

### Notes and Questions

1. Are there other ideas that you think should be included in agency guidance to address environmental justice concerns?
2. Should EPA and other agencies be required to translate NEPA documents whenever a project will impact a community that has a significant percentage of members that do not speak English? How large a percentage should this be? What if there are numerous, monolingual subpopulations within the affected community—should agencies be required to translate documents into multiple languages? Should entire documents be translated, or only summaries and/or important documents? (EISs can sometimes be several hundred pages long.) What other approaches should be explored? Should technical assistance be provided to help communities participate in the NEPA review process?

### 3. Judicial Review of NEPA

What has been the impact of the Executive Order on Environmental Justice and other agency guidance on decisions under NEPA? Thus far, relatively few reported cases have reached this question. As an initial matter, since section 6-609 of the Executive Order provides that it does not create any private right of action to judicial review, some courts have held that they lack jurisdiction to consider challenges to environmental justice analyses carried out under the Order. See *Citizens Concerned About Jet Noise, Inc. v. Dalton*, 48 F. Supp. 2d 582, 604 (E.D. Va. 1999). In other cases, though, the courts have found that once federal agencies exercise their discretion to include an environmental justice analysis in its NEPA evaluation, this analysis is reviewable under NEPA and the Administrative Procedure Act. See *Communities Against Runway Expansion, Inc. v. Federal Aviation Administration*, 355 F.3d 678, 688–89 (D.C. Cir. 2004); *Senville v. Peters*, 327 F. Supp. 2d 335 (D. Vt. 2004). Most of the rulings that reach the question of whether the environmental justice analysis is adequate have, under principles of deference to the agency, been quick to uphold the EIS.

One case in which this issue was fully explored involves the Nuclear Regulatory Commission (NRC), an independent regulatory agency not technically covered by the Executive Order, but that nonetheless voluntarily agreed to be bound by it in 1994. In 1997, the Atomic Safety and Licensing Board (Board) of the NRC heard a challenge to a Final Environmental Impact Statement (FEIS) prepared for a proposal by Louisiana Energy Services (LES) to build an \$855 million uranium-enrichment facility in the midst of two historically black communities in Claiborne Parish, Louisiana (the project was known as the Claiborne Enrichment Center, or CEC). The Board issued the following ruling.

#### **In the Matter of Louisiana Energy Services, L.P.**

45 N.R.C. 367 (1997)

This Final Initial Decision addresses the remaining contention—environmental justice contention J.9—filed by the Intervenor, Citizens Against Nuclear Trash (“CANT”), in this combined construction permit–operating license proceeding.... The Applicant plans to build the CEC on a 442-acre site in Claiborne Parish, Louisiana, that is immediately adjacent to and between the unincorporated African-American communities of Center Springs and Forest Grove, some 5 miles from the town of Homer, Louisiana.... The site, called the LeSage property... is currently bisected by Parish Road 39 (also known

as Forest Grove Road) running north and south through the property.... [Center Springs] lies along State Road 9 and Parish Road 39 and is located approximately [a third of a mile] to the north of the LeSage property.... [Forest Grove] lies approximately [two miles] south of the site along Parish Road 39.... The two community churches, which share a single minister, are approximately 1.1 miles apart, with the LeSage property lying between them.

The community of Forest Grove was founded by freed slaves at the close of the Civil War and has a population of about 150. Center Springs was founded around the turn of the century and has a population of about 100. The populations of Forest Grove and Center Springs are about 97% African American. Many of the residents are descendants of the original settlers and a large portion of the landholdings remain with the same families that founded the communities. Aside from Parish Road 39 and State Road 9, the roads in Center Springs or Forest Grove are either unpaved or poorly maintained. There are no stores, schools, medical clinics, or businesses in Center Springs or Forest Grove.... [F]rom kindergarten through high school the children of Center Springs and Forest Grove attend schools that are largely racially segregated. Many of the residents of the communities are not connected to the public water supply. Some of these residents rely on ground-water wells while others must actually carry their water because they have no potable water supply....

