

Office Letter Transmittal

pdr
J. K. H. H.

TO: All NRR Employees

SUBJECT: NRR OFFICE LETTER NO. 906, REVISION 1, "PROCEDURAL GUIDANCE FOR PREPARING ENVIRONMENTAL ASSESSMENTS AND CONSIDERING ENVIRONMENTAL ISSUES"

PURPOSE: Revised Office Letter No. 906 establishes procedures and provides guidance pertaining to the preparation of environmental assessments and the consideration of environmental issues for licensing actions. It supersedes Office Letter 906 dated December 22, 1988. These changes affected a significant portion of the Office Letter so change bars were not used.

DIVISION OF ORIGIN: Division of Reactor Program Management

CONTACT: Claudia M. Craig, 415-1053

DATE APPROVED: September 27, 1996

AVAILABILITY: Roberta Ingram, 415-1219

200040

1/1
DFB

ID 9A-5 NAL
Ltr

ORC *96/002 0089 +A* *12/23/96*

NRR OFFICE LETTER NO. 906, REVISION 1

**PROCEDURAL GUIDANCE FOR PREPARING
ENVIRONMENTAL ASSESSMENTS AND CONSIDERING
ENVIRONMENTAL ISSUES**

OBJECTIVES

This office letter is intended to: (1) define the responsibilities of the Generic Issues and Environmental Projects Branch (PGEB) for ensuring that NRR is consistent in its implementation of NRC and other Federal environmental regulations, (2) define NRR staff responsibilities, and (3) provide guidance to NRR staff on the procedural requirements for demonstrating compliance with environmental statutes and regulations covering environmental issues for docketed facilities.

The office letter contains guidance for preparing environmental assessments (EAs) and for considering the environmental issues associated with the Coastal Zone Management Act (CZMA), the Endangered Species Act (ESA), the National Historical Preservation Act (NHPA), and the executive order related to environmental justice. These issues entail, in part, determining an action's impact on protected coastal zones, protected endangered species, and archaeological and historical sites, and considering the degree to which an action has an effect on minority populations and low-income populations. It should be noted that an environmental impact statement (EIS) addresses the same issues as an EA, but in a more detailed format. This office letter does not address the preparation of an EIS; an EIS will be prepared with technical support from PGEB staff. This office letter supersedes previous guidance on these subjects.

RESPONSIBILITIES AND AUTHORITIES

PGEB

PGEB is responsible for providing implementation guidance and technical support to NRR staff for the resolution of environmental issues for docketed facilities. PGEB is also responsible for coordinating environmental issues with other NRC offices, for ensuring NRR meets its obligations under all Federal environmental regulations and the National Environmental Policy Act (NEPA), and for consistently and properly implementing the requirements of 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," for docketed facilities.

All NRR Employees

Individual NRR staff members are responsible for implementing the procedural requirements of this office letter; staff should consult with PGEB when reviewing environmental issues.

BASIC REQUIREMENTS

In addition to NRC's regulatory responsibilities embodied in the traditional health and safety requirements of the Atomic Energy Act, NRC also has responsibilities that derive from the NEPA and from other environmental regulations (such as the ESA, the NHPA, and the CZMA) and from Presidential executive orders. NRR staff should consider the environmental issues when performing license amendment activities including, but not limited to (1) increasing the authorized power level of commercial power reactors (power uprate up to 5 percent and extended power uprate up to 120 percent), (2) changing the license expiration date to recapture time between the construction permit and actual operation (construction recapture), (3) performing decommissioning activities under 10 CFR Part 50, and (4) revising Appendix B of a licensee's operating license (environmental protection plan). Additionally, the staff should consider the environmental issues when processing license renewal applications and requests for exemptions from NRC regulations, and when conducting rulemaking.

NRR staff is encouraged to seek assistance from PGEB early in dealing with environmental issues that are unique, particularly difficult, or unfamiliar. NRR staff may request formal guidance in writing EAs or EISs from PGEB. When seeking concurrence, assistance, or safety evaluation input, NRR staff should provide PGEB staff a Technical Assignment Control (TAC) number because environmental reviews are fee recoverable under 10 CFR Part 170.

PGEB Requirements

- (1) Review and concur on EAs prepared by NRR staff for the activities listed above. PGEB will maintain typical treatments of environmental issues, and provide input to standard wording used in addressing similar environmental issues.
- (2) Review, and provide guidance and support to NRR staff in the preparation of all EISs (draft, final, and supplements) for docketed facilities.
- (3) Participate in environmental rulemaking activities. PGEB will review proposed environmental legislation, statutes, regulations, and guidance for potential impact on NRR and will participate in Federal-wide meetings. PGEB will provide guidance to NRR staff regarding the implementation of other applicable Federal statutes.
- (4) Review new and emerging environmental issues and provide support to NRR staff in resolving environmental issues.
- (5) Review environmental documents submitted by other Federal and State agencies.
- (6) Review recovery plans for endangered species and prepare or direct the preparation of biological assessments (BAs) as required by the ESA.

- (7) Coordinate environmental protection training activities with the Technical Training Center.
- (8) Coordinate environmental issues with other NRC offices.
- (9) Maintain a roster of staff with particular environmental specialties and experience, and coordinate participation in environmental reviews. PGEB will maintain access to environmental review resources through technical assistance contracts at national laboratories.
- (10) Maintain and update this office letter.

General Staff Requirements for EAs

As discussed above ("Basic Requirements"), EAs must be written for certain licensing and rulemaking activities. Although most environmental reviews performed by NRC are EAs, it is important to understand the distinction between an EA and an EIS and when each is used.

NEPA requires that a detailed statement of the *environmental impact of the proposed action and alternatives* (an EIS) be prepared for "major Federal actions significantly affecting the quality of the human environment." The process used to *determine whether an action will significantly affect (or impact) the environment* is an EA. If the review documented in an EA shows that the proposed action will not have a significant impact on the environment, a finding of no significant impact (FONSI) is made in the conclusion of the EA and no EIS need be prepared. If, on the other hand, the environmental review reveals that the proposed action will, or has the potential to, significantly affect the environment, the EA must conclude that a more detailed review of the environmental affects (i.e., an EIS) should be prepared. In general, an EIS contains much more detail about the specific environmental impacts of the proposed action and alternatives, and requires extensive public participation, public comment, and coordination with other agencies. Normally, project managers (PMs) prepare EAs and are responsible for coordinating the preparation of EISs.

