

# Blue Ridge Environmental Defense League

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## **Statement of Charles N. Utley to the National Environmental Justice Advisory Council (NEJAC) Public Meeting September 11-12, 2013, Atlanta, Georgia**

The United States Environmental Protection Agency established the Office of Environmental Justice in 1992 because all Americans regardless of race, color, national origin, or economic circumstance should be able to live in a clean, healthy environment. The National Environmental Justice Advisory Council was established as a federal advisory committee to EPA. The mission of NEJAC is to:

1. Provide advice and recommendations about broad issues related to environmental justice from all stakeholders, and
2. Provide a forum for integrating environmental justice with EPA priorities and initiatives.

Therefore, I am pleased to present to you today advice and recommendations on two broad topics— brownfields and nuclear power— which affect EPA initiatives. I am grateful for this opportunity.

### **Brownfields Delays Result in Environmental Injustice**

The length of time for assessment, remediation and evacuation of residents living in contaminated areas takes too long, in one case it has taken nearly a generation. To fulfill the EPA Brownfields Program's promise of working together in a timely manner to prevent, assess, safely clean up, and sustainably reuse brownfields, something must be done to remove roadblocks which impeded progress.

For example, the volunteer Augusta Brownfields Commission has been working diligently on behalf of the city for more than seven years. The Commission prepared the initial Brownfields grant that brought the City \$200,000 to assess the Goldberg site. It was instrumental in preparing a second Brownfields grant that brought the city another \$200,000 to assess commercial property adjacent to the Goldberg site and the Hyde Park community. The first grant was used to assess the Goldberg Brothers' Junk Yard which led to surface clean-up of the site.

The second grant was used to do a phase # 2 assessment in adjacent sites and in the Hyde Park community. Both grants were developed with little or no assistance from the city. The Brownfields Commission has an outstanding record of accomplishments in securing funds to improve this city.

The city's contaminated/blighted areas are untapped revenue that could be used to ease the city's financial crunch by providing jobs and economic growth to our city. We are asking that all efforts in community development, clean-up or relocation be a part of the Brownfields Commission and that NEJAC explore ways and make recommendations on facilitating a process which simply takes too long.

## The US Nuclear Regulatory Commission Fails to Fulfill its Commitment to Environmental Justice

The federal government has apparently disregarded requirements of the National Environmental Policy Act regarding the Plant Vogtle nuclear power plant. The conclusions of environmental impacts statements are plainly wrong. Further, for the last three years we have an outstanding Clean Air Act 505 petition before the EPA regarding the plant's air permit. And emergency evacuation measures in the community surrounding the plant are woefully inadequate.

### Memorandum of Understanding is Needed

The Nuclear Regulatory Commission has side-stepped Clinton's Executive Order 12898 and ignored President Obama's August 4, 2011 Memorandum of Understanding.<sup>1</sup> The NRC has not fulfilled the commitment it made to carry out Executive Order 12898.<sup>2</sup> In 1997 Office of Nuclear Material Safety and Safeguards and the Office of Nuclear Reactor Regulation did develop their own environmental justice guidance, NUREG-1748 and LIC-203,<sup>3</sup> but the NRC has failed to properly address environmental justice in licensing decisions made since the Executive Order. The following describes the agency's failure.

The NRC's Draft Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions is virtually devoid of affirmative policies for considering environmental justice issues in the NEPA decision-making process. Instead, it is a catalogue of the ways in which the NRC does *not* plan to consider environmental justice issues. Moreover, the NRC's rationale for refusing to consider discrimination in the NEPA decision-making is not supportable.<sup>4</sup>

The NRC has subverted the Executive Order by downplaying its purpose and scope. In 2003, in an attempt to dispose of the thorny EJ issues raised by its licensing actions,<sup>5</sup> the NRC published the following statement:

The E.O. simply serves as a reminder to agencies to become aware of the various demographic and economic circumstances of local communities as part

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<sup>1</sup> Memorandum of Understanding on Environmental Justice and Executive Order 12898, August 4, 2011

<sup>2</sup> Letter to President Clinton from NRC Chairman Ivan Selin, March 31, 1994

<sup>3</sup> See NUREG-1748, "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs," August 22, 2003 (ADAMS Accession No. ML032450279) and NRR Office Instruction, LIC-203, Procedural Guidance for Preparing Environmental Assessments and Considering Environmental Issues (June 21, 2001) (ADAMS Accession No. ML011710073)

