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Tyson R. Smith

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ARTICLE

WITH LIBERTY AND ENVIRONMENT JUSTICE FOR ALL: A DECADE AT THE NUCLEAR REGULATORY COMMISSION

Tyson R. Smith*

I. INTRODUCTION

In the ten years since President Clinton issued Executive Order 12898 directing each federal agency to make achieving environmental justice part of its mission, the results have been mixed. The Executive Order has undoubtedly raised the profile of environmental justice issues within federal agencies, but the results of this increased attention are less clear. On one hand, attempts to remedy environmental racism through litigation have mostly failed, while, on the other, efforts to bring increased attention to environmental justice within the National Environmental Policy Act (NEPA) process have been more successful. This article will examine the impact of the Executive Order on the Nuclear Regulatory Commission (NRC) by focusing on a series of agency adjudications leading up to the recently-published agency policy statement on environmental justice. The article will close by examining the effect of the policy statement in a recent adjudication and discuss the prospects for future NEPA litigation on environmental justice.

The environmental justice movement is a relatively new and still-amorphous concept. To some, environmental justice is associated with the term "environmental racism" suggesting intentional or, at the very least, practical discrimination against low-income or minority communities. To others, environmental justice is way of examining decisions in an effort to better understand the environmental impacts on those same communities and seeking ways to alleviate their burden. The Environmental Protection Agency (EPA) defines environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies," while the Nuclear Regulatory Commission's (NRC) recent Policy Statement on Environmental Justice does not even attempt to define the term.¹ Such a flexible definition is fitting for a movement that developed independently through grassroots efforts in communities across the country. Now, however, certain aspects of environmental justice are becoming institutionalized in local, state and federal decision-making processes. Thus, an examination of which parts of what definition of environmental justice can be effectively incorporated into the regulatory process is in order.

During the late 1980's and early 1990's, environmental justice issues began to percolate beyond local disputes and started to enter the national consciousness. Congressman Walter E. Fauntroy, Chairman of the Congressional Black Caucus, requested that the General Accounting Office (GAO) conduct a study to determine whether a relationship existed between the location of hazardous waste landfills and the demographics of the communities that surround them.² The GAO obliged, releasing a report the following year concluding that three out of four off-site landfills examined in eight southeastern states, were located in

* Attorney with the U.S. Nuclear Regulatory Commission; J.D. 2003, Lewis and Clark Law School, Certificate in Environmental and Natural Resource Law; M.S. 1999, Stanford University, Civil and Environmental Engineering; B.S. 1995, Vanderbilt University, Civil and Environmental Engineering. All views expressed in this article are those of Mr. Smith and do not necessarily reflect those of the Commission. The Commission has not taken a position on the principal issues addressed in this article and has indicated neither approval nor disapproval of the positions that Mr. Smith takes in this article.

¹ *Compare Environmental Justice*, EPA, available at <http://www.epa.gov/compliance/environmentaljustice/index.html> (last updated Jan. 25, 2005) with Final Policy Statement: Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions, 69 FR 52,040 (Aug. 24, 2004).

² See CHRISTOPHER H. FOREMAN, JR., *THE PROMISE AND PERIL OF ENVIRONMENTAL JUSTICE* 18 (Brookings Instit. Press 1998).

predominantly minority communities.³ Even though the report did not make any conclusions about the cause of its findings, the report helped bolster the arguments that many local organizations had been making for years. When Congress failed to pass any legislation to address the growing awareness of the environmental concerns surrounding minorities and low-income populations, the task fell to President Clinton.⁴ In February 1994, President Clinton issued Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," that directed 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 programs, policies, and activities" on minority and low-income communities.⁵

The Executive Order directs agencies to incorporate environmental justice into agency missions "[t]o the greatest extent practicable and permitted by law . . ."⁶ For most federal agencies, that means environmental justice should be incorporated into their (NEPA) reviews.⁷ For some agencies, the Executive Order implicates compliance with the Title VI of the Civil Rights Act of 1964, which applies to federally-funded programs that affect human health or the environment; however, that statute is inapplicable to the NRC's regulatory and licensing actions. For other agencies, such as the EPA, environmental justice matters may be addressed during the permitting process under other environmental statutes including the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act. For independent agencies, such as the NRC, the President only requested that the agency comply with the Executive Order. Nevertheless, NRC Chairman Ivan Selin, in a letter to President Clinton, indicated that the NRC would endeavor to carry out the measures set forth in the Executive Order as part of its efforts to comply with the requirements of NEPA.⁸

