



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 25, 1997

Mr. Bradley M. Campbell
Associate Director for Toxics and
Environmental Protection
Council on Environmental Quality
722 Jackson Place, N.W.
Washington, D.C. 20503

Dear Mr. Campbell:

This letter forwards the U.S. Nuclear Regulatory Commission's (NRC's) comments on the Council of Environmental Quality's (CEQ) revised Draft Guidance for Considering Environmental Justice (EJ) under the National Environmental Policy Act (NEPA), dated March 26, 1997. These comments are in addition to those provided May 10, 1996 to the Office of Management and Budget on the 1996 draft CEQ guidance (enclosed). A comparison of the 1996 draft CEQ guidance against the March 26, 1997 revised draft CEQ guidance indicates earlier NRC comments were not incorporated; thus, we submit them for reconsideration. In addition, four major categories of change are noted and discussed individually, as follows.

- I. The new draft CEQ guidance directs agencies to consider socioeconomic impacts for Environmental Assessments (EAs) in some circumstances.

The NRC believes it would be more appropriate to reserve consideration of socioeconomic issues until the identification of a significant environmental impact at the conclusion of the EA process. As a general matter of practice, NRC considers socioeconomic impacts in most, if not all, of its Environmental Impact Statements (EISs). In the EA context, however, it would be inappropriate to require the NRC to initiate the resource intensive consideration of socioeconomic issues before it has determined whether the proposed action will have significant physical environmental impacts. We continue to believe EJ issues need not be routinely considered in those cases where a Finding of No Significant Impact (FONSI) is made. Furthermore, routinely addressing EJ issues at the EA stage could have a considerable impact on agency workload and scheduling for agency actions.

- II. A new section was added to the revised draft CEQ guidance raising a specific requirement for agencies to supplement their procedures to address EJ issues in circumstances where no EIS or EA is prepared.

The new language in Section III.D raises concern. We agree it may be appropriate to consider EJ issues in cases where the Federal action involves a significant environmental impact but, due to a statutory exemption or some other reason, no EA or EIS has been prepared. At the same time, however, we believe it makes little sense to expend limited agency resources to consider EJ issues in cases where no significant environmental impact is involved and no EA or EIS has been prepared. For example, NRC and other agencies establish categorical exclusions by rulemaking for those actions that have been

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demonstrated to have no significant environmental impact (e.g., NRC regulations at 10 CFR 51.22). If an action is covered by a categorical exclusion and thus, by definition, does not have a significant environmental impact, the proposed CEQ guidance would appear, nevertheless, to require the consideration of EJ issues. The rationale for this requirement is unclear. It would not appear that any purpose is served by directing agencies to consider the disproportionate effect on low-income or minority groups of actions that have no significant environmental impact. As such, we believe consideration of EJ issues is not required, and we do not intend to consider EJ issues, for those activities categorically excluded from NEPA review.

This concern raises a more fundamental issue regarding the relationship of NEPA's legal requirements to the consideration of EJ issues. The EO indicates that "[each] Federal agency shall analyze the environmental effects, including human health, economic and social effects, of Federal actions, including effects on minority communities and low-income communities, when such analysis is required by [NEPA] (emphasis added)." Given this language, we have assumed the intent of the EO and the draft CEQ guidance is to emphasize and clarify the existing legal obligation of agencies to consider EJ issues under NEPA. The new provision in the draft CEQ guidance that would require agencies to consider EJ issues where no EA or EIS is prepared does not appear to be consistent with this intent. In addition, the new language in the guidance related to the consideration of EJ issues in the preparation of EAs raises similar concerns. A clearer explanation of the relationship between the NEPA's requirements and the draft guidance (as well as the EO) would significantly aid NRC and other agencies in incorporating EJ issues into their NEPA process. In general, the NRC does not intend to consider EJ issues where no significant environmental impact is involved, although it has in practice considered EJ issues in EAs prepared to support rules and regulations in the past.

- III. Agencies are requested to take EJ into account whenever promulgating or revising regulations, policies, procedures and guidance under NEPA or any other statutory act.

NRC already seeks to incorporate EJ into its regulatory development process. For instance, recent amendments to the Commission's NEPA implementing regulations specifically identify EJ as a potential issue for consideration in the environmental review of license renewal applications. Currently, under the interim NRC procedures, EJ is specifically considered in the EAs and EISs prepared to support rules and regulations developed by NRC.

- IV. The addition of mandatory language throughout the revised draft guidance document appears to be internally inconsistent and is a departure from the generally flexible language contained in the 1996 draft.

