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POLICY ISSUE (Notation Vote)

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FOR: The Commissioners

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SUBJECT: SYSTEMATIC REVIEW OF HOW AGENCY PROGRAMS, POLICIES,
AND ACTIVITIES ADDRESS ENVIRONMENTAL JUSTICE

PURPOSE:

This paper presents the staff's systematic review of how agency programs, policies, and activities address environmental justice (EJ), in response to the Commission's April 23, 2021, Staff Requirements Memorandum (SRM) M210218B (Agencywide Documents Access and Management System [ADAMS] Accession No. [ML21113A070](#)). The staff makes several policy recommendations that could enhance and update how the agency addresses EJ, and it provides a legal and factual basis for these recommendations. In addition, this paper provides information on several commitments to further enhance how the agency addresses EJ but that do not involve changes to policy.

SUMMARY:

The staff assessed whether EJ is appropriately considered and addressed in agency programs, policies, and activities, such as adjudicatory procedures and environmental reviews, given the agency's mission.

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In its systematic review, the staff benchmarked EJ programs, policies, and activities at other agencies to understand how the U.S. Nuclear Regulatory Commission's (NRC's) programs compare to those of other agencies. The staff also conducted extensive outreach including the formal solicitation of comments through a *Federal Register* notice,¹ public meetings, and in-person and virtual discussions with stakeholders and representatives of Tribal governments and other Tribal groups across the country. For the purposes of this paper, the staff refers to federally recognized tribes,² state-recognized tribes and those that self-identify as Indian tribes, as Tribal nations. The staff considered EJ communities³ and Tribal nations with EJ-related issues in its review, and it refers to both throughout this paper. The outreach strategy also included an internal component leveraging agency resources. This resulted in a broad range of views and perspectives that were factored into the staff's recommendations and commitments.

Overall, the staff found the consideration of EJ in agency programs, policies, and activities is consistent with applicable law. It is also generally consistent with the spirit of Executive Orders (EOs) that address EJ. The staff has identified areas where the consideration of EJ could be updated, enhanced, or modernized, and provides related recommendations and commitments.

BACKGROUND:

EO 12898, issued February 11, 1994, directs each Federal agency to "make achieving environmental justice 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 populations and low-income populations."⁴ EO 12898 "does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law" and creates no right of judicial review.⁵ Independent agencies, including the NRC, are not required to follow the terms of EO 12898, but are "requested to comply with the provisions of [the] order."⁶

¹ Systematic Assessment of How the NRC Addresses Environmental Justice in its Programs, Policies, and Activities, 86 Fed. Reg. 36,307 (July 9, 2021); 86 Fed. Reg. 43,696 (Aug. 10, 2021); 86 Fed. Reg. 50,745 (Sept. 10, 2021).

² Federally recognized tribes are acknowledged by the Secretary of the Interior pursuant to the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. § 479a). The NRC's Tribal Policy Statement (TPS), Principle #2, states, "the NRC recognizes [federally recognized] Tribal governments as dependent domestic sovereign nations, independent from State governments, with separate and distinct authorities with inherent sovereign powers over their members and territory, consistent with applicable statutes and authorities." 82 Fed. Reg. 2402, 2415-16 (Jan. 9, 2017). The NRC's TPS sets forth principles to be followed by the NRC to promote effective government-to-government interactions with federally recognized tribes and encourage and facilitate Tribal involvement in the areas that the NRC has jurisdiction. The TPS is the governing document that provides the NRC staff guidance on interacting with Tribal governments.

³ Tribal members can also be part of an EJ community that has different interests and concerns than a Tribal government.

⁴ Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Exec. Order No. 12898, 59 Fed. Reg. 7629 (Feb. 16, 1994) (EO 12898).

⁵ *Id.* at Sec. 6-609.

⁶ *Id.* at Sec. 6-604.

