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Keep Uranium In The Ground!

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U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
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re:Docket ID NRC-2021-0137-0001

Dear NRC:

Please accept the Multicultural Alliance for a Safe Environment's (MASE) comments on the U.S. Nuclear Regulatory Commission's environmental justice policy review pursuant to 86 Fed. Reg. 36307 (July 9, 2021).

MASE consists of five core groups: Bluewater Valley Downstream Alliance, Eastern Navajo Diné Against Uranium Mining, Laguna-Acoma Coalition for a Safe Environment, Post '71 Uranium Workers Committee, and the Red Water Pond Road Community Association.

MASE is rooted in the experiences of uranium-impacted communities of the southwestern U.S. We are communities working to restore and protect the natural and cultural environment through respectfully promoting intercultural engagement among communities and institutions for the benefit of all life and future generations. MASE was established in 2008.

I. Introduction

Environmental justice, and its converse, environmental racism, refer to disparate environmental pollution distribution, where low-income communities and communities of color more often bear the pollution burdens of industrial development and waste disposal than affluent and White communities.¹ These patterns of inequitable pollution distribution are the result of policy and legal decisions that may be intentional or unintentional.² Whether intentional or not, however, since the term environmental racism was first introduced in 1982, ample research has established that low-income communities of color are much more likely to be exposed to environmental hazards - and the health effects that

¹ McLeod, Jeffery Smith, *Unmasking the Processes and Justifications that Lead to Environmental Racism: A Critique of Judicial Decision-Making, Political and Public Ambivalence, and the Disproportionate Placement of Environmental and Land Use Burdens in Communities of Color*, 5 Va. J. Soc. Pol'y & L. 545, 546-547 (Spring, 2008).

² Id.

accompany them - than affluent or White communities.³ Environmental racism manifests both substantively and procedurally.⁴ accompany them - than affluent or White communities.⁵ Environmental racism manifests both substantively and procedurally.⁶

In 1994, President Clinton issued Executive Order (“E.O.”) 12898, which directed all Executive branch agencies to implement policies that reflected a commitment to environmental justice.⁷ At the time, E.O. 12898 represented a significant step forward for low-income communities of color seeking a more equitable distribution of environmental pollution.⁸ Although independent agencies such as the U.S. Nuclear Regulatory Commission (“NRC”) were not required to comply with the Executive Order, the Chair of the Nuclear Regulatory Commission announced that the NRC would voluntarily implement E.O. 12898's provisions.⁹

Despite the NRC Chair's commitment to integrating E.O. 12898's provisions into the agency's processes, the history of implementation and development of environmental justice at the NRC demonstrates that the agency has failed entirely to realize any meaningful gains in incorporating environmental justice into its primary functions. Further, given the Trump administration's and Congress's recent indications¹⁰ that nuclear power will be a centerpiece of the nation's energy policy, more than ever, low-income and communities of color, like those who make up MASE, will find themselves in the atomic cross-hairs.

³ Id. at 546-548 and citations therein. See, also, e.g., Clark, Lara, et. al., *National Patterns in Environmental Injustice and Inequality: Outdoor NO₂ Air Pollution in the United States*, PLoS ONE 9(4): e94431 (April 15, 2014), available at: <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0094431>; Brulle, Robert J. and Pellow, David N., *Environmental Justice: Human Health and Environmental Inequalities*, 27 Ann. Rev. Public Health 103 (2006), available at: <http://annualreviews.org/doi/pdf/10.1146/annurev.publhealth.27.021405.102124>

⁴ Salcida, Rachel, note 3, supra at 119-120.

⁵ Id. at 546-548 and citations therein. See, also, e.g., Clark, Lara, et. al., *National Patterns in Environmental Injustice and Inequality: Outdoor NO₂ Air Pollution in the United States*, PLoS ONE 9(4): e94431 (April 15, 2014), available at: <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0094431>; Brulle, Robert J. and Pellow, David N., *Environmental Justice: Human Health and Environmental Inequalities*, 27 Ann. Rev. Public Health 103 (2006), available at: <http://annualreviews.org/doi/pdf/10.1146/annurev.publhealth.27.021405.102124>

⁶ Salcida, Rachel, note 3, supra at 119-120.