Upon receipt of a proposed action, the PM should determine whether an environmental review is needed and, if it is needed, the type that should be prepared. Section 51.22 of Title 10 of the Code of Federal Regulations (10 CFR 51.22) identifies categories of actions that are excluded from environmental reviews because it has been determined that certain categories do not individually or cumulatively have a significant effect on the human environment. If the PM determines that the proposed action is outside one of the excluded categories, then the PM shall prepare the EA in accordance with the requirements in 10 CFR 51.30, unless significant environmental impacts may occur as a result of the action. If significant environmental impacts may occur, the PM should contact PGEB and an EIS will be prepared. Section 51.30 of Title 10 of the Code of Federal Regulations requires an EA to (1) identify the proposed action, (2) briefly discuss the need for the proposed action, (3) briefly discuss the alternative courses of action if the proposed action involves an unresolved conflict concerning alternative uses of resources,

(4) describe the environmental impacts of the proposed action and any alternative courses of action noted in item 3 (above), and (5) list agencies and persons consulted and identify sources used. An EA should include a FONSI if the EA supports a conclusion that the proposed action will not have a significant effect on the quality of the human environment. If such a finding cannot be made, an EIS will need to be prepared. The preparation of the EIS should be coordinated with PGEB. Attachment 1 is a flow chart outlining the process. Attachment 2 contains detailed guidance on each step in the preparation of an EA. Attachment 3 contains a sample (boilerplate) of the appropriate format and content of an EA. Note that the sample is intended to be used as guidance and is not a substitute for an objective consideration of the impacts and conclusions. PMs must independently satisfy themselves that any boilerplate statements used are correctly applied to the specific action being reviewed.

General Requirements for Rulemaking Activities

When an EA is written in support of rulemaking activities, the initiating office implements additional procedures. Detailed guidance is provided in the NRC Regulations Handbook, NUREG/BR-0053.

In general, after the Federal Register notice (FRN) for the proposed rule is signed by the Commission Secretary or the Executive Director for Operations (EDO), and before the FRN is published, a generic cover letter with a copy of the draft EA and the FRN should be sent to the State Liaison Officer requesting the State's comments. As with an EA for a licensing action, the consultation must be documented in a brief summary in the EA, and must address the comments and staff response. A sample letter is included in the NUREG.

General Requirements for Environmental Justice

In February 1994, the President issued an executive order mandating that Federal agencies make "environmental justice" part of each agency's mission by addressing disproportionately high and adverse human health or environmental effects of Federal programs, policies, and activities on minority populations and on low-income populations. The Council on Environmental Quality (CEQ) is developing guidelines on how to integrate environmental justice into the NEPA process. Until those guidelines are issued, the NRR interim procedure (Attachment 4) should be used.

Environmental justice reviews will be performed for all actions requiring preparation of an EIS or a supplement to an EIS. An environmental justice review is not usually required for an EA in which a FONSI is made, unless warranted by special circumstances. These cases may include regulatory actions that involve a significant site modification with an identifiable impact on the environment or that have substantial public interest. Senior NRR management will decide on a case-by-case basis when special circumstances exist that require the staff to perform an environmental justice review for an EA.

Coastal Zone Management Act

The Coastal Zone Management Act of 1972 was promulgated to encourage and assist States and territories in developing management programs that preserve, protect, develop, and, where possible, restore the resources of the coastal zone. Activities of Federal agencies that are reasonably likely to affect coastal zones shall be consistent with the approved coastal management program (CMP) of the State or territory. The CZMA provisions apply to all Federal licenses and actions requiring Federal approval (new plant licenses, license renewals, materials licenses, and major amendments to existing licenses) which affect the coastal zone in a State or territory with a federally approved CMP. Attachment 5 is a list of States and territories with federally approved CMPs.

Project Managers should determine whether the State or territory has an approved CMP and whether their licensee is within the boundary of the CMP. If the plant is located within the CMP boundary, the PM should become familiar with the requirements of the CMP. Within the CMP, predetermined activities are listed that may affect the coastal zone. When the PM determines a proposed licensing activity may affect coastal uses or resources, the PM should inform the licensee of the need to contact the government of the State or territory and to comply with the provisions of the CZMA. The licensee should certify its compliance to the State or territory. Attachment 6 is a draft model certification for license amendment applicants.

The PM, in notifying the licensee of the need to communicate with the State or territorial government, should ascertain whether the proposed activity is listed in the CMP or not. If the activity has been listed in the CMP, the PM has an obligation to withhold approval of the application until the government of the State or territory has concurred. If the applicant seeks a license, permit, or license amendment for an activity affecting the coastal zone, and that activity is not listed in the CMP, the State or territory has the responsibility to inform the NRC and the applicant (within 30 days after the CMP coordinator has been notified) that the activity requires State or territorial government review. Otherwise, the State or territory waives the right to review the unlisted activity. In either case, once the State or territory begins its review, it has 6 months to determine whether such activity is consistent with the CMP. If the State or territory concurs, NRC may issue approval of the application. If the State or territory objects to a consistency certification for a listed activity, NRC may not approve the activity unless the applicant appeals the objection to the Secretary of Commerce and the Secretary overrides the objection. Attachment 7 is a flow chart of CZMA activities.

Endangered Species Act

The ESA was promulgated in 1973 to ensure protection of endangered or threatened species and critical habitats. The ESA imposes two basic requirements on Federal agencies. First, the ESA requires each Federal agency to ensure that any action authorized, funded, or carried out by an agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or impairment of any critical

habitat for such species. "Action" has been interpreted broadly and comprises licensing, rulemaking, and lesser regulatory actions that could jeopardize an endangered species. A Federal agency should act, if possible (where it has the legal authority), to prevent endangered species or their habitats from being threatened or destroyed.

Second, the ESA requires Federal agencies to fulfill the requirements of the act in consultation with, and with the assistance of, the Secretary of the Interior (for freshwater and terrestrial species through the Fish and Wildlife Service) or the Secretary of Commerce (for oceanic and coastal matters through the National Marine Fisheries Service); hereafter both are referred to as "the Service." If the Federal agency fails to consult with the Service, and the action results in the "taking" (harassment, harm, pursuit, hunting, shooting, wounding, killing, trapping, capture, collection, or attempt to engage in such activities) of an endangered species or the impairment or destruction of a critical habitat, the Federal agency is in clear violation of the ESA. Five consultation processes can be used and are discussed briefly next.