In a letter to the President, dated March 31, 1994,⁷ former NRC Chairman Ivan Selin pledged the NRC would “endeavor to carry out the measures set forth in Executive Order 12898” and the accompanying Presidential Memorandum.⁸ In March 1995, the Commission approved the agency’s EO 12898 “Environmental Justice Strategy” (1995 EJ Strategy) “to integrate environmental justice into the conduct of all pertinent activities at the agency primarily in the NRC’s fulfillment of its NEPA [National Environmental Policy Act] responsibilities.”⁹

Following litigation of several EJ contentions in NRC adjudicatory proceedings and a request for Commission action, the Commission directed the staff to develop a policy statement on environmental justice that would systematically address an agency-wide standard for consideration of EJ issues in NRC environmental reviews.¹⁰ After considering public comments on the proposed policy statement, the Commission issued its final “Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Matters” in August 2004.¹¹ This EJ Policy Statement incorporates the Commission’s decisions in the *Louisiana Energy Services* and *Private Fuel Storage* proceedings, NRC environmental guidance, and Federal caselaw on EJ.¹² The EJ Policy Statement specifies that it “is intended to be a Commission-approved general clarification of the Commission’s position on the treatment of environmental justice issues in NRC regulatory and licensing actions.”¹³ It also reaffirms the Commission’s commitment to the general goals of EO 12898 and states that the NRC “will strive to meet those goals through its normal and traditional NEPA process.”¹⁴ The 1995 EJ Strategy and the 2004 EJ Policy Statement have not been updated since their issuance.

More recently, several EOs have been issued that address, among other things, EJ, including EO 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,”¹⁵ EO 14008, “Tackling the Climate Crisis at Home and Abroad,”¹⁶ and

⁷ Letter from NRC Chairman Ivan Selin to the President, March 31, 1994 (ADAMS Accession No. [ML033210526](#)).

⁸ Memorandum from The White House to the Heads of All Departments and Agencies, “Executive Order on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (Feb. 11, 1994) (Presidential Memorandum).

⁹ Staff Requirements Memorandum, COMSECY-95-013–Environmental Justice Strategy (March 24, 1995) ([ML003756575](#)) (non-public). The NRC’s 1995 EJ Strategy, along with EJ strategies from other Federal agencies and Executive branch offices were made public in June 1995. Interagency Working Group on Environmental Justice: Notification of Availability of Final Federal Agency Environmental Justice Strategies, 60 Fed. Reg. 30,871 (June 12, 1995).

¹⁰ See SRM-SECY-02-0219–Licensing and Hearing Issues Raised by Louisiana Energy Services in Advance of its Application ([ML030640177](#)) (non-public). For additional discussion of these proceedings and this request, see Enclosures 1 and 9.

¹¹ Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions, Final Policy Statement, 69 Fed. Reg. 52,040 (Aug. 24, 2004) (EJ Policy Statement).

¹² *Id.* at 52,041 (citing *Louisiana Energy Services* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77 (1998); *Private Fuel Storage* (Independent Spent Fuel Storage Installation), CLI-02-20, 56 NRC 147, 153-55 (2002); *Private Fuel Storage* (Independent Spent Fuel Storage Installation), CLI-04-09, 59 NRC 120 (2004)).

¹³ *Id.* at 52,041.

¹⁴ *Id.* at 52,040.

¹⁵ Exec. Order No. 13990, 86 Fed. Reg. 7037 (Jan. 25, 2021) (EO 13990).

¹⁶ Exec. Order No. 14008, 86 Fed. Reg. 7619 (Feb. 1, 2021) (EO 14008).

EO 14057, “Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability.”¹⁷ For additional background information see Enclosure 1.

DISCUSSION:

In response to the Commission’s April 23, 2021, SRM, the staff conducted a systematic review of how agency programs, policies, and activities address EJ. Specifically, the staff evaluated EO 12898 and recent EOs and assessed whether EJ is appropriately considered and addressed in the agency’s programs, policies, and activities, such as adjudicatory procedures and environmental reviews, given the agency’s mission. The staff considered the EJ practices of other Federal, state, and Tribal agencies, and evaluated whether the EJ Policy Statement is adequate, and whether the NRC should incorporate EJ beyond implementation through NEPA. The staff also considered whether establishing formal mechanisms to gather external stakeholder input would benefit any future NRC EJ efforts.¹⁸ To inform this review, the staff engaged with stakeholders representing a broad range of EJ perspectives and leveraged resources within the agency. The following sections describe the staff’s review.

1. Review of Agency Programs, Policies, and Activities

The staff conducted a systematic review of the NRC’s programs, policies, and activities. This included a review of programmatic information, such as decommissioning and licensing activities, Management Directives, and policy statements (e.g., EJ Policy Statement, Tribal Policy Statement, and Agreement State Policy Statements). The staff also reviewed the NRC’s Strategic Plan, adjudicatory and rulemaking activities, outreach activities, environmental review activities, and guidance documents. Further, the staff reviewed EO 12898 and recent EOs that address EJ. The staff then compared the goals of these EOs with how the agency currently addresses EJ in its programs, policies, and activities. The staff also considered benchmarked data and external and internal feedback.