⁷ E.O. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, § 1-101. The Executive Order characterizes environmental justice as disproportionately high and adverse health and environmental impacts on low-income and minority populations. Id.

⁸ Salcido, Rachael E., *Reviving the Environmental Justice Agenda*, 91 Chi.-Kent L. Rev. 115, 118 (2016).

⁹ Letter to President Clinton from Ivan Selin (March 31, 1994).

¹⁰ See, e.g., Crawford, Jonathan, *Trump and U.S. Nuclear Power Find Common Ground in Jobs Push*, Bloomberg News (Feb. 7, 2017).

II. Comments

In its Federal Register notice, the NRC poses a series of questions to which it requests answers. MASE has copied the NRC's questions in bold, and offered its answers below each question.

1. **What is your understanding of what is meant by environmental justice at the NRC?**

To MASE, it appears that at the NRC, environmental justice does not mean anything in any substantial way. Given the NRC's historical and contemporary treatment of low-income communities, communities of color and Indigenous peoples, the NRC's "environmental justice" policy seems to be no more than a cynical effort to "greenwash" licensing and policy actions that continue to disproportionately affect under-resourced communities.

2. **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.**

a. **How could the NRC expand how it engages and gathers input?**

In MASE's view, engagement and input are not the biggest issue with the NRC's environmental justice policy. Instead, NRC should be focusing on developing policies that mitigate or avoid altogether disproportionate impacts on low-income communities and communities of color.

That said, the NRC could improve engagement significantly by working with frontline communities at the beginning of the licensing process, rather than after the license application process is well under way, which is the current practice.

b. **What formal tools might there be to enhance information gathering from stakeholders and interested persons in NRC's programs, policies and activities?**

To improve information gathering from stakeholders and interested persons, the NRC should first understand the communities with whom it is interacting. This could be accomplished by meeting with impacted or potentially impacted community members (not just local government officials or chambers of commerce) over an extended period of time. This would require an NRC staff person on the ground in the impacted or potentially impacted community. It would also require NRC staff to acquire or have access to language and cultural proficiency appropriate to the targeted community.

c. **Can you describe any challenges that may affect your ability to engage with the NRC on environmental justice issues?**

The largest and most obvious challenge is that the NRC does not understand or appear to care about environmental justice. Since the NRC initially committed to implementing an environmental justice policy, it has consistently, through administrative jurisprudence, limited the policy's effect.

In one of the earliest Commission evaluations of the NRC's environmental justice policy, the Commission reviewed a Licensing Board decision to summarily dismiss environmental justice

challenges to an early site permit¹¹ for a nuclear reactor at the Grand Gulf Nuclear Station in Claiborne County, Mississippi.¹²

There, the Commission upheld the Licensing Board's determination that impacted communities had failed to raise a litigable claim that the NRC's technical staff had failed to sufficiently consider the socioeconomic and racial make-up of the area most immediately impacted by the proposed reactor.¹³

The communities' concerns were twofold. First, the community claimed that license applicant's Environmental Report failed to follow NRC environmental guidance because it compared the impacted community's economic and racial composition to the rest of Mississippi (which has a substantial African-American population and at the time was the second poorest state in the nation) rather than the other sites that were being considered for the reactor, as required by the guidance.¹⁴ The Commission determined that simply disclosing the socioeconomic makeup of the affected community was sufficient to inform the public of the community's demographics and therefore satisfied the NRC's environmental justice requirements for NEPA.¹⁵

Second, the affected community claimed that the applicant's environmental report failed to address the deficiencies in emergency planning that were a result of the affected community's poverty.¹⁶ The affected communities identified several emergency planning shortcomings, including the fact Claiborne county had only one fire station, ten police officers, and one hospital to contend with a potential radiological emergency.¹⁷ The Commission held this contention was not litigable because the environmental report disclosed the socioeconomic and racial makeup of the community and the affected community had not shown that the emergency planning deficiencies would fall disproportionately on the

¹¹ An early site permit allows a nuclear reactor operator to secure certain safety reviews from the NRC prior to constructing a reactor or informing the NRC of the type of reactor that will be used. See, <https://www.nrc.gov/reactors/new-reactors/esp.html>.

