

**MEETING SUMMARY**

**of the**

**EXECUTIVE COUNCIL**

**of the**

**NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL**

**February 23 and 24, 1998**  
**Arlington, Virginia**

**Meeting Summary Accepted By:**

**Robert Knox**  
**Acting Designated Federal Official**

**Haywood Turrentine**  
**Chair**

**MEETING OF THE  
EXECUTIVE COUNCIL OF THE  
NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL**

**1.0 INTRODUCTION**

The Executive Council of the National Environmental Justice Advisory Council (NEJAC) held a special business meeting on February 23 and 24, 1998 in Arlington, Virginia to review action items and resolutions and to discuss other outstanding business issues remaining from the NEJAC's December 1997 meeting. Approximately 80 persons attended the meeting. Mr. Haywood Turrentine, Laborers' District Council of Education and Training Trust Fund (an affiliate of the Laborers International Union of North America), serves as chair of the NEJAC. Mr. Robert Knox, Acting Director, Office of Environmental Justice (OEJ), U.S. Environmental Protection Agency (EPA), is serving as the acting Designated Federal Official (DFO) for the Executive Council. Exhibit 1 presents a list of members who were present and identifies those members who were unable to attend the meeting.

This chapter presents a summary of the deliberations of the Executive Council. It contains five sections, including this *Introduction*. Section 2.0, *Remarks*, presents summaries of the remarks offered by the chair of the Executive Council and various speakers. Section 3.0, *Outstanding Issues*, provides a summary of the discussions about issues raised or considered during the December 1997 meeting of the NEJAC held in Durham, North Carolina. Section 4.0, *Administrative Issues of the NEJAC*, focuses on administrative tasks of the NEJAC. Section 5.0, *Resolutions*, presents the full text of the resolutions approved by the Executive Council by the subcommittees of the NEJAC during the December 1997 meeting.

**2.0 REMARKS**

This section summarizes the remarks of the chair of the Executive Council, the Principal Deputy Assistant Administrator of EPA's Office of Enforcement and Compliance Assurance (OECA), the Director of EPA's Office of Civil Rights (OCR), and the Deputy Administrator of EPA.

**2.1 Remarks of the Chair of the Executive Council**

Mr. Turrentine welcomed the members of the Executive Council and expressed his appreciation

Exhibit 1

**EXECUTIVE COUNCIL OF THE  
NATIONAL ENVIRONMENTAL JUSTICE  
ADVISORY COUNCIL**

**List of Members Who Attended the Meeting  
February 23 and 24, 1998**

Mr. Haywood Turrentine, **Chair**  
Mr. Robert Knox, **Acting DFO**

Mr. Don Aragon  
Ms. Leslie Beckhoff  
Ms. Jean Belille  
Ms. Sue Briggum  
Mr. Luke Cole  
Ms. Mary English  
Mr. Arnoldo Garcia  
Ms. Annabelle Jaramillo  
Ms. Lillian Kawasaki  
Mr. Charles Lee  
Mr. Gerald Prout\*  
Ms. Rosa Hilda Ramos  
Mr. Arthur Ray  
Mr. Gerald Torres\*  
Mr. Baldemar Velasquez  
Mr. Damon Whitehead  
Ms. Margaret Williams

**List of Members  
Who Were Unable to Attend**

Ms. Christine Benally  
Ms. Dollie Burwell  
Ms. Rosa Franklin  
Mr. Grover Hankins  
Mr. James Hill  
Mr. Lawrence Hurst  
Mr. R. Lewis Shaw

\* *Attended February 23, 1998 only*

for their commitment to be timely at meetings. Mr. Turrentine reminded the members of the Executive Council that the special business meeting of the NEJAC had been convened to provide the members an opportunity to review and discuss outstanding issues that the Executive Council had not considered at its meeting in December 1997. He also expressed concern that the terms of one-third of the members of the

NEJAC were to expire in July 1998. Mr. Turrentine therefore requested that during the meeting the members discuss the effects of such a turnover in membership. (See section 4.3 for a discussion about member turnover) Mr. Turrentine stated that the integration of environmental justice into EPA's programs and activities remains an outstanding issue of concern to the NEJAC. (See section 3.3 for the discussion on this topic.)

## **2.2 Remarks of the Principal Deputy Assistant Administrator of the Office of Enforcement and Compliance Assurance**

Ms. Sylvia Lowrance, Principal Deputy Assistant Administrator, EPA OECA, complimented Mr. Turrentine on the success of the site tour and the response of local governments to various environmental justice issues that both the tour and the deliberations of the NEJAC's subcommittees had emphasized. Ms. Lowrance then provided the members of the Executive Council an update on outstanding issues of concern related to environmental justice at EPA. Those issues, she said, include:

- Reinvigoration of EPA's Executive Steering Committee on Environmental Justice
- Issuance of EPA's interim guidance for investigation of administrative complaints under Title VI of the Civil Rights Act of 1964 that challenge permits
- Vacancies in the positions of the director of OEJ and OCR

Ms. Lowrance reminded the members of the Executive Council that on December 5, 1997, she had issued a memorandum directing the deputy assistant administrators of EPA to "reinvigorate" the executive steering committee by requesting stronger relationships between the NEJAC and EPA offices. She explained that, at a meeting held in early February 1998, the members of the steering committee had agreed that one of the roles of the steering committee would be to ensure that there is a unified environmental justice strategy in all EPA program offices. Ms. Lowrance also informed the members of the NEJAC that the steering committee would be responsible for ensuring that environmental justice is included in the agency's plan under the

Government Performance and Results Act of 1993 (GPRA), a statute that requires federal agencies to develop plans and accountability measures for their activities and programs.

Ms. Lowrance then announced that EPA had issued its interim guidance for investigating complaints filed under Title VI and that the document currently was undergoing a 90-day public comment period, which ends on May 6, 1998. She explained that EPA had conducted several conference calls with representatives of environmental justice communities, states, and industry to discuss the interim guidance. Ms. Lowrance stated her commitment to the conduct of two workshops on the interim guidance. Several states, she added, would develop pilot projects that can serve as models for other states. Concluding her remarks on Title VI, Ms. Lowrance announced that EPA Region 6 had issued for review by the public draft demographic information related to the Shintech case in Louisiana, which involves the proposed siting of a polyvinyl chloride (PVC) manufacturing facility.

Ms. Lowrance also announced that EPA had appointed Ms. Ann Goode as the director of EPA OCR and that the process of selecting the director of OEJ had begun. Ms. Lowrance also stated that she has hopes of having the director of OEJ appointed prior to the next meeting of the NEJAC.

Mr. Gerald Prout, FMC Corporation and a member of the Waste and Facility Siting Subcommittee, recommended that the Executive Council form a work group related to reviewing EPA's work plan related to GPRA and to possibly assist EPA to develop accountability measures related to environmental justice. Ms. Lowrance stated that she believes that would be appropriate and that she hopes to provide the NEJAC with a draft work plan for review and comment by May 1998.