Early Consultation

The applicant can request that the Federal agency enter into early consultation with the Service. This may be done if the applicant believes one or more listed species or critical habitats may be affected by the proposed action. The agency initiates early consultation in writing. The process followed is the same as the one discussed under "Formal Consultation"; however, a preliminary biological opinion (BO) is issued. A preliminary BO does not constitute the authority to "take" listed species.

Informal Consultation

Informal consultation, an optional process of discussions between the Service and the Federal agency preceding formal consultation, determines whether formal consultation or a conference is required.

Conference

This process involves informal discussions between a Federal agency and the Service regarding the impact of an action on proposed species or proposed critical habitat and recommendations to minimize or avoid harm.

Biological Assessment

A biological assessment (BA) is initiated when a major construction activity takes place that may affect listed species or critical habitats. The Federal agency requests a list from the Service of endangered or threatened species and critical habitats or sends the Service a list of species and habitats that are being reviewed in the BA. Within 30 days of the request, the Service responds (provides the list or concurs on the list that was prepared by the Federal agency). If no species or habitats are affected, no further action is required. If only proposed species or habitats (not yet listed as an

endangered or threatened species or habitat) are present, the Federal agency must confer with the Service, but a BA is not required. If there are listed species or critical habitats, then the Federal agency must begin the BA within 90 days of the response. The BA may include the findings of onsite inspections, opinions of recognized experts, results of an information review, an analysis of the proposed actions, and alternatives. The BA must be submitted to the Service within 180 days of the response. The Service must respond to the BA within 30 days. If there are no species present and the Service concurs, no formal consultation is required. If the BA concludes that the action is not likely to jeopardize the species or any critical habitat and the Service concurs, then no conference is required. If the BA concludes that the action affects listed species or critical habitat, then the Federal agency can initially request an informal consultation to determine if the project can be modified so that the species or critical habitats are not adversely impacted. Otherwise, formal consultation is required.

Formal Consultation

Formal consultation is a process between the Service and the Federal agency that takes place after the BA has been submitted and the BA has determined that the action affects listed species or critical habitats. The Federal agency sends a written request for consultation to the Service. The written request must contain a description of the action, a description of the area, a description of the listed species, the effects of the action, an analysis of the cumulative effects, and a review of reports and other information. Within 90 days, the Service issues a BO. The BO contains a summary of the action, the effects, an opinion on whether the species is in jeopardy as a result of the action, alternatives, incidental "take" provisions, and conservation measures.

After the consultation is complete, the Federal agency must determine whether it has taken all necessary actions. Although the Federal agency is not legally bound to comply with Service opinions and can adopt measures that differ from the recommendations, the courts give substantial weight to Service opinions.

There are also provisions for reinitiation of consultation if the original assumptions of the BA change, and there is a provision for a citizen suit to challenge a Federal agency's action.

National Historical Preservation Act

The NHPA was promulgated in 1966 and amended in 1992 to coordinate and support public and private efforts to identify, evaluate, and protect significant historic and archaeological resources.

Section 106 of the NEPA directs Federal agencies to consider the effects of their undertakings on historic properties and to give the Advisory Council on Historic Preservation (the Council) an opportunity to review and comment on any Federal agency action that might harm historic property. "Undertakings" denotes a broad range of Federal activities, including the issuance of NRC

licenses, license amendments, and permits. "Historic property" is any property listed in or eligible for inclusion in the National Register of Historic Places (register). The NHPA evaluation may take place as part of the NEPA review.

As the first step in the process, the agency identifies the historic property that the undertaking may affect. The Federal agency should review information and consult with the State Historic Preservation Officer (SHPO). If properties are identified and may be eligible for entry in the register, but have not yet been listed there, the agency should evaluate the site against criteria published by the National Park Service. The evaluation is carried out in consultation with the SHPO and the agency may seek formal determinations. If the property has already been listed in the register, no further evaluation is necessary. The agency should assess the effect of the undertaking on the site that contains a historic property. The Federal agency should work with the SHPO. Three determinations may be made: no effect, no adverse effect, and adverse effect. If an adverse effect is determined, the agency should consult with the SHPO, the public, and the Council. Consultation will result in a memorandum of agreement (MOA) outlining measures agreed upon by the agency to reduce, avoid, or mitigate the adverse effect. The MOA is submitted to the Council and the Council replies in writing within 30 days.

EFFECTIVE DATE

This office letter is effective immediately.

Attachments:

