



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

December 3, 1998

MEMORANDUM TO: John T. Greeves, Director, DWM
Donald A. Cool, Director, IMNS
William F. Kane, Director, SFPO

FROM: *E. William Brach*
E. William Brach, Acting Director
Division of Fuel Cycle Safety
and Safeguards, NMSS

SUBJECT: INCORPORATING PROCEDURES FOR RULEMAKING ACTIVITIES INTO THE
REVISION TO POLICY & PROCEDURE LETTER 1-50, "ENVIRONMENTAL
JUSTICE IN NEPA DOCUMENTS"

In 1995, RES issued guidance on environmental justice reviews for the rulemaking process. Because rulemaking responsibilities have since been incorporated into NMSS, our office guidance must be revised to include RES's environmental justice guidance on rulemaking.

Attached for your review are the revised Policy & Procedure (P&P) Letter 1-50, "Environmental Justice in NEPA Documents," and the recommended changes to make NUREG/BR-0053, "Regulations Handbook," Revision 4 consistent with the revised environmental justice guidance. The major change to the P&P Letter is the addition of a new section entitled, "Procedures for Rulemaking Activities" (see p. 4). A secondary change is the addition of Figure 1, which depicts the process for conducting an environmental justice review for licensing actions (see p. 6).

Please notify Amy Bryce at 415-5848 with any questions or comments within two weeks of the date of this memo so that we may submit the revised Draft P&P Letter to OSP. OSP will be submitting the NMSS and NRR revised guidance to the Commission. Our plan is to finalize the NMSS guidance document after the Commission provides comments.

Attachments:

1. Revised Draft Policy
and Procedure Letter 1-50
2. Recommended Changes to
NUREG/BR-0053

cc: Rosetta Virgilio, OSP
Hampton Newsome, OGC
Josephine Piccone, NMSS/IMNS

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NMSS Policy and Procedures Letter 1-50, Rev. 2
November 1998

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." On December 10, 1997, the Council on Environmental Quality (CEQ) issued, "Environmental Justice Guidance Under the National Environmental Policy Act." CEQ developed this guidance to, "...further assist Federal agencies with their NEPA procedures." As an independent agency, the CEQ's guidance is not binding on the NRC; however, the NRC considered CEQ's guidance on environmental justice while revising this policy and procedure letter, and CEQ's guidance is included as an informational attachment to this letter.

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. In general, where the proposed action would not cause any adverse environmental impacts, and therefore would not cause any disproportionately high and adverse human health or environmental impacts, specific demographic analysis may not be warranted. 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, but 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 for licensing actions and rulemakings.

-DRAFT-**PROCEDURES FOR LICENSING ACTIONS**

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. A distinction should be made, however, between Native American communities that live within their own governmental jurisdictions and those that do not. The CEQ regulations (10 CFR Part 1500-1508) recognize the government to government relationship between the federal government and tribal governments. Similarly, the NRC's regulations require that any affected Indian tribe be invited to participate in the scoping process for an EIS. 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 computer software "Landview II, Mapping of Selected EPA-regulated Sites, TIGER/Line 1992, and 1990 Census of Population and Housing," by the U.S. Environmental Protection Agency and the U.S. Department of Commerce, Bureau of the Census. This software will be 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. Use the best available information.

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, the site does have an environmental justice potential and environmental justice will have to be considered in greater detail. If appropriate, staff may consider differences greater than 20 percent to be significant. Additionally, if either the

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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. 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; NMSS 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 pursue extra measures to ensure that minority and low-income populations are given the opportunity to participate. During scoping meetings for an EIS, for example, NMSS 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. Extra measures NMSS 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 groups as may be appropriate.

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. Moreover, when public meetings are held concerning a specific site, an attempt should be made to include any minority or low-income community in the meeting. For example, NMSS staff may consider holding public meetings in the evenings or weekends, holding meetings at less formal locations (e.g., schools or churches), or providing transportation to the meetings.

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.

3. 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.

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? 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

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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 finding in the environmental justice section.

Next, 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. Document the conclusion in the environmental justice section.

4. 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. To the extent practicable, mitigation measure should reflect the needs and preferences of the affected minority or low-income populations. 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.
5. 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 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.

The process for conducting an environmental justice review for a licensing action is outlined in Figure 1.

PROCEDURES FOR RULEMAKING ACTIVITIES

1. The staff responsible for rulemaking should address environmental justice in the preamble to any

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proposed and final rules that require an EIS, a supplement to an EIS, generic EIS, or if warranted by a "special case," EA/FONSI, as described in the "Policy" section, 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 step 2 of the "Procedures for Licensing Actions," 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 "Procedures for Licensing Actions," 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 should 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.