¹² *In the Matter of System Energy Resources, Inc. (Early Site Permit for Grand Gulf Site)*, CLI-05-04, 61 N.R.C. 10, 12 (2005).

¹³ *Id.*

¹⁴ *Id.* at 18.

¹⁵ *Id.*

¹⁶ *Id.* at 20.

¹⁷ *Id.* at 14.

34% of Claiborne County's population that was below the poverty line compared to the 66% of the population that was above the poverty line.¹⁸

Subsequently, in another case, the Commission approved an early site permit for two nuclear reactors associated with the North Anna Nuclear Power plant in Louisa County, Virginia.¹⁹ The Commission reviewed, among other issues, a determination by an NRC Licensing Board that the NRC's technical staff failed to make a sufficiently detailed analysis of the environmental justice issues associated with the planned construction of the nuclear reactors under NEPA and the NRC's environmental justice policy.²⁰

The Licensing Board concluded that pursuant to the NRC's environmental justice policy and NRC environmental justice guidance, the NRC's technical staff had failed to take a more "detailed" look at the proposed reactors' impacts on the low-income and minority population the technical staff had identified as being impacted.²¹ In reversing the Licensing Board's decision, the Commission initially drew attention to its view that the NRC environmental justice policy is voluntary.²²

The Commission then distinguished between the technical staff's environmental justice analysis and its explanation of that analysis in the environmental impact statement.²³ The Commission concluded that irrespective of whether the underlying analysis was thorough or not, NRC guidance and policy does not require the technical staff to provide a comprehensive explanation of its analysis in the FEIS.²⁴ Thus, even while concluding that the technical staff's environmental justice discussion in the FEIS was "rather cursory", "thin" and "terse" it was nevertheless sufficient to satisfy the NRC's environmental justice policy and guidance because the technical staff ultimately concluded that the environmental justice impacts would be "small" and the record accurately reflected that conclusion.²⁵

¹⁸ Id. at 20.

¹⁹ *In the Matter of Dominion Nuclear North Anna, LLC*, CLI-07-27, 66 N.R.C. 215, 219 (2007).

²⁰ Id. at 238.

²¹ Id. at 238-239.

²² Id. at 240. This statement seems to imply that the NRC's environmental justice policy may be ignored or applied arbitrarily.

²³ Id. at 241.

²⁴ Id. at 242-243.

²⁵ Id. at 247-248.

In another proceeding to renew the operating license for two nuclear reactors at the Indian Point nuclear power plant, located approximately twenty-four miles north of New York City, the Commission was faced with the issue of whether the NRC technical staff could rely on the safety findings in a 1996 generic EIS for the license renewal before it.²⁶ As a generic document, the 1996 generic EIS did not contain site specific environmental justice considerations.²⁷ The impacted communities in that case provided evidence to the Licensing Board that poverty and site-specific community characteristics like language barriers, presented obstacles to emergency evacuation in the event of a serious nuclear accident.²⁸ The Licensing Board accepted the evidence and concluded that the technical staff had failed to take a "hard look" at the environmental justice impacts in the Indian Point EIS.²⁹

The Commission reversed the Licensing Board, holding that concerned community members should not be able to even raise the issue of disproportionate impacts of a catastrophic accident on low-income or minority communities.³⁰ The Commission reasoned that the NRC technical staff properly relied upon the previous generic evaluation of the type of reactor employed at the Indian Point facility, and was not required to inquire whether there were unique or site-specific disproportionate impacts on low-income or minority communities.³¹

Finally, a significant part of the NRC's final environmental justice policy is founded on the Commission's decision in the Louisiana Enrichment Services case.³² This reliance on LES, however, creates a dissonance within the NRC's environmental justice obligations. In LES, the Commission held that NEPA was the only statutory grounds for identifying discrimination, and NEPA only permitted identifying disparate impacts.³³ This view seems to preclude looking for intentional discrimination in the course of the licensing process, which puts the NRC's process at odds with national civil rights laws. Further, this view seems to indicate the NRC will willfully ignore evidence of intentional environmental discrimination when raised, as it was in the LES case, by parties to a licensing proceeding.

