

Blue Ridge Environmental Defense League

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Declaration of Rev. Charles N. Utley Regarding Environmental Justice and Emergency Response Issues at Plant Vogtle Electric Generating Plant Based on Events at Fukushima and the Findings of the NRC Interim Task Force

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I, Charles N. Utley, make the following declarations:

Brief Statement of Professional Qualifications

I served on the National Environmental Justice Advisory Council to write Executive Order No. 12898: "Federal Actions to Address Environmental Justice in Minority Populations and Low-income populations."

I was invited to address President Obama's Blue Ribbon Commission on America's Nuclear Future regarding Environmental Perspectives at their meeting on January 7, 2011.

I introduced and developed the EPA Brownfields Instructive Program for the City of Augusta, Georgia, Richmond County, and serve as chair of the CSRA Brownfields Commission.

I serve as a lecturer for the Environmental Justice Program at Paine College, Augusta, GA

Environmental Justice

Environmental Justice means seeking to avoid disproportionate adverse environmental impacts on low income populations and minority communities.

The stated purpose of the Obama Administration's August 4, 2011 Memorandum of Understanding is "To declare the continued importance of identifying and addressing environmental justice considerations in agency programs, policies, and activities as provided in President Clinton's Executive Order 12898, including as to agencies not already covered by the Order."¹

¹ "Memorandum of Understanding on Environmental Justice and Executive Order 12898," August 4, 2011

The August 4th Memorandum of Understanding advances federal agency responsibilities first outlined in the 1994 Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.” The Executive Order makes environmental justice integral to the mission of each agency. The MOU broadens the reach of the Interagency Working Group on Environmental Justice, including federal agencies not part of the 1994 Executive Order and providing for the addition of more. The MOU strengthens environmental justice efforts under the National Environmental Policy Act and Title VI of the Civil Rights Act of 1964. At present, the White House Council on Environmental Quality, the General Services Administration, the Small Business Administration and thirteen cabinet departments² have signed the MOU.

NRC Fails to Fulfill its Commitment to Environmental Justice

The Nuclear Regulatory Commission has side-stepped Clinton’s Executive Order and ignored Obama’s Memorandum of Understanding. The NRC has not fulfilled the commitment made by Chairman Ivan Selin that NRC would carry out Executive Order 12898.³ 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-203,⁴ but the NRC has failed to properly address environmental justice in licensing decisions made since the Executive Order. Public interest group comments submitted to the NRC accurately described 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.⁵

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,⁶ the

² Department of Health and Human Services; Department of Justice; Department of Agriculture; Department of Commerce; Department of Defense; Department of Education; Department of Energy; Department of Homeland Security; Department of Housing and Urban Development; Department of Interior; Department of Labor; Department of Transportation; Department of Veterans Affairs

³ Letter to President Clinton from NRC Chairman Ivan Selin, March 31, 1994

⁴ 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)

⁵ 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>

⁶ See Louisiana Energy Services (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77 (1998) and PFS (Independent Spent Fuel Storage Installation), CLI-02-20, 56 NRC 147, 153-55 (2002)

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 of any socioeconomic analysis that might be required by NEPA.⁷

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. The power to issue them comes from the U.S. Constitution.

Executive Order 12898 states:

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States.⁸

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.⁹

The NRC must take steps to avoid disproportionate, adverse environmental impacts on low income and minority populations and impacts on important religious, subsistence, or social practices. Further, the NRC should sign the 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

It should be noted that there are no shelters in place for the residents in the Shell Bluff Community. 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.

⁷ Federal Register /Vol. 68, No. 214 /Wednesday, November 5, 2003 /Notices, page 62643

⁸ Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations, February 11, 1994

⁹ "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.

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 EIS for an early site permit for Plant Vogtle's Units 3 and 4 was completed in July 2008.¹⁰ 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." Unbelievably, the report attributed the high percentage of minority and low-income people on the "sparseness" of the rural population. The data collection for this report consisted of interviews with just three residents.

