

## Recommendation 2: Revise the NRC's 1995 Environmental Justice Strategy

### Background

EO 12898, Section 1–103, directs Federal agencies to develop strategies for addressing environmental justice (EJ) in agency programs, policies, and activities.<sup>1</sup> As discussed in Enclosure 1, the 1995 EJ Strategy arose from the former NRC Chairman's commitment to "carry out the measures" set forth in EO 12898<sup>2</sup> and accompanying Presidential memorandum.<sup>3</sup> In March 1995, the Commission approved the NRC's EO 12898 "Environmental Justice Strategy" (1995 EJ Strategy).<sup>4</sup> At the time of issuance, the NRC had an Environmental Justice Coordinator, an Environmental Justice Group (comprised of senior agency officials), and had appointed a representative to the newly established EO 12898 Interagency Federal Working Group on Environmental Justice (Section 1–102).

The stated goal of the NRC's EJ Strategy "is 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." For the purposes of this EJ Strategy, the NRC used the following working definition:

Environmental justice means the fair treatment and meaningful involvement of all people, regardless of race, ethnicity, culture, income, or educational level with respect to the development, implementation and enforcement of environmental laws, regulations, and policies.

On August 4, 2011, 17 Federal executive branch agencies and offices signed a "Memorandum of Understanding [MOU] on Environmental Justice and Executive Order 12898" to, among other things, "declare the continued importance of identifying and addressing environmental justice considerations in agency programs, policies, and activities as provided in Executive Order 12898...."<sup>5</sup> By signing the MOU, these agencies also agreed to update their EJ strategies and seek public involvement in their strategies, consistent with EO 12898, Section 5-5. The

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<sup>1</sup> 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).

<sup>2</sup> Letter from NRC Chairman Ivan Selin to the President, March 31, 1994 (ADAMS Accession No. [ML033210526](#)).

<sup>3</sup> 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).

<sup>4</sup> Staff Requirements Memorandum COMSECY-95-013–Environmental Justice Strategy (March 24, 1995) ([ML003756575](#)) (non-public).

<sup>5</sup> Memorandum of Understanding on Environmental Justice and Executive Order 12898, August 4, 2011, available at <https://www.epa.gov/environmentaljustice/memorandum-understanding-environmental-justice-and-executive-order-12898> (last visited Jan. 21, 2022). The following agencies signed the MOU: White House Council on Environmental Quality; Department of Agriculture; Department of Commerce; Department of Defense; Department of Education; Department of Energy; Department of Health and Human Services; Department of Homeland Security; Department of Housing and Urban Development; Department of the Interior; Department of Justice; Department of Labor; Department of Transportation; Department of Veterans Affairs; Environmental Protection Agency; General Services Administration; and Small Business Administration.

NRC's EO 12898 EJ Strategy has not been evaluated for updates or revised since it was made public by the Interagency Working Group on Environmental Justice in June 1995.<sup>6</sup>

#### What the Staff Learned

The staff reviewed the NRC's 1995 EJ Strategy to determine if underlying principles may have changed or if enhancements to the Strategy are warranted. The staff also considered whether the agency has fulfilled its stated goal of integrating EJ "into the conduct of all pertinent activities," including relevant NRC programs and policies. To inform its review, the staff considered other Federal agencies' EJ strategies/strategic plans<sup>7</sup> as well as numerous EJ strategy-related comments concerning the NRC's EJ activities, representing a variety of perspectives. Some commenters asserted that EJ is not being fully considered within the NRC. They suggested it should be incorporated into the NRC's mission statement, and not be limited to the NRC's NEPA process. NRC staff noted awareness of the NRC's 1995 EJ Strategy is limited within the NRC. Commenters and NRC staff suggested creating positions, including an EJ position within the agency (similar to the position described in 1995 EJ Strategy), to coordinate and manage the incorporation of EJ into the NRC's programs, policies, and activities. There were also several comments related to outreach and engagement with EJ communities and Tribal nations, which are being addressed by other recommendations (see, e.g., Enclosure 4). Commenters also stated the NRC should commit to making diversity, equity, inclusion, and accessibility a goal within the agency, and that they would like to see the NRC implement EJ by addressing diversity within the Atomic Safety and Licensing Board and in Commission representation.<sup>8</sup> In addition, commenters suggested that the NRC create new positions and boards to organize EJ practices and programs, and at minimum have an EJ advocate. Commenters requested the creation of an EJ community advisory board to advise the agency, and an office for technical and legal advice or independent EJ organization or commission with the power to intervene and influence regulatory or licensing decisions concerning EJ issues.<sup>9</sup>

The goal of the Commission's 1995 EJ Strategy is to integrate EJ into all pertinent NRC activities. However, some of the principles presented in the EJ Strategy are not being fully implemented in NRC's programs, policies, and activities (e.g., consideration of EJ in Title VI activities). While comprehensive, the 26-year-old EJ Strategy does not account for 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.