<sup>4</sup> Comments by Nuclear Information and Resource Service on US Nuclear Regulatory Commission's Draft Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions, Diane Curran, Esq, and Michael Marriotte, Executive Director, February 3, 2004, <http://www.nirs.org/ejustice/nrc/commentsonejpolicy2304.htm>

<sup>5</sup> See Louisiana Energy Services (Claiborne Enrichment Center), CLI69863, 47 NRC 77 (1998) and PFS (Independent Spent Fuel Storage Installation), CLI602620, 56 NRC 147, 153655 (2002)

of any socioeconomic analysis that might be required by NEPA.<sup>6</sup>

However, the President's Executive Order was not simply a reminder. It was not a proclamation. Executive Orders are policy directives that implement or interpret a federal statute, a constitutional provision, or a treaty.

According to Dr. Robert Bullard, the Order was put to the test in rural Louisiana. Citizens Against Nuclear Trash charged NRC and Louisiana Energy Services with environmental racism because of their selection of a site for a uranium enrichment plant. In 1997 the Atomic Safety and Licensing Board concluded that "Racial bias played a role in the selection process." The judges chastised NRC staff for failing to address the provisions of Executive Order 12898; the decision was upheld on appeal.<sup>7</sup>

Therefore, we respectfully request that NEJAC, through its advisory capacity recommend that EPA request that the NRC sign the August 2011 MOU, an important aspect of which is procedures to help overburdened communities more efficiently and effectively engage federal agencies in decision making.

#### Environmental Injustice Plagues Plant Vogtle

There are no shelters in place for the residents in the Shell Bluff Community where Georgia Power's Plant Vogtle nuclear power plant is located. And this rural community is not accessible to public transportation. The closest city is Waynesboro, Georgia located approximately 10 miles away, still not far enough to be considered a safe zone. If there were shelters in place, they could support residents for a short period or extended period of time in case of an emergency.

Shell Bluff is just an example of where the NRC has failed to fully implement Executive Order 12898 to protect Minority Populations and Low-Income Populations from being exposed in a disproportionate way. This constant plague and threat to health and safety must not continue.

The Final Environmental Impact Statement for an early site permit for Plant Vogtle's Units 3 and 4 was completed in July 2008.<sup>8</sup> The FEIS concluded: "[T]he impacts of plant operations on environmental justice would be SMALL because no environmental pathways, health characteristics, or other preconditions of the minority and low-income population were found that would lead to adverse and disproportionate impacts."

However, in 2009 a nuclear power siting study was published which suggests that there is a "reactor-related environmental injustice" at Plant Vogtle. The study found:

The mining, fuel enrichment-fabrication, and waste-management stages of the

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<sup>6</sup> Federal Register /Vol. 68, No. 214 /Wednesday, November 5, 2003 /Notices, page 62643

<sup>7</sup> "Environmental Justice: Grassroots Activism and its Impact on Public Policy Decision Making," Bullard and Johnson, *Journal of Social Issues*, Vol. 56, No. 3 (2000) pp.555-578.

<sup>8</sup> NUREG-1872, published August 2008

US commercial nuclear fuel cycle have been documented as involving environmental injustices affecting, respectively, indigenous uranium miners, nuclear workers, and minorities and poor people living near radioactive-waste storage facilities. After surveying these three environmental-injustice problems, the article asks whether US nuclear-reactor siting also involves environmental injustice. For instance, because high percentages of minorities and poor people live near the proposed Vogtle reactors in Georgia, would siting new reactors at the Vogtle facility involve environmental injustice? If so, would this case be an isolated instance of environmental injustice, or is the apparent Georgia inequity generally representative of environmental injustice associated with nuclear-reactor siting throughout the US? Providing a preliminary answer to these questions, the article uses census data, paired t-tests, and z-tests to compare each state's percentages of minorities and poor people to the percentages living in zip codes and census tracts having commercial reactors. Although further studies are needed to fully evaluate apparent environmental injustices, preliminary results indicate that, while reactor-siting-related environmental injustice is not obvious at the census-tract level (perhaps because census tracts are designed to be demographically homogenous), zipcode-scale data suggest reactor-related environmental injustice may threaten poor people ( $p < 0.001$ ), at least in the southeastern United States.<sup>9</sup>

Georgia Power and the NRC apparently disregarded this information because the Final Supplemental EIS for Plant Vogtle's combined licenses states that the conclusions presented in the ESP EIS "remain bounding and valid."<sup>10</sup> But the summary conclusions of the Final EIS are plainly wrong. Unless and until the NRC fully implements Executive Order 12898, environmental injustice will continue at Plant Vogtle and elsewhere.