²⁶ *In the Matter of Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Units 2 and 3)*, CLI-15-6, 81 N.R.C. 340, 350-351 (2015).

²⁷ *Id.* at 367-368.

²⁸ *Id.* at 373-374.

²⁹ *Id.* at 375.

³⁰ *Id.* at 380-381.

³¹ *Id.*

³² *In the Matter of Louisiana Energy Services, L.P. (Claiborne Enrichment Center)*, CLI-98-3, 47 NRC 77, 102 (1998).

³³ *Id.*

Hence, before communities will ever be able to meaningfully engage with the NRC on environmental justice issues, the NRC will need to grapple with its stated mission to protect public health, and its unspoken, but obvious priority to promote the nuclear industry.

3. 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?

Initially, the NRC could enhance opportunities for under-resourced communities to participate in licensing activities by making participation less onerous. Currently, in order to participate in NRC licensing activities, under-resourced communities must be able to retain legal counsel, retain technical experts, and commit significant amounts of time to protecting their communities. Thus, in order for environmental justice communities to participate in NRC licensing processes, they must have access to significant financial resources and a lot of time. These are exactly the kinds of resources that environmental justice communities, by definition, lack.

An important first step in ensuring meaningful participation of environmental justice communities in licensing proceedings would be to allow for members of impacted or potentially impacted communities to be able to intervene in a licensing proceeding automatically, simply by expressing the desire to do so. Additionally, in all licensing proceedings, the NRC should place the burden on the license applicant and NRC staff to prove the proposed operation is safe, rather than placing the burden on under-resourced communities to prove a proposed operation is not safe. Finally, the NRC should establish a program that makes money available to low-income communities of color to retain legal and technical experts for challenging licensing decisions.

4. What ways could the NRC enhance identification of environmental justice communities?

NRC should first use tools such as the U.S. Environmental Protection Agency's EJScreen and census data to identify low-income communities and communities of color. After the NRC has completed an initial screening process, it should rely on local informants to identify more precisely the communities impacted by NRC decisions.

5. 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?

Unfortunately, as noted throughout these comments, the NRC's historic and current treatment of environmental justice is wholly inadequate.

6. 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?

While the NRC's environmental justice policy could be significantly improved by implementing more robust NEPA analyses, even the most rigorous NEPA analysis would still be limited by NEPA's procedural nature. In other words, the best NEPA analysis would not necessarily result in concrete health outcomes in those communities most impacted by the nuclear fuel chain. For concrete outcomes, a substantive environmental justice policy is needed. However, the Commission effectively shut the

door to any substantive measures addressing environmental racism in the nuclear fuel chain before it even formally adopted an environmental justice policy, when it held in the LES decision that NEPA was the "only conceivable" means by which environmental justice might be evaluated.³⁴ However, the NRC's organic statute - the Atomic Energy Act - provides a basis for addressing substantive environmental inequality in a substantive way.

The Atomic Energy Act is the implementing statute for the Nuclear Regulatory Commission. It provides for the NRC's regulatory authority, including its authority to issue licenses to possess and transport nuclear materials and construct nuclear power plants.³⁵ The NRC's primary mandate, pursuant to the Atomic Energy Act is to protect public health and safety.³⁶ Accordingly, the Atomic Energy Act contains numerous provisions prohibiting the issuance of any license by the NRC that fails to protect the public health and safety. For example, with respect to source material, the AEA provides³⁷:

The Commission shall not license any person to transfer or deliver, receive possession of or title to, or import into or export from the United States any source material, if in the opinion of the Commission, the issuance of a license to such person for such purpose would be inimical to the common defense and security or the *health and safety of the public*. (emphasis added).³⁸

The AEA also has public health and safety requirements with respect to byproduct material^{39, 40} and special nuclear material.^{41, 42} Finally, the AEA has public health and safety requirements for nuclear

³⁴ See, note 30, *supra*. It is noteworthy that while the Executive Order itself uses NEPA as an example as a way in which the E.O. could be implemented, nothing in the E.O. indicates that NEPA should be the only means of implementation.