A. Evaluation of Recent and Existing Executive Orders that Address EJ

The staff evaluated EOs that address EJ in its assessment of whether EJ is appropriately considered and addressed at the agency. Specifically, the staff considered whether the manner in which agency programs are implemented is in the spirit of these EOs. In 2021, the President issued several EOs that emphasize the importance of EJ considerations in Federal programs, policies, and activities. While the specific provisions of these EOs are unique, the goals are similar—consider EJ in agency programs, policies, and activities. Importantly, EO 14008 amended EO 12898 by establishing a White House EJ Interagency Council, to be directed by the Chair of the Council on Environmental Quality (CEQ), and a White House Environmental Justice Advisory Council, to advise the CEQ Chair and the Interagency Council.¹⁹ Significantly, the Interagency Council is directed to “submit to the President, through the National Climate

¹⁷ Exec. Order No. 14057, 86 Fed. Reg. 70,935 (Dec. 8, 2021) (EO 14057).

¹⁸ For the purposes of this review, the staff considers “formal mechanisms” to be means for consistently engaging with external stakeholders and Tribal nations to receive and provide information in support of agency mission-related activities.

¹⁹ See EO 14008 at Sec. 220. The Interagency Council replaced the former Interagency Working Group, of which the NRC staff was a participant.

Advisor, a set of recommendations for further updating Executive Order 12898.” To date, the Interagency Council review of EO 12898 is ongoing. Changes to EO 12898, if any, may be of particular interest since the NRC’s current EJ activities were borne out of the agency’s commitment to meet the goals of EO 12898.

The primary goal of EO 12898 is to prevent minority and low-income communities from being subject to “disproportionately high and adverse human health or environmental effects” of agency programs, policies, and activities. Additionally, EO 12898 directs that agency responsibility under the EO applies equally to Native American programs.²⁰ The EO provides that agencies should develop an EJ strategy and conduct their programs, policies, and activities in a manner that does not exclude persons from participation in, deny persons the benefits of, or subject persons to discrimination because of their race, color, or national origin.²¹ The EO also addresses research, data collection and analysis, subsistence consumption of fish and wildlife, and public participation and access to information.²² The accompanying Presidential Memorandum underscored the importance of certain provisions of existing law, including Title VI of the Civil Rights Act and NEPA.

Following issuance of EO 12898, the NRC committed to carry out the measures set forth in the EO and accompanying Presidential Memorandum, and in 1995 issued its EJ Strategy. The NRC’s EJ Strategy describes how EJ would be implemented at the NRC, including how the agency would engage the public and address openness and clarity by seeking and welcoming public participation.²³ In 2004, the Commission reaffirmed its commitment to the goals of EO 12898 in its EJ Policy Statement.²⁴ Further, consistent with EO 12898 Sections 3-3, Research, Data Collection, and Analysis, and 4-4, Subsistence Consumption of Fish and Wildlife, the agency collects occupational exposure data for certain licensed activities, participates in interagency research on groundwater protection and dose, and has environmental review guidance that includes consideration of EJ populations’ consumption patterns.

Similar to EO 12898, EO 14008 directs that agencies “make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.”²⁵ As noted above, the goal of the 1995 EJ Strategy is to integrate EJ into all pertinent NRC activities, and the EJ Policy Statement explains how the NRC addresses EJ in its regulatory and licensing actions through NEPA. The NRC also has established procedures and guidance requiring the consideration of climate and other cumulative effects in NEPA reviews.²⁶

²⁰ EO 12898 at Sec. 6-606.

²¹ See *id.* at Sec. 1-103 and 2-2.

²² *Id.* at Sec. 3-3, 4-4, and 5-5.

²³ Compare 1995 EJ Strategy with EO 12898 Sec. 5-5, Public Participation and Access to Information.

²⁴ EJ Policy Statement, 69 Fed. Reg. at 52,040.

²⁵ See EO 14008 at Sec. 219. EO 14008 is directed toward “executive departments and agencies” and does not specifically mention independent agencies like the NRC.

