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UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

April 7, 1997

MEMORANDUM TO: Richard L. Bangart, Director  
Office of State Programs

FROM: Frank J. Miraglia, Deputy Director *Frank J. Miraglia*  
Office of Nuclear Reactor Regulation

SUBJECT: COMMENTS ON REVISED DRAFT COUNCIL ON ENVIRONMENTAL QUALITY  
(CEQ) GUIDANCE FOR CONSIDERING ENVIRONMENTAL JUSTICE (EJ)

NRR has reviewed the revised draft CEQ guidance dated March 26, 1997, for consideration of EJ under the National Environmental Policy Act (NEPA). The revised draft appears similar to previous drafts with the exception of certain word changes and the addition of two sections to address the following: 1) the need to address EJ in cases where no environmental impact statement (EIS) or environmental assessment (EA) is prepared, and 2) the need to consider EJ when promulgating or revising regulations, policies, procedures, and guidance under NEPA or any other Act.

The staff continues to be concerned that the CEQ guidance states that EJ issues should be considered at each and every step of the NEPA process. It appears that CEQ would like agencies to address EJ issues prior to identifying environmental impacts. The process in 10 CFR Part 51 outlines the staff's procedures for identifying environmental impacts and allows the staff make a Finding of No Significant Impact (FONSI) in an EA. The staff believes that if a FONSI is made, EJ issues need not be considered. Although words such as "whenever feasible" (page 3), and "where there may be environmental justice concerns" (page 5) exist in the CEQ guidance, it still appears the intent of the guidance is to address EJ issues during both the EA and EIS stage of the NEPA process. As stated in previous comments, addressing EJ issues at the EA stage may lead to a significant impact on NRC resources. Further, the staff agrees with the Department of Justice concern regarding the litigation risks in requiring agencies to consider socioeconomic impacts during the EA stage.

The revised guidance added a section to address EJ issues when no EA or EIS is prepared and when a disproportionate and adverse impact on low-income or minority communities may exist. The Commission has already evaluated certain situations and determined that those activities do not result in environmental impacts and are categorically excluded from NEPA reviews (10 CFR 51.22). Contrary to the CEQ guidance, the staff believes that consideration of EJ issues is not required for those activities categorically excluded from NEPA review.

The other major revision added a section addressing regulatory changes and the need to address EJ. The staff believes we have encompassed this guidance in our regulatory process, as demonstrated in the recent revision to 10 CFR Part 51.

Contact: C. Craig  
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The CEQ guidance retains the wording that individual agencies may supplement the guidance with more specific procedures tailored to particular programs or activities, and that agencies should apply the guidance flexibly and may consider its terms a point of departure rather than conclusive direction in applying the terms of the Executive Order. This appears to be inconsistent with the revised wording in the guidance which inserted words such as "shall" and "must". The staff believes the CEQ guidance should not contain words that imply strict compliance with the guidance.

As stated in previous memoranda, should this or a similar version of the guidance become final, a more thorough review by the EJ group is needed to determine where flexibility exists in the Executive Order and the CEQ guidance in order to develop the final NRR procedure for implementing EJ. Until that time, the staff will continue to consider EJ issues under the NRR interim guidance dated March 16, 1995.

NRR discussed the CEQ guidance with OGC; OGC will provide comments under a separate memorandum.

cc: R. Virgilio

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cc: R. Virgilio

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