

**From:** Scott Clow <sclow@utemountain.org>  
**Sent:** Monday, August 23, 2021 2:29 PM  
**To:** NRC-EJReview Resource  
**Subject:** [External\_Sender] Comments regarding Environmental Justice Systematic Review

**Importance:** High

August 23, 2021

U.S. Nuclear Regulatory Commission

RE: Systematic Assessment for How the NRC Addresses Environmental Justice in its Programs, Policies, and Activities

[Via Email]

Dear Nuclear Regulatory Commission:

Thank you for considering your role in environmental justice and how it relates to your programs policies, and activities. The Ute Mountain Ute Tribe (UMUT) has a community located in White Mesa, Utah adjacent to the White Mesa Uranium Mill. The mill is licensed by the State of Utah, an agreement state, under Radioactive Materials License UT 1900479, as amended.

The relationship between the UMUT and NRC and the State of Utah has been strained due to the mill, its ongoing operations, and the lack of significant environmental review as you describe NRC undertaking in its NEPA process. Unfortunately the State of Utah's R313-24-3 process is not as robust as NEPA, and the detail and magnitude of the environmental assessment process is completely at the discretion of the Division of Waste Management and Radiation Control (DWMRC) – the regulating entity. That conflict of interest has created a dismissive and inconsiderate dialogue and lack of concern.

In the recently released Public Participation Summary for License Amendment 10, DWMRC states, "Environmental Justice is an issue that is garnering increasing attention." (pp. 77, DRC-2021-010222). That statement makes us wonder if this is a new concept for the regulators, or if they have never taken the time to consider what environmental justice is. We have met with DWMRC and Utah Division of Air Quality and higher level decision makers in Utah, including the Governor, several times, and the issue of having the mill continue its operations in perpetuity, focused primarily on alternate feeds, while still having 40-year old impoundments in operation is still just "garnering increasing attention." There were 11,680 comments submitted opposing the License Amendment, mostly on the basis of environmental justice concerns regarding the long-term impacts of the facility and inadequacy of the regulatory decisions there to protect the surrounding resources and the groundwater in the Burro Canyon formation under the facility in the context of this amendment putting the mill on the radar as a world destination for such material processing and disposal.

During the last decade, the mill operators have been out of compliance with the 40 CFR, Part 41 Subpart W, cross referenced by Appendix A in 10 CFR, Part 40. Two emissions violations (on two different impoundments consecutively) and two failures to maintain liquid cover over radioactive materials in the unconventional impoundments demonstrate that the mill operators and owners do not care about the violation of the Clean Air Act, its implications on the license, and further understand that the State

regulators may well let them do what they want in that regard. (see attachment 1, photo of impoundment 4B without adequate liquid cover, August 4, 2021- on right).

Similarly, the radioactive materials license requires compliance with a groundwater discharge permit. The groundwater permit is continually modified to relax the standards it contains to allow compliance in lieu of identification of the sources of pollution as the permit states it requires. The disregard to groundwater degradation in the Burro Canyon formation is an ongoing travesty that the mill owners and state regulators plan will eventually be handled by the Department of Energy Legacy Management Program with American tax dollars instead of the manner that the permit states is required. In many aspects of the licensing process we see a need for a comprehensive environmental assessment that considers what NEPA would consider, with a degree of separation from the regulating entity that can dismiss any aspect it deems uncomfortable as it has in the recent public participation summary as, “public clamor and collateral attacks to policy and other administrative actions.”

In addition to these broader comments about the need for and inadequacy of current environmental assessment and compliance, we have directly commented on some of the questions published in the federal register below:

(1) What is your understanding of what is meant by environmental justice at the NRC?

**UMUT Response: By oversight and directives, the NRC ensures that minority or low-income population receives no significant health, environmental, or cultural impacts or perceptions thereof from operations of a nuclear facility.**

**From 1502.16**

**(b)** Economic or social [effects](#) by themselves do not require preparation of an [environmental impact statement](#). However, when the **agency** determines that economic or social and natural or physical environmental [effects](#) are interrelated, the [environmental impact statement](#) shall discuss and give appropriate consideration to these [effects](#) on the human environment.

(2) As described in the Commission’s 2004 Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions (69 FR 52040), the NRC currently addresses environmental justice in its NEPA reviews to determine if a proposed agency action will have disproportionately high and adverse impacts on minority and low-income communities, defined as environmental justice communities.

(a) When the NRC is conducting licensing and other regulatory reviews, the agency uses a variety of ways to gather information from stakeholders and interested persons on environmental impacts of the proposed agency action, such as in-person and virtual meetings, Federal Register notices requesting input, and dialog with community organizations.