²⁶ For example, NUREG-1555 for new reactors, NUREG-1555, Supplement 1, for license renewal, and NUREG-1748 for licensing actions associated with Office of Nuclear Material Safety and Safeguards (NMSS) programs provide guidance to the NRC staff on addressing changing climate conditions and cumulative effects in NRC NEPA reviews.

Similarly, EO 13990 also discusses advancing and prioritizing EJ, and directs Federal agencies to seek stakeholder input, including from EJ organizations, when considering certain matters.²⁷ As described in Enclosures 4 and 5, the NRC has existing programs, policies, and activities in place related to engagement on a variety of issues.

The most recent EO directed at Executive agencies, EO 14057, also focuses on advancing EJ, stating in Section 101 “the mounting risks and costs already posed by the climate crisis” present the government an “opportunity to advance environmental justice.”²⁸ This EO directs the Federal Government to incorporate EJ considerations into sustainability and climate adaptation planning, programs, and operations.²⁹ It also directs agencies to incorporate EJ as part of their agency planning and performance.³⁰ The NRC does not currently have sustainability or climate adaptation planning, programs, and operations.

In addition to these EOs that address EJ, the staff looked at EO 13985, “Advancing Racial Equity and Support for Underserved Communities through the Federal Government.”³¹ While agency activities related to EO 13985 are being addressed outside of this EJ review, the principles in this EO can be instructive in enhancing meaningful engagement with EJ communities and Tribal nations.

B. Benchmarking to Consider the Practices of Other Agencies

The staff benchmarked the EJ practices of numerous other agencies (including Executive agencies and independent agencies like the NRC) and compared those practices to NRC

²⁷ EO 13990 at Sec. 1 (“Our Nation has an abiding commitment to empower our workers and communities; promote and protect our public health and the environment; and conserve our national treasures and monuments, places that secure our national memory. Where the Federal Government has failed to meet that commitment in the past, it must advance environmental justice It is, therefore, the policy of my Administration to ... prioritize ... environmental justice....”); Sec. 2(e) (“heads of agencies shall seek input from the public and stakeholders, including State, local, Tribal, and territorial officials, scientists, labor unions, environmental advocates, and environmental justice organizations” when conducting the review under EO 13990 Section 2 of agency actions taken during the prior administration that might conflict with EO 13990’s stated policy in Section 1). Like EO 14008, EO 13990 is also directed toward “executive departments and agencies,” and does not specifically mention independent agencies like the NRC.

²⁸ Section 507(b) of EO 14057 states, “To support a whole-of-government approach to achieve the policy in section 101 of this order, independent agencies are encouraged to implement the policy, goals, and provisions of this order, consistent with applicable law.”

²⁹ EO 14057, Section 402 also states, “Consistent with applicable law, agencies shall consider incorporating recommendations of the Justice40 Initiative, required by section 223 of Executive Order 14008.” The Justice40 Initiative sets a goal for certain Federal investments for 40 percent of the overall benefits to flow to disadvantaged communities. This section of EO 14008 was evaluated by NRC staff outside of this EJ review. The evaluation did not identify any agency programs to which this initiative would apply.

³⁰ Section 503 of EO 14057 is directed at “heads of principal agencies.” The term, “Principal agencies” is defined in Section 603(h); the definition specifically identifies a number of agencies; it does not include the NRC.

³¹ Exec. Order No. 13985, 86 Fed. Reg. 7009 (Jan. 25, 2021). The provisions in EO 13985 establishing new requirements do not apply to independent agencies like the NRC. Rather, the EO states that independent agencies are “strongly encouraged” to comply. EO 13985 at Sec. 11.

practices. To support the benchmarking effort, the staff used a contractor to validate its identification of external EJ programs, policies, and activities.

The staff learned that other Executive and independent agencies, including the Federal Energy Regulatory Commission (FERC), are conducting similar assessments, and enhancing their EJ programs, policies, and activities. For example, in May 2021, the Department of Transportation issued an order outlining its updated EJ Policy³² and, in October 2021, the Environmental Protection Agency (EPA) issued its updated EJ strategy for public comment.³³ The staff also found that many Federal agencies have staff or organizations devoted to EJ. For example, FERC has a Senior Counsel for Environmental Justice and Equity,³⁴ EPA has an office devoted to EJ, and the Department of Energy (DOE) has an office focused on the impact of its policies, regulations, and programs on minority communities. In addition, agencies conduct training to help ensure that their staff have the skills and knowledge needed to effectively address EJ issues. Finally, some agencies, such as EPA and DOE, leverage Federal advisory committees to support their EJ programs.