*(See sections 3.1, 3.2, and 3.4 for detailed discussions about issues related to EPA's Executive Steering Committee on Environmental Justice, EPA's interim guidance for investigation of administrative complaints under Title VI, and the Shintech case.)*

## **2.3 Remarks of the Director of the Office of Civil Rights**

Ms. Goode first stated her intention to interact

regularly with the NEJAC, adding that she recognizes the NEJAC as a critical stakeholder group. She noted that the NEJAC could count on her to be “present, responsive, and engaged” in its concerns. OCR had increased its staff to provide technical assistance for Title VI cases, she continued. OCR, she reported, also is considering nontraditional personnel who could “augment the current capacity of the office” by providing nonlegal expertise to the investigation of Title VI cases. For example, a specialist in geographic information systems (GIS) could conduct analyses for such cases, she said. Ms. Goode also stated that she had met with representatives of U.S. Department of Justice (DOJ) to discuss development of a training manual on Title VI.

Mr. Luke Cole, Center on Race, Poverty and the Environment, California Rural Legal Assistance Foundation and member of the Enforcement Subcommittee, expressed concern about OCR’s rigid interpretation of the 180-day statutory limit for filing complaints under Title VI during the permitting process. He stated that OCR uses several different interpretations as to when the process for filing a complaint starts. He continued by explaining that the interim guidance offers some direction, particularly with respect to complainants exhausting their administrative appeals before a state agency prior to filing a complaint under Title VI with EPA. Mr. Cole stated that he is aware of three cases that OCR rejected because the office interpreted the complaints as untimely; OCR considered the 180 days to commence from when the permit was issued rather than when the appeal was concluded. Mr. Cole expressed hope that Ms. Goode would use the good cause waiver of the 180-day rule in such instances.

Replying to Mr. Cole’s inquiry about the status of six other cases that OCR is investigating, Ms. Goode noted that the six cases are in various stages of investigation. She added that the agency had underestimated the difficulty of the investigations. Mr. Cole then suggested that the proposed Title VI training Ms. Goode had mentioned should be coordinated with the efforts of other agencies, such as the U.S. Department of Housing and Urban Development (HUD) and the Bureau of Indian Affairs (BIA), U.S. Department of the Interior.

Responding to Ms. Goode’s remarks, Mr. Arthur Ray, Maryland Department of the Environment and chair of the Enforcement Subcommittee, asked that she comment on OCR’s role in the implementation of environmental justice within EPA. Ms. Goode replied that OCR is committed to the implementation of the agency’s Diversity Action Plan, an effort that is designed to address affirmative action and concerns about quality of life at EPA. Ms. Goode also noted that a new senior-level committee had been established at EPA to oversee the level of diversity in the workforce throughout the agency, as well as to ensure the development and implementation of the Diversity Action Plan. Mr. Ray then inquired whether OCR has authority to oversee the performance of the agency and its staff in ensuring diversity in the workforce. Ms. Goode stated that OCR, in conjunction with the Office of Human Resources Management, is charged with reviewing the performance of EPA’s senior executives, administrative staff, and regional programs, as well as providing comments to the EPA Administrator about such issues.

Mr. Damon Whitehead, Earthjustice Legal Defense Fund and member of the Waste and Facility Siting Subcommittee, inquired whether OCR will require states to conduct their own civil rights assessments, rather than waiting for complaints to be filed under Title VI. Ms. Goode responded that such an action is possible, but that she was not familiar with the logistics of that type of “front-end approach to accountability” at the state level or whether any such approach had been successful.

Ms. Rosa Hilda Ramos, Community of Cataño Against Pollution and chair of the Public Participation and Accountability Subcommittee, expressed her distress about EPA Region 2’s air and water programs, stating that implementation of the two programs had been biased against the region’s Caribbean Office. Ms. Ramos stated that, for more than 25 years, power plants in Puerto Rico have failed to meet federal environmental standards and yet still have been granted permits by EPA. The power plants have destroyed the ecosystem on which many fishermen depend, she asserted. Ms. Ramos explained further that such issues persist because of the distance between New York City Offices and Puerto Rico. She stated that EPA Region 2 consistently had denied the Caribbean Office’s request to increase its decision-making authority. Ms. Ramos then requested that Ms. Goode

review and forward to the NEJAC copies of documentation about requests made and responses provided related to increasing the decision-making authority of the Caribbean field offices's.

Mr. Don Aragon, Wind River Environmental Quality Commission of the Shoshone and Northern Arapaho Tribes and a member of the Health and Research Subcommittee, asked whether Ms. Goode had been participating in the development of EPA's training workshops on working effectively with tribes. In response, Ms. Goode agreed to contact Ms. Kathy Gorospe, director of EPA's American Indian Environmental Office (AIEO), to arrange to become involved in the effort to develop workshops.

Continuing to address the issue of Title VI cases, Mr. Turrentine expressed his concern that it was more than 30 years after the passage of the Civil Rights Act of 1964 before the agency produced a guidance document that provides support for implementation of the act. He stated his hope that federal, state, and local agencies, as well as industry, would be guided not by the need to avoid litigation, but rather by the need to do what is right. Expressing agreement with Mr. Turrentine were other members of the Executive Council, including Mr. Baldemar Velasquez, Farm Laborer Organizing Committee and chair of the International Subcommittee, who stated that problems of inequity will persist unless a redistribution of wealth, possibly through litigation, occurs as result of claims under Title VI. Exhibit 2 presents an excerpt of Mr. Velasquez's remarks on issues related to civil rights. To conclude the discussion with Ms. Goode, Mr. Charles Lee, United Church of Christ Commission for Racial Justice and chair of the Waste and Facility Siting Subcommittee, thanked her for making herself and OCR available to the NEJAC and further expressed his happiness that OCR has a vision of achieving environmental justice. Mr. Turrentine offered the NEJAC's assistance to OCR, commenting that the NEJAC will "join them in the trenches" when the two organizations can work on mutual problems together.

## 2.4 Remarks of the Deputy Administrator

Mr. Fred Hansen, Deputy Administrator of EPA, thanked the members of the Executive Council for the opportunity to address the NEJAC and then reviewed several issues that he had discussed at the December 1997 meeting of the NEJAC.

Mr. Hansen stated that he wished to assure the members of the Executive Council and the NEJAC that EPA is committed to integrating environmental justice into the agency's activities and programs. He announced that, on February 11, 1998, the fourth anniversary of Executive Order 12898 on Environmental Justice, he and the EPA Administrator had distributed a memorandum to all senior managers at EPA that discussed the strengthening of environmental justice programs and activities at the agency. Exhibit 3 presents a copy of that memorandum.

Mr. Hansen then reminded the members of the Executive Council of the lengthy discussion during the December 1997 meeting about EPA's performance partnership agreements (PPA) with the states, how those agreements function, and whether environmental justice is incorporated into PPAs. Because EPA's Executive Steering Committee on Environmental Justice has the lead role at the agency in ensuring the integration of environmental justice into policies and activities, Mr. Hansen explained, the steering committee would have the responsibility of ensuring that environmental justice is included in PPAs with the states.

