organizations, or other appropriate groups.

In addition, if a representative(s) of the affected population has been identified such as an officer of an organized local group or community leader, the individual(s) should receive notices of meetings and copies of Federal Register notices.

When communicating with the public, NMSS staff should consider disseminating information through alternative media such as translating notices (and other documents) into a language other than English, where appropriate.

- C. 1. 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, including cumulative and multiple impacts, where appropriate. 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.
2. Next, one should assess if the impacts disproportionately impact the minority or low-income population, i.e., Are the impacts greater for these populations? Are there any impacts experienced by these populations that are not experienced by others? To effectively visualize the impacts, it may be helpful to display the minority and low-income population data spatially. 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, no further analysis would be needed. The reviewer should document the finding in the environmental justice section.

3. Finally, it is necessary to determine if the impacts are high and adverse. Another way of stating this: Are the impacts significant, unacceptable or above generally accepted norms such as regulatory limits or state and local statutes and ordinances. Each impact, and where appropriate, the cumulative and multiple effect of the impacts, should be reviewed for significance. If the statement can be made that no combination of the impacts are significant, then there are no disproportionate adverse and high impacts on the minority or low-income populations. The reviewer should document the conclusion in the environmental justice section.
- D. If there are significant impacts to the minority or low-income population, it is then necessary to look at mitigative measures and benefits. The reviewer should determine and discuss if there are any mitigative measures that could be taken to reduce the impact. To the extent practicable, mitigation measures should reflect the needs and preferences of the affected minority or low-income populations. The reviewer should discuss the benefits of the project to surrounding communities, even though 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, factors such as the mitigative measures and/or the benefits of a project outweigh the disproportionate impacts. In any 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.
- E. The results of an environmental justice evaluation should be documented in the EIS or special case EA. The results should indicate if a disproportionately high and adverse human health or environmental impact is likely to result from the proposed action and any alternatives, and should be written in non-technical plain language. 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.

Following an EIS or EA, the NRC announces its decision in a Record of Decision (ROD) or a FONSI. For an EIS or special case or circumstance EA, the ROD or FONSI should document the conclusion of the findings on environmental justice, including any mitigative measures that will be taken to reduce the impact.

#### **IV. POLICY IMPLEMENTATION FOR RULEMAKING ACTIVITIES**

- 1. The staff responsible for rulemaking should address environmental justice in the preamble to any proposed and final rules that require an EIS, a supplement to an EIS, generic EIS, or if warranted by a special case or circumstance EA/FONSI, as described in Section II., above.**
- 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. Measures to increase public participation are discussed in Section III. B. above.**
- 3. If an environmental justice analysis is performed for a rulemaking activity, the staff should include language contained in NUREG/BR-0053, Revision 4, Section 3.13 and 5.13 to the Federal Register Notice to seek and welcome public comments on environmental justice. The staff should follow the "Policy Implementation for Licensing Actions," in Section III. above, to perform the environmental justice review.**
- 4. Public comments on environmental justice issues should be addressed in the preamble to the final rule when published in the Federal Register. Environmental justice comments should be addressed at the same level of detail and in the same location as comments received on other parts of the rule.**
- 5. When a rule is being modified or developed that contains siting evaluation factors or criteria for siting a new facility, the staff may consider including specific language in the rule or supporting regulatory guidance to state that an environmental justice review will be performed as part of the licensing process.**

**Attachment: Environmental Justice Guidance  
Under the National Environmental Policy  
Act, Council on Environmental Quality,  
December 10, 1997.**

Figure 1: Flow-process for Conducting an Environmental Justice (EJ) Review for NMSS Licensing Actions.