Benchmarked data were used to assess whether the NRC should incorporate EJ beyond its implementation through NEPA for regulatory and licensing actions, by considering and comparing the statutory authorities that guide where and how other agencies address EJ, given their respective missions. The staff found that all agencies consider EJ in their NEPA programs. EJ is also being considered by other Federal agencies under other statutes such as Title VI of the Civil Rights Act. Additional information regarding the staff's benchmarking efforts is provided in Enclosure 10.

C. Outreach to Gather a Broad Range of Perspectives and Leverage Agency Resources

The staff developed and implemented a strategy for this EJ review to solicit perspectives from geographically, ethnically, and economically diverse stakeholders and interested persons, including representatives from community-based EJ organizations, national environmental and nuclear safety non-governmental organizations, licensees, state and local governments, Tribal nations, and labor unions. The outreach strategy also included an internal component to leverage resources within the agency.

The staff solicited comments through a *Federal Register* notice, providing specific questions on which it was seeking feedback.³⁵ In response to public feedback, the staff twice extended the comment period, ultimately to October 29, 2021.³⁶ To maximize participation, the staff offered

³² Department of Transportation Order 5610.2C, "U.S. Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," (May 16, 2021), available at <https://www.transportation.gov/sites/dot.gov/files/Final-for-OST-C-210312-003-signed.pdf> (last visited Jan. 20, 2022).

³³ FY 2022–2026 EPA Strategic Plan, Draft (Oct. 1, 2021), available at <https://www.epa.gov/system/files/documents/2021-10/fy-2022-2026-epa-draft-strategic-plan.pdf> (last visited Jan. 20, 2022).

³⁴ Glick Names Montana Cole to Top Environmental Justice Post at FERC (May 20, 2021), available at <https://www.ferc.gov/news-events/news/glick-names-montina-cole-top-environmental-justice-post-ferc> (last visited Jan. 20, 2022).

³⁵ 86 Fed. Reg. at 36,307.

³⁶ 86 Fed. Reg. at 43,696; 86 Fed. Reg. at 50,745.

multiple ways to provide comments—telephone, email, mail, online (e.g., regulations.gov) and received approximately 2,500 comment submissions.

During 2021, the staff held several public meetings³⁷ and met in-person and virtually with various community organizations, individuals, and state and local representatives over several months.

To keep external stakeholders informed on the progress of its work, the staff developed two public web pages and publicized its outreach through a news release, social media (Facebook and Twitter), a podcast, and a pamphlet describing the review and comment process, distributed during in-person meetings with stakeholder groups.

Under the NRC Tribal Policy Statement, the staff issued a letter on August 20, 2021, offering consultation for its EJ review with federally recognized Tribes ([ML21236A225](#)). In addition, through EPA's Regional Tribal Operational Committees, the staff conducted government-to-government meetings with Tribal representatives and engaged various Tribal groups to gather critical input on key EJ issues. Enclosure 11 includes a list of Tribal nations, external organizations, groups, and representatives with whom the staff engaged.

The staff also conducted numerous interviews with agency subject matter experts to inform the recommendations and commitments and held an internal townhall to further leverage agency knowledge and experience. In addition, the staff launched an agency-wide crowd-sourcing campaign using the Idea Scale platform, seeking suggestions on how the NRC might enhance its approach to EJ. The staff received several submissions offering best practices for engaging EJ communities and Tribal nations, including consideration of limited English proficiency and enhanced use of graphics, ideas to enhance identification of EJ communities, and consideration of EJ throughout all NRC activities including licensing and inspection. The staff also suggested reviewing past licensing actions to identify EJ impacts that may not have been considered but may still linger, as a way of informing future licensing decisions. This internal feedback was included and evaluated with external feedback, which is summarized below and discussed in more detail in the enclosures to this paper.

Overview of What the Staff Learned

During its outreach effort, the staff received feedback from external and internal stakeholders that the NRC should make it clearer that EJ is a priority, consistent with the goals of recent EOs that address EJ, and the NRC should more effectively engage with EJ communities and Tribal nations. The feedback indicated there is not a one-size-fits-all solution to effectively address EJ in all situations. Also, the methods used by the NRC to engage EJ communities and Tribal nations are important to ensure effective engagement during the NRC's decision-making process. Commenters called for early and consistent outreach from the preapplication phase throughout a licensed facility's operating life to support relationship building, trust and stakeholder confidence.