Mr. Hansen concluded his remarks by emphasizing that the NEJAC serves a very significant role at the agency by presenting issues of concern to the EPA Administrator, as well as assisting the agency in such other areas as the protection of children's health.

Mr. Ray requested that Mr. Hansen explain further the agency's plans for incorporating environmental justice into PPAs. Mr. Hansen explained that, because accountability measures are a concern both within and outside the agency, he had asked that the steering committee identify core indicators that can be used to help determine the extent to which environmental justice has been incorporated into the PPAs. Such core indicators might include the number of inspections conducted, the number of enforcement actions taken, the number of

Exhibit 2

sources that are under permit, and the number of permit renewals, suggested Mr. Hester:

### IMPORTANCE OF CIVIL RIGHTS

Mr. Ray stated his belief that EPA also should evaluate a state's previous performance in addressing environmental issues before signing a PPA, an issue that he identified as a fundamental problem related to such agreements.

I think that's the fundamental basis of our economic system and as long as that is that, as long as we are concerned with capital and investment and finding the resources to get a return on investments, we're going to continue to see corporations size up just the way they see the role of industry and the way they see these matters. I think she's absolutely correct. I'm sorry, but I think lawsuits are -- investors are going to see it more as an impediment to them making money that they have to deal with than making their corporations a social service agency.

Mr. Ray emphasized further that the NEJAC should recommend to a state that has a "dismal record" in addressing environmental justice should not be allowed to enter into a PPA because such a move would serve only to allow

different groups of migrant workers out in some rural podunk community in North Carolina or western Ohio, we ourselves are subjected to these very same economic processes. Yes, we receive very meager wages, but we compete really for the meager wages with other workers who harvest the same crops for the same corporations in Mexico and even as far away as India. In Mexico the minimum wage is a little over \$3.00 a day. In India, the same pickles you find in your jars that we harvest in Ohio and North Carolina, in India it's like five cents a day.

Now, how are you going to compete with that? Here you've got an investor and a corporation trying to get a return for its investors and you've got these migrant workers trying to compete with cheap labor all over the globe. It creates all kinds of measures of injustice, of discrimination, and people who are subjected to enormous pressures just to survive.

It would be good if all the leaders and the decisionmakers in the key corporations, the multinational companies, the financiers who control an enormous of wealth and money that's moved all over the globe for investment and getting returns, that they would consider in the decisionmaking the social impact from their decisions. But that ain't the way it's done.

The only way it can be done is there's enough people out there through grassroots communities, through allies in government, in business and other places, who will serve as the conscience of that accumulation of wealth. There has to be a conscience to it.

Now, you may mistake me as someone who is very anti-business. I'm not anti-business, but I'm for the people who are on the bottom, the people who suffer, the people whose mothers scream because their babies' bellies are hungry or who are injured or who are diseased, who are polluted on and they hurt. We have to lift them up as to the best of our ability.

I think that those of us who are able to connect and ally ourselves with one another -- some of the people that have helped me the most ironically are people in business, who have come forth now and said, "Baldemar, we've fought you all these years." The people from the Campbell Soup Company, there were always two camps in that company. One camp wanted to fight us all the way until we were dead and the other group that said, "No, I think we need to talk to them because they're not going to go away and things aren't going to get any better for our company. So we might as well deal with them."

Out of that came some people who said, "No, we see that we had ignored the people on the bottom. We have to do something about that." They've been blessed by it because, for instance, productivity has risen 45 percent in the areas where we have these agreements. So they've gotten back what they invested to lift up the people in the meager way that they've done over the past few years.

It has to do with reconciling the two extremes. Isn't that the things that have eternal value in this world? Money is not going to go to heaven with us. It's going to stay right here. It has no eternal value. What it does have is the relationships and the things that we're able to reconcile while we're in this world. I think that if business gets to the point of understanding that they have to reconcile their money making with the impact it has on communities, the impact that it has on people on the bottom who are impacted by their industry, I think this world would be a big step forward and a lot better off.

--Baldemar Velasquez  
Chair, International Subcommittee  
February 1998

Meeting of the National Environmental Justice Advisory Council



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 WASHINGTON, D.C. 20460  
 FEB 11 1998

OFFICE OF  
 THE ADMINISTRATOR

**MEMORANDUM**

Subject: Strengthening EPA's Environmental Justice Programs and Activities

To:	Assistant Administrators	Chief Financial Officer
	Deputy Assistant Administrators	Associate Administrators
	General Counsel	Regional Administrators
	Inspector General	Deputy Regional Administrators

Four years ago President Clinton issued Executive Order 12898 on Environmental Justice directing the Environmental Protection Agency (EPA) and other federal agencies to identify and address the environmental and human health concerns in minority communities and low-income communities. Following up on this directive, we made environmental justice one of EPA's guiding principles to help the Agency better ensure that all communities and all people have clean air, pure water, land that is safe to live on, and food safe to eat.

EPA has made significant progress in establishing effective environmental justice programs. For example, several EPA offices and regions have implemented specific environmental justice initiatives and built strong working relationships with the National Environmental Justice Advisory Council (NEJAC). Since its inception in 1994, NEJAC has held more than 40 public meetings and provided critical advice in the development of important Agency initiatives such as Brownfields and Children's Health Protection. Pursuant to Executive Order 12898, EPA also has taken steps to develop a stronger Title VI program that involves key stakeholders to ensure nondiscrimination in environmental programs and equal protection in communities of color.

While we are proud of EPA's accomplishments, our work is not done. We continue to face environmental justice concerns in many communities. Thus, on this fourth anniversary of Executive Order 12898, we ask you to join us in reaffirming EPA's commitment to environmental justice and to reflect on the Agency's successes and remaining challenges. To help in these efforts we have asked Sylvia Lowrance to Chair a reinvigorated Environmental Justice Executive Steering Committee, a group of Deputy Assistant Administrators and several Deputy Regional Administrators who will advise us on the Agency's environmental justice activities.

The Steering Committee will assess EPA's environmental justice initiatives—identifying those that have been effective, opportunities to build on these accomplishments in all program and regional offices, and other operational changes required to ensure successful implementation of the Executive Order. These recommendations will be presented to us prior to the next NEJAC meeting, scheduled for May 31- June 3, 1998.

We believe that the reinvigoration of the Environmental Justice Executive Steering Committee will enhance EPA's efforts to ensure environmental justice for all communities. We look forward to your full support.

Administrator

Carol M. Browner

Deputy Administrator

Fred Hansen



not be allowed to enter into a PPA because such a move would serve only to allow that state more freedom "to hurt such communities." In response to the concerns voiced by Mr. Ray, Mr. Hansen provided an overview of the PPA initiatives. He stated that PPAs represent a new structure that supports an alternative funding agreement between EPA and states, adopted because EPA recognizes that each state has established unique performance levels and resources. Each PPA, he continued, would be developed to fit the state involved. Mr. Hansen stated that, in the past, EPA had not used a "litmus paper test" to measure a state's previous performance on compliance and enforcement issues; however, he said that he believes that the development of key criteria for state programs that incorporate environmental justice measures will accomplish the same purpose as a review of a state's past performance. In response, Mr. Ray stated his belief that a minimum standard should be established before a state becomes a partner in a PPA.