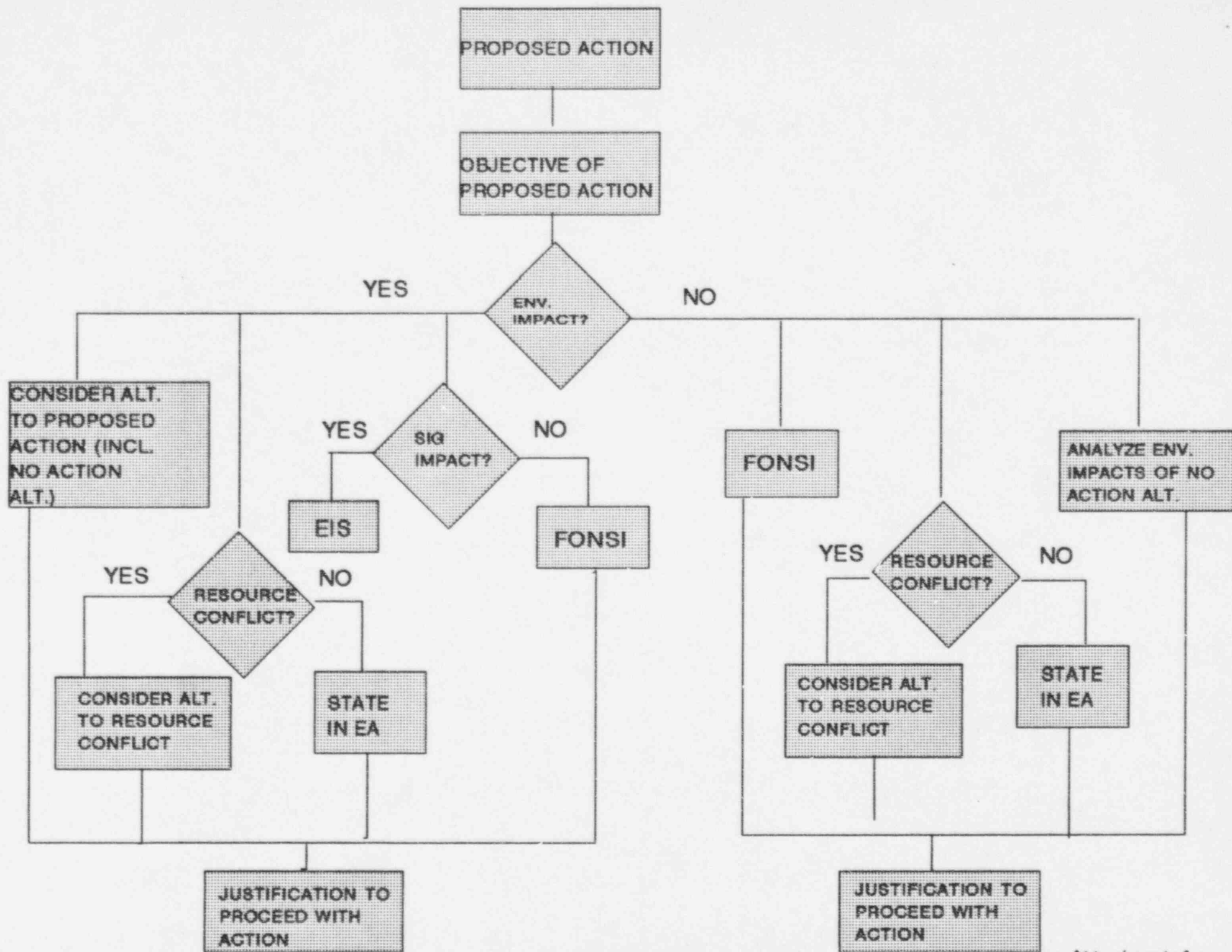
1. EA Flow Chart
2. EA Preparation Guidance
3. EA Boilerplate
4. Environmental Justice Interim Procedure
5. List of States with Federally-approved CMPs
6. Draft Model for Certification
7. CZMA Flow Chart

cc w/attachments:

J. Taylor, EDO
 J. Milhoan, DEDR
 H. Miller, RI
 S. Ebnetter, RII
 A. Beach, RIII
 L. Callan, RIV
 SECY
 OGC
 PUBLIC

ATTACHMENT 1

EA FLOW CHART



ATTACHMENT 2
EA PREPARATION GUIDANCE

DETAILED GUIDANCE FOR PREPARING ENVIRONMENTAL ASSESSMENTS

Identification of the Proposed Action

This section should briefly describe the action proposed and reference the pertinent licensee application.

The Need for the Proposed Action

Section 51.30(a)(1)(i) of Title 10 of the Code of Federal Regulations requires that an EA shall contain a brief discussion of the need for the proposed action. When writing this portion, the person preparing the assessment should discuss the applicant's motivation for submitting the application to the NRC. For example, does the requested exemption or amendment provide some benefit to the applicant if granted? How would the applicant be affected if the application was not approved?

Alternatives

The NEPA contains two separate requirements related to the consideration of alternatives. The first requires the consideration of alternatives in the preparation of an EIS. The second requires the consideration of alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources. Thus, the statute requires alternatives to be considered only if an EIS is prepared or if an agency action exists involving unresolved conflicting uses of resources. The significance of the environmental impact of the action cannot be used to determine whether or not an agency has to consider alternatives.

Sections 51.30(a)(1)(ii) and (iii) of Title 10 of the Code of Federal Regulations require that an EA include alternatives to the proposed action and the environmental impact of the alternatives. NEPA requires NRC to consider alternatives in the preparation of all EAs whenever the following two conditions are present: (1) there is some identifiable environmental impact from the proposed action and (2) the objective of the proposed action can be achieved in one of two or more ways that will have differing impacts on the environment (unresolved conflict of available resources). The fact that the EA involves a FONSI does not automatically exempt the person preparing the assessment from considering alternatives. As long as there is some identifiable impact on the environment from the proposed action, the person preparing an EA should consider alternatives. For those actions involving a very small impact, it is reasonable to consider a very limited range of alternatives. In fact, in several decisions, the courts have stressed that the range of alternatives an agency must consider in an EA decreases as the environmental impact of the proposed action becomes less and less substantial. However, no court has held that an agency is excused from considering alternatives if the agency has made a FONSI and, in fact, considering alternatives is independent of the question of environmental impact.

Nonsignificant impact does not equal no impact, so if an even less harmful alternative is feasible, it ought to be considered. If the environmental impact of a proposed action is zero, there is no need to consider alternatives because there is no use of natural resources associated with the action. In those cases involving no environmental impact at all, it is reasonable to avoid a discussion of alternatives, or at least limit the discussion of alternatives to consideration of the no action alternative. If the "no action" alternative is the only alternative examined, the alternatives section may contain wording similar to the following:

As an alternative to the proposed action, the staff considered denying the proposed action. Denial of the application would not change current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Conflicts Concerning Alternative Use of Resources

In accordance with Section 102(2)(E) of NEPA, agencies must consider alternative courses of action if the proposed action involves an unresolved conflict of how available resources will be used under the proposed action. This will occur when the objective of the proposed action can be achieved in one of two or more ways that will have differing impacts on the environment even if a FONSI has been made. OGC has provided the following guidance to the staff. Almost all EAs prepared by NRC are expected to involve an "unresolved resource conflict," as this term has been interpreted by the courts.

Requirements for Consultation With States and Other Government Agencies

10 CFR 51.30(a)(2) requires the EA to list agencies and persons consulted and to identify the sources used. The person preparing the EA must consult with the affected State before the EA is issued, and must solicit comments on the environmental impact and any other comments the State may have. Additionally, the person preparing the EA is responsible for ensuring that other appropriate agencies are contacted if an action may involve some impact to the natural or physical environment. The consultation must be documented in a brief summary in the EA and should contain (1) the name of the agency or person contacted (consulted with), (2) the date and purpose of the consultation, (3) a brief summary of the views or comments expressed and the staff resolution, and (4) references to publicly available documents containing additional information, as applicable.