The staff heard about successes in how the agency engaged EJ communities and addressed EJ issues in the past, such as using postcards to reach communities, being responsive during and following public meetings, and including Tribal nations throughout agency processes,

³⁷ Meeting information and summaries are available in ADAMS at [ML21208A423](#) (July meeting); [ML21285A189](#) (September meeting); and [ML21301A071](#) (October meeting).

including relationship-building before a specific process begins. The staff also heard about challenges in identifying, reaching, and engaging EJ communities and Tribal nations. The agency's reliance on information technology—accelerated during the pandemic—has increased staff's ability to reach a broader audience for any given public meeting, but paradoxically has heightened challenges of reaching EJ communities that remain beyond technology's reach.

The staff also heard concerns that the NRC does not use formal mechanisms, such as an internal EJ organization or advisory committee, to help implement and periodically review and update its programs, policies, and activities to benefit future EJ efforts. In addition, the staff heard that the NRC's EJ Strategy and EJ Policy Statement should be updated. Commenters also suggested incorporating EJ beyond implementation through NEPA.

In addition, commenters raised concerns about consideration of EJ in specific programmatic areas and activities, including the Agreement State program, cessation of operation activities, adjudicatory activities, 10 C.F.R. Part 20 dose requirements, cost-benefit analyses for regulatory analyses, emergency preparedness, and certain environmental review activities. Enclosure 12 summarizes the external comments received during this period and discusses the staff's approach for reviewing these comments.

2. Analysis, Findings, and Recommendations

Based on its review, the staff concluded the NRC's programs, policies, and activities that address EJ through NEPA are consistent with applicable law. They are also generally consistent with the spirit of EOs that address EJ. EJ considerations at the NRC are currently limited to NEPA-related activities for regulatory and licensing actions. The staff has identified areas where consideration of EJ could be updated, enhanced, or modernized both within and outside the NEPA context, including enhancements to the EJ Policy Statement and implementation of formal mechanisms to benefit future EJ efforts. Enhancements would support, among other things, the NRC Principles of Good Regulation.³⁸

The staff is seeking Commission approval on Recommendations 1–6 described below. While there are benefits from implementing all these recommendations together, they are independent and can be approved separately. In addition to these recommendations, the staff has identified several commitments, detailed in Enclosures 6 and 8. These commitments do not affect Commission policy. Details, including applicable internal and external feedback, and the supporting rationale for these recommendations and commitments are included in Enclosures 2-9.

A. Recommendations

1) *Revise the EJ Policy Statement.*

The staff's assessment is that while the EJ Policy Statement is legally adequate, there are areas of the Policy Statement that could benefit from additional clarity, consistency, and transparency. Examples of the types of issues to be considered as part of the revision are identified in

³⁸ The NRC has a long history of, and commitment to, engaging with stakeholders to foster openness, public participation, and collaboration in its regulatory activities. The NRC's Principles of Good Regulation and Open Government Plans illustrate how the NRC incorporates engagement into the agency's core mission to protect public health and safety and the environment.

Enclosure 2. As part of the revision process, stakeholders—including EJ communities and Tribal nations—should be engaged to provide feedback on potential revisions. If approved, the NRC staff would provide a draft revised EJ Policy Statement for Commission review and approval, consistent with the process used for the 2004 Policy Statement. For additional information regarding this recommendation, see Enclosures 2 and 9.

2) *Revise the NRC's 1995 EJ Strategy.*

While comprehensive, the 26-year-old EJ Strategy does not account for all the changes made in NRC's programs, policies, and activities since 1995, such as the Commission's 2004 EJ Policy Statement and 2017 Tribal Policy Statement. Accordingly, the staff recommends updating the NRC's 1995 EJ Strategy using a stakeholder engagement process. This could be accomplished concurrent with any update of the EJ Policy Statement. If approved, the NRC staff would provide an updated EJ Strategy for Commission review and approval. For additional information regarding this recommendation, see Enclosure 3.