Ms. Mary English, Energy Environment and Resources Center, University of Tennessee and chair of the Health and Research Subcommittee, then noted that simply asking states "how many river miles are clean" could mask any patterns that would illustrate disproportionate effects on environmental justice communities and potential environmental justice issues. Mr. Hansen responded that detailed information is being gathered, but that the information is not being distributed effectively to environmental justice communities.

Mr. Cole then expressed concern about issues related to Title VI in the context of PPAs. Mr. Cole urged that, in developing a PPA with a state, EPA consider the number of outstanding complaints filed against that state under Title VI. Mr. Cole then stated that, to resolve the outstanding cases related to Title VI, Mr. Hansen and the EPA Administrator should inform the agency that the issue is crucial and that the agency should redirect resources to address those cases.

Ms. Ramos expressed concern that EPA does not provide opportunities for communities to participate early in the process of making decisions about the issuance of permits. She encouraged Mr. Hansen to use PPAs as a means of ensuring that the states provide communities

opportunities to participate meaningfully in the decision-making process. Mr. Hansen replied that he recognizes that public participation is a critical component of all EPA programs and further that he is aware of the common obstacles to public participation, such as lack of technical expertise, lack of early involvement, or lack of information on the part of the community.

Mr. Lee reminded the members of the Executive Council of another issue that had been discussed at the December 1997 meeting. The Community/University Partnership Grants (CUP) are not to be funded for 1998, he said. He stated his belief that EPA had made a commitment to facilitating a discussion about the evaluation of the program. Mr. Knox then explained that, in previous years, the CUP grant program had been made available through a "congressional add-on" to EPA's budget and that the agency had not received any "add-on" funds from Congress under the new budget. He informed the members of the Executive Council that OEJ intends to evaluate the program and the process by which grants had been awarded under it. Mr. Lee suggested that the members of the NEJAC, representatives of communities that have concerns about environmental justice, and other stakeholders should be involved in the evaluation of the CUP grant program. Mr. Knox recommended that a work group be established to participate in the evaluation process. Mr. Lee, Ms. Ramos, and Ms. English volunteered to serve on the work group.

Mr. Aragon expressed concern about EPA's hesitancy to establish PPAs with tribes. He explained that most tribes need to stabilize their funding sources and build the capacity of their environmental programs. Continuing, Mr. Aragon stated that the performance partnership grants (PPG) that accompany the agreements would be a source of such stability.

### 3.0 OUTSTANDING ISSUES

This section summarizes the discussions of the Executive Council about outstanding issues that had been raised or discussed during the December 1997 meeting of the NEJAC. Those issues include the proposed Shintech facility in St. James Parish, Louisiana; the status of the interim guidance for Title VI; and the integration of environmental justice into EPA's programs and activities.



### 3.1 Issues Related to the Proposed Shintech Facility

Mr. Cole began the discussion of the proposed Shintech facility by reviewing the proceedings of two hearings sponsored by the Louisiana Department of Environmental Quality (LDEQ) that he had attended on January 23 and 24, 1998 in St. James Parish, Louisiana. Mr. Cole explained that he had represented the NEJAC at the public hearings, which were held to provide the members of the affected communities an opportunity to comment on issues related to air quality and environmental justice that are pertinent to the proposed construction of the facility. Mr. Cole explained that concerns related to air quality were discussed at the hearing held on January 23 and concerns related to environmental justice were discussed at the hearing on January 24. Exhibit 4 provides background information about the proposed facility.

Mr. Cole stated that the hearings had been well-run and well-attended. He noted further that he had been surprised at the level of opposition to the facility, having estimated the ratio of opponents to proponents present at the meeting to be 10 to 1. Mr. Cole expressed concern that since the May 1997 meeting of the NEJAC, he had been led to believe that the community of St. James Parish was divided on the Shintech issue. Mr. Lee, who had attended the Louisiana hearings, although not as a representative of the NEJAC, agreed that, despite the efforts of EPA Region 6 to portray St. James Parish as a very divided community, he had seen no indication of significant support for the proposal in the community. On the contrary, he stated, a survey published in a local paper a few days before the hearings showed evidence that there is little local support for the proposal. Mr. Lee contended that EPA should review its role in mischaracterizing the community and instead should depict the tremendous opposition that appears to exist.

Mr. Cole discussed briefly the types and length of public testimony that can be given under Louisiana law. He then expressed concern that, although approximately 200 people had testified over the two day period, the decision to discuss issues related to air and at a hearing separate from a discussion of environmental justice implications, confused the audience and created a "stifling impact on public input." Moreover, Mr.

Exhibit 4

#### **BACKGROUND INFORMATION ON THE PROPOSED SHINTECH FACILITY IN ST. JAMES PARISH, LOUISIANA**

The Shintech Corporation has sought to build a \$700 million plastics plant near Convent, St. James Parish, Louisiana, along a stretch of the Mississippi River known as "Cancer Alley."

The Louisiana Department of Environmental Quality (LDEQ) granted the Shintech facility permits in early 1997, and local residents appealed the permits to the U.S. Environmental Protection Agency (EPA) on technical considerations under Title V of the Clean Air Act (CAA) and on civil rights considerations under Title VI of the Civil Rights Act of 1964. In response to the appeals, EPA remanded the permit to LDEQ, describing approximately 50 deficiencies in the air permit. EPA also notified LDEQ that it was examining the implications of the proposed violations under Title VI and expressed the hope that LDEQ would address those issues.

Cole said, he had heard members of the public comment that the public comment period had been too short and too structured. Those who had wanted to express their opinions had been able to do so, he observed, but he added that he did not know whether those comments ultimately would be 'heard' by LDEQ. When asked what effects the hearings would have on the decision-making process, Mr. Cole informed the members of the Executive Council that no high-level staff of LDEQ had attended the hearings. Mr. Knox then stated that representatives of EPA Headquarters and EPA Region 6 had attended the meetings.

Mr. Cole then referred to the resolution of the Enforcement Subcommittee that had been approved at the May 1997 meeting of the NEJAC. The resolution, he said, had requested that EPA provide the citizens of St. James Parish, Louisiana the opportunity for full participation in the siting decision. Ms. Lillian Kawasaki, Los Angeles (California) Department of Environment and a member of the Waste and Facility Siting Subcommittee, inquired whether the resolution really had "asked for the right thing." Mr. Cole replied that the question was difficult to answer

because the resolution had been directed at EPA, but the hearing had been sponsored by the state of Louisiana. He suggested that the state might have scheduled a hearing in response to EPA's request that public participation be encouraged.