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<sup>6</sup> See Interagency Working Group on Environmental Justice: Notification of Availability of Final Federal Agency Environmental Justice Strategies, 60 Fed. Reg. 30,871 (June 12, 1995).

<sup>7</sup> See United States Government Accountability Office, "Environmental Justice; Federal Efforts Need Better Planning, Coordination, and Methods to Assess Progress," GAO-19-543 (September 2019), available at <https://www.gao.gov/products/gao-19-543> (last visited Jan. 31, 2022) (identifying agencies' EJ strategies).

<sup>8</sup> As noted in Discussion Section 1.A of this paper, there are separate ongoing agency efforts related to equity, inclusion, and EO 13985, "Advancing Racial Equity and Support for Underserved Communities through the Federal Government" (86 Fed. Reg. 7009 (Jan. 20, 2021)); accordingly, these issues are not addressed in detail in this paper.

<sup>9</sup> Analysis and recommendations related to potential separate organizations are discussed in Enclosure 5, and considerations for intervenor funding are addressed in Enclosure 6.

## Recommendation

The staff recommends updating the NRC's EJ Strategy to address changes made in programs, policies, and activities since 1995. This could be accomplished using a public engagement process concurrent with any update of the 2004 EJ Policy Statement for regulatory and licensing actions. The NRC staff would provide an updated EJ Strategy for Commission review and approval. As part of this update, the staff recommends reinstating the EJ Coordinator and an oversight committee of senior agency officials consistent with the "Continue senior management involvement" principle in the 1995 EJ Strategy. The goal of this principle is to ensure EJ policy information is shared among NRC offices, programs, activities, and the public.

Updating the NRC's 1995 EJ Strategy would provide an opportunity to demonstrate the agency's recommitment to the measures set forth in EO 12898 (consistent with the recommitment made by the 17 Federal agencies that signed the 2011 EJ MOU). It also would address the general goals of recent EOs that address EJ, such as EO 13990 and 14008, to prioritize and incorporate EJ in agency activities. In addition, updating the 1995 EJ Strategy would provide an opportunity to expand the 1995 NRC EJ Strategy principle "Seeking and Welcoming Public Participation," to demonstrate the agency's enduring commitment to meaningful engagement and outreach with EJ communities and Tribal nations, and support the NRC's Strategic Goal to "Inspire Stakeholder Confidence in the NRC."<sup>10</sup> Another 1995 EJ Strategy principle, "Continued Senior Management Involvement," announced the appointment of an NRC EJ Coordinator. However, it has been many years since the NRC staffed this position. Reestablishing an NRC EJ Coordinator would further the consistency and efficiency of EJ reviews in regulatory and licensing actions as well as how EJ should be addressed in all agency programs, policies, and activities. The EJ Coordinator could also participate on the newly formed EO 14008 White House EJ Interagency Council and attend White House Environmental Justice Advisory Committee meetings. Finally, updating the 1995 EJ Strategy would provide the opportunity to reflect changes to programs, policies, and activities since 1995, including referencing the Tribal Policy Statement and clarifying how the Commission's EJ Policy Statement supports the 1995 EJ Strategy principle "Integration of Environmental Justice into NRC's NEPA Activities." For resource information related to this recommendation, see Enclosure 13.

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<sup>10</sup> Strategic Plan, Fiscal Years 2022-2026, NUREG-1614, Vol. 8 (draft report for comment), at 11 ([ML21260A054](#)) ("To be successful, the NRC must not only excel in carrying out its mission but must do so in a manner that inspires confidence."). The final Strategic Plan, Fiscal Years 2022-2026, NUREG-1614, Vol. 8 will be published in April 2022 and will be available at <https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1614/index.html> (last visited March 16, 2022).