3) *Enhance EJ-related outreach activities.*

During its EJ review, commenters stressed the importance of engaging early and building long-term relationships with EJ communities and Tribal nations. Accordingly, the staff is recommending that the agency take a more comprehensive approach to outreach in an effort to enhance the way it communicates and engages with EJ communities and Tribal nations. This effort would involve a number of activities including, but not limited to, creating positions to support EJ-related outreach, enhancing guidance and training for the NRC staff related to engagement on EJ matters, and improving accessibility to EJ guidance and procedures. For additional information regarding this recommendation, see Enclosure 4.

4) *Implement formal mechanisms to enhance how EJ is addressed at the NRC.*

The NRC does not have a dedicated mechanism specifically aimed at engagement with EJ communities or benefits to future EJ efforts. Therefore, the staff is recommending two formal mechanisms that would each serve different purposes and provide different benefits for future EJ efforts. The recommended formal mechanisms are not interdependent and include (1) the creation of a Federal advisory committee for EJ matters, and (2) holding periodic Commission meetings with EJ communities and Tribal nations on cross-cutting EJ issues. For additional information regarding these recommended mechanisms, see Enclosure 5.

There is, however, a differing NRC staff view for creating a Federal advisory committee for EJ matters:

The agency could benefit from external views on Environmental Justice (EJ) issues, but those views are most efficient when they can be obtained in a timely manner. For example, the EDO recently tasked OCHCO with leading an effort to significantly increase hiring with the stretch goal of achieving full utilization entering the next fiscal year. This could be an opportunity to hire an expert (or experts) that brings broad knowledge of EJ issues. The EJ paper recommends creating an advisory committee that is subject to the Federal Advisory Committee Act (FACA). The infrastructure and time needed to set up and maintain a new advisory committee may not yield timely advice to the Commission. In other

words, an advisory committee may require more overhead, infrastructure and time than seeking expert advice in a more tactical and streamlined manner.

While acknowledging a potential efficiency in hiring an internal EJ professional, this mechanism would not provide the independent views that an external panel would bring. Additionally, a Federal advisory committee for EJ would allow more meaningful engagement by facilitating direct views and connections with EJ communities.

5) Assess potential changes to current prohibition on intervenor funding.

Although stakeholders have long requested the agency assist the public with the costs associated with NRC litigation, Congress has barred the use of appropriated monies to pay the expenses of, or otherwise compensate, parties intervening in NRC regulatory or adjudicatory proceedings.³⁹ Such potential funding issues and related legislative considerations raise complex questions for which detailed consideration would require time and resources beyond those allotted for this EJ review. Accordingly, the staff recommends that the Commission direct the NRC staff to undertake a separate assessment and report back with an analysis of whether the Commission should consider requesting potential legislative changes to the current prohibition on intervenor funding. For additional information regarding this recommendation, see Enclosure 6.

6) Assess whether enhancements can be made to how EJ is addressed in the Agreement State application process and related activities.

Under the NRC's Agreement State Program, after an agreement becomes effective, the NRC discontinues its regulatory authority over the radioactive materials and activities covered under the agreement. Entrance into an agreement with a State under section 274 of the Atomic Energy Act is categorically excluded from the NRC's environmental review provisions implementing NEPA requirements under 10 C.F.R. § 51.22(c)(4). Because there is no NEPA review required, there is currently no EJ consideration during the Agreement State application process.⁴⁰

The staff heard there is a need for clarity, transparency, and engagement in the Agreement State application process and related activities. For example, Tribal nations and NRC staff noted that the process for reviewing Agreement State applications has historically not included an opportunity for Tribal consultation; the NRC staff has begun to offer this opportunity under the Tribal Policy Statement. Similarly, Tribal nations expressed that there is not an effective means to raise EJ concerns with the NRC or the State regarding radiological safety and security after the NRC discontinues its authority under an agreement. Also, several representatives from Agreement States' offices noted there is not a clear understanding of Agreement State responsibilities to Tribal nations. Therefore, in addition to recommending that the Commission consider revisions to the EJ Policy Statement to encourage States to implement EJ in their regulatory activities, as appropriate (see Enclosure 2), the staff recommends that the agency undertake a separate assessment of the Agreement State application process and other related

³⁹ Pub. L. No. 102-377, Title V, § 502, 106 Stat. 1315, 1342 (1992), 5 U.S.C. § 504 note ("None of the funds in this Act or subsequent Energy and Water Development Appropriations Acts shall be used to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings funded in such Acts.").

⁴⁰ Some, but not all States have a process for considering EJ in their regulatory activities.