³⁵ 42 U.S.C. § 2013(b).

³⁶ 47 NRC at 103, n.20

³⁷ "Source material" is uranium, thorium or other material determined by the Commission to be source material or ores containing concentrations of 0.05% or greater of uranium or thorium. 42 U.S.C. § 2014(a); 10 C.F.R. 20.1003.

³⁸ 42 U.S.C. § 2099.

³⁹ "Byproduct material" is defined as any radioactive material made radioactive by exposure to radiation incident to producing or utilizing special nuclear material or the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content. 42 U.S.C. § 2014(e).

⁴⁰ 42 U.S.C. § 2111

⁴¹ "Special nuclear material" is defined as artificially enriched material that is not source material, including plutonium or uranium enriched in the 233 or 235 isotope. 42 U.S.C. § 2014(aa).

⁴² 42 U.S.C. § 2073(e).

power plant operation.⁴³ As discussed in more detail below, the U.S. Environmental Protection Agency has already used similar broad grants of discretion in the statutes it implements and enforces to substantively consider and address environmental inequities.

Although it is the NRC's view that NEPA provides the only conceivable statutory authority for its environmental justice analysis, the Atomic Energy Act's health and safety provisions could provide an additional basis for a meaningful environmental justice policy.⁴⁴ The NRC would therefore not only have the procedural remedies that NEPA affords, it would also have the discretion to fashion substantive remedies, such as license conditions, under the auspices of the Atomic Energy Act.

While the NRC has not appeared to seriously consider using the Atomic Energy Act's omnibus health and safety provisions as a basis for environmental justice analyses, using omnibus health and safety provisions is not unprecedented. The U.S. Environmental Protection Agency ("EPA") has used similar broad grants of discretion to impose substantive environmental justice measures on polluting facilities subject to its regulatory authority.

The EPA's Environmental Appeals Board ("Appeals Board") has used similar omnibus language from several environmental statutes to find EPA authority to make substantive environmental justice inquiries, and three of those decisions are instructive.

The Appeals Board used omnibus language in the Resource Conservation and Recovery Act ("RCRA") to uphold a substantive agency wide environmental justice policy. In *In re: Chemical Waste Management of Indiana, Inc.*, the Appeals Board acknowledged that while E.O. 12898 did not change the substantive requirements for issuance of a permit under RCRA and its implementing regulations, where the EPA has discretion to act within the constraints of RCRA and its regulations, the EPA should exercise that discretion to the greatest extent practicable to implement the Executive Order.⁴⁵

In particular, the Appeals Board noted that under RCRA's omnibus clause, which provides that "[e]ach permit issued under this section shall contain such terms and conditions as the Administrator (or the State) determines necessary to protect human health and the environment", the EPA is required to craft permit conditions that would eliminate health and environmental risks, and if no such permit

⁴³ 42 U.S.C. §§ 2133(b), 2133(d), 2201(b). Several courts have interpreted the health and safety language to give the NRC regulatory authority over the radioactive aspects of nuclear material. See, *New Hampshire v. Atomic Energy Comm'n*, 406 F.2d 170, 175 (1st Cir. 1969); *Pacific Gas & Electric Co. v. State Energy Resources Conservation and Development Comm'n*, 461 U.S. 190, 205 (1983).