(i) How could the NRC expand how it engages and gathers input?

**UMUT Response: It has been a very long time since NRC has reached out to tribes nationally. We recommend a regional approach through EPA regions’ Regional Tribal Operations Committees (RTOC’s). This will reach most tribal environmental networks directly or indirectly. RTOC’s meet monthly via teleconference and in person multiple times per year.**

(ii) What formal tools might there be to enhance information gathering from stakeholders and interested persons in NRC’s programs, policies, and activities?

**UMUT Response: Have meeting at Tribal community.**

**With local newspapers becoming obsolete in disparate communities, through social media or local governmental web pages, citizens who might hold-back in in-person forums may participate in comment pages available on those sites. However older citizens may not respond via social media.**

(iii) Can you describe any challenges that may affect your ability to engage with the NRC on environmental justice issues?

**UMUT Response: The Federal Government has a Trust responsibility to Tribes and after the State of Utah obtained Agreement State status, this responsibility was lost because the state has no comparable obligation. No accountability to the Tribe from the State Utah has been upheld on the White Mesa Mill issues on this basis.**

(b) How could the NRC enhance opportunities for members of environmental justice communities to participate in licensing and regulatory activities, including the identification of impacts and other environmental justice concerns?

**UMUT Response: Go into the community and interact with leaders and people.**

(c) What ways could the NRC enhance identification of environmental justice communities?

**UMUT Response: US Census data is a great tool, but too often does not depict true social, economic, racial makeup of communities.**

**NRC looked at rad and chemical risk but not impacts of perception of radiation sources at the neighboring mill would have on Tribal social and cultural practices.**

**Tribal Member perception of mill impacts greatly associated with environmental observations such as overwhelming smells in the air, blinded, lame, or deformed animals found in the area, and do not put credence in the Mill message of dismissal that all at the mill is 'safe'.**

(d) What has the NRC historically done well, or currently does well that we could do more of or expand with respect to environmental justice in our programs, policies, and activities, including engagement efforts? In your view, what portions of the 2004 Policy Statement are effective?

(3) What actions could the NRC take to enhance consideration of environmental justice in the NRC's programs, policies and activities and agency decision-making, considering the agency's mission and statutory authority?

**UMUT Response: Convene a discussion with your Agreement State regulators in the State of Utah regarding this systematic assessment. Ongoing violation of the Clean Air Act at the facility demonstrates that while the Mil-DOS calculations and dispersion of radon in the miles between the impoundments and the White Mesa Ute Community may discount concern about radiation dose and radon health impacts at this time from a technical perspective, the fear and perception of having a licensed facility violating federal and state law next door is part of the daily reality for the people in White Mesa. Especially one that people see and smell every day.**

(a) Would you recommend that NRC consider any particular organization's environmental justice program(s) in its assessment?

(b) Looking to other Federal, State, and Tribal agencies' environmental justice programs, what actions could the NRC take to enhance consideration of environmental justice in the NRC's programs, policies, and activities?

(c) Considering recent Executive Orders on environmental justice, what actions could the NRC take to enhance consideration of environmental justice in the NRC's programs, policies, and activities?

**UMUT: EPA is the cornerstone agency for environmental justice and the current directives from the administration. We recommend that NRC parallel the actions of the EPA.**

Thank you for your consideration of these comments.

Sincerely,

Scott T. Clow  
Environmental Programs Director  
Ute Mountain Ute Tribe  
970-564-5432

970-570-3546 (mobile)  
P.O. Box 448  
Towoac, CO 81334



Enclosures:

Attachment 1: photo of Cell 4B, White Mesa Mill August 4, 2021

Attachment 2: Public Participation Summary, RML Amendment 10, DRC- 010222

**Federal Register Notice:** 86FR36307  
**Comment Number:** 16

**Mail Envelope Properties** (9279d71a0d464f018bc361f87f344c3c)

**Subject:** [External\_Sender] Comments regarding Environmental Justice Systematic Review  
**Sent Date:** 8/23/2021 2:29:25 PM  
**Received Date:** 8/23/2021 2:29:52 PM  
**From:** Scott Clow

**Created By:** sclow@utemountain.org

**Recipients:**  
"NRC-EJReview Resource" <NRC-EJReview@nrc.gov>  
Tracking Status: None

**Post Office:** utemountain.org

<b>Files</b>	<b>Size</b>	<b>Date &amp; Time</b>
MESSAGE	11340	8/23/2021 2:29:52 PM
image001.jpg	6493	

**Options**  
**Priority:** High  
**Return Notification:** No  
**Reply Requested:** No  
**Sensitivity:** Normal  
**Expiration Date:**