The Intervenor's environmental justice contention is grounded in the requirements of [NEPA].... Subsequent to ... the Staff's issuance of the draft EIS, on February 11, 1994, the President issued Executive Order [on Environmental Justice No.] 12,898.... Although Executive Order 12898 does not create any new rights that the Intervenor may seek to enforce before the agency or upon judicial review of the agency's actions, the President's directive is, in effect, a procedural directive to the head of each executive department and agency that, "to the greatest extent practicable and permitted by law," it should seek to achieve environmental justice in carrying out its mission by using such tools as [NEPA].... Thus, whether the Executive Order is viewed as calling for a more expansive interpretation of NEPA as the Applicant suggests or as merely clarifying NEPA's longstanding requirement for consideration of the impacts of major federal actions on the "human" environment as the Intervenor argues, it is clear the President's order directs all agencies in analyzing the environmental effects of a federal action in an EIS required by NEPA to include in the analysis, "to the greatest extent practicable," the human health, economic, and social effects on minority and low-income communities....

#### *Impacts of Road Closing/Relocation*

The Intervenor [asserts] that the FEIS is deficient because if [sic] fails to address the impacts of closing Parish Road 39, which currently bisects the LeSage site and joins the communities of Forest Grove and Center Springs. Dr. Robert Bullard [a sociologist and prominent environmental justice scholar] testified.... that if the road is not relocated it would impose upon the residents of Center Springs and Forest Grove an additional 8- or 9-mile trip by way of Homer to go from one community to the other.

Additionally, Dr. Bullard asserted that even if Parish Road 39 is relocated around the site, the Staff incorrectly concluded in the FEIS that the impacts would be very small and not pose unacceptable risks to the local community. According to Dr. Bullard, it is apparent that the Staff did not even consult with any of the residents of Forest Grove and Center Springs before reaching its conclusion for if it had, the Staff would have found that Forest Grove Road is a vital and frequently used link between the two communities, with regular pedestrian traffic....

[T]he  
mile) to  
meters  
and the  
minority

The  
cuss Fe  
Spring  
commu  
it will  
travel t

Dr.  
between  
presen  
reau o  
popula  
black l  
It thus  
no mo  
Forest  
who d  
walk b  
be mo  
Staff u  
have u  
in the  
the rel

Pro

Inte  
advers  
by the

In s  
to cou  
incom  
of the

Th  
FEIS  
creasi  
pacts.  
housi  
Staff  
the S  
ties o  
place  
propo  
find l  
these

{T}he FEIS indicates that the road relocation will add approximately 120 meters (0.075 mile) to the traveling distance between State Roads 2 and 9 and will add an additional 600 meters (0.38 mile) to the 1800 meter (1.1 mile) distance between the Forest Grove Church and the Center Springs Church, which are the approximate centers of the respective minority communities....

The Staff's FEIS treatment of the impacts of relocating Parish Road 39 does not discuss Forest Grove Road's status as a pedestrian link between Forest Grove and Center Springs and the impacts of relocation on those who must walk the distance between the communities on this road. In the FEIS, the Staff calculates how much additional gasoline it will take to drive between the communities when the road is relocated and the added travel time the road relocation will cause for various trips....

Dr. Bullard testified, however, that Forest Grove Road is a vital and frequently used link between the communities with regular pedestrian traffic. Neither the Staff nor the Applicant presented any evidence disputing Dr. Bullard's testimony in this regard. Further, the Bureau of Census statistics introduced by the Intervenor show that the African American population of Claiborne Parish is one of the poorest in the country and that over 31% of black households in the parish have no motor vehicles. Again this evidence is undisputed. It thus is obvious that a significant number of the residents of these communities have no motor vehicles and often must walk. Adding 0.38 mile to the distance between the Forest Grove and Center Springs communities may be a mere "inconvenience" to those who drive, as the Staff suggests. Yet, permanently adding that distance to the 1- or 2-mile walk between these communities for those who must regularly make the trip on foot may be more than a "very small" impact, especially if they are old, ill or otherwise infirm. The Staff in the FEIS has not considered the impacts the relocation of Forest Grove Road will have upon those residents who must walk. Accordingly, we find that the Staff's treatment in the FEIS of the impacts on the communities of Forest Grove and Center Springs from the relocation of Parish Road 39 is inadequate and must be revised.