⁴⁴ The NRC does not appear to have given the idea of using the AEA's public health and safety provisions any serious thought. In response to a comment on the NRC's draft environmental justice policy suggesting that the AEA could serve as a basis for its environmental justice policy, the NRC simply noted that:

[t]he AEA does not give the Commission the authority to consider EJ-related issues in NRC licensing and regulatory proceedings. Apart from the mandate set forth in NEPA, the Commission is limited to the consideration of radiological health and safety and common defense and security. Citing *New Hampshire v. Atomic Energy Commission*, 406 F.2d 170, 175, 176 (1st Cir. 1969).

69 Fed. Reg. at 52044. However, the *Chemical Waste Management* case, discussed below, had long been decided and could have served as a model for the NRC's environmental justice policy. The NRC appeared never to have considered using the reasoning in *Chemical Waste Management* in fashioning its own environmental justice policy.

⁴⁵ 6 E.A.D. 66, 72 (1995).

conditions could be crafted, then the permit must be denied.⁴⁶ The Appeals Board concluded that when a comment on a draft permit raises at least a superficially plausible claim that a project would disproportionately impact a minority or low-income community, the EPA is required to include in its environmental impacts assessment an analysis “focusing particularly on the minority or low-income community whose health or environment is alleged to be threatened by the facility.”⁴⁷ If such an analysis found that the project would truly cause harm to human health or the environment, the EPA is required to fashion permit conditions to protect health and the environment or if no conditions can be fashioned, deny the permit.⁴⁸

Later Appeals Board decisions reinforce the decision in *Chemical Waste*. In *In re: Envotech, L.P.*, the Appeals Board construed the omnibus health and safety provisions of the Safe Drinking Water Act to allow EPA to conduct an analysis of whether low-income or minority communities would be disproportionately impacted by construction of hazardous waste injection wells.⁴⁹ In reaching its conclusion, the Appeals Board stated:

we hold that when a commenter submits at least a superficially plausible claim that a proposed underground injection well will disproportionately impact the drinking water of a minority or low-income segment of the community in which the well is located, the Region should, as a matter of policy, exercise its discretion under 40 C.F.R. § 144.52(a) (9) to include within its assessment of the proposed well an analysis focusing particularly on the minority or low-income community whose drinking water is alleged to be threatened. In this way, the Region may implement the Executive Order within the constraints of the SDWA and the UIC regulations.⁵⁰

In another case, the Appeals Board remanded two permits granted under the Clean Air Act for an oil exploration project off the coast of Alaska.⁵¹ The Appeals Board based its remand, in part, on the EPA's failure to conduct an adequate environmental justice analysis when Native Alaskan groups had raised evidence of health disparities between the community of Inupiat Eskimos most impacted by the oil exploration project and the rest of the U.S. population.⁵² The Appeals Board decision was also

⁴⁶ Id. at 74, citing 42 U.S.C. § 6925(c)(3).

⁴⁷ Id. at 75.

⁴⁸ Id. at 74.

⁴⁹ 6 E.A.D. 260, 281-282 (1996).

⁵⁰ Id. at 282.

⁵¹ *In re: Shell Gulf of Mexico, Inc. & Shell Offshore, Inc.*, 15 E.A.C. 103, 105 (2010).

⁵² Id. at 150.

premised on an acknowledgement that environmental justice must be considered in connection with issuing Prevention of Significant Deterioration permits under the Clean Air Act.⁵³

Using these broad statutory grants of discretion to implement a broader environmental justice policy is uncontroversial. The Environmental Law Institute ("ELI")⁵⁴ published a report in 2001 analyzing sources of statutory authority that could serve as the bases for EPA environmental justice activities.⁵⁵ In that report, ELI reviewed all the major environmental statutes EPA is charged with implementing and enforcing, and concluded: "[a]ll of EPA's sources of authority - environmental statutes, mission-expanding and cross-cutting laws, and general discretion - give the agency substantial and wide-ranging powers to pursue environmental justice."⁵⁶ The power to consider environmental racism and fashion remedies to address it generally contained in the broad statutory authority to protect human health or to take necessary and appropriate action to carry out an environmental statute's goals.⁵⁷ Such remedies include denying operating permits or fashioning permit conditions based on environmental justice concerns.⁵⁸ The National Academy for Public Administration⁵⁹ reached a similar conclusion after reviewing EPA's air, water and waste programs.⁶⁰