Ms. Ramos then inquired about the policy of the state of Louisiana on responding to public comment and expressed her concern that documentation of the meeting and access to public documents be ensured throughout the review process. Ms. Lowrance then explained that the hearing had covered permitting issues only and that each state has its own administrative procedure for responding to public comment. Mr. Cole responded that, while he did not remember that access to public documents related to the proposed facility had been an issue, he had heard that LDEQ had withheld from the public evidence of existing groundwater contamination at the proposed site. He then stated that other issues, such as cumulative health effects, civil rights, lack of escape routes, LDEQ's failure to consider public comments seriously, and lack of economic advantage to the community from the presence of the facility, had been raised by the public during the hearings.

At the request of Mr. Whitehead, Ms. Lowrance discussed EPA's role in the Shintech case. She stated that EPA would work with the state of Louisiana and continue its investigation of the Title VI claims. Ms. Lowrance also announced the demographic information collected for EPA's analysis of Title VI aspects of the Shintech case had been made available. She stated that the data were available for public comment, analysis, and interpretation and were a crucial aspect of EPA's outreach efforts regarding the proposed Shintech facility. Ms. Lowrance noted that EPA would like to receive comment on the accuracy of the data, as well as suggestions for their use. Mr. Whitehead then expressed concern that review of the Title VI issues may take years, and that the facility could be built before EPA resolves those issues.

Referring to the demographic data on the community living near the proposed Shintech facility, Mr. Cole expressed his concern that comparing data obtained solely from communities located in Cancer Alley, rather than comparing data from these communities with data from another state or country, would skew the perception of the severity of the community's

environmental hazards. Mr. Lee supported that view, stating that techniques of comparison can produce radically different results. He suggested that EPA seek more accurate comparisons of data and that EPA monitor the analytical process. Ms. Lowrance agreed that the manner in which the data are presented was important and declared EPA's commitment to respond to any comments about the data. Further, she noted, EPA had maintained an "open book" policy on the Shintech case and that there has been full public disclosure of all information related to the proposed air permit and the Title VI claims. Mr. Lee then pointed out that, while the data may be correct, few, if any, health assessments had been conducted in the communities in the vicinity of the proposed Shintech facility. Ms. Ramos agreed that there is a data gap in the Shintech case and stated further that EPA should provide guidelines on cumulative health assessment to the state of Louisiana.

Although Ms. Lowrance stated that EPA had set an April 3, 1998 deadline for resolution of the Title VI aspects of the Shintech case, Mr. Turrentine reminded the Executive Council that all the efforts that EPA is investing in responding to the Shintech case presuppose the notion that there is a solution that will be acceptable to all stakeholders in the issue. He asserted that solving all the technical and legal issues would not necessarily satisfy the community's needs and wishes and that EPA must "go beyond those aspects" to consider the real wishes of the community.

After extensive discussion of the Shintech case, the Executive Council established an ad hoc group of members of the NEJAC who drafted a letter to the EPA Administrator to request that a full investigation of the Shintech case be conducted before any permits are granted or Title VI claims resolved in the case. The members of the Executive Council approved the letter, adding a request that the EPA Administrator submit to the NEJAC a status report on Shintech before the June 1998 meeting at the NEJAC.

### **3.2 Interim Guidance on Title VI**

Members of the Executive Council discussed at length public participation related to EPA's interim guidance to address complaints filed under Title VI of the Civil Rights Act of 1964. Mr. Ray began the discussion by asking Ms. Lowrance to

describe EPA's plan to ensure public participation throughout the public comment period for the interim guidance. Ms. Lowrance announced that EPA would conduct a public outreach effort under which the agency plans to sponsor a series of conference calls, two training workshops, and other outreach efforts to provide states, industry groups, and environmental justice stakeholders the tools necessary to interpret and apply the Title VI guidance. She stated that, through the workshops, EPA hopes to provide a forum for discussion among EPA, states, industry, and environmental justice communities. Mr. Ray then asked how EPA will process the comments received on the interim guidance. Ms. Lowrance stated that EPA will review the comments received and then, depending on the type and nature of the comments, decide to what extent revisions will be made to the guidance. She emphasized that she wants to ensure that all stakeholders understand the purpose of the guidance and that EPA intends to use the guidance to address complaints filed under Title VI on a case-by-case basis.

Ms. Sue Briggum, WMX Technologies, Inc. and a member of the Waste and Facility Siting Subcommittee, stated that the business community is struggling, along with state and local governments, to understand the implications of the guidance related to Title VI. Ms. Briggum emphasized the significance of having workshops that involve all stakeholders participating in a dialogue because, she said, it is through communication that all stakeholders learn from each other. She stated that she believes EPA's approach in introducing the guidance as well as conducting outreach segregates stakeholders because the agency is consulting with one stakeholder group at a time. Ms. Briggum recommended that EPA hold workshops that include representatives from communities, state and local governments, and industry. In response, Ms. Lowrance stated her willingness to act as broker with the agency to arrange for workshops at which representatives of EPA, states, tribes, and industry would attend. Ms. Lowrance stated that EPA's interim analyses of Title VI cases should be viewed as a mutual issue that involves all parties in discussion. Ms. Kawasaki expressed the concern that no entity (state and local governments, businesses, and individuals) would be willing to work according to a designated format, but rather would prefer to

approach Title VI in a manner that reflects that entity's current relationship with EPA.

Ms. Lowrance reported that states and industry groups recently have inquired whether states must comply with Title VI and how Title VI will affect specific permitting issues. Mr. Lee then inquired about the approach established in the guidance to investigating permitting procedures, specifically about the section that details requirements for "justification and mitigation." Examples of mitigation, Ms. Lowrance responded, include an entity's efforts to address multimedia pollution, such as an entity's development of a supplemental environmental project (SEP) or an intensification of an entity's pollution prevention projects. Mr. Cole expressed his hope that EPA recognized that mitigation must eliminate the discriminatory effects of a project or facility. Simply offering jobs to an affected community, stated Mr. Cole, should not be considered mitigation. Referring to the justification of an entity's actions in a Title VI case, Ms. Lowrance noted that all actions should serve a public purpose and that goal is basic to Title VI.

Discussing the NEJAC's ongoing interest in the Title VI guidance, Mr. Lee stated that the NEJAC should focus on making Title VI "implementable, workable, and a realistic policy," despite the recognition that there likely will be a "rocky year" in implementing the guidance. Mr. Turrentine responded that, in light of such concerns, the NEJAC should determine whether the guidance itself is workable. Mr. Cole reminded the members of the Executive Council that the Enforcement Subcommittee has established a work group to review and draft comments on the interim guidance for Title VI. He stated that it is the intention of the subcommittee to develop and submit comments to EPA before the May 6, 1998 deadline. Mr. Ray added that the subcommittee will forward the analysis to the Executive Council for approval.

Mr. Lee agreed that the NEJAC should focus on developing and submitting comments to EPA within the public comment 90-day time frame; however, he stated that the NEJAC also should ensure that EPA is conducting accurate and appropriate outreach and education related to the guidance. Mr. Turrentine then asked if this is separate task for the NEJAC or is a part of the Enforcement Subcommittee's analysis on the guidance. Mr. Ray responded that the burden to

ensure and conduct outreach related to the guidance is the responsibility of EPA, not the NEJAC.

