

Recommendation 4: Implement Formal Mechanisms

Background

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.

For the purposes of this review, the staff considers "formal mechanisms" to be means for consistently engaging with external stakeholders and Tribal nations with EJ concerns to receive and provide information in support of agency mission-related activities. The NRC has and continues to rely on formal mechanisms, such as public meetings, rulemakings, and adjudicatory processes, as means for providing stakeholder engagement. As technology has advanced, the NRC has also proven successful in incorporating technology into its formal engagement mechanisms. For example, the agency uses web technology and mobile technology (e.g., videoconferencing, Twitter, Facebook, YouTube Channel, NRC.gov, RSS Feeds) to promote and encourage participation in NRC activities. With these efforts, the agency is providing more information to stakeholders in more formats and reaching more stakeholders than in the past. The NRC does not, however, have a formal mechanism specifically aimed at engaging EJ communities in a manner that would benefit future EJ efforts.

What the Staff Learned

During its outreach, commenters expressed that despite the multiple methods of communication that the NRC currently uses, there are gaps in the NRC's ability to engage in meaningful dialogue with EJ communities and Tribal nations. Some commenters stated that the NRC's engagement processes appear to be the NRC just "checking the box" rather than really listening, and that this leaves a general lack of trust in the agency. Other commenters noted that when the NRC does engage, it is not always in a manner accessible or understandable to EJ communities and Tribal nations or tailored to meet community needs. They cited NRC's use of technical jargon and language, too much reliance on virtual meetings that require broadband and access to mobile devices or computers, failure to consider limited English language proficiency, and challenges with venue selection. Several commenters recommended the NRC create an external advisory committee, as an independent body, to promote involvement in the NRC's processes and foster building and maintaining relationships with all stakeholders. While commenters expressed that improving engagement in all areas is important, commenters suggested that an external panel could provide particular benefits by helping to identify, shape, and provide advice to the NRC from an outside perspective, including from EJ communities on EJ-related programs, policies, and activities. Similarly, Tribal nations' representatives suggested the NRC consistently recognize government-to-government relationships and consult with Tribes to build trust and engage meaningfully, and that consultation be used consistently outside National Environmental Policy Act reviews. In addition, commenters suggested that the NRC should partner with or leverage existing organizations to engage on EJ related issues, such as the Environmental Protection Agency's Regional Tribal Operation Committees.

Through its benchmarking efforts, the staff found that other Federal agencies use various formal mechanisms such as citizen advisory boards or Federal Advisory Committees (FAC) to help build relationships and engage EJ communities and Tribal nations in the formulation of programs, policies, and activities, and to assist in monitoring the implementation of agency EJ

programs. For example, the Environmental Protection Agency supports a representative FAC (National Environmental Justice Advisory Committee) and Regional Tribal Operation Committees to facilitate relationship building and enhance communication with EJ communities and Tribal nations. The Department of Energy has citizen advisory boards at many of its major facilities to provide a forum for community relationship building and enhanced communication. The Federal Energy Regulatory Commission recently created an Office of Public Participation to improve its outreach efforts. For additional information regarding the staff's benchmarking effort see Enclosure 10.

While the NRC has formal mechanisms to engage external stakeholders to share and receive information, these mechanisms are more transactional in nature and not particularly useful in facilitating meaningful dialogue between the NRC and representatives of EJ communities and Tribal nations. Further, these more transactional mechanisms do not always afford meaningful opportunities for EJ communities and Tribal nations to provide advice and feedback to the NRC on cross-cutting EJ matters.

Recommendations

The staff analyzed comments received, reviewed formal mechanisms employed by other agencies, compared those to mechanisms in place at the NRC, and identified two recommendations that, if implemented, could benefit the NRC's future EJ efforts.¹ Based on its analysis, the staff recommends that both formal mechanisms be implemented because each would yield different benefits for future NRC EJ efforts, which are discussed below. While the staff recommends both formal mechanisms, the mechanisms are not interdependent. For related resource information, see Enclosure 13.

Formal Mechanism 1: Create a Federal Advisory Committee for EJ matters.