Like the environmental statutes that EPA administers, the AEA health and safety provisions provide a basis for a substantive NRC environmental justice policy. Nothing in the Atomic Energy Act would prevent the NRC from exercising its discretion under the omnibus health and safety provisions of the AEA to conduct substantive environmental justice analyses. Nor does anything in the AEA represent an obstacle that would prevent the Commission from adopting the environmental justice analytical framework which the EPA Appeals Board has applied to the statutes the EPA administers.

Moreover, a substantive environmental justice policy grounded in the Atomic Energy Act would benefit the communities most impacted by the nuclear fuel chain. For example, because every person or

⁵³ Id. at 149.

⁵⁴ The ELI is a non-profit, non-partisan organization dedicated to policy analysis, public education and information dissemination on environmental issues. See, <https://www.eli.org/about-environmental-law-institute>.

⁵⁵ Environmental Law Institute, *Opportunities for Advancing Environmental Justice: An Analysis of U.S. EPA Statutory Authorities* (2001).

⁵⁶ Id. at 3.

⁵⁷ Id. at 14.

⁵⁸ Id. at 17-18.

⁵⁹ The National Academy of Public Administration is a Congressionally chartered non-profit, non-partisan organization charged with providing analysis and advice on matters of public administration. See, <http://www.napawash.org/about-us/who-we-are.html> (last viewed, May 23, 2017).

⁶⁰ National Academy of Public Administration, *Environmental Justice in EPA Permitting: Reducing Pollution in High-Risk Communities is Integral to the Agency's Mission* at 38 (Dec. 2001).

entity seeking to possess nuclear materials or operate a nuclear facility must first obtain a license, environmental justice could be considered in every instance, not just those instances where an environmental impact statement would be required under NEPA. Therefore, by basing an environmental justice policy on the AEA, the gaps left by relying on NEPA as the sole basis for an environmental justice analysis would be filled.

Further, unlike under NEPA, under the Atomic Energy Act, the NRC would have less room to discount adverse consequences of a licensing action. If a proposed licensing activity were found to adversely affect the health or safety of an environmental justice population, the NRC would be required, under the AEA, to either impose license conditions that eliminated the adverse health and safety consequences or deny the license application. In contrast, under NEPA, even if the NRC found that a licensed activity would disproportionately impact a low-income or minority community, it could choose to ignore those impacts if it determined that other considerations, including economic considerations, outweighed the disproportionate impacts.⁶¹

Finally, an environmental justice policy under the AEA would impose no new duties on the NRC, nor would it confer any new rights or causes of action. Under the AEA, the NRC is already required to analyze the health and safety aspects of a proposed project. An environmental justice policy grounded in the AEA would simply require the NRC to assess whether an environmental justice population would be disproportionately affected by the project and if so, if there were any special factors that might make the proposed project particularly risky to the health and safety of that community. For example, Native American and Latino populations tend to have higher incidences of diabetes than Caucasian populations, which make them more susceptible to the kidney damage that is caused by ingesting even low concentrations of uranium over time.⁶² Under an AEA-based substantive environmental justice policy, projects that would result in elevated levels of uranium, a potent nephrotoxin, that could be ingested by populations that might face greater health risks from uranium ingestion, such as Native Americans and Latinos, would be less likely to be ignored by the NRC.

III. Conclusion

MASE appreciates the opportunity to comment on the NRC's environmental justice policy review and looks forward to meaningful engagement on this issue.

Sincerely,

Susan R Gordon

Susan Gordon
Coordinator
Multicultural Allianc for a Safe Environment

⁶¹ *Robertson v. Methow Valley Citizens Council*, 490 U.S. at 350.

⁶² Malczewska-Toth, Barbara, et. al., *Recommendations for a Uranium Health-Based Ground Water Standard* (Report prepared for the New Mexico Environment Department Groundwater Quality Bureau) at 37 (2003).