

March 10, 1994

MEMORANDUM FOR: James L. Blaha
Assistant for Operations
Office of the Executive Director for Operations

FROM: Dennis M. Crutchfield
Associate Director for Advanced Reactors
and License Renewal
Office of Nuclear Reactor Regulation

SUBJECT: DRAFT SECY CONCERNING EXECUTIVE ORDER 12898 ON ENVIRONMENTAL
INJUSTICE - GT 9831

As you requested, we have reviewed OGC's draft SECY paper concerning the new Executive Order 12898 on "Environmental Injustice" (the Order). We agree with the proposal that the NRC comply with the Order. However, we do have some concerns with the recommendations described in the SECY paper for implementing the Order. The paper does not describe important implementation details, such as (1) which NRC office will be tasked with overall responsibility for implementing the Order, (2) who should sit on the Interagency Working Group, (3) the estimated staff effort required to review completed environmental impact statements and assessments to determine the extent to which the NRC already meets the intent of the Order and any new actions necessary to comply with the Order, and (4) the priority with which the actions should be pursued. These details will affect NRR resources and schedules, therefore, we suggest that OGC provide a discussion of the level of effort required to support the recommendations in the SECY paper and the possible effects on NRC resources and schedules.

Original signed by:
Dennis M. Crutchfield
Associate Director for Advanced Reactors
and License Renewal
Office of Nuclear Reactor Regulation

cc: WRussell
FMiraglia

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See next page

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L-5 Executive Order
L-4-1, #1.51
M-45-3-24 (EPA)

OFC: PDLR SPM: PDLR SC: PDLR PD: PDLR AB: ADAR
NAME: CNorsworthy RNease FAKstulewicz SNewberry DCrutchfield
DATE: 3/1/94 3/10/94 3/10/94 3/10/94 3/10/94
Official Document Name: INJUSTIC.RN

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FROM: DUE: 03/14/94

EDO CONTROL: 0009831
DOC DT: 03/07/94
FINAL REPLY:

ester Crane
3C

TO:

Jim Blaha

OR SIGNATURE OF : ** GRN **

CRC NO:

*3/11
Blaha Note*

DESC:

ROUTING:

*Taylor
Milhoan
Thompson
Blaha*

REQUEST COMMENTS ON DRAFT STAFF PAPER RE NEW EXECUTIVE ORDER ON "ENVIRONMENTAL JUSTICE"

Taylor
Milhoan
Thompson
Blaha

DATE: 03/07/94

ASSIGNED TO: CONTACT:

<u>NRR</u>	<u>Russell</u>
NMSS	Bernero
RES	Beckjord
SP	Maria Lopez-Otin

SPECIAL INSTRUCTIONS OR REMARKS:

COMMENTS TO BLAHA BY 3/14/94.

NRR RECEIVED: March 7, 1994
NRR ACTON: DRSS: CONGEL

NRR ROUTING: WR/FJM
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ACTION

DUE TO NRR DIRECTOR'S OFFICE

BY *Bar.* 10, 1994

Jim -
here's a draft staff paper.
I've also E-mailed it
to Hugh. Peter 3/7/94

March XX, 1994

MEMORANDUM FOR:

The Chairman
Commissioner Rogers
Commissioner Remick
Commissioner de Planque

FROM:

William C. Parler
General Counsel

James M. Taylor
Executive Director for Operations

SUBJECT:

NEW EXECUTIVE ORDER ON
"ENVIRONMENTAL JUSTICE"

PURPOSE:

To advise the Commission of a new Executive Order (Attachment A), No. 12898, dated February 11, 1994, which directs all federal agencies to develop, according to prescribed timetables, strategies for assuring "environmental justice" in their programs, policies, and activities. (Independent agencies, such as NRC, are "requested" to comply with the Executive Order.) A separate Presidential memorandum to all agencies (Attachment B) is a reminder of relevant provisions of existing law, including the requirement to consider, when environmental impact statements and other environmental documents are prepared, the effects of federal actions on minority and low-income communities.