#### Emergency Preparedness is Woefully Inadequate

The Fukushima I nuclear power plant is located in the towns of Okuma and Futaba, Japan. In March 2011 they were evacuated by government order because of the nuclear accident there. Together, Okuma and Futaba have a population of 19,000. Burke County has about 22,000 residents. If Plant Vogtle were to have an accident requiring residents to leave, how would they be evacuated? How would people know what to do? How would residents be notified? Where would they go? What would be done for people who could not drive?

After the Fukushima accident, President Obama recommended that residents within 50 miles evacuate the area or "shelter in place." But what does shelter in place mean if you have no shelter? How many residents are ready to evacuate or shelter in place?

For decades, potassium iodide, chemical abbreviation KI, has been known to be

<sup>9</sup> *Environmental Injustice in Siting Nuclear Plants*, Mary Allred and Kristin Shrader-Frechette, ENVIRONMENTAL JUSTICE, Volume 2, Number 2, 2009 © Mary Ann Liebert, Inc. DOI: 10.1089/env.2008.0544

<sup>10</sup> NUREG-1947, Section 5.7 Environmental Justice, March 2011

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extremely effective in the event of a nuclear power plant emergency. The key to its effectiveness is early and widespread distribution and education so that in the event of a nuclear accident such as Fukushima people living ten or twenty miles from the plant may protect themselves. Experts have called for its use:

KI distribution should be included in planning for comprehensive radiological incident response programs for nuclear power plants. KI distribution programs should consider predistribution, local stockpiling outside the emergency planning zone (EPZ), and national stockpiles and distribution capacity.<sup>11</sup>

KI should be distributed in Burke County, Georgia and an educational program established by the EPA.

#### Clean Air Act Petition Outstanding

On May 27, 2009, Southern Nuclear Operating Company submitted Georgia Air Quality Application No. 18986 for a major modification<sup>12</sup> of the Vogtle Electric Generating Plant for the purpose of adding 4 cooling towers and 13 diesel engines. On April 6, 2010, the Georgia Environmental Protection Division's Air Protection Branch held a hearing in Waynesboro, Georgia, to receive comments regarding the draft permit from members of the interested public. Members of the Blue Ridge Environmental Defense League testified at the hearing and submitted written comments. In a letter dated June 11, 2010, the Georgia Department of Natural Resources informed Southern Nuclear Operating Company that the EPA's 45-day review period had expired and that "Permit Amendment No. 4911-033-0030-V-02-31" for the construction and operation of equipment to support new nuclear Units 3 and 4 including cooling towers is now final. On August 10, 2010, the Blue Ridge Environmental Defense League filed a petition under Section 505 of the Clean Air Act. To date, we have received no official reply and the matter remains unaddressed. We request that NEJAC recommend to EPA that the 505 petition be addressed as soon as possible.

#### Conclusion

We believe that the EPA should require Georgia Power to provide shelter, evacuation assistance and other protections from a nuclear accident at Vogtle for residents of Blythe, Girard, Keysville, Midville, Sardis, Shell Bluff, Vidette, Waynesboro and all residents of Burke County. Also, potassium iodide tablets should be provided at no charge to all residents in Burke County. Further, we ask that NEJAC recommend that the EPA and other federal agencies, including the Nuclear Regulatory Commission, the Federal Emergency Management Agency and the Georgia EPD, fully implement environmental

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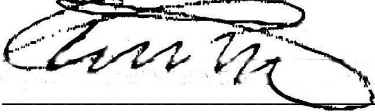
<sup>11</sup> Letter to Sen. Joseph Lieberman from Peter Crane, Counsel for Special Projects, US Nuclear Regulatory Commission (retired) and Frank von Hippel, Professor of Public Affairs, Princeton University citing a report by the National Academies of Science, September 26, 2007, ADAMS Accession No. ML072831363

<sup>12</sup> A modified source is "any physical change in a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted." Clean Air Act Section 111(a)(4)

justice mandates including but not limited to Executive Order 12898 at Plant Vogtle.

Thank you for the opportunity to speak to you today.

Sincerely,



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