The person preparing the EA should briefly describe why the consultation was initiated. For example, if the National Marine Fisheries Service was contacted on July 25, 1995, to discuss a specific issue involving short-nosed sturgeon, the summary could state

The National Marine Fisheries Service was contacted on July 25, 1995, to discuss the evaluation of the ability of short-nosed sturgeon to avoid capture after the proposed modification of the river water intake.

If the consultation was made to meet strictly a programmatic requirement and not a specific issue, the consultation with the State could be summarized as follows:

In accordance with its stated policy, on [insert date], the staff consulted with the [insert name of State] State official, [insert name of official] of the [insert name of agency], regarding the environmental impact of the proposed action. The State official had [choose one - comments or no comments].

If comments are received from the State or agency, the comments should be summarized in the EA. Minor comments could be characterized as "general agreement" or "no objection" by the State or agency. More extensive comments require the person preparing the EA to summarize the details of the issues and the resolution of the comments or in a separate document referenced in the EA. Resolution of the comments should be placed in the NRC Public Document Room (PDR) and the local PDR to ensure public access.

Before issuing the EA for an exemption to the regulations, the person preparing it should also contact the State government to solicit comments on the environmental impact of the proposed action. Although notifying the State is not required by 10 CFR 50.91, it is required by the NEPA. This requirement may be met by sending a copy of the incoming exemption request to the State. If the State has a comment, the person preparing the EA should resolve and document the comments in the EA, as discussed above.

ATTACHMENT 3

EA BOILERPLATE

APPROPRIATE FORMAT FOR AND CONTENT OF AN ENVIRONMENTAL ASSESSMENT

(Addressee)

SUBJECT: (Plant name) - (TAC NO. M00000)

Dear _____:

Enclosed is a copy of the Environmental Assessment and Finding of No Significant Impact related to your application for [amendment/exemption] dated _____, as supplemented on _____. The proposed [amendment/exemption] would _____.

The assessment is being forwarded to the Office of the Federal Register for publication.

Sincerely,

_____, Project Manager
Project Directorate_____
Division of Reactor Projects - _____
Office of Nuclear Reactor Regulation

Docket No. _____

Enclosure: Environmental Assessment

cc w/encl: See next page

UNITED STATES NUCLEAR REGULATORY COMMISSION(LICENSEE)(DOCKET NO.)(PLANT NAME)ENVIRONMENTAL ASSESSMENT AND FINDING OFNO SIGNIFICANT IMPACT

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an [amendment to/exemption from] Facility Operating License No. _____, issued to (name of licensee) , (the licensee), for operation of the (facility name) , located in _____.

ENVIRONMENTAL ASSESSMENTIdentification of the Proposed Action:

The proposed action would _____

_____.

The proposed action is in accordance with the licensee's application for [amendment/exemption] dated _____, as supplemented by letter dated _____.

The Need for the Proposed Action:

The proposed action _____

_____.

Environmental Impacts of the Proposed Action:

The Commission has completed its evaluation of the proposed action and concludes that_____

_____.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action:

PREPARER PLEASE NOTE

The following paragraph may be used when the "no-action" alternative is addressed in the EA.

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources:

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the [insert name of facility].

Agencies and Persons Consulted:

In accordance with its stated policy, on [insert date] the staff consulted with the [insert name of State] State official, [insert name of official] of the [insert name of agency], regarding the environmental impact of the proposed action. The State official had no comments.

FINDING OF NO SIGNIFICANT IMPACT

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated _____, as supplemented by letter dated _____, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the [insert LPDR address].

Dated at Rockville, Maryland, this _____ day of _____ 1996.

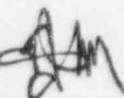
FOR THE NUCLEAR REGULATORY COMMISSION

_____, Director
Project Directorate
Division of Reactor Projects -
Office of Nuclear Reactor Regulation

ATTACHMENT 4

ENVIRONMENTAL JUSTICE INTERIM PROCEDURE

Note to: Hugh Thompson, Jr.
Maria Lopez-Otin
John Hickey
Stuart Treby
Ann Hodgdon
Bill Morris

From: Frank Miraglia 

Date: March 16, 1995

Subject: Interim NRR Procedure for Environmental Justice Reviews

The EDO has directed NRR, NMSS, and RES to develop procedures for considering environmental justice when preparing NEPA documents and to coordinate the procedures with the NRC Environmental Justice Working Group. The procedures are to provide guidance for performing environmental justice reviews on an interim basis until CEQ guidance is received. Attached is NRR's interim procedure for your review. Please provide your comments to Steve Hoffman (MS O-11F23) by March 31, 1995.

Att: As stated

cc: (w/o att)
S. Newberry
F. Akstulewicz
S. Hoffman

INTERIM NRR PROCEDURE FOR ENVIRONMENTAL JUSTICE REVIEWS

BACKGROUND

This procedure provides interim guidance to the Office of Nuclear Reactor Regulation staff on conducting environmental justice reviews for proposed agency actions and implements direction received from the Executive Director for Operations in a memorandum dated December 6, 1994, "State Consultation on Environmental Assessments." The requirement for Federal agencies to consider environmental justice is a result of the February 11, 1994, Presidential Executive Order 12898 mandating that Federal agencies "...make achieving environmental justice a 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..."

The Counsel on Environmental Quality (CEQ) is developing guidelines on how to integrate environmental justice into the National Environmental Policy Act (NEPA) process. When the CEQ guidelines are available, this interim procedure will be revised, as required.

SCOPE

Until the CEQ guidelines are received, environmental justice reviews will be performed for all actions requiring preparation of an environmental impact statement (EIS) or a supplement to an EIS. Reviews are not normally required for environmental assessments (EAs) in which a finding of no significant impact (FONSI) is made unless warranted by special circumstances.

For EAs with a FONSI determination, the staff concludes as part of its analysis that there will be no significant offsite impacts from the action. If no significant offsite impacts will occur, no member of the public will be substantially affected. Therefore, there can be no disproportionate high and adverse effects or impacts on any member of the public including minority or low-income populations. In these instances, no environmental justice review will be performed. However, under special circumstances, environmental justice reviews may be required for actions in which an EA/FONSI is prepared. These cases may include regulatory actions that involve a significant site modification with an identifiable impact on the environment or that have substantial public interest. Senior management will decide on a case-by-case basis when special circumstances exist that require the staff to perform an environmental justice review for an EA.