Although detailed guidance on the implementation of the two directives may be developed, it is not likely to be available in time for the Executive Order's deadline for compliance. We believe that the NRC is in a position to respond positively and quickly to the Presidential initiative, and we therefore provide a draft reply for Commission consideration. (Attachment C.)

DISCUSSION:

On February 11, 1994, President Clinton signed and issued two

Contact:
Peter Crane, GC
504-1622

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documents designed to assure that Federal agencies practice "environmental justice," which is defined 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" in the United States and lands under its control.

A. The Executive Order

The first of the two documents is Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." Its most notable provisions are as follows:

1. Interagency working group

Section 1-102 of the Executive Order directs the Administrator of EPA to convene, by May 11, 1994, an interagency working group composed of a number of cabinet-level departments, as well as the Office of Science and Technology Policy, the Council of Economic Advisors, numerous other named bodies, and "such other Government officials as the President may designate." (NRC is not among those named.) The Working Group is to report to the President through two of its members, the Deputy Assistant to the President for Environmental Policy and the Assistant to the President for Domestic Policy.

The Working Group is charged with developing the general guidance that Federal agencies will use in identifying disproportionate effects on minority and low-income populations. To assure Government-wide consistency, it will also "coordinate with, provide guidance to, and serve as a clearinghouse for" each Federal agency as it develops its particular environmental justice strategy. It is not clear that specific guidelines are contemplated, nor does it seem likely that the Working Group (given that it need not be convened before May 11, 1994) would be able to develop formal guidelines in time for agencies to meet their deadlines for compliance (to be set forth below).

The Working Group will also assist EPA, HHS, HUD and others with their research activities; assist in coordinating data collection required by the Executive Order; study existing data; hold public meetings; and develop model projects involving two or more agencies working in cooperation.

2. Individual agency strategies

Each agency is directed to develop its own environmental justice strategy, according to prescribed timetables, as follows:

a. By June 11, 1994: Identify an internal process for developing a strategy and advise the Working Group about it.

b. By August 11, 1994: Prepare an outline of the strategy and forward it to the Working Group.

c. By December 11, 1994: Prepare the strategy in proposed form and forward it to the Working Group.

d. By February 11, 1995: Forward the finalized strategy to the Working Group. By this time, the agency should have identified specific projects and provided the working group with a schedule for their implementation.

e. By February 11, 1996: Report to the Working Group on progress in implementing the strategy.

3. Research and data collection

Agencies are told that environmental human health analyses should include minority and low-income populations that may be exposed to substantial environmental hazards and should identify multiple and cumulative exposures. Proposed research strategies should be made available to affected minority and low-income populations for their comment. Where practicable, agencies should "collect, maintain, and analyze" information on the environmental and human health risks borne by persons of different race, national origin, and income, and should use this information to determine whether agency programs have disproportionate effects on minority and low-income populations. Where practicable, agencies are to share information and avoid duplication through cooperation with other Federal agencies and State, local, and tribal governments.

4. Public participation and access to information

Agencies may, whenever practicable and appropriate, translate environmental and health-related documents into other languages for the benefit of populations with limited English. Agencies shall work to ensure that their environmental and health-related documents are clear, concise, and readily accessible to the public.

5. No legal rights created

The Executive Order says that it is "intended only to improve internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law." Likewise, it creates no right to judicial review.

B. The Memorandum to Heads of Departments and Agencies

This Memorandum states that its purpose is to "underscore certain provisions of existing law" -- specifically, environmental and civil rights statutes -- "that can help assure that all

communities and persons in this Nation live in a safe and healthful environment." It directs all department and agency heads to ensure immediate implementation of: (1) Title VI of the Civil Rights Act of 1964 (non-discrimination in Federally funded programs affecting human health and the environment), and (2) the National Environmental Policy Act's requirement that when an environmental analysis is necessary, it must include effects on minority and low-income communities.

