



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

February 9, 1999

MEMORANDUM TO: Rosetta Virgilio, Federal Liaison
Office of State Programs

FROM: *for* *Josephine M. Piccone*
Elizabeth Q. Ten Eyck, Director
Division of Fuel Cycle Safety
and Safeguards, NMSS

SUBJECT: UPDATED REVISION TO THE DRAFT POLICY & PROCEDURE
LETTER 1-50, "ENVIRONMENTAL JUSTICE IN NEPA DOCUMENTS"

I am forwarding a revision of the Office of Nuclear Material Safety and Safeguards (NMSS) Draft Policy and Procedure (P&P) Letter 1-50, "Environmental Justice in NEPA Documents," dated December 1998 (attached). The December 1998 revision replaces the draft P&P Letter I sent to you on August 17, 1998, and incorporates the following changes:

- Changes discussed at the October 6, 1998, meeting between representatives from NRR, NMSS, OGC and OSP.
- Rulemaking guidance.

I have also attached the recommended changes to NUREG/BR-0053, "Regulations Handbook," Revision 4. These changes ensure that the rulemaking guidance provided in NUREG/BR-0053 remains consistent with the revised environmental justice guidance.

Each division and project office in NMSS was given an opportunity to review the revised P&P Letter. In the course of reviewing the P&P letter, the Division of Waste Management (DWM) identified issues related to the special characteristics of some DWM facilities:

- The current guidance focuses on making environmental justice evaluations based on the analysis of population characteristics for the areas immediately adjacent to the licensed facilities and in communities up to 4 miles from the sites in rural areas. However, uranium recovery facilities are not compact sites and can cover very large areas. (In-situ leach uranium recovery facilities cover areas that are typically several tens of thousands of acres - some cover upwards of 70,000 acres). These facilities may include Native American lands, or sacred areas, or geographic features that have cultural importance to tribes of Native Americans, but are miles away from anyone, including the people for whom they have significance. In addition, the groups for which they are significant may be very small. Similar circumstances have been an issue at the proposed California low-level waste disposal facility. Should very small groups qualify for an environmental justice impact assessment? Should additional environmental justice guidance be developed for these circumstances?

E-9

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- The Uranium Recovery Branch performs assessments of traditional cultural properties as part of the evaluation of impacts for licensing actions as required by Section 106 of the National Historic Preservation Act. Is this assessment sufficient or is an additional environmental justice analysis required?

Additional guidance on whether the above issues should be addressed (and to what extent) may be necessary prior to finalizing the Draft P&P Letter. Phyllis Sobel is the DWM contact for these issues. She can be reached at 415-6714.

OGC has reviewed P&P Letter 1-50 and has no objections.

Attachments:

- Revised Draft Policy and Procedure Letter 1-50
- Recommended Changes to NUREGBR-0053

CONTACT: Amy Bryce, NMSS/FCSS
(301) 415-5848

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

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 (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.

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 the National Environmental Policy Act (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 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.

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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 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. 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,

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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,

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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.

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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.