DOCUMENTATION

Each EIS and EIS supplement shall contain a section titled, "Environmental Justice," which will either contain the complete environmental justice review or a reference to another document containing the review. If a reference to another document is used, a summary of the review and its conclusions should be included in the EIS section. An EA will only have an "Environmental Justice" section if a review was performed.

ATTACHMENT

PROCEDURES

The following guidance should be used when performing an environmental justice review. This interim procedure may not address all situations that may occur. Project Managers should consult with the License Renewal and Environmental Review Project Directorate whenever the need for an environmental justice review is required.

1. Determine whether the regulatory action will be supported by an EIS or by an EA. When the regulatory action requires the preparation of an EIS or a supplement to an EIS, a review of environmental justice must be prepared using the process discussed in paragraphs 2 through 10 below. When the regulatory action involves the siting of new facilities or requires the evaluation of alternative sites, environmental justice information must be developed for each site under consideration.

When the regulatory action is supported by an EA, the reviewer should recommend to management whether unusual circumstances warrant the consideration of potential environmental justice concerns in the EA. The determinations will be made on a case-by-case basis. The current guidance is that environmental justice should be discussed in an EA only when the regulatory action involves a significant site modification with an identifiable offsite impact or is the subject of substantial public interest. When it becomes necessary to discuss environmental justice in an EA, the process outlined in paragraphs 2 through 10 should be followed.

2. In performing an environmental justice review, the following should be considered:
 - a. The review should focus on the action being taken. If the action is, for example, a license amendment, the activities covered by the amendment only should be reviewed, and not the overall impact from the issuance of the original license. This applies even if an environmental justice review was not performed for the original action.
 - b. Cumulative impacts from other facilities in the same area not licensed by the NRC need not be included in the review. Impacts from other facilities licensed by the NRC should be considered to the extent possible.
 - c. The impacts to be reviewed for environmental justice are the same as those normally evaluated for NEPA compliance. It is not necessary to discuss the impacts in the environmental justice review at the same level of detail as in the impacts sections of the EIS. A brief discussion of the impact is acceptable with a reference to another section of the EIS for more detail.

- d. If there are significant impacts on minority or low-income populations, the staff should discuss any mitigative measures that could be taken to reduce the impact.
 - e. A graduated evaluation of impacts may be performed, if appropriate, if the nature of the impact has an identifiable variation within the area or with distance from the source (for example, radiation exposures).
 - f. When applicable, consumption patterns of populations which principally rely on fish and/or wildlife for subsistence should be considered.
3. During the public scoping process for the EIS, include environmental justice as a discussion topic. Solicit input from groups and or individuals of minority and low-income status concerning any human health or environmental impacts they believe they are incurring in their communities due to the proposed action. Special attention must be taken to ensure that minority and low-income populations are adequately informed and given the opportunity to participate. This may require actions such as holding scoping meetings at night or on weekends when these groups can attend without having to take time off from work; extra announcements in local media, through local churches, and community groups; and issuing announcements and publishing information in a language other than English.
 4. Using the input received from the public scoping process and the evaluation of environmental impacts for the EIS, determine the location of environmental impact sites for all adverse human health or environmental impacts which are known to be significant or perceived as significant by groups and/or individuals. More than one environmental impact site may exist if multiple impacts can occur from the proposed action. The size of the areas will vary according to the nature of the impacts and should be consistent with the areas used to review environmental impacts in the EIS. See Figure 1 for examples.
 5. Determine the geographic area to be used for the comparative analysis in determining whether a minority or low-income population exists. The geographic area is a larger area that encompasses all of the environmental impact sites (for example, a county or a group of counties). See Figure 1 for examples.

When a regulatory action is being considered that involves alternative site locations, in addition to determining the individual geographic area for each site as defined above, determine an overall geographic area which encompasses all of the alternative site geographic areas (for example, the entire state). See Figure 2 for an example.

If the environmental impact sites overlap more than one state, then the geographic area will encompass parts of each state. The geographic area does not have to follow established boundaries such as county or state lines.

6. Determine minority and low-income composition in the geographic area:

- a. Using the most recent U.S. Bureau of the Census decennial census, currently the 1990 Census of Population and Housing, determine the percentage of the total population within the geographic area for each minority category. Minority categories are defined as Black; American Indian, Eskimo, or Aleut; Asian or Pacific Islander; other non-white; and Hispanic origin. For example, a geographic area could be 15 percent Black, 2 percent Asian, and 4 percent American Indian.
- b. Using the most recent U.S. Bureau of the Census decennial census, determine the percentage of the households within the geographic area that are below the poverty level. For performing environmental justice reviews, low-income is defined as being below the poverty level as defined by the Census Bureau.

7. For each environmental impact site, determine the percentage of the total population within the impact site that is minority for each minority category. Likewise, determine the percentage of the total households within the impact site that are below the poverty level (low-income).

If no qualifying minorities or low-income households are identified for any environmental impact site, document the conclusion. The environmental justice review is complete.

8. An environmental justice review must be performed if either (a), (b), or (c) are met.

- a. A minority population exists in an environmental impact site if (1) the percentage of minority within the total population of the environmental impact site exceeds the percentage of minority within the total population of the geographic area by 10 percent or more, or (2) if the percentage of minority within the total population of the environmental impact site is at least 50 percent.

An example of a situation requiring an environmental justice review would involve a minority group that makes up 35 percent of the total population of an environmental impact site while only comprising 25 percent of the total population of the geographic area.

An additional example involves the situation where a minority group makes up 52 percent of the total population of an environmental impact site while only comprising 47 percent of the total population of the geographic area. The group would be considered a minority population in this environmental impact site because they make up more than 50 percent of the entire population in the environmental impact site even though they are not 10 percent greater than the percentage in the geographic area.

A minority population is also defined to exist if more than one minority group is present and the minority population percentage, as calculated by aggregating all minority persons, meets either of the above-stated thresholds.