Mr. Cole agreed with Mr. Ray that the responsibility of conducting outreach to communities that have environmental justice concerns is the responsibility of OEJ; however, he stated that as an advocate for Title VI, he has been distributing the document to ensure that affected communities are receiving the document.

Ms. Lowrance closed the discussion on issues related to the interim guidance on Title VI by emphasizing that EPA is ready to work with the NEJAC to ensure that outreach has been conducted and that all stakeholders groups have participated.

### **3.3 Integration of Environmental Justice Within EPA**

Ms. Lowrance began the discussion related to the integration of environmental justice within EPA by asking to what extent would the NEJAC like to interact with the members of EPA's Executive Steering Committee on Environmental Justice. She suggested that members of the steering committee work directly with the appropriate subcommittees to discuss issues of concern related to that subcommittee. Ms. Lowrance explained that if staff of EPA learn the processes of the NEJAC, responses to issues could be forwarded to the NEJAC in a more timely manner.

Ms. Lowrance noted that it is the perception of many leaders of the environmental justice movement that EPA's Office of Solid Waste and Emergency Response (OSWER) and OECA have advanced further to integrate environmental justice into their programs than other program offices at the agency. Ms. Lowrance contended that the NEJAC's establishment of a new subcommittee, created to address permitting issues in EPA's air and water programs, will bolster EPA's environmental justice initiative by creating a close working relationship between NEJAC and the assistant administrators of EPA's air and water programs.

Mr. Lee cited a model partnership between an EPA program and the NEJAC, as the active participation with the NEJAC of EPA OSWER and its Acting Assistant Administrator, Mr. Timothy Fields, Jr. The successful integration of

environmental justice in OSWER, he pointed out, is evidenced by a number of characteristics, which he enumerated as follows:

- OSWER prepared an environmental justice initiative before the President issued Executive Order 12898
- OSWER established its own environmental justice committee
- OSWER's participation with NEJAC has led to the change in culture that is necessary before environmental justice can be integrated throughout the agency
- OSWER monitors its own success by tracking its initiatives and measurable milestones and by being budget-oriented

Members of the Executive Council agreed that the active participation of Mr. Fields in the activities of the Waste and Facility Siting Subcommittee, combined with OSWER's participation in environmental justice programming, is an excellent example of both the institutionalization of environmental justice and realization of the goals of the NEJAC.

## **4.0 ADMINISTRATIVE ISSUES OF THE NEJAC**

This section summarizes the discussion of the Executive Council of various administrative issues affecting the NEJAC.

### **4.1 Tracking Action Items and Resolutions**

Mr. Turrentine expressed frustration about the lack of information related to the status of action items and resolutions of the Executive Council and the subcommittees. He also expressed concern that the NEJAC is not adequately informed of EPA's responses to action items and resolutions other than in the form of a paper trail. Ms. Lowrance stated that she personally follows-up on a number of action items and resolutions that affect OECA but agreed that EPA should do a better job of informing the NEJAC when action is taken related to a resolution.

Continuing to address the issue of accountability related to action items and resolutions, Mr. Lee requested information about: (1) the number of resolutions that the NEJAC had passed, and (2)

## Exhibit 5

**ROLES OF THE NEJAC**

The NEJAC will serve as:

- 1) a sounding board through which people can bring issues before the agency
- 2) a advisory body that influences EPA policy
- 3) a forum for policy discussions that provides an interpretive framework for federal statutes and language
- 4) a consciousness-raising organization for EPA
- 5) a catalyst within EPA and among agencies to identify environmental justice issues
- 6) a supporter of particular action to remedy a particular problem

the number of action items that had resulted from issues raised during public comment periods. Ms. Marva King, OEJ, responded that it would be necessary to gather the data from records. Mr. Lee reminded the members of the Executive Council that the tracking system used by the NEJAC is a good "first effort to respond" to issues brought up to EPA, and that he believes that the system provides "good raw data." He suggested, however, that the tracking system used by the NEJAC be sorted by geographic area, issue, or some other factor, rather than chronologically by outstanding item, as currently is the case. The former approach would provide a more user-friendly format, added Ms. Kawasaki, and would enable the council to better maintain accountability to the agency and the public.

Pointing out that it is important to measure the overall progress of the NEJAC and the problem-solving capacity of EPA, Mr. Lee suggested that it would be helpful to know how to characterize environmental justice issues and questions that regularly confront EPA. He noted that the NEJAC should strive to improve its resolutions, which he described as "very effective instruments," by focusing discussion and breaking down the issues into their various pertinent aspects. Ms.

English then recounted the major questions with which the NEJAC was dealing: "What happens in response to a resolution," and "What types of resolutions are we passing?" "Are there patterns that must be addressed (that are) the basis of a lot of issues?" and "Are there fewer, but major consolidated resolutions that can incorporate smaller issues?" Ms. Lowrance responded that the environmental justice issues regularly presented at NEJAC meetings and to EPA are multimedia in nature, but added that a common theme is the lack of responsiveness of local, state, and federal officials to community complaints. She suggested that a review would be a good means of assessing the success of the NEJAC. Mr. Cole also noted that when he joined the NEJAC, members of the Executive Council emphasized that the NEJAC should address concerns related to national policies of EPA and only use site-specific cases as a means to illustrate the concerns or issues of the national policy.

The members of the Executive Council then focused their discussions on the role of the NEJAC and its effectiveness in addressing issues brought before it. Section 4.2 below summarizes that discussion.

#### **4.2 Effectiveness of the National Environmental Justice Advisory Committee**

Ms. English began the discussion by identifying six specific roles for the NEJAC and suggested that accountability measures could be added to each point to support evaluation of the NEJAC's effectiveness. Exhibit 5 presents the roles for the NEJAC.

Ms. Ramos noted that currently no system is in place to evaluate the effectiveness of the NEJAC and, further, that such an evaluation is crucial to the environmental justice struggle. She contended that the classification of the problems raised by communities, local governments, or individuals is central to the evaluation of the problem-resolving capacity of both EPA and the NEJAC. Ms. Ramos stated that one must consider the following questions when investigating an environmental justice issue: "Which part of the process isn't working? Is it regional, legal, the wrongful perception of a community, or is it the failing upper levels of EPA?" Ms. Briggum noted that the NEJAC has

changed slowly from an analytic body that provides guidance on larger policy issues to an entity that functions in a managerial role by tracking individual issues.