In 2009, subsequent to the Vogtle COLA and ESP-FEIS, 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 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.¹¹

Southern Nuclear Operating Company and the NRC apparently disregarded this new 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."¹² The summary conclusions of the Final EIS are plainly wrong. Unless and until the NRC fully

¹⁰ NUREG-1872, published August 2008

¹¹ *Environmental Injustice in Siting Nuclear Plants*, Mary Alldred and Kristin Shrader-Frechette, ENVIRONMENTAL JUSTICE, Volume 2, Number 2, 2009 © Mary Ann Liebert, Inc. DOI: 10.1089/env.2008.0544

¹² NUREG-1947, Section 5.7 Environmental Justice, March 2011

implements Executive Order 12898, environmental injustice will continue at Plant Vogtle and elsewhere.

Interim Task Force Provides Opportunity to Address Environmental Injustice

Task Force Recommendation number 11 states that “the NRC should pursue emergency preparedness topics related to decisionmaking, radiation monitoring, and public education. (Section 4.3.2)”

One economical and practicable means of advancing emergency preparedness is the distribution of potassium iodide to residents living near nuclear power plants. This crystalline salt is very soluble in water and is used medically chiefly in the treatment of hypothyroidism, to block thyroidal intake of radioactive iodine, and as an expectorant. It should be readily available to the residents in the Shell Bluff community and all areas where there is the threat of radiation exposure.

For decades, potassium iodide, chemical abbreviation KI, has been known to be 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 within and without the NRC 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.¹³

In fulfillment of the Task Force recommendation, KI should be distributed in Burke County, Georgia and an educational program established by the NRC.

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?

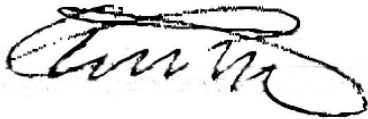
After the Fukushima accident, President Obama recommended that residents within 50 miles evacuate the area or “shelter in place.” What does shelter in place mean if you have no shelter? How many residents are ready to evacuate or shelter in place?

¹³ 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

In my opinion, the NRC should require Southern Company 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. Potassium iodide tablets should be provided at no charge to all residents in Burke County.

Conclusion

I believe that the Interim Task Force provides NRC with a means of pursuing emergency preparedness topics related to decision making, radiation monitoring, and public education. Also, the NRC Chairman Jaczko should sign the August 4, 2011 environmental justice Memorandum of Understanding without delay.



Signature

August 11, 2011
Date

Resume of Charles N. Utley

Personal Data

Ordained Ministry of the Gospel March 1998

Military Service

1966-1968 US Army, Sergeant (E-5), Viet Nam Campaign Medal, Viet Nam Service Medal

Education

1966 T. W. Josey High School, Augusta, Georgia

1973 BA, Paine College, Augusta, Georgia

1983 M.Ed. South Carolina State University, Orangeburg, SC

Employment

1986—present: Guidance Department at Spirit Creek Middle School

2002—present: Community organizer and Environmental Justice Campaign Coordinator for the Blue Ridge Environmental Defense League

Community Involvement

1980-2005 President of Hyde and Aragon Park Improvement Committee, Inc. In January 1999 I was given the prestigious task of writing the community's Brownfield Pilot Project. With God's help Hyde Park and the City of Augusta received a Two Hundred Thousand-Dollar (\$200,000) Brownfield Redevelopment Pilot Grant. This grant was given to only 52 cities in the United States and the only one given that was written by a community in the year 2000.

President, Augusta Mayor's Brownfield Commission

Membership with other Organizations

I have worked with several organizations, agencies and communities throughout the United States, striving to help my community and others that are faced with the disproportionate, unjustified, despicable conditions of our communities, including:

- Richmond County Neighborhood Alliance Association, Augusta, Georgia
- Southern Organizing Committee for Economic and Social Justice, Atlanta, Georgia
- National Environmental Justice Advisory Council to write Executive Order 12898 of the Environmental Justice Act that was signed by President Clinton

- Advisory Board Member for Agency for Toxic Substances and Disease Registry
- Board of Health “Health Monitoring Program,” Augusta-Richmond County, Georgia
- Citizens for Environmental Justice, Savannah Georgia