- b. A low-income population is considered to be present if the percentage of the households below the poverty level in an environmental impact site is 10 percent or more greater than the percentage of the households below the poverty level for the total geographic area (similar to the example in Item 8.a).
 - c. When multiple sites are being considered, minority or low-income populations must be reviewed for each site as described in (a) and (b) above. In addition, similar reviews should be performed comparing the minority and income data for the environmental impact sites for each alternative site to the larger overall geographic area discussed in paragraph 4.
9. When the review identifies minority and low-income populations:
- a. Assess (qualitatively or quantitatively as appropriate) the degree to which each minority or low-income population is disproportionately receiving adverse human health or environmental impacts as compared to the entire geographic area.
 - b. Assess (qualitatively or quantitatively as appropriate) the significance or potential significance of such adverse environmental impact on each minority or low-income population.
 - c. Provide an assessment of the degree to which each minority or low-income population is disproportionately receiving any benefits compared to the entire geographic area.
 - d. Discuss any mitigative measures for which credit is being taken to reduce environmental justice concerns.
 - e. When alternative sites are being evaluated, perform the same reviews described in Items 9(a) through (d) for each site. For Item 9(a), perform a review comparing the impacts to the larger overall geographic area encompassing all of the alternative sites.
10. Provide the staff's conclusion regarding whether the proposed action will have disproportionately high and adverse environmental impacts on minority and low-income populations.