Nearly all the members of the Executive Council supported the proposal that the NEJAC design and conduct an appropriate evaluation of its own effectiveness. Mr. Velasquez encouraged the Executive Council to define an evaluative process, but maintained that the evaluation should be separate from the clarification of the role of the NEJAC. While some members responded that the two goals (evaluation and definition of roles) should be addressed concurrently, Mr. Lee expressed his opinion that the real issue is the evaluation of how effective the NEJAC has been, and the identification of steps that can be taken to increase its effectiveness. While the NEJAC may define itself and its role through the evaluation process, Mr. Lee continued, it ultimately is a function of EPA to determine the role of the NEJAC beyond its responsibility as an advisory body. Certain members of the Executive Council then expressed concern that an internal evaluation of the NEJAC would be critical and time-consuming, and requires a sophisticated analysis. Others agreed that such a study would be a "massive effort," but also stated that the study could supplement NEJAC's goal of providing solid advice on environmental justice issues.

Mr. Velasquez maintained that government is a reaction to and reflection of "the things that are set on course on a daily basis," and that another important role of the NEJAC is to serve as a constituency that compels the government to do what it otherwise might not do. Ms. Briggum then claimed that the law often cannot achieve by itself the results expected by the NEJAC. Rather, such results depend on the leadership of those involved and the ability of those leaders to promote environmental justice in each EPA program. Ms. Briggum noted further that the NEJAC should be responsible for developing guidelines that guarantee adequate and authentic public participation, as well as for creating useful structures in which one can express one's opinions honestly.

As a result of their discussion, the members of the Executive Council agreed to form a focus group that would evaluate the effectiveness of NEJAC and to develop recommendations related to the

various roles of the NEJAC. The work group will examine the nature of the NEJAC, its accomplishments, and its current responsibilities. Mr. Lee also recommended that former members of the NEJAC be included as members of the focus group.

#### 4.3 Composition of the NEJAC

Members of the Executive Council discussed the subject of the composition of the NEJAC. Mr. Turrentine remarked that the terms of one-third of the council members were to end in July. Replying to Mr. Ray's question about "how much latitude the council has" in deciding who is a member of the NEJAC, Mr. Knox stated that the current members of the Executive Council can recommend candidates, but that, ultimately, the EPA Administrator would select the new members. Members of the Executive Council then expressed their concern about the need for continuity on the NEJAC, noting that a number of long-standing members within the national environmental justice movement would be leaving the body. The members of the Executive Council then reviewed representation on the council and strategies for maintaining the integrity of the NEJAC.

Ms. English noted the concern that EPA should consider in the membership of the NEJAC overall representation of sectors of society, ethnic groups, and income levels. Major environmental justice issues affect areas of rural America, she continued. Many low-income communities in the south are subject to cumulative environmental risks to health, yet they do not qualify as communities of "people of color." Further, she argued, the term "people of color" creates what she characterized as an "us/them distinction" between communities of color and Americans of European descent that undermine the goal of environmental justice.

Agreeing with Ms. English, Ms. Ramos reminded members of the Executive Council that claims cannot be filed under Title VI for low-income white communities that may experience serious environmental and health risks. Mr. Cole and Ms. Ramos noted that Executive Order 12898 on Environmental Justice was the first federal document to recognize low-income populations in the environmental justice movement and noted further that the Executive order plays a major role in correcting that shortcoming of Title VI. Many

members of the Executive Council observed that environmental justice always has referred to communities of color and low-income populations.

Mr. Velasquez then argued that environmental justice is largely a class issue and that the NEJAC should be aware of the difference. When asked what more the Executive Council could do to better represent environmental justice communities in rural America, Mr. Knox noted that many of those communities are not well organized and had never nominated individuals for membership on the NEJAC. Ms. English proposed that many of these communities may not be aware of the NEJAC, suggesting further that they may think that the NEJAC is an inappropriate forum for them, primarily because they consider it a forum for communities of color.

Addressing the issue of membership on the NEJAC, Mr. Turrentine briefly described the Executive Council's role in altering the current membership pattern. If the members of the NEJAC want to retain members and not rotate memberships, as stated in the bylaws of the NEJAC, the Executive Council must submit a resolution directly to the EPA Administrator that sets forth the benefits of retaining current members.

The members then discussed the criteria they would like to apply in determining membership of the NEJAC. Mr. Cole suggested that representatives chosen from nongovernment sectors should have experience in the environmental justice movement and further that some current members be retained to maintain the institutional memory of the body.

Members of the Executive Council drafted a letter to the EPA Administrator that outlines the NEJAC's preferences related to membership of the NEJAC. Ms. English repeated her concern that, when the new members are selected to serve on the next council, the perspective of rural low-income populations be represented and that the Council be actively inclusive of new environmental justice issues that may arise. The proposed letter, she continued, does not necessarily ensure that new members would include representatives of predominantly rural, low-income communities. Several members agreed with Ms. English and supported the addition of new voices to the council.

Mr. Arnaldo Garcia, Earth Island Institute and member of the International Subcommittee, voiced support for the letter, based on the need to maintain continuity within the council. However, he expressed some concern about the accountability of the NEJAC, stating that retaining current members could diminish the NEJAC's capacity to adapt to the ever-changing environmental justice movement. After receiving Mr. Garcia's comment, the Executive Council approved the letter.

#### **4.4 Air and Water Subcommittee of the National Environmental Justice Advisory Council**

Mr. Knox provided a background sketch of the proposed new subcommittee. Mr. Knox stated that EPA had identified air and water as major programs in the agency that have not participated on a regular basis in the activities of the NEJAC. The proposed subcommittee would encourage the EPA assistant administrators for the two programs to participate in the activities of the NEJAC, stated Mr. Knox, and would bring about stronger engagement between the air and water programs and the NEJAC. Mr. Lee requested that the NEJAC discuss the feasibility of establishing a subcommittee on issues related to air and water, noting that some 40 to 50 percent of EPA's decisions about air and water issues involve decisions about permits. He concluded, then, that the proposed subcommittee likely would focus on permitting issues. Ms. Lowrance endorsed the adoption of such a permitting theme, but challenged the members of the Executive Council to realize that permitting is the end result of a long regulatory process, and that EPA requests advice from the NEJAC on regulatory issues involving air and water programs. Mr. Ray asked Ms. Lowrance to identify areas of the regulatory policy where the NEJAC could provide assistance. She responded that the NEJAC can provide advice on new policy initiatives (such as EPA's Clean Water Action Plan), strategy development, rule-making (for example, for municipalities and specific industries), and outreach to stakeholders.

Although various members of the Executive Council voiced support for the establishment of an Air and Water Subcommittee, Mr. Lee noted that addressing such "front-end" air and water issues is important, but that issues related to the Solid Waste Disposal Act (SWDA) or the Clean

Water Action Plan differ greatly from permitting issues. He proposed that the subcommittee's major focus be permitting, but stated that its purview should not be restricted to permitting issues alone. In response, Mr. Turrentine stated that permitting is a broad issue with "undefined parameters" upon which the members of the NEJAC for the most part can agree. Ms. Lowrance maintained that the multimedia perspective of most issues considered by the NEJAC might lead to some overlap of effort among subcommittees. However, she expressed her hope that the Air and Water Subcommittee's initial focus would be on regulatory initiatives and stated that she would support such a subcommittee, because it could be modified or expanded as various jurisdictional issues are encountered.

