



September 13, 2021
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Subject: Comments on the U.S. Nuclear Regulatory Commission's Systematic Assessment for How the NRC Addresses Environmental Justice in Its Programs, Policies, and Activities (Docket ID NRC-2021-0137)

Dear Commissioners Hanson, Baran, and Wright:

Good Energy Collective (GEC) was pleased to submit these comments to the U.S. Nuclear Regulatory Commission (NRC) on Aug. 11, 2021, for the agency's systematic assessment into how it addresses environmental justice in its programs, policies, and activities. Since that date, Nuclear Innovation Alliance and Data for Progress have additionally supported the input below.

Introduction

The NRC's role as licensor and regulator of U.S. civilian use of radioactive materials makes the agency an important player in the federal government's efforts to uphold environmental justice. Decisions regarding the nation's nuclear reactors, materials, and wastes all have implications for the lived environment, some of them significant and long-term.

Under President Joe Biden, the federal government has rightly taken a proactive role to advance environmental justice in federal decision making. We commend the commission for twice committing to assess its approach to environmental justice.¹ For the NRC, environmental justice considerations have particular currency with regard to federal permitting processes subject to the National Environmental Policy Act (NEPA). Because the commission's decisions under NEPA carry long-term consequences for surrounding communities, it is critical that the NRC uphold environmental justice through its licensing and regulatory processes.

¹ President Bill Clinton's Executive Order 12898 in 1994 requested that independent agencies like the NRC identify and address disproportionately high and adverse health and environmental impacts of its activities on minority and low-income populations. President Biden's Executive Order 13985 strongly encouraged independent agencies to identify and address barriers to equitable access that underserved communities face in benefiting from federal activities and programs, while Executive Order 14008 set a general policy for the administration, through its governance, to deliver environmental justice. U.S. Government Publishing Office, "Executive Order 12898 of February 11, 1994: To Address Environmental Justice in Minority Populations and Low-Income Populations" (1994), <https://www.govinfo.gov/content/pkg/FR-1994-02-16/html/94-3685.htm>; U.S. Government Publishing Office, Executive Order 13985 of January 20, 2021: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (2021), <https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government>; U.S. Government Publishing Office, "Executive Order 14008 of January 27, 2021: Tackling the Climate Crisis at Home and Abroad" (2021), <https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad>.

About Good Energy Collective: GEC is a progressive policy research organization focused on building the progressive case for nuclear energy as an essential part of the broader climate change agenda. GEC works with industry, the administration, Congress, and NGOs across the political spectrum to help shape the future of advanced nuclear technologies to contribute toward an environmentally just climate response.

In 2004, the NRC released its Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions (2004 Policy Statement).² Unfortunately, the document and its approach toward environmental justice reflect outdated thinking on justice concepts, e.g., by limiting the NRC's close review of environmental justice matters to instances in which the percentage of minority or low-income populations in the area impacted by a particular action exceeds the state or county percentage by 20 or 50 percentage points, and by failing to set a policy for adapting NEPA stakeholder engagement procedures for actions that would impact significant populations of underserved and overburdened residents. The 2004 Policy Statement insufficiently guarantees that the NRC will uphold the principles of environmental justice and ensure that all U.S. populations are treated fairly and included in decision-making processes that relate to the lived environment.

Summary

Below, we provide recommendations to the commission regarding both the process that the NRC should follow in conducting its current systematic assessment, and the approach the NRC should take to ensure it advances the values of environmental justice across its activities.

Below are our core recommendations for the systematic assessment:

- Extend the comment deadline for an additional 60 days
- Identify and convene a group of advisors to develop recommendations to inform the NRC staff's own recommendations to the commission under the systematic assessment
- Task the advisory group with developing a list of key questions for which the group will submit recommendations to inform the systematic assessment

Below are our core recommendations for addressing environmental justice:

- Make it easier for the public to discover opportunities to participate in stakeholder engagement processes for NRC licensing activities by improving public access to NRC meetings, documents, and activities
- Reconvene the group of advisors convened through the systematic assessment to develop recommendations on how to redesign the stakeholder engagement process, with an emphasis on procedural and environmental justice
- Task the advisory group with developing a list of key questions for which the group will submit recommendations to inform the commission's approach to environmental justice

Context for Recommendations

"That's the most important thing for us in environmental justice, is to be able to have a seat at the table and make our concerns...heard."

