



Nye County

Department of Natural Resources & Federal Facilities

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Draft Policy Statement
(68FR62642)

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USNRC

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Secretary,
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attention: Rulemakings and Adjudications Staff

**Draft Policy Statement on the Treatment of Environmental Justice
Matters in NRC Regulatory and Licensing Actions**

Dear Ms. Vietti-Cook:

Enclosed please find the comments of Nye County, Nevada on the above referenced draft Commission policy statement.

We appreciate the opportunity to comment on this important policy statement. If you have any questions concerning this matter, please don't hesitate to contact me at (775) 727-7727.

Respectfully,
NYE COUNTY, NEVADA

Les W. Bradshaw
Department Manager

LB/vt

Enclosure: as stated

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SECY-02

NYE COUNTY, NEVADA COMMENTS ON NRC DRAFT POLICY STATEMENT ON THE TREATMENT OF ENVIRONMENTAL JUSTICE MATTERS IN NRC REGULATORY AND LICENSING ACTIONS

As the local government within whose jurisdiction Yucca Mountain, the proposed site of the nation's first, and perhaps only, high-level nuclear waste repository, Nye County is uniquely concerned with the proper application of environmental justice considerations by the NRC, as well as all other federal departments and agencies. We commend the NRC for addressing this important issue in an integrated, formal manner, with agency wide application. That is a much more desirable and responsible approach than addressing environmental justice piecemeal, through adjudicatory decisions, or with different branches each adopting and applying their own policies on how to comply with these requirements.

In general, we agree with the draft's position that environmental justice matters need to be considered by the NRC in its licensing decisions in the context of the proper application of the National Environmental Policy Act (NEPA). That is entirely appropriate. We also certainly agree with the statements, found in the Summary of the Draft Statement at FR 68 No. 214, page 62642 (11/5/2003) that:

"The Commission recognizes that the impacts, for NEPA purposes, of its regulatory or licensing actions on certain populations may be different from impacts on the general population due to a community's distinct cultural characteristics or practices. Disproportionately high and adverse impacts of a proposed action that fall heavily on a particular community call for close scrutiny--a hard look--under NEPA. ---- "The NRC believes that an analysis of disproportionately high and adverse impacts needs to be done to fulfill its NEPA obligations to accurately identify and disclose all significant environmental impacts associated with a proposed action."

In other words, the draft indicates that, if disproportionately high and adverse impacts of a proposed action fall heavily on a particular community, such as Amargosa Valley or southern Nye County, the action deserves closer scrutiny, or mitigation, under NEPA. That is a correct statement of policy, and one that Nye County wholeheartedly supports, and expects the Department of Energy to recognize as it implements impact mitigation policies relevant to construction, operation and closure of the repository .

The draft statement indicates that an environmental justice inquiry would not necessarily end with a finding of no significant impact. If, because of the uniqueness of the community involved (low income or minority), a significant offsite impact could result, then mitigation or a full environmental impact statement (EIS) should be considered. That is a statement of policy that Nye County supports, as far as it goes. It can be

significantly improved, however. The policy should make clear that it covers, and will look at potential impacts from, all operations related to a facility subject to licensing. In the case of Nye, of course, that would include transportation of spent nuclear fuel and high-level nuclear waste to the proposed repository at Yucca Mountain. Also, while a full EIS is fine, it provides nothing to a community affected by a nuclear facility unless accompanied by actual mitigation. The policy statement should therefore clearly express a preference for mitigation.

The statement's proposed numerical approach would still allow the flexibility to use a state or county as the metric for establishing whether or not a census block meets the environmental justice criteria. In Nevada, for example, if either Clark or Washoe Counties are included in the metric, then a rural county will have fewer (if any) environmental justice eligible census blocks. That would render any such review an exercise in futility, indeed a sham. We are certain that is not what the Commission intends. The policy statement should encourage, if not require, the selection of the methodology that identifies the most eligible census blocks, not the least. Using the State as the metric, Nye County might have only one low-income block (in Amargosa Valley), which does not include the Yucca Mountain site. If Nye County is used as a metric (to compare to each block), then most of the census blocks in the county may be environmental justice eligible. That is, in our view, more reasonable, since rural areas generally are economically depressed.

In defining the geographic area for assessment the draft statement chooses to retain the current approaches of both the Office of Nuclear Material Safety and Safeguards (NMSS) and Office of Nuclear Reactor Regulation (NRR). For NMSS, under whose aegis repository licensing will fall, that would limit the geographic area for assessment to a radius of 0.6 miles, in the case of the proposed repository a ridiculously small area. That cannot be what the Commission intends. We urge the Commission to reflect, in its final statement, that in the case of a nuclear waste repository, or substantially similar facility, the 50 mile radius normally used by NRR be applied by NMSS. Anything less would result in the environmental justice review, in the case of the Yucca Mountain repository, being a worthless charade. That would be clearly and completely contrary to the expressed policy of the Commission, as noted above and in the draft statement's opening summary.

Nye County appreciates the opportunity to review and comment on this important expression of the Commission's environmental justice policy.