The revised draft CEQ guidance retains the wording that individual agencies may supplement the guidance with more specific procedures tailored to particular programs or activities, and that agencies should be flexible in applying the guidance and may consider its terms a point of departure rather than conclusive direction in applying the terms of the EO. The addition of terms such as "must consider" and "shall" in the draft CEQ guidance

calls into question the flexibility associated with the use of CEQ's document and also appears to make the document internally inconsistent. It has been NRC's understanding that, as advertised by its title, CEQ's document will be only guidance for agencies in implementing the EO. The addition of new "mandatory" language throughout the document does not appear to be consistent with that purpose. In addition, as demonstrated by the following excerpt from Section III.B., the document now sends a confusing message on this issue:

"There is not a rote formula for how environmental justice issues should be identified or addressed. However, the following principles provide general guidance.

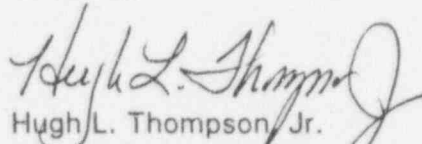
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Provisions such as these in the CEQ document that are held out to be "guidance" but also contain mandatory language will cause, at best, confusion for NRC and other agencies attempting to implement it. Clarification of this matter is necessary to aid agencies in their implementation of the draft CEQ guidance.

Although independent agencies, such as the NRC, were only requested to comply with the EO, NRC has endeavored to carry out the measures set forth in the EO and accompanying memorandum in the manner it believes to be appropriate. The NRC's 1995 EJ strategy is based on five principles of implementation and emphasizes NRC is committed to giving consideration to the CEQ guidelines on how to integrate EJ into agency decisionmaking under NEPA. The five principles include: the integration of EJ into NRC's NEPA activities; the continuation of senior NRC management involvement to provide guidance in this area; openness with the public and clarity of agency positions; communication and the welcoming of public participation with stakeholders, including minority and low-income communities; and the continuation of review and monitoring of Title VI activities of the Civil Rights Act of 1964, which are limited to funding training and travel under Section 274 of the Atomic Energy Act of 1954, as amended. The NRC will continue to consider EJ issues as currently outlined in our strategy and implementation guidance documents.

If you have any questions, I can be reached at (301) 415-1713.

Sincerely,


Hugh L. Thompson, Jr.
Deputy Executive Director
for Regulatory Programs

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

May 10, 1996

Mr. Zach Church
Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

Re: LRM No. 4130--CEQ Proposed Guidance on Environmental Justice

Dear Mr. Church:

The staff of the Nuclear Regulatory Commission (NRC) offers the following comments on the proposed Council on Environmental Quality guidance.

GUIDANCE DOCUMENT

On page 2 of the proposed guidance, the second bullet recognizes the importance of data collection on multiple and cumulative exposures to environmental hazards and indicates that data on exposure issues should be incorporated into NEPA analysis as appropriate. The Executive Order placed an emphasis on collecting data on a long-term basis in order to build up a data base. This guidance is now suggesting that the data is to be utilized in evaluating proposed Federal actions. The guidance should make clear that agencies are not required to create data for the sole purpose of complying with the guidance.

The second bullet on page 3 and the second full paragraph on page 13 speak of mitigation measures identified as part of a finding of no significant impact (FONSI). In most, if not all, of the cases where the NRC makes a FONSI, there is no need to consider mitigation measures. The guidance should make clear that there is no need to discuss mitigation measures unless NEPA requires it.

The third new paragraph on page 5 indicates that agencies should recognize that environmental justice is highly sensitive to the "history or circumstances" of a particular community or population. Additional guidance regarding what is contemplated here would be useful.

The third bullet on page 7 and the first new paragraph on page 12 suggest that environmental justice considerations will be addressed as part of environmental assessments (EA). EAs often result in a FONSI. In such a case, since there is no significant environmental impact, there is no reason to examine environmental justice issues. This should be clarified since our experience suggests that there would be few instances warranting environmental justice consideration in an EA. A routine examination of this issue in EAs could have a significant impact on agency workload and scheduling for licensing actions.

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In this same vein, throughout the document guidance is provided for actions to be taken during the scoping process. Scoping is normally performed only for environmental impact statements, not EAs. If environmental justice reviews are to be performed for EAs, guidance needs to be provided regarding the performance of such reviews without scoping.

The second sentence of the full paragraph on page 10 should be revised to add the words "the opportunity for" after the word "regulations". The sentence would thus read, "CEQ's regulations require the opportunity for comprehensive public involvement through the NEPA process." A Federal agency cannot guarantee public participation.