- Fred Collins, Tribal Chair, Northern Chumash Tribal Council in San Luis Obispo, Calif., July 15 Public Meeting to Discuss Agency Approach to Environmental Justice: Afternoon Session

² U.S. Government Publishing Office, "Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions" (2004), <https://www.federalregister.gov/documents/2004/08/24/04-19305/policy-statement-on-the-treatment-of-environmental-justice-matters-in-nrc-regulatory-and-licensing>.

A successful systematic review of environmental justice practices will benefit from a basic understanding of the social science literature on key justice concepts. Studies of social justice often differentiate between at least three types of justice: restorative justice, which focuses on righting the wrongs of the past; procedural justice, which deals with ensuring fair and open opportunities for people to participate in decision-making; and distributive justice, which seeks to share the benefits of an action evenly and compensate those whom the action fails to serve. Procedural justice considerations are the most relevant in the case of the NRC, which is specifically tasked with regulating and licensing the safe and protective use of radioactive materials in the lived environment. As a regulatory agency with a limited mandate, the NRC has comparatively greater control over the procedures it uses to license and regulate nuclear facilities than it does to remediate past economic, environmental, or health-related harms, or to execute decisions based upon ensuring equal or compensatory benefits.³ For this reason, Good Energy Collective's comments and recommendations focus on steps the NRC can take to ensure its actions embody the principles of procedural justice. We exclude discussion of whether Congress should ultimately extend NRC's authorities or its mandate into jurisdiction over actions with remediative or distributive considerations, as the question falls outside the scope of the commission's systematic assessment of its existing authorities.

The U.S. Environmental Protection Agency currently defines "environmental justice" as "[t]he fair treatment and meaningful involvement of all people regardless of race, color, culture, national origin, income, and educational levels with respect to the development, implementation, and enforcement of protective environmental laws, regulations, and policies."⁴ Without processes in place to advance procedural justice, the NRC cannot be certain it has all of the information it needs to uphold environmental justice and treat overburdened and underserved populations fairly, including by involving them meaningfully in key decisions.

Under the existing 2004 Policy Statement and environmental justice guidance from the Office of Nuclear Material Safety and Safeguards in 2003 and the Office of Nuclear Reactor Regulation in 2004, the NRC maintains it identifies minority and low-income populations as part of the NEPA process through scoping meetings; announces scoping meetings by newspaper, posters, radio, and television at least one week beforehand; asks tribal, church, and community leaders to inform potentially affected groups of the process; and reviews mitigative measures when potentially significant impacts minority and low-income populations are identified.⁵ However, as the NRC heard anecdotally in its Comment-Gathering Meetings on July 15, 2021, some members of the public are aggrieved with the suitability of the existing policies and guidance.

1. Lillie Lane, Public Information Officer for the Navajo Nation Environmental Protection Agency, expressed concerns with the NRC's ability to relate information effectively to the tribe. Speaking with regard to United Nuclear Corp.'s requested authorization to amend its license (No.

³ Conversely, agencies with more expansive mandates, such as the U.S. Department of Energy, U.S. Environmental Protection Agency, and the U.S. Department of Agriculture, will have a particularly vital role to play in ensuring restorative justice principles are integrated into their solicitations, programmatic activities, and grantmaking, as well as reviews under NEPA.

⁴ U.S. Environmental Protection Agency, "EJ 2020 Glossary" (2020), <https://www.epa.gov/environmentaljustice/ej-2020-glossary>.

⁵ U.S. Government Publishing Office; U.S. Nuclear Regulatory Commission, "NUREG-1748: Environmental Review Guidance for Licensing Actions Associated with NMSS Programs" (2003), ADAMS Accession No. ML032450279; U.S. Nuclear Regulatory Commission, NRR Office Instruction, LIC-203, Rev. 1, "Procedural Guidance for Preparing Environmental Assessments and Considering Environmental Issues" (2004), ADAMS Accession No. ML033550003.

SUA-1475) to clean up mine waste at a site in Gallup, N.M., Ms. Lane noted her concern that the NRC had held public meetings about the process via webinar, despite the rurality of the area and its lack of sufficient broadband and internet. Ms. Lane expressed that only at the request of the Navajo Nation had the NRC hired a Navajo translator to convey information about a Draft Environmental Impact Statement by radio, with a recording whose translation she indicated was inadequate. According to Ms. Lane, the Navajo people “don’t trust any federal agencies out here because [they have] been living with uranium mines for 70, 80 years, and not one site has been addressed.”

2. Pamela Greenlaw, a Sierra Club volunteer in South Carolina, expressed a frustration that to date, the community and local organizations’ efforts to “inform the NRC on how to communicate at the grassroots level” regarding the relicensing process of Westinghouse Electric Co.’s Columbia Fuel Fabrication Facility in Richland County, S.C. (License No. SNM-1107) have been met with unkept promises.

The NRC’s existing practices to identify and assess environmental justice communities and engage them effectively throughout NEPA processes are insufficient to ensure procedural justice. The insufficiency extends to the current systematic review of how the agency addresses environmental justice through its work. Below, we make recommendations both on how the NRC can proceed with its assessment in a just manner and how it can ensure that the review results in the identification and adoption of new, actionable, and just processes.

Recommendations for the Systematic Assessment

The NRC’s current assessment of its approach to environmental justice is bound by the limitations of its business-as-usual stakeholder engagement processes and the existing 2004 Policy Statement. As such, we identify several shortfalls with the public stakeholder outreach that NRC has conducted to date for its assessment.

Taken together, the two public Comment-Gathering Meetings that the NRC held on this topic on July 15, 2021, at 1:30 p.m. ET and again at 8:00 p.m. ET,⁶ do not embody procedural justice. While the NRC was right to hold both an afternoon and evening session, identifiable shortfalls with this approach include having held both events on the same day; offering no opportunity for those on the Pacific Coast to engage in the evening; and publicly noticing the meeting in the Federal Register only six days (four business days) in advance. Because procedural justice is not yet ensured through NRC’s existing processes, the usual comment-gathering process is incompatible with a holistic assessment of how the NRC’s activities directly impact specifically overburdened and underserved communities. A premature closure of the public comment period and a business-as-usual execution of the assessment risks excluding the views and comments of those whom this review is intended to serve and risks perpetuating an echo chamber among those most familiar with NRC licensing procedures who may worry they have the least to gain

⁶ U.S. Nuclear Regulatory Commission, “Public Meeting to Discuss Agency Approach to Environmental Justice: Afternoon Session” (2021), Adams Accession No. ML21200A183; U.S. Nuclear Regulatory Commission, “Public Meeting to Discuss Agency Approach to Environmental Justice: Evening Session” (2021), Adams Accession No. ML21200A189.

from a thoughtful, dedicated assessment process and have greater bandwidth to express their positions under existing stakeholder processes.

As part of its systematic assessment, we recommend that the NRC:

1. Extend the comment deadline for the systematic assessment for an additional 60 days
2. Identify and convene a group of advisors to develop recommendations to inform the NRC staff's own recommendations to the commission under the systematic assessment. The advisory group should be paid for their time and expertise and consist of a geographically and racially diverse group of:
 - a. Approximately five community member participants, who live within a 10-mile radius of ongoing or upcoming NRC actions; and
 - b. Approximately five experts of social justice and/or environmental justice with demonstrated experience researching, planning, and/or implementing procedural justice principles
3. Task the advisory group with developing a list of key questions for which the group will submit recommendations to inform the systematic assessment. Questions could include but should not be limited to:
 - a. Whether the NRC should integrate "environmental justice" explicitly into its mission statement and safety culture⁷
 - b. Who and which resources the NRC should further consult in developing its internal recommendations to the commission on how to ensure environmental justice through changes in procedure
 - c. Whether separate environmental justice recommendations to the NRC should be made between its three core work areas: reactors, materials, and waste

Recommendations for Addressing Environmental Justice

By opening this review into its environmental justice practices, the NRC has a unique opportunity to develop equitable stakeholder engagement practices that make its work more accessible to the most overburdened and underserved members of the public while building closer relationships with stakeholders who experience the effects of the commission's activities.

We recommend that the NRC:

1. Make it easier for the public to discover opportunities to participate in stakeholder engagement processes for NRC licensing activities by identifying opportunities to improve public access to NRC meetings, documents, and activities
2. Reconvene the group of advisors convened through the systematic assessment to develop recommendations on how to redesign the stakeholder engagement process, with an emphasis on procedural and environmental justice. The advisory group should hold an inaugural meeting to set its:

⁷ Jeff Semancik, director of the Radiation Division of the Connecticut Department of Energy and Environmental Protection, proposed at the 1:30 p.m. session of the July 15 Comment-Gathering Meeting that the NRC consider this action.

- a. Rules of engagement (i.e., how meetings will be conducted in a manner that ensures equal participation and respect among members and strategies for resolving points of contention)
 - b. Initial meeting timetable (e.g., quarterly, annual, semi-annual, etc.)
3. Task the advisory group with developing a list of key questions for which the group will submit recommendations to inform the commission's approach to environmental justice. Initial questions could include but should not be limited to:
 - a. Whether specific NRC policies or regulatory actions establish or worsen barriers to the participation of underserved and overburdened communities
 - b. Whether the NRC should expand its definition of "disadvantaged" from minority and/or low-income populations to the expanded definition that the White House Council on Environmental Quality (CEQ) and the Office of Management and Budget (OMB) provided in July 20 federal guidance⁸
 - c. Whether the NRC should expand its definition of "environmental justice community" to include not only those communities in the vicinity of particular licensing activities, but also those who may be geographically dispersed but who experience shared conditions, in line with the CEQ and OMB's guidance⁹
 - d. Whether the NRC's existing parameters for identifying, contacting, and engaging environmental justice communities and assessing if disproportionate harm exists are sufficiently serving all underserved and overburdened stakeholders
 - e. Whether national environmental justice mapping tools exist that the NRC should use (or continue to use) to identify, with greater inclusivity or accuracy, environmental justice communities, such as the U.S. Environmental Protection Agency's EJSCREEN; its new Power Plants and Neighboring Communities tool; and the geospatial Climate and Economic Justice Screening Tool under development by the CEQ and the U.S. Digital Service¹⁰
 - f. Whether, across all activities or on a license-by-license basis, the NRC should closely follow the guidance of the federal Plain Language Action and Information Network to create plain language versions of documents relevant to licensing processes that require an Environmental Impact Statement under NEPA
 - g. Whether the staffing capacity of the NRC Office of Small Business and Civil Rights should be expanded to increase the level of communications and engagement that the NRC is able to conduct with external stakeholders through the Outreach and Compliance Coordination Program
 - h. Whether, across all activities or on a license-by-license basis, cultural sensitivity training for NRC staff liaising with disadvantaged communities would help the commission advance environmental and procedural justice
 - i. Whether the NRC's Agencywide Documents Access and Management System (ADAMS) database's search features are sufficiently accessible to environmental justice communities

⁸ U.S. Office of Management and Budget, "Memorandum for the Heads of Departments and Agencies (2021), <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>.

⁹ Ibid.

¹⁰ Ibid.

Conclusion

We thank the NRC for its systematic assessment of its approach to environmental justice and are happy to elaborate on any aspects of our comment. We look forward to engaging further with the commission on this and future public stakeholder processes.

Respectfully,

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