The NRC provides an interesting example of how environmental justice issues can be incorporated into agency decision-making. As an agency that was involved in some of the earliest and most important litigation involving NEPA,⁹ the NRC is certainly familiar with the statute and has highly-trained and experienced NEPA staff. In addition, the agency's limited statutory authority to address environmental justice affords a chance to separate some of the more challenging and highly charged aspects of environmental justice from the more mundane tasks of assimilating environmental justice considerations into agency decisions. Thus, focusing on the NRC's efforts to address environmental justice provides considerable insight into the implementation of the directives of the Executive Order within the NEPA process. The assimilation of environmental justice into the NEPA process at the NRC began with staff guidance on environmental justice, and was further refined through several adjudications, and has now fully evolved into the NRC's Policy Statement on Environmental Justice.

³ See U.S. GEN. ACCOUNTING OFFICE, PUB. NO. RCED-83-168, SITING OF HAZARDOUS WASTE LANDFILLS AND THEIR CORRELATION WITH RACIAL AND ECONOMIC STATUS OF SURROUNDING COMMUNITIES 1 (1983).

⁴ Congress twice failed to enact environmental justice legislation to "to assure nondiscriminatory compliance with all environmental, health and safety laws and to assure equal protection of the public health." See Environmental Justice Act of 1993, H.R. 2105, 103d Cong. (1993); Environmental Justice Act of 1992, H.R. 5326, 102d Cong. (1992).

⁵ Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994).

⁶ *Id.*

⁷ National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. § 4321 (1994).

⁸ Again, the NRC does not have any authority under the Civil Rights Act of 1964 so its compliance is limited to NEPA.

⁹ See *e.g.*, Calvert Cliff Coordinating Comm. v. U.S. Atomic Energy Comm'n, 449 F.2d 1109 (D.C. Cir. 1971); Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council, 435 U.S. 519 (1978).

II. THE PAST: ENVIRONMENTAL JUSTICE ADJUDICATIONS AT NRC

Over the past 10 years, the NRC has adjudicated various environmental concerns in its licensing process. Some of these have been victories for proponents of environmental justice, while others have not. Nevertheless, over the course of the last decade, several consistent themes and limitations on the role and scope of NEPA and environmental justice have emerged that warrant examination.

A. Louisiana Energy Services

In 1998, the Commission first analyzed the Executive Order in an adjudicatory licensing procedure for Louisiana Energy Services (LES).¹⁰ LES sought “an NRC license to construct and operate . . . a privately-owned uranium enrichment facility” located between two minority communities.¹¹ As a result of constructing and operating the facility a parish road, which bisected the proposed enrichment facility site, was closed and relocated.¹² The intervenor alleged that the discussion of impacts in the applicant’s environmental report was inadequate “because it failed to fully assess the disproportionate socioeconomic impacts of the propos[al] on [the minority] communities.”¹³

The Commission held that the disparate impact analysis within NEPA is the “principal tool” for addressing environmental justice issues, and that “[t]he NRC’s goal is to identify and adequately weigh, or mitigate, effects, on low-income or minority communities” by assessing impacts “peculiar” to those communities.¹⁴ The Commission emphasized that the Executive Order did not establish any new rights or remedies; instead the Commission based its decision on NEPA, stating that “[t]he only ‘existing law’ conceivably pertinent here is NEPA, a statute that centers on environmental impacts.”¹⁵

The Commission also addressed the possibility that racial considerations affected the facility siting.¹⁶ The Commission concluded that “[a]n agency 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, so to speak.”¹⁷ The Commission also noted that the Council on Environmental Quality’s draft guidance for implementing the Executive Order “focuses exclusively on identifying and adequately assessing the impacts of the proposed actions on minority populations, low-income populations, and Indian Tribes” and that the guidance “makes no mention of a NEPA-based inquiry in racial discrimination.”¹⁸ Accordingly, *LES* limits the scope of an environmental justice contention at the NRC to issues considered in a NEPA analysis.