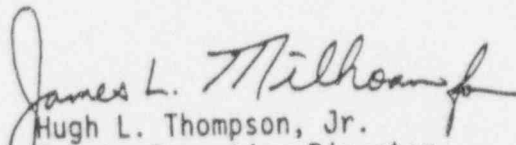
The first full paragraph on page 11 refers to the use of Landview II software. This software needs to be revised to include all of the variables addressed in the CEQ guidance.

The second full paragraph on page 11 relates to collection and analysis of data addressing "sensitive subpopulations" within the affected low-income or minority community. The NRC's normal practices do not encompass assessing impacts on subpopulations. Additional guidance on what is expected here would be useful. In addition, the paragraph provides that data on different patterns of living, should be developed when needed. Again, this is a suggestion that data be developed for particular projects, rather than to compile a general data base. In addition, clarification is required regarding whether such data is to be collected throughout the life of the project or only for the purposes of evaluating whether the project should be approved. If it is the former, this provision could be quite costly to implement.

APPENDIX A

The definition of "minority population" on page 2 should recognize that some individuals may qualify as a minority on more than one basis and that aggregations of the bases may result in double counting. This should be avoided.

Sincerely,


James L. Thompson, Jr.
Deputy Executive Director

for Nuclear Materials Safety, Safeguards
and Operations Support

appears to make the document internally inconsistent. It has been NRC's understanding that, as advertised by its title, CEQ's document will be only guidance for agencies in implementing the EO. The addition of new "mandatory" language throughout the document does not appear to be consistent with that purpose. In addition, as demonstrated by the following excerpt from Section III.B., the document now sends a confusing message on this issue:

"There is not a rote formula for how environmental justice issues should be identified or addressed. However, the following principles provide general guidance.

- > To comply with the Executive Order, agencies must consider the following issues: ... [emphasis added]."

Provisions such as these in the CEQ document that are held out to be "guidance" but also contain mandatory language will cause, at best, confusion for NRC and other agencies attempting to implement it. Clarification of this matter is necessary to aid agencies in their implementation of the draft CEQ guidance.

Although independent agencies, such as the NRC, were only requested to comply with the EO, NRC has endeavored to carry out the measures set forth in the EO and accompanying memorandum. The NRC's 1995 EJ strategy is based on five principles of implementation and emphasizes NRC is committed to giving consideration to the CEQ guidelines on how to integrate EJ into agency decisionmaking under NEPA. The five principles include: the integration of EJ into NRC's NEPA activities; the continuation of senior NRC management involvement to provide guidance in this area; openness with the public and clarity of agency positions; communication and the welcoming of public participation with stakeholders, including minority and low-income communities; and the continuation of review and monitoring of Title VI activities of the Civil Rights Act of 1964, which are limited to funding training and travel under Section 274 of the Atomic Energy Act of 1954, as amended. Until CEQ guidelines become final, the NRC will continue to consider EJ issues as currently outlined in our strategy and implementation guidance documents.

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THANKS, Susan

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appears to make the document internally inconsistent. It has been NRC's understanding that, as advertised by its title, CEQ's document will be only guidance for agencies in implementing the EO. The addition of new "mandatory" language throughout the document does not appear to be consistent with that purpose. In addition, as demonstrated by the following excerpt from Section III.B., the document now sends a confusing message on this issue:

"There is not a rote formula for how environmental justice issues should be identified or addressed. However, the following principles provide general guidance.

- > To comply with the Executive Order, agencies must consider the following issues: ... [emphasis added]."

Provisions such as these in the CEQ document that are held out to be "guidance" but also contain mandatory language will cause, at best, confusion for NRC and other agencies attempting to implement it. Clarification of this matter is necessary to aid agencies in their implementation of the draft CEQ guidance.

Although independent agencies, such as the NRC, were only requested to comply with the EO, NRC has endeavored to carry out the measures set forth in the EO and accompanying memorandum. The NRC's 1995 EJ strategy is based on five principles of implementation and emphasizes NRC is committed to giving consideration to the CEQ guidelines on how to integrate EJ into agency decisionmaking under NEPA. The five principles include: the integration of EJ into NRC's NEPA activities; the continuation of senior NRC management involvement to provide guidance in this area; openness with the public and clarity of agency positions; communication and the welcoming of public participation with stakeholders, including minority and low-income communities; and the continuation of review and monitoring of Title VI activities of the Civil Rights Act of 1964, which are limited to funding training and travel under Section 274 of the Atomic Energy Act of 1954, as amended. Until CEQ guidelines become final, the NRC will continue to consider EJ issues as currently outlined in our strategy and implementation guidance documents.

If you have any questions, I can be reached at (301) 415-1713.

Sincerely,

Hugh L. Thompson, Jr.
Deputy Executive Director
for Regulatory Programs

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