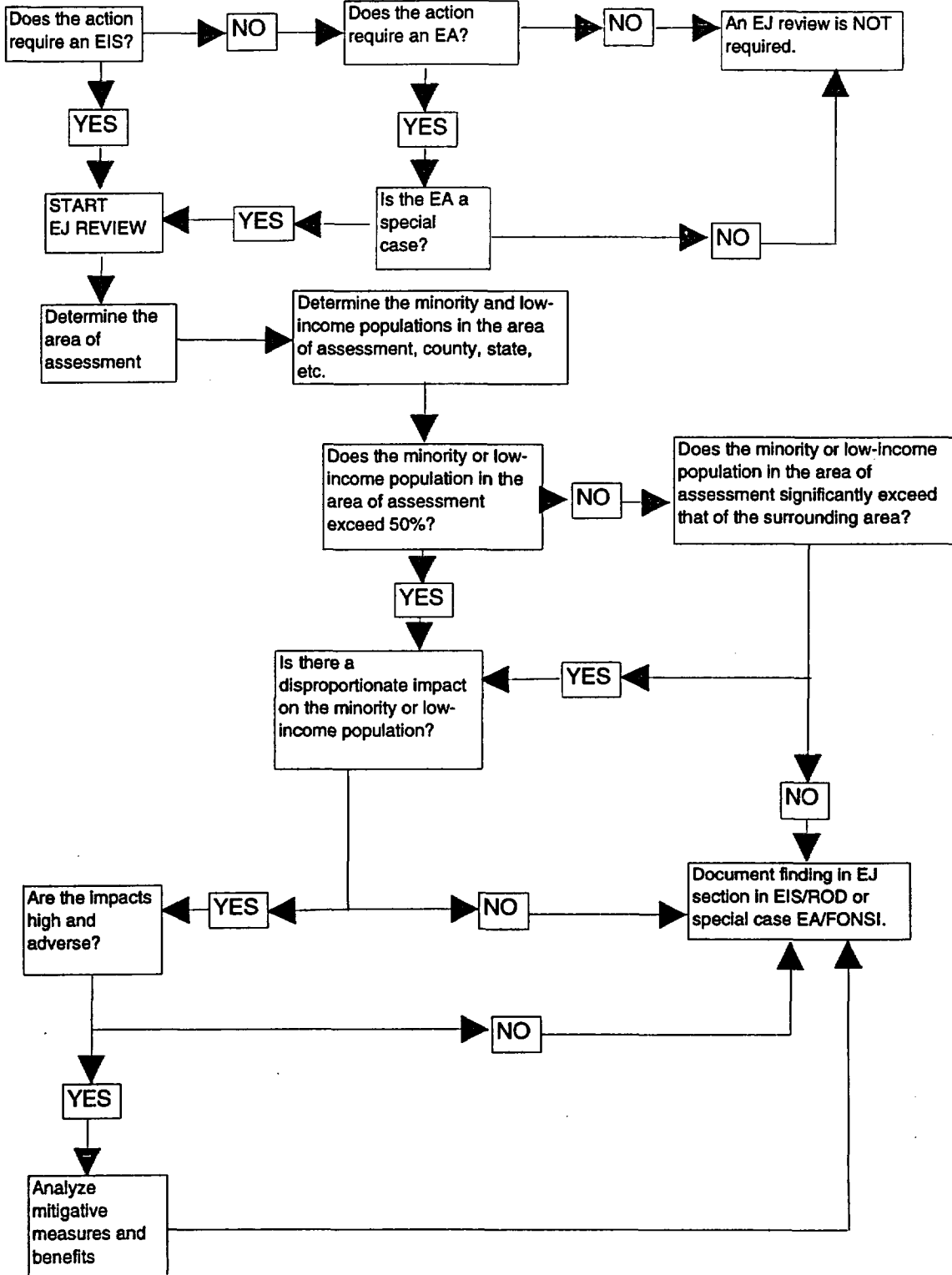


Figure 1: Flow-process for Conducting an Environmental Justice (EJ) Review for Licensing Actions.

**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 is seeking 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 is seeking 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:

In most cases, an environmental justice review should not be conducted 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):

"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 is seeking

public participation. Comments on any aspect of the Environmental Assessment may be submitted to the NRC as indicated under the ADDRESSES heading.”

with

“The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action. However, the general public should note that the NRC welcomes public participation. The NRC has also committed to complying with Executive Order (EO) 12898-Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, dated February 11, 1994. The NRC evaluated environmental justice for this environmental assessment and has determined that there are no disproportionate high and adverse impacts on minority and low-income populations. In the letter and spirit of EO 12898, the NRC is requesting public comment on any environmental justice considerations or questions that the public thinks may be related to this proposed rule but somehow were not addressed. The EO describes environmental justice 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.” Comments on any aspect of the Environmental Assessment, including environmental justice, may be submitted to the NRC as indicated under the ADDRESSES heading.”

Section 5.13 National Environmental Policy Act (NEPA)

Section (d), Page 152: 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] and [insert date], 1999, respectively.”

Section (e)(1), Page 154: Delete the paragraph starting:

“The NRC requested public comments on any environmental justice considerations that may be related to this rule....”

Section (e)(2), Page 154: Delete the paragraph starting:

“The NRC requested public comments on any environmental justice considerations that may be related to this rule....”

Section (e)(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, if 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, the NRC shall insert the following paragraph into the preamble language of Sections (f)(1) and (f)(2):

“The NRC requested public comments on any environmental justice considerations that may be related to this rule. (Indicate whether public comments have been addressed and whether the environmental assessment has changed as result of public comment.)”