¹⁰ Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions, 69 Fed. Reg. 52,040 (Aug. 24, 2004) (referring to the adjudicatory proceeding of *In the Matter of Louisiana Energy Services (Claiborne Enrichment Center), L.P.*, 47 NRC 77 (1998) [hereinafter *In re LES*]).

¹¹ *In re LES*, 47 NRC at 83.

¹² *Id.*

¹³ *Id.* at 86.

¹⁴ *Id.* at 100.

¹⁵ *Id.* at 102 (internal citation omitted).

¹⁶ *Id.* at 100.

¹⁷ *Id.* at 102 (internal quotation omitted).

¹⁸ *Id.*

B. Private Fuel Storage

More recently, the Commission reiterated its views on environmental justice in *In the Matter of Private Fuel Storage, L.L.C. (PFS)*.¹⁹ *PFS* involved the licensing of a proposed fuel storage facility on land owned by the Skull Valley Band of Goshute Indians.²⁰ The intervener, Ohngo Gaudadeh Devia (OGD), argued that individual members of OGD, including band members who opposed the project, might suffer the environmental impacts of the project without enjoying its benefits as a result of an alleged misappropriation of funds paid on the *PFS* lease.²¹

First, the Commission reiterated its view that NEPA is the only pertinent statute and stated that environmental justice, as applied at the NRC, “means that the agency will make an effort under NEPA to become aware of the demographic and economic circumstances of local communities where nuclear facilities are to be sited, and take care to mitigate or avoid special impacts attributable to the special character of the community.”²² The Commission also reasoned that “[t]he essence of an environmental justice claim, in NRC practice, is disparate environmental *harm*.”²³ Accordingly, in the Commission’s view, NEPA does not “call for an investigation into disparate economic benefits as a matter of environmental justice” because “nothing” in the executive order or NEPA “suggest[s] that a failure to receive an economic benefit should be considered tantamount to a disproportionate impact.”²⁴ As to perceived disparities in the distribution of tax receipts from the project, the Commission noted that “NEPA simply is not the vehicle, and [the] NRC not the forum,” for resolving the question of whether a state’s tax policies are discriminatory.²⁵

The Commission agreed that “the executive order asks agencies to consider environmental justice implications only when disparate environmental effects are ‘high and adverse.’”²⁶ After recognizing that the Environmental Impact Statement (EIS) found the overall environmental impacts on reservation residents as small to moderate, the Commission concluded that there is, therefore, no reason to believe that those who fail to share in the financial benefits of the project are suffering “high and adverse” environmental impacts.²⁷ “Even though money (or social services) from [a project] might make it easier for some to tolerate noise, cultural insult, and unsightliness near the facility, [such] payments [do not] mitigate environmental harms in the sense of eliminating or minimizing them.”²⁸ Thus, *PFS* stands for the proposition that NEPA does not call for a detailed examination of the distribution of the financial benefits of a proposed project.

Taken together, *LES* and *PFS* outline the scope of environmental justice at the NRC. Through those adjudicatory decisions, the Commission staked out the limits of what it will consider to be relevant for environmental justice. Instead of taking a pro-active, pro-community role, the Commission declined to even address whether there are discriminatory effects of its decisions. By delineating the outer limits of its understanding of its responsibilities in such a way, the Commission opened the door for a definitive statement regarding its role in addressing environmental justice concerns through its licensing and regulatory functions.

¹⁹ *In the Matter of Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation)*, 56 NRC 147 (2002) [hereinafter *In re PFS*].

²⁰ *Id.* at 149.

²¹ *Id.*

²² *Id.* at 156.

²³ *Id.* at 153 (emphasis added).

²⁴ *Id.* at 154.

²⁵ *Id.* at 159.

²⁶ *Id.* at 154 (citing Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994)).

²⁷ *Id.*

²⁸ *Id.* (internal quotation omitted).