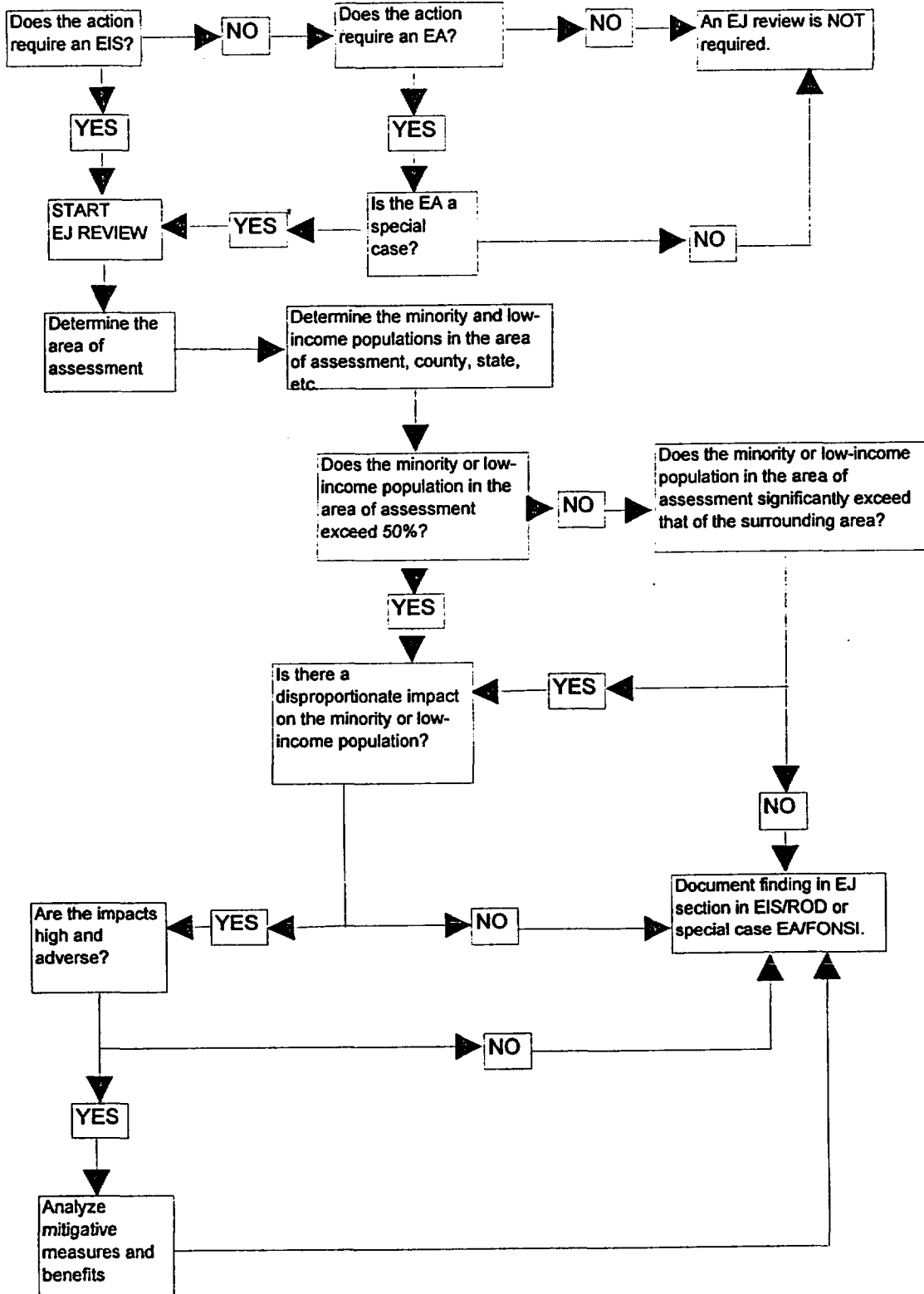


Figure 1: Flow-process for Conducting an Environmental Justice (EJ) Review for Licensing Actions.

**Recommended Changes To
NUREG/BR-0053, "Regulations Handbook," Revision 4**

The Office of Nuclear Reactor Regulation (NRR) and the Office of Nuclear Material Safety and Safeguards (NMSS) recommend that the following changes be incorporated into NUREG/BR-0053, "Regulations Handbook," Revision 4. These changes will make the Regulations Handbook consistent with the revised environmental justice procedures implemented by NRR and NMSS.

Section 3.13 National Environmental Policy Act

Subsection (d), Page 57: Replace the last sentence of this section with the following:

"The environmental justice procedures for the Office of Nuclear Reactor Regulation and Office of Nuclear Material Safety and Safeguards were signed into effect on [insert date], 1999 and [insert date], 1999, respectively."

Section (f)(1), Pages 59-60: Replace the paragraph starting,

"The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action...."

with

"The determination of this environmental assessment is that there will be no significant impact to the public from this action. However, the general public should note that the NRC welcomes public participation. Comments on any aspect of the Environmental Assessment may be submitted to the NRC as indicated under the ADDRESSES heading."

Section (f)(2), Pages 60-61: Replace the paragraph starting,

"The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action...."

with

"The determination of this environmental assessment is that there will be no significant impact to the public from this action. However, the general public should note that the NRC welcomes public participation. Comments on any aspect of the Environmental Assessment may be submitted to the NRC as indicated under the ADDRESSES heading."

Section (f)(3): Introduce a new section that states:

The NRC guidance on environmental justice does not automatically require an environmental justice review for an environmental assessment that results in a Finding of No Significant Impact. However, in certain cases, as described in the environmental justice procedures of the Office of Nuclear Reactor Regulation or the Office of Nuclear Material Safety and Safeguards, the NRC may conduct an environmental justice review for an environmental assessment for a proposed rule and determine that a finding of no significant impact is appropriate. For these special cases, the NRC shall replace the preamble language in Sections (f)(1) and (f)(2):