

Sweeney, Beverly

From: Flanders, Scott - *NRO*
Sent: Wednesday, February 24, 2010 2:46 PM
To: Whited, Ryan; Muir, Jessie; Lopas, Sarah
Subject: FW: EJ Language Mistake in STP Unit 3 and 4 EIS

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Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions 5
FOIA- 2011-0359

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IV. Guidelines for Implementation of NEPA as to Environmental Justice Issues

- The legal basis for the NRC analyzing environmental impacts of a proposed Federal action on minority or low-income communities is NEPA, not Executive Order 12898. The E.O. emphasized the importance of considering the NEPA provision for socioeconomic impacts. The NRC considers and integrates what is referred to as environmental justice matters in its NEPA assessment of particular licensing or regulatory actions.
- In evaluating the human and physical environment under NEPA, effects on low-income and minority communities may only be apparent by considering factors peculiar to those communities. Thus, the goal of an EJ portion of the NEPA analysis is (1) To identify and assess environmental effects on low-income and minority communities by assessing impacts peculiar to those communities; and (2) to identify significant impacts, if any, that will fall disproportionately on minority and low-income communities. It is not a broad-ranging review of racial or economic discrimination.

In the NRR Guidance LIC 203 Rev.1, which is the current staff guidance, the background section reads as follows. Note that it only refers to minority and low-income populations.

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 FR 7629 (1994), directs Federal agencies in the Executive Branch to "make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities" on minority and low-income populations. Although an independent agency, the NRC indicated its willingness to comply with the Executive Order.

Under General Principles of Environmental Justice, LIC-203, Rev 1 contains the following language. It does not ever refer to populations that are not minority or low-income. It does refer to community impacts, but only in the context of minority and low-income populations.

The staff should consider the composition of the affected area to determine whether minority or low-income populations are present in the area and may be affected by the proposed action. If there are significant impacts from the proposed action, the staff needs to determine whether there may be disproportionately high and adverse human health or environmental effects on minority or low-income populations.

The staff should recognize the interrelated cultural, social, occupational, historical, or economic factors that may amplify the natural and physical environmental effects of the proposed agency action. These factors should include the physical sensitivity of the community or population to particular impacts; the effect of any disruption on the community structure associated with the proposed action; and the nature and degree of impact on the physical and social structure of the community.

Significantly, LIC-203 Rev.1 notes under Procedures for Licensing Actions that if no minority and low-income communities are identified, then no further EJ analysis is required, implying that no other unique community would trigger an environmental justice analysis or should be covered by one.

Minority categories are defined as: American Indian or Alaskan Native; Asian; Native Hawaiian or other Pacific Islander; or Black races; or Hispanic ethnicity ("other" may be considered a separate minority category)

...
In identifying minority or low-income populations, reviewers may consider a community either as a group of individuals living near one another or a group of individuals that experience common conditions of environmental exposure or effect. The criteria listed above should only serve as a guideline for determining the presence of a minority or low-income population. If it is apparent through interviews, public comment/interest, or by investigation that there is a distinct minority or low-income population that may be adversely effected by the proposed action, then the reviewer should proceed with the environmental justice review, even if the population is not identified through use of the census data.

If no minorities or low-income households are identified in the potentially affected area or environmental impact area, then document the conclusion. The environmental justice review is complete.

LIC-203 Rev.1 also notes, only in the context of minority and low-income communities:

Reviewers should recognize that the impacts to minority or low-income populations may be different from impacts on the general population due to a community's distinct cultural practices. In addition, reviewers should take into account different patterns of living and consumption of natural resources, such as subsistence consumption.

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