III. THE PRESENT: STATE OF ENVIRONMENTAL JUSTICE AT THE NRC

A. Environmental Justice Policy Statement

In light of the two adjudications discussed above, the Commission recently published a policy statement setting out its views and policy on the significance of the Executive Order and guidelines on when and how environmental justice will be considered in NRC licensing and regulatory actions.²⁹ The Commission confirmed that “[t]he basis for admitting E.J. contentions in NRC licensing proceedings stems from the agency’s NEPA obligations”³⁰ Procedurally, an environmental justice review “is a tool, within the normal NEPA [process], to identify communities that might otherwise be overlooked and identify impacts due to their uniqueness as part of the NRC’s NEPA review process.”³¹ “Thus, admissible contentions in this area are those which allege, with the requisite documentary basis and support as required by 10 C.F.R. Part 2, that the proposed action will have *significant adverse impact* on the physical or human environment that were not considered because the impacts to the community were not adequately evaluated.”³² The Commission reiterated that “[r]acial motivation and fairness or equity issues are not cognizable under NEPA”³³ Thus, the focus of an environmental justice 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.”³⁴

The Policy Statement also includes some procedural guidelines for implementing an environmental justice review through identification of minority and low-income communities and assessing the environmental impacts they may experience.³⁵ The Commission specifies the components of an environmental justice review including defining the geographic area for assessment, identifying low-income and minority communities, and emphasizing scoping.³⁶ The Commission also chose to endorse the Staff’s use of numerical guidance as a useful tool for performing an environmental justice review to be augmented through the NEPA scoping process.³⁷ For example, the Commission noted that under current Staff guidance, an area is defined as low-income or minority if the impacted area’s percentage of minority or low-income population significantly (defined as greater than 20 percent) exceeds that of the State or County.³⁸ “Thus, the goal of [the] EJ portion of the NEPA analysis is (1) to identify and assess environmental effects on low-income and minority communities by assessing impacts peculiar to those communities; and (2) to identify significant impacts, if any, that will fall disproportionately on minority and low-income communities.”³⁹

While NEPA requires agencies to assess the impacts of a proposed action and determine whether those impacts are significant, the Executive Order seeks consideration of “environmental justice implications only when the disparate environmental impacts are ‘high and adverse.’”⁴⁰ The process endorsed by the Commission

²⁹ Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions, 69 Fed. Reg. 52,040 (Aug. 24, 2004).

³⁰ *Id.* at 52,046.

³¹ *Id.* at 52,047.

³² *Id.* (emphasis added).

³³ *Id.*

³⁴ *Id.*

³⁵ *See id.* at 52,047-48.

³⁶ *Id.*

³⁷ *Id.* at 52,048. Such numerical guidance includes “triggers” if the minority or low-income population in an area exceeds fifty percent or is twenty percentage points higher than the average in the relevant geographic area. *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ In the Matter of Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), 56 NRC 147, 154 (2002) (citing Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994)).

for identification of environmental justice concerns consists of: a) identification of minority and low income populations, and b) determining whether there are disproportionately high and adverse impacts on those populations.⁴¹ Absent a claim to the contrary, the environmental justice considerations of NEPA are not pertinent.⁴² Once the threshold for conducting an in-depth environmental justice review is exceeded, the precise demographics of a given area are not critical; instead, the focus of the environmental justice review shifts to assessing the impacts on the minority populations.⁴³ When an EIS correctly identifies “minority populations” and conducts an in-depth environmental justice review, the agencies NEPA responsibilities are satisfied.⁴⁴

Since the purpose of identifying the low-income and minority populations is to aid in assessing potentially significant impacts to those communities, whether an area is defined as low-income or minority is effectively inconsequential as long as the review ultimately considers impacts unique to those communities. In an EIS, once the agency acknowledges the need to do an environmental justice analysis, the review shifts focus to an assessment of the impacts to a low-income population rather than concentrating on formulating ever more precise census statistics. Under NEPA, the purpose of the environmental justice review is “to become aware of the demographic and economic circumstances of local communities where nuclear facilities are to be sited, and take care to mitigate or avoid *special impacts* attributable to the *special character* of the community.”⁴⁵ Thus, the focus of the environmental justice 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.*”⁴⁶ Thus, a party challenging the adequacy of an EIS must describe a nexus between the effect on minority and low-income populations and the specific environmental harm.