Mr. Cole expressed his concern that the establishment of a new subcommittee would further separate the existing subcommittees into distinct categories and that the new subcommittee could add to the proliferation of resolutions, which would complicate the Executive Council's priorities among issues. Ms. Briggum seconded Mr. Cole's concerns and suggested that adding a few staff people to each of the subcommittees, as well as refining the number of proposed resolutions, may help focus the efforts of the new subcommittee.

Mr. Ray then offered a word of caution to the members of the Executive Council, stating that the many differences between air and water issues make the new subcommittee a very challenging effort, and noting that he recognized the new subcommittee already faced a "full plate" of work. In response, Mr. Turrentine observed that, whether or not the subcommittee is formed, air and water issues will be brought before the NEJAC and some decision-making framework ultimately will be necessary.

The members then agreed that the question was not whether there would be a new subcommittee, but how the subcommittee would be organized. Mr. Lee reminded the members of the Executive Council that the new subcommittee should address issues that are of primary concern to communities, such as permits, standards, and major policy initiatives. Turning to the question of the fragmentation of issues among the various bodies of the NEJAC, he argued that the NEJAC must "realize that environmental justice begins

and ends in communities" and that its members must continue to press to make people and their communities part of the decision-making process.

Finally, Ms. English and Ms. Ramos expressed support for the establishment of the new subcommittee, stating that (1) it would engage two important EPA offices in environmental justice issues and (2) the need for attention to air and water issues had been demonstrated by the increasing number of requests for permits for waste-to-energy facilities throughout the United States.

Ms. Kawasaki suggested that the Executive Council form a work group to discuss the focus and role of the new subcommittee. Mr. Ray then suggested that instead of forming a new work group that the Protocol Committee be used to discuss issues related to the new subcommittee.

#### **4.5 Resolutions and Letters of the Subcommittees**

Members of the Executive Council then discussed several resolutions forwarded by various subcommittees that were outstanding from the December 1997. Section 5.0 presents the full text of the resolutions forwarded by the various subcommittees of the NEJAC from the December 1997 meeting and which were approved by the Executive Council.

Members of the Executive Council agreed that the Indigenous Peoples Subcommittee's resolution on Medicine Lake Highlands, California be returned to the subcommittee for clarification about the role of BIA and the accurate identification of several acronyms. Members of the Executive Council agreed to vote on the revised resolution by mail ballot.

In addition, the members of the Executive Council also approved letters to the EPA Administrator from the Enforcement and Indigenous Peoples subcommittees.

- The members of the Enforcement Subcommittee had forwarded a letter to the EPA Administrator about Enforcement Resolutions Nos. 6 and 7 on trading of air emissions credits that had been adopted by the NEJAC. The letter recommends that EPA reconsider improvement measures outlined in the resolutions and requests that the EPA



Administrator and the Assistant Administrator for OAR attend a meeting of the Work Group on the Open-Market Trading of Air Emissions Credits of the Enforcement Subcommittee.

- The members of the Indigenous Peoples Subcommittee had forwarded a letter to the EPA Administrator urging the agency to support youth programs similar to those addressed by the Native Youth Alliance.
- The members of the Indigenous Peoples Subcommittee had forwarded a letter to the EPA Administrator about ensuring that the EPA regional and headquarters tribal coordinators attend the meetings of the Executive Council and the Indigenous Peoples Subcommittee of the NEJAC.
- The members of the Indigenous Peoples Subcommittee had forwarded a letter to the EPA Administrator about ensuring that EPA's American Indian Environmental Office (AIEO) and OEJ are consulted by EPA program offices in the development and implementation of policies and programs that affect Indian country.

#### **4.6 Update on EPA Office of Pollution Prevention and Toxics Lead-Based Paint Study**

Ms. English briefed the members of the Executive Council on the progress of the Health and Research Subcommittee's review of the lead-based paint study, funded initially by EPA's Office of Pollution Prevention and Toxics (OPPT) and currently by HUD, that measured the effectiveness of repair and maintenance actions on lead blood levels in residents of Baltimore, Maryland. The study was presented at the December 1997 meeting of the Health and Research Subcommittee and received public comment at that time, she reported. Ms. English stated that members of the public and of the Health and Research Subcommittee had voiced concern about the methodology and protocol used in the study. Ms. English added that she shared some of those concerns, specifically mentioning the study's technical validity, ethical considerations, and the overall adequacy of its approach. Ms. English encouraged the members of the Executive Council to read the report; however, she reminded the members that the

subcommittee will provide a complete report on the study at the June 1998 meeting of the NEJAC.

## **5.0 RESOLUTIONS**

This section presents the text of each resolution that was forwarded by the various subcommittees of the NEJAC from the December 1997 meeting to the Executive Council and which were approved by the council.

### **5.1 Resolutions from the Enforcement Subcommittee**

This section presents the text of the resolutions forwarded by the Enforcement Subcommittee to the Executive Council of the NEJAC that were approved at the February 1998 meeting.

#### **Resolution on the Study of Disproportionate Impacts of Pollution Trading Programs**

WHEREAS, air pollution credit trading has the potential to concentrate dangerous toxic air pollutants in low income communities and communities of color, creating or exacerbating toxic hot spots, especially when multiple facilities in a single community purchase pollution credits thereby increasing or perpetuating their emissions; and

WHEREAS, the public has a right to know when air pollution may increase in a particular area due to pollution trading; and

WHEREAS, limited data has been collected to determine whether air pollution trading programs have had the effect of concentrating toxic or hazardous air pollution in low-income communities or communities of color.

NOW THEREFORE BE IT RESOLVED, that NEJAC urges and advises EPA to:

- (1) Conduct a rigorous analysis of existing air pollution trading programs to determine if they have resulted in the creation or perpetuation of toxic or hazardous air pollution hot spots in low-income communities or communities of color;
- (2) Conduct a rigorous analysis of proposed air pollution trading programs to determine if they have the potential to create or perpetuate toxic or hazardous air pollution hot spots in

low-income communities or communities of color.

- (3) Involve representatives of the impacted communities in the design and implementation of the analyses.
- (4) Refrain from approving any air pollution trading program that allows trading of toxic or hazardous chemicals, particulate matter, or carbon monoxide unless and until the above analyses have been completed.
- (5) Report back to the NEJAC by May 1998 on the progress in meeting these recommendations, and make available to the NEJAC the analyses performed.

#### **Resolution on the Environmental Justice Impacts of Particulate Matter Spatial Averaging**

WHEREAS, the Environmental Protection Agency (EPA) has recently adopted particulate matter standards that are in many ways an improvement over former standards; and

WHEREAS, the newly adopted particulate matter standards allow "spatial averaging," a process which allows air quality agencies to average particulate matter readings from several air quality monitors located in a particular region; and

WHEREAS, spatial averaging would allow an area that exceeds federal particulate matter standards, to be averaged with another area that falls below accepted standards, with the result that both areas could be deemed to be in compliance with federal standards; and

WHEREAS, spatial averaging may create risks that low-income communities and communities of color with particulate matter levels exceeding federal standards may be deemed