The Memorandum directs the Environmental Protection Agency, in its review, under Section 309 of the Clean Air Act, of the environmental effects of other agencies' actions, to ensure that agencies have taken into account the effects on minority and low-income communities.

As with the Executive Order, the Memorandum states that it is intended only to improve internal management of the Executive Branch, not to create any substantive or procedural rights that are enforceable at law.

C. Analysis

It is too early to tell what the practical impact of the Executive Order and accompanying memorandum will be. First, as a legal matter, they create no enforceable rights; both documents are explicit on this point. Second, the Executive Order does not spell out what is to be in the "environmental justice strategies" that agencies are to adopt. Third, the memorandum to heads of agencies does no more than restate existing NEPA law on the evaluation of socio-economic impacts.

The impact of the documents will therefore depend largely on the guidance that the Working Group develops and provides. (For that reason, we think that NRC has a strong interest in being added to the list of agencies represented on the Working Group, and we have drafted the NRC's response letter accordingly.) Given the nature of the NRC's responsibilities as a licensing and regulatory agency (as opposed, for example, to an agency which funds construction of new roads or public housing), the Executive Order and the accompanying memorandum seem most likely to apply to the NRC's fulfillment of its NEPA responsibilities. There, the NRC already takes account in its Environmental Impact Statements and Environmental Assessments of the socio-economic impacts of its actions, but it is possible that we would wish to focus with greater particularity on the impacts of NRC actions on minority and low-income populations.¹ We (the staff and OGC)

¹ Two examples of NRC actions arguably having "environmental justice" implications come readily to mind. In the first, the Licensing Board conducting the proceeding on Louisiana Energy Services' plan to construct and operate the Claiborne Enrichment

intend to review a representative sample of our NRC Environmental Impact Statements and Environmental Assessments to see how fully they comply with the letter and spirit of the new directives.

For the present, we think that the most reasonable course of action for the NRC is to agree, in general terms, to comply voluntarily with the Presidential initiative; to seek membership on the Working Group; and in the meantime, to begin surveying NRC programs and practices to identify ways in which changes might be necessary or appropriate. This approach is reflected in the attached draft letter to the President.

William C. Parler
General Counsel

James M. Taylor
Executive Director for Operations

Attachments:

- A -- Executive Order 12898
- B -- Memorandum to Heads of All Departments and Agencies
- C -- Draft letter to the President

Center in Homer, Louisiana, recently admitted a contention charging that the effects of the facility will fall with disproportionate weight on minority populations. In the second, a proposal to store spent fuel from the Prairie Island nuclear plant on the Mescalero Apache Reservation in New Mexico seems likely to raise similar issues.

March XX, 1994

President William L. Clinton
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C.

Dear Mr. President:

The Nuclear Regulatory Commission has received Executive Order 12898 and the accompanying Memorandum to Heads of All Departments and Agencies, both dated February 11, 1994, and wishes to state its full support for the principles set out in those documents. The NRC has for many years evaluated the social, economic, and health effects of its actions through the preparation of environmental documents, as required by the National Environmental Policy Act. The two documents, by focusing with greater specificity on how those impacts may be felt differentially by minority and low-income populations, can help contribute to an even fuller understanding of the impacts of agency actions. We are, therefore, pleased to advise you of our agreement with your request to independent agencies to adopt the measures set forth in E.O. 12898 and the accompanying Memorandum to Heads of All Departments and Agencies.

We note, however, that the NRC is not among the agencies and departments currently represented on the Working Group. We believe that the NRC should be added to the Working Group, both because of the likely impacts of the environmental justice effort on NRC programs and policies and because the NRC, through its experience in the in-depth evaluation of the socio-economic impacts of its actions, may have important insights to contribute to the interagency process.

For the present, the NRC is engaged in a review of past environmental impact statements and assessments to ascertain the degree to which NRC is already in compliance with the letter and spirit of the environmental justice directives. We are also reviewing agency programs and policies to identify areas of potential change. We are pleased to be part of this important initiative.

Sincerely,

Ivan Selin