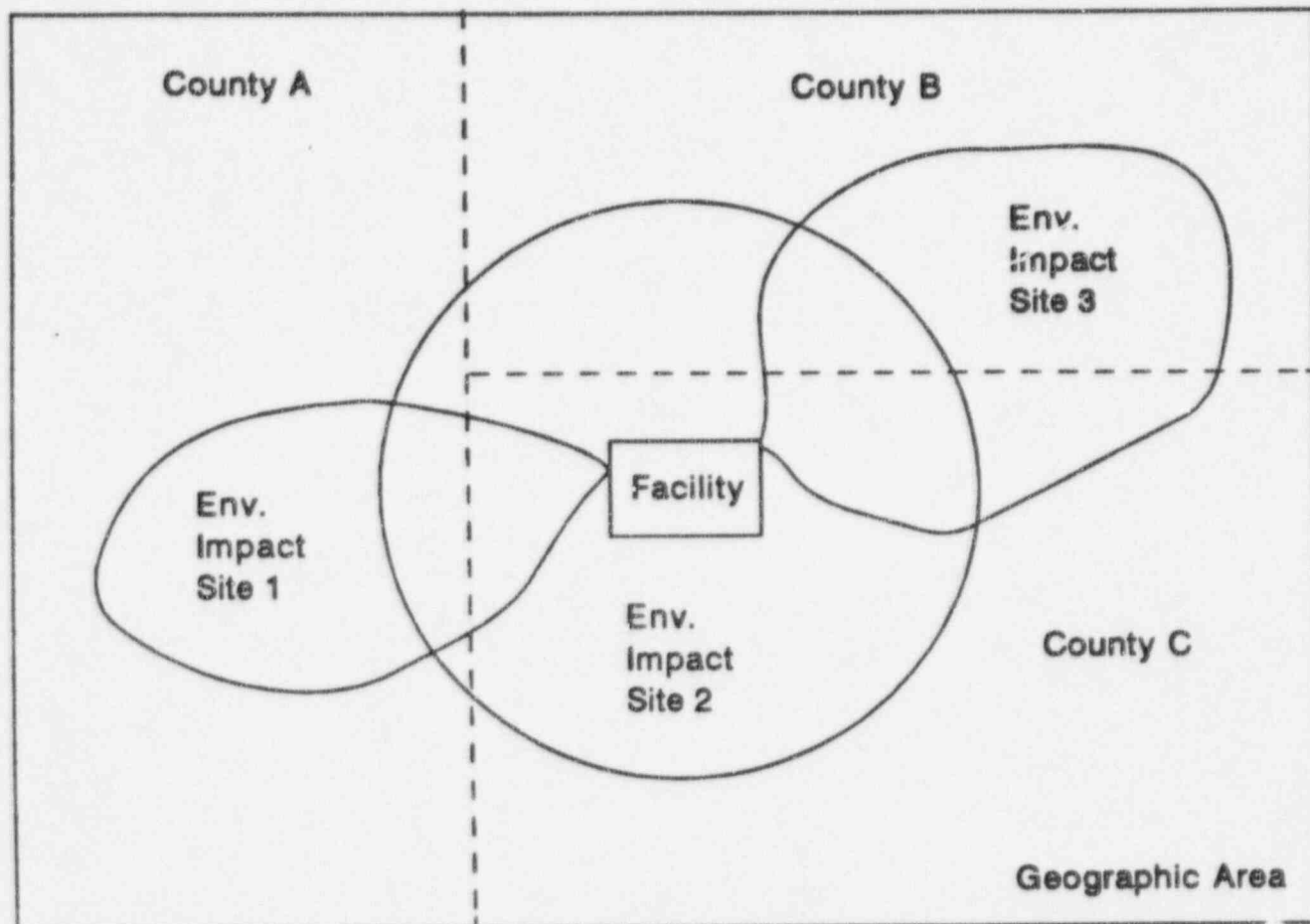


Figure 1
Environmental Impact Sites & Geographic Area

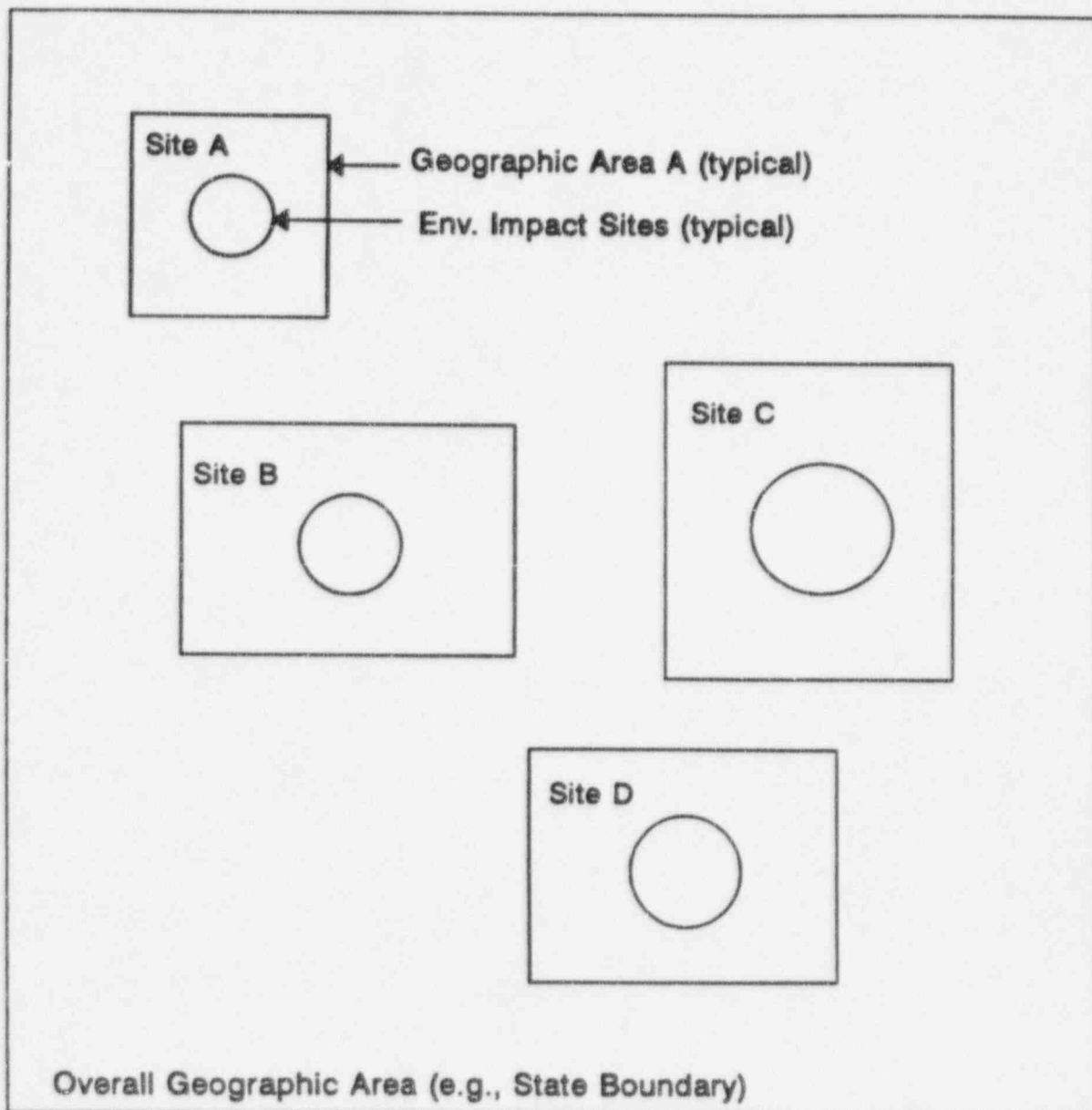


Figure 2
Evaluation of Alternative Sites

ATTACHMENT 5

LIST OF STATES WITH FEDERALLY-APPROVED CMPs

STATES AND TERRITORIES WITH FEDERALLY APPROVED CMPs

Alabama	New Jersey
Alaska	New York
American Samoa	North Carolina
California	Northern Marinas
Connecticut	Oregon
Delaware	Pennsylvania
Florida	Puerto Rico
Guam	Rhode Island
Hawaii	San Francisco Bay Conservation and Development Commission
Louisiana	South Carolina
Maine	Virginia
Maryland	Virgin Islands
Massachusetts	Washington
Michigan	Wisconsin
Mississippi	
New Hampshire	

STATES DEVELOPING CMPs

Georgia	Minnesota
Texas	Ohio
Indiana	

ATTACHMENT 6

DRAFT MODEL FOR CERTIFICATION

FEDERAL CONSISTENCY CERTIFICATION
FOR FEDERAL PERMIT AND LICENSE APPLICANTS

The CZMA requires that any applicant for a Federal license or permit or authorization, certification, approval, or other form of permission which any Federal agency is empowered to issue to an applicant to conduct an activity, inside or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone of that State shall certify in the application to the approving Federal agency that the proposed activity complies with the enforceable policies of the State's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the State or its designated agency a copy of the certification, with all necessary information and data. See 16 U.S.C. 1456(c)(3)(A); 15 C.F.R. 930.51(a). At the earliest practicable time, the State agency shall notify the Federal agency and the applicant whether the State agency concurs or objects to a consistency certification. See 15 C.F.R. 930.63(a).

[Insert name of State] has an approved Coastal Zone Management Program (CZMA program) which includes [insert the statutory provisions and regulations of the State's CZMA program].

Consistency Certification:

[Insert name of applicant] has determined that the proposed [insert name of project] complies with the [insert name of State] approved coastal management program and will be conducted in a manner consistent with such program.

Necessary Data and Information:

- (1) This section provides a detailed description of the proposed activity and its associated facilities. [Provide a copy of the Federal application and other materials pursuant to 15 C.F.R. 930.58(a)(1) which will permit adequate assessment of probable coastal zone effects by the State.]
- (2) This section contains the necessary information and data required by the State's CMP as described in the State's CMP program document and subsequent approved amendments. [Provide information pursuant to 15 C.F.R. 930.58(a)(2) and 930.56(b).]

- (3) This section contains a brief assessment relating the probable effects of the proposed [insert name of project] and its associated facilities on any land or water use or natural resource of the coastal zone to the relevant enforceable policies of [insert name of State] coastal management program. [Contact State coastal management agency to help determine relevant enforceable policies, briefly describe the relevant policies, and write a brief assessment of how the effects of the proposed activity relate to the relevant policies.]
- (4) This section contains a brief set of findings, derived from the assessment, that the proposed [insert name of project], its associated facilities, and their effects, are all consistent with the enforceable policies of [insert name of State] coastal management program. [Prepare a set of findings for each distinguishable aspect of the proposed activity - essentially a conclusion of fact based on the assessment.]

By this certification that the [insert name of project] is consistent with [insert name of State] coastal management program, the State of [insert name of State] is notified that it has 6 months from the receipt of this letter and accompanying information in which to concur with or object to [insert name of applicant] certification. However, pursuant to 15 C.F.R. 930.63(b), if [insert name of State] has not issued a decision within 3 months following commencement of State agency review, it shall notify [insert name of applicant] and the Federal agency of the status of the matter and the basis for further delay. The State's concurrence, objection, or notification of review status shall be sent to [insert name of applicant contact].

ATTACHMENT 7
CZMA FLOW CHART

CZMA Federal Consistency Process **for Federally Licensed or Permitted Activities** **(CZMA § 307(c)(3)(A); 15 C.F.R. Part 930, Subpart D)**