B. System Energy Resources, Inc.

In a recent decision, the Commission had its first opportunity to apply the environmental justice policy statement.⁴⁷ The Commission affirmed a Licensing Board decision which had rejected a variety of challenges to System Energy Resources Inc.’s (SERI) early site permit (ESP) application based on inadequate environmental justice analyses.⁴⁸ Several groups had challenged the sufficiency of the application on a couple of grounds, including inaccurate information on the racial and socioeconomic demographics of the area surrounding the site and inadequate consideration of allegedly unique aspects of the local community.

As to the first point, the Commission held that the ESP application satisfied the environmental justice

⁴¹ See, e.g., Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions, 69 Fed. Reg. at 52,048.

⁴² See *In re PFS*, 56 NRC at 154; Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions, 69 Fed. Reg. at 52,047 (“If there will be no significant impact as a result of the proposed action, it follows that an EJ review would not be necessary.”).

⁴³ For example, using LIC-203, minority populations of 50%, 60% and 84% would all trigger an environmental justice review. See *infra*.

⁴⁴ The NRC Staff guidance considers a minority or low-income population to be present if: 1) the minority or low-income population in the census block groups or environmental impact site exceeds 50 percent, or 2) the minority or low-income population is significantly greater (typically at least 20 percentage points) than the minority or low-income population percentage in the geographic area chosen. OFFICE OF NUCLEAR REACTOR REGULATION, OFFICE INSTRUCTION LIC-203, PROCEDURAL GUIDANCE FOR PREPARING ENVIRONMENTAL ASSESSMENTS AND CONSIDERING ENVIRONMENTAL ISSUES D-8, D-9 (2001).

⁴⁵ *In re PFS*, 56 NRC at 156 (emphasis added).

⁴⁶ Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions, 69 Fed. Reg. at 52,047 (emphasis added).

⁴⁷ In the Matter of System Energy Res., Inc. (Early Site Permit for Grand Gulf Site), CLI-05-04 (NRC Jan. 18, 2005) [hereinafter *SERI*].

⁴⁸ See *id.* slip op. at 13. An early site permit resolves certain issues related to the development of a new reactor at a site, including the environmental effects of construction and operation.

aspects of NEPA by reporting information on the minority and income demographics of the area near the site.⁴⁹ Although the site is located in Claiborne County, Mississippi, a largely African-American county which is also one of the poorer counties in the one of the poorest states in the country,⁵⁰ the Commission noted that the environmental documents contained sufficient detail and descriptions of the minority and low-income populations surrounding the plant.⁵¹ The Commission elaborated on this point, opining that even if the petitioners would prefer different language or emphasis, such an analysis is not required by NEPA.⁵² As a result, the Commission effectively followed and affirmed the numerical guidance in its environmental justice Policy Statement that has essentially turned the environmental justice aspects of NEPA into an exercise of demographic disclosure.

With regard to the allegedly unique characteristics, the Commission again sided with the Licensing Board and rejected the contention. The petitioners had argued that the environmental justice concerns of local citizens were compounded by the State of Mississippi's peculiar tax code which redistributed tax revenues from the existing nuclear generating station to all the counties in the state shortly after the plant began operations.⁵³ As a result of the redistribution, the petitioners alleged that shortages in funding resulted in inadequate emergency preparedness and that, therefore, the local community suffered a high and disproportionate impact from plant operations.⁵⁴ The Commission disagreed with that legal conclusion and dismissed any suggestion of disproportionate impact by stating that such risks "fall equally on all members of the community - the 66% of the population living above the poverty line in Claiborne County as well as the 34% living below."⁵⁵

Notably, the Commission rejected the contention without resorting to the "disparate economic impact" language it had used in the *PFS* case.⁵⁶ This appears to reflect a conscious decision to focus on the broader purpose of an environmental justice NEPA analysis, *i.e.* disclosure of impacts, rather than letting itself or its Licensing Boards get bogged down in arguments over cause and effect of NRC activities. Despite the nearly indisputable discriminatory effect of the Mississippi statute, the Commission believes the issue falls outside the purview of its jurisdiction under NEPA. Thus, while disparate impacts analysis once appeared potential avenue for affecting real change in local communities back in *LES*, the Commission no longer even considers the issue up for debate. In the end, *SERI* simply confirms and solidifies the NRC's environmental justice philosophy embodied in the Environmental Justice policy statement.