The staff recommends creating a representative FAC for EJ, composed of external EJ professionals and community leaders, to help identify, shape, and provide advice from an informed, outside perspective, to the NRC on EJ-related programs, policies, and activities. Importantly, a FAC would be focused on supporting other recommendations in this paper, specifically revising the NRC's EJ Policy Statement (see Enclosure 2) and EJ Strategy (see Enclosure 3) and supporting initial implementation of the EJ Strategy. In addition, it would also support relationship and trust building, which was a major focus of the comments the staff received. Pursuant to Title 10 of the *Code of Federal Regulations* (10 C.F.R.) Part 7, the FAC would be focused on specific tasks, and time limited unless the Commission affirmatively decides to renew its Charter.²

As discussed above, FACs are used to support EJ work at other Federal agencies, and a repeating theme of the comments received was the need for the NRC to consider doing the

¹ If no formal mechanism is implemented (i.e., the status quo is maintained), the agency would rely on existing outreach practices to identify and address concerns related to relationship building and lack of trust in the agency by some EJ communities and Tribal nations.

² Pursuant to 10 C.F.R. § 7.1(e), "[e]xcept where otherwise required by law, an NRC advisory committee shall be terminated whenever the stated objectives of the committee have been accomplished, the subject matter or work of the committee has become obsolete, the committee's main functions have been assumed by another entity within the Federal Government, or the cost of

same. Further, Congress recognizes FACs as a formal mechanism to seek public advice and assistance. This formal mechanism would provide significant benefits to future EJ efforts. Specifically, it would provide a means for the NRC to obtain from representative members independent views, formal advice, and assistance on a wide range of EJ issues specific to the NRC's programs, policies, and activities—a function that cannot currently be performed by the NRC or an existing NRC advisory committee. By creating its own FAC, the NRC could direct the FAC's activities to address NRC-specific issues. In addition, establishing a FAC for EJ matters would provide a means to receive and better understand feedback and perspectives from EJ communities and Tribal nations.

The NRC would, however, need external review before creating this FAC, and FACs require a highly regulated structure, and conformance with ongoing record-keeping and reporting requirements.³ Accordingly, this formal mechanism would require resources for support; this would include resources for the designated Federal Officer required by 10 C.F.R. § 7.11, NRC staff preparation and distribution of materials, and project management.

Formal Mechanism 2: Hold Periodic Commission Meetings with EJ communities and Tribal nations on cross-cutting EJ issues.

The staff recommends that there be periodic meetings between the Commission and representatives of EJ communities and Tribal nations to help identify and shape, from an informed, outside perspective, EJ-related programs, policies, and activities, including implementation efforts. This formal mechanism would allow the Commission to communicate with and hear from EJ communities and Tribal nations regarding their feedback and perspectives, including ways the NRC may be able to better meet the needs of specific EJ communities and Tribal nations with whom it engages on EJ matters.

Implementing this formal mechanism would provide tangible benefits. For example, implementing this formal mechanism would provide EJ communities a seat at the table with NRC decision-makers, providing an opportunity to ensure concerns are heard and understood at the highest levels of the agency. Periodic meetings also could help foster greater communication, dialogue, and understanding between stakeholders, and the NRC. In addition, these meetings also could demonstrate to EJ communities and Tribal nations that their concerns and interests are a particular focus of NRC decision-makers. This formal mechanism could be an important first step in direct communication with EJ communities and Tribal nations on EJ matters at the highest levels of the agency.

operating the committee has become excessive in relation to the benefits accruing to the Federal Government from its activities.” Further, pursuant to 10 C.F.R. § 7.1(e)(1) unless required by statute, a committee “terminates no later than two years after its establishment or last renewal, unless renewed.”

³ The Federal Advisory Committee Act (FACA) and NRC's implementing regulations in 10 C.F.R. Part 7 set forth processes and requirements related to establishing and maintaining FACs. See 5 U.S.C. App. 2; 10 C.F.R. Part 7 (NRC's FACA implementing regulations). For example, before establishing an EJ FAC (which would be a “discretionary” FAC, i.e., “advisory committee that is established, but not required to be established, under the authority of an agency head, and its establishment or termination is within the legal discretion of an agency head,” see 10 C.F.R. § 7.2), the NRC must first consult with the Committee Management Secretariat (organized within the General Services Administration) and provide specified information. See 10 C.F.R. § 7.5. In addition, there are detailed FAC charter filing, public notice, recordkeeping, and reporting requirements. See, e.g., 10 C.F.R. §§ 7.8, 7.9, 7.12, 7.13, and 7.17.