#### *Property Value Impacts*

Intervenor [also] asserts that property values in the neighboring communities will be adversely affected by the facility and that this economic effect will be borne disproportionately by the minority communities that can least afford it....

In support of [this] assertion...., Dr. Bullard testified that the general "benefit streams" to counties with large industrial taxpayers do not have significant positive effects on low income minority communities, which are already receiving a disproportionately low share of the services offered by the county....

The Staff's treatment of the economic impacts of the CEC on property values in the FEIS does indeed recognize that the CEC will depress some property values while increasing others, but the Staff fails to identify the location, extent, or significance of impacts. Further, although, the FEIS generally indicates the CEC is likely to increase both housing and land prices because of increased demand and the benefits capture effect, the Staff makes no attempt to allocate the costs or benefits. Dr. Bullard directly challenges the Staff's failure to assess the impacts of the CEC on property values in the communities of Forest Grove and Center Springs asserting that when facilities like the CEC are placed in the midst of poor, minority communities, the facility has negative impacts on property values in the immediate area of the plant. For the reasons specified below, we find his testimony on the negative economic impact of the CEC on property values in these minority communities reasonable and persuasive....

Dr. Bullard explained that unlike white residents of the parish, the black residents of Forest Grove and Center Springs face substantial "housing barriers" that preclude them from leaving when a large industrial facility is sited in the midst of their residential area. As a consequence, these already economically depressed communities must fully absorb the further adverse impact of having a heavy industrial facility nearby making them even more undesirable. He testified that the beneficial effects on housing values from increased demand by new migrating employees and the benefit capture effect relied upon by the Staff in the FEIS will have no effect on these minority communities that currently receive almost no parish services, are virtually 100% African American, and are inhabited by some of the most economically disadvantaged people in the United States. As Dr. Bullard stated, it is "extremely unlikely" new workers to the area will seek to live in Forest Grove and Center Springs. Dr. Bullard concludes that these factors lead to an overall negative impact on property values in the minority communities that must host the CEC....

The Staff witnesses made no attempt to explain how or why Dr. Bullard might be mistaken.... Indeed, given the Staff's recognition in the FEIS that there will be some negative impacts on property values from the CEC, it is difficult to envision an economic rationale that would demonstrate those adverse impacts from the CEC are likely to occur to properties well removed from the facility, such as in Homer or Haynesville, as opposed to the Forest Grove and Center Springs areas next to the facility.... By the same token, the opinions of [two witnesses for the applicant that] the effect that industrial facilities often increase property values in the vicinity of a facility are far too general to draw any reasonable conclusions about the impacts on property values in the circumstances presented here. Likewise, Mr. LeRoy's [another witness for the applicant] testimony about the positive impact on lakefront vacation home values from the construction of nuclear power plants is neither useful nor reasonable in making a comparison with the economically disadvantaged minority communities of Forest Grove and Center Springs. Certainly, the reality of Forest Grove and Center Springs hardly seems comparable to the description of Lake Wylie in Applicant's Exhibit 19, which states that "the Catawba plant was built on a beautiful lake, dotted with hundreds of expensive homes and homesites." Nor do these communities resemble the description of Lake Keowee in Exhibit 19 as "one of the most prestigious resort/retirement communities in the United States [which] is less than a mile from Oconee Nuclear Station. At Keowee Key more than 1500 people golf, boat, fish, relax and retire next door to a nuclear plant."

On this basis, we find that the Staff's treatment in the FEIS of the impacts from the CEC on property values in the communities of Forest Grove and Center Springs is inadequate....

\* \* \*

### *Notes and Questions*

1. What is different about the NEPA analysis demanded by the Board and the type traditionally prepared by federal agencies? Is it the particularized focus on how the project will impact very small subpopulations of larger communities? Is it the Board's careful attention to the project's social and economic impacts? The Board seems to embrace Dr. Bullard's longstanding view that achieving environmental justice requires examination of "who pays and who benefits" from industrial development. Note also that, although the Board requires an environmental justice analysis, it specifically declines to decide whether the Executive Order calls for a more expansive interpretation of NEPA or merely