IV. THE FUTURE OF ENVIRONMENTAL JUSTICE AT THE NRC

In rejecting the environmental contentions in *SERI*, the Commission appears to be signaling that its patience has worn thin with regard to environmental justice issues and that it will no longer tolerate a wide-ranging inquiry into environmental justice issues. As demonstrated *supra*, the Commission has, in the past, been willing to take pragmatic look at the impacts of its decisions on local communities and has even shown a remarkable willingness to go beyond the 'procedural' nature of NEPA and even incorporate a recognition of

⁴⁹ *Id.* slip op. at 11.

⁵⁰ Claiborne County is approximately 85% African American and 32.4% of the population is below the poverty level. *Id.* slip op. at 9.

⁵¹ *Id.* slip op. at 11-12.

⁵² *Id.*

⁵³ *Id.* slip op. at 8-9. "Grand Gulf, Unit 1 commenced operations in 1995." *Id.* slip op. at 4 n.13. "In 1986, voters approved an amendment to the Mississippi Constitution that allowed the state legislature to deny or limit local taxing authority's right to impose taxes on, specifically, nuclear powered generating plants." *Id.* See MISS. CONST. art. 4, § 112 (amended 1986). "The amendment also allowed the legislature to impose a 'special mode of valuation, assessment, and levy upon nuclear-powered electrical generating plants,' and to distribute the tax as the legislature saw fit." *SERI*, CLI-05-04, slip op. at 4-5 n. 13 (quoting MISS. CONST. art. 4, § 112 (amended 1986)).

⁵⁴ *SERI*, CLI-05-04, slip op. at 12.

⁵⁵ *Id.* slip op. at 13.

⁵⁶ See *infra*, Part II.B.

discrimination or injustice. Now, the Commission appears to have decided to just focus on the core purpose of environmental justice and NEPA – disclosure of environmental justice impacts. For the Commission, this will likely result in faster and more streamlined environmental reviews and NEPA document development. The agency now has the clarity and confidence that comes from clear environmental justice expectations. For licensees and applicants, the Commission's efforts to boil the environmental justice review down to the bare bones of what is required by NEPA will bring increased regulatory certainty to future facility siting decisions. Moreover, in performing their environmental justice reviews, licensees and applicants will have a better understanding and awareness of the impacts of their activities in local communities. Now, however, knowing that the results of their review cannot be used to sink the project, they may be more willing to enter into negotiations with those communities to mitigate any environmental justice impacts. Unfortunately, for local communities, the grand possibilities that environmental justice issues once engendered are now off the table. There are precious few tools left with respect to NEPA that can be used as a 'sword' to preclude the licensing of nuclear facilities. Nevertheless, incorporating environmental justice as a stand-alone component of an agency's NEPA review gives local communities a clear avenue for public participation – one where they can air (and agencies must address) environmental justice concerns.

V. CONCLUSION

The federal government and the NRC have come a long way from the Executive Order of ten years ago. At the time, the Executive Order offered the possibility of a new social contract that would distribute the environmental impacts of industrial facilities more equally by precluding entities from choosing the path of least resistance in poor or minority communities. But, the realities of implementing and assimilating environmental justice into federal decisions have shrunk any such hope. The bureaucracies of the federal government have ground down the grand visions of the environmental justice movement into an exercise of statistics and disclosure, especially in the NEPA context.

Remarkably, that may turn out to be quite an achievement in and of itself. The idea of environmental justice was unheard of twenty years ago, but now every agency has a plan, a procedure, a policy statement, or some process for addressing environmental justice issues. The engagement of the government has been slow, but now that the initial inertia has been overcome, the simple fact of agency awareness of environmental justice is bound to have an effect on future decisions. So, while the grandest goals have not come to fruition, the effects of the Executive Order will continue to reverberate for generations to come.