

identify impacts due to their uniqueness as part of the NRC's NEPA review process.

As part of NEPA's mandate, agencies are required to look at the socioeconomic impacts that have a nexus to the physical environment. See 40 CFR 1508.8 and 1508.14. An "environmental-justice"-related socioeconomic impact analysis is pertinent when there is a nexus to the human or physical environment or if an evaluation is necessary for an accurate cost-benefits analysis. See *One Thousand Friends of Iowa v. Mineta*, 250 F. Supp. 2d 1064, 1072 (S.D. Iowa 2002) (the fact that numerous courts have held that an agency's failure to expressly consider environmental justice does not create an independent basis for judicial review forecloses any argument that NEPA was designed to protect socioeconomic interests alone). Therefore, EJ *per se* is not a litigable issue in our proceedings. The NRC's obligation is to assess the proposed action for significant impacts to the physical or human environment. Thus, admissible contentions in this area are those which allege, with the requisite documentary basis and support as required by 10 CFR part 2, that the proposed action will have significant adverse impact on the physical or human environments that were not considered because the impacts to the community were not adequately evaluated.

Racial Motivation Not Cognizable Under NEPA

Racial motivation and fairness or equity issues are not cognizable under NEPA, and though discussed in the E.O., their consideration would be contrary to NEPA and the E.O.'s limiting language emphasizing that it creates no new rights.³ The focus of any "EJ" review should be on identifying and weighing disproportionately significant and adverse environmental impacts on minority and low-income populations that may be different from the impacts on the general population. It is not a broad ranging or even limited review of racial or economic discrimination. As the Commission explained in LES, "an inquiry into a license applicant's supposed discriminatory motives or acts would be far removed from NEPA's core interest: 'the physical environment—the world around us * * *'" LES, CLI-98-3, 47 NRC at 102, quoting *Metropolitan Edison Co. v. People Against Nuclear*

Energy, 460 U.S. 766, 772 (1983). Thus, the EJ evaluation should disclose whether low-income or minority populations are disproportionately impacted by the proposed action.

Environmental Assessments Normally Do Not Include Environmental Justice Analysis

The agency's assessment of environmental justice-related matters have been limited in the context of environmental assessments (EA). Previously, the Commission has stated that absent "significant impacts, an environmental justice review should not be considered for an EA where a Finding of No Significant Impact (FONSI) is issued unless special circumstances warrant the review." SRM-MO21121A (Supplemental)—Affirmation Session: 1. SECY-02-0179—Final Rule: Material Control and Accounting Amendments, Dec. 3, 2002 (ADAMS Accession No. ML023370498).⁴ If there will be no significant impact as a result of the proposed action, it follows that an EJ review would not be necessary. However, the agency must be mindful of special circumstances that might warrant not making a FONSI. In most EAs, the Commission expects that there will be little or no offsite impacts and, consequently, impacts would not occur to people outside the facility. However, if there is a clear potential for significant offsite impacts from the proposed action then an appropriate EJ review might be needed to provide a basis for concluding that there are no unique impacts that would be significant. If the impacts are significant because of the uniqueness of the communities, then a FONSI may not be possible and mitigation or an EIS should be considered.

Generic and Programmatic Impact Statements Do Not Include Environmental Justice Analysis

An NRC EJ analysis should be limited to the impacts associated with the proposed action, *i.e.*, the communities in the vicinity of the proposed action. EJ-related issues differ from site to site and normally cannot be resolved generically. Consequently, EJ, as well as other socioeconomic issues, are normally considered in site-specific EISs. Thus, due to the site-specific nature of an EJ analysis, EJ-related issues are usually not considered during the preparation of a generic or programmatic EIS. EJ assessments

would be performed as necessary in the underlying licensing action for each particular facility.

Need for Flexibility in NRC's Environmental Justice Analyses

The procedural guidelines for EJ review should allow for flexibility in the analysis to reflect the unique nature of each review. It is important, however, that the NRC be consistent in its approach to this matter and develop clear, defined procedural guidance for identifying minority and low-income communities and assessing the impacts they may experience.

1. Defining Geographic Area for Assessment

One of the first steps the staff takes in its EJ analysis is to identify the geographic area for which it seeks to obtain demographic information. While staff guidance states that the geographic scale should be commensurate with the potential impact area, NMSS and NRR have adopted numeric guidance based on activities that those offices regulate. Under current NMSS procedures, the potentially affected area is normally determined to be a radius of 0.6 miles from the center of the proposed site in urban areas, and four miles if the facility is located in a rural area. NRR normally uses a 50-mile radius that should be examined for licensing and regulatory actions involving power reactors. These distances reflect the different activities regulated by NRR and NMSS and are consistent with the area of potential impacts normally considered in NRC environmental and safety reviews. However, these procedures provide that the distances are guidelines and that the geographic scale should be commensurate with the potential impact area and should include a sample of the surrounding population as the goal is to evaluate the communities, neighborhoods and areas that may be disproportionately impacted.

The Commission recognizes that numerical distances are helpful to characterize the likely extent of impacts for categories of regulatory action. Thus, we are retaining the current procedure as articulated by NMSS and NRR in their respective office guidance since this numeric guidance should be sufficient in most cases to include all areas with an actual or potential for reasonably foreseeable physical, social, cultural, and health impacts.

2. Identifying Low-Income and Minority Communities

Once the impacted area is identified, potentially affected low-income and minority communities should be

³ Such issues are more appropriately considered under Title VI of the Civil Rights Act. See LES, CLI-98-3, 47 NRC at 101-106. The NRC does not have the authority to enforce Title VI in the NRC licensing process.

⁴ At least one court supports the view that EJ does not need to be considered in an EA. See *American Bus Ass'n v. Slater*, 1999 U.S. Dist. LEXIS 20936, 9 Am. Disabilities Cas. (BNA) 1427 (D.C. Cir. Sept. 10, 1999).