NRC activities (e.g., the Agreement State Program Performance Concerns process) to identify whether there are potential improvements or modifications that could prove beneficial to EJ communities and Tribal nations, and report back to the Commission with any recommendations for changes, as appropriate. For additional information regarding this recommendation, see Enclosure 7.

B. Commitments

In considering feedback from external and internal stakeholders, the staff identified the following commitments: 1) enhance how the NRC staff communicates and engages with EJ communities and Tribal nations on issues associated with dose and radiation protection, and to follow related interagency research; 2) enhance communication related to emergency preparedness, response, and recovery activities; 3) enhance communication and information through existing processes related to impacts on EJ communities from cessation of operations at nuclear facilities; 4) assess enhancing the consideration of EJ in regulatory cost-benefit analysis guidance; 5) consider lessons learned and knowledge gained during this EJ review in environmental review guidance updates; and 6) improve communications with EJ communities and Tribal nations about the hearing process. These commitments do not affect Commission policy. For additional information regarding these commitments, see Enclosures 6 and 8.

C. Implementation of Commitments and Approved Recommendations

In considering ways to implement commitments and any approved recommendations discussed above, the staff considered external and internal feedback, and compared the NRC's efforts with those of other agencies. The staff determined that an internal mechanism, such as a dedicated EJ group, could be an effective means to implement commitments and any approved recommendations discussed in this paper, in particular the enhanced outreach recommendation discussed in Enclosure 4. Specifically, such a mechanism could result in increased consistency, reliability, and efficiency in how EJ is addressed in agency programs, policies, and activities. An internal mechanism could support how the agency addresses EJ within the NEPA review process (currently handled by the Environmental Center of Expertise in the Office of Nuclear Material Safety and Safeguards) and outside NEPA.

The size and scope of any implementation mechanism would be driven by how the Commission addresses the recommendations in this paper. Following the Commission's decision on the proposed recommendations, the NRC staff will assess the need for EJ resources or an internal organization to support implementation. In addition, within 120 days of Commission direction on this paper, the NRC staff will develop an implementation plan with schedule and resource estimates, including what work activities might be shed or deferred, to support implementation of recommendations, if approved, and commitments.

COMMITMENTS:

Described in Sections 2.B and 2.C, and detailed in Enclosures 6 and 8, are the commitments made in conjunction with this review.

RECOMMENDATIONS:

The staff recommends that the Commission approve Recommendations 1–6 described in Sections 2.A.1–6 and detailed in Enclosures 2–7, and 9.

RESOURCES:

Enclosure 13 includes an estimate of the NRC resources needed to implement all the recommendations and commitments set forth in this paper. The timeframe for addressing the recommendations and commitments can be phased across future years and will be addressed in the implementation plan following the Commission's direction.

COORDINATION:

The Office of the General Counsel reviewed this package and has no legal objection. The Office of the Chief Financial Officer reviewed this package for resource implications and has no objections.

Daniel H. Dorman Digitally signed by Daniel H. Dorman
Date: 2022.03.29 12:35:44 -04'00'

Daniel H. Dorman
Executive Director
for Operations

Marian L. Zobler Digitally signed by Marian L. Zobler
Date: 2022.03.29 11:55:10 -04'00'

Marian L. Zobler
General Counsel

Enclosures:

1. EJ Background and Chronology
2. Recommendation Revise the EJ Policy Statement
3. Recommendation: Revise the NRC's 1995 EJ Strategy
4. Recommendation: Enhance EJ-Related Outreach Activities
5. Recommendation: Implement Formal Mechanisms
6. Recommendation: Recommendations and Commitments Related to Adjudicatory and Rulemaking Activities
7. Recommendation: Assess the Agreement State Application Process and Related Activities
8. Commitments to Enhance How the Agency Addresses EJ
9. Legal Enclosure for the EJ Review (Not Publicly Available)
10. Overview of Benchmarking Effort for the EJ Review
11. Outreach Activities for the EJ Review
12. Comment Summary Report
13. EJ Review Recommendations and Commitments Resource Estimates (Not Publicly Available)

SUBJECT: SYSTEMATIC REVIEW OF HOW AGENCY PROGRAMS, POLICIES, AND
 ACTIVITIES ADDRESS ENVIRONMENTAL JUSTICE DATED: MARCH 29, 2022

ADAMS Accession Number: **ML22031A063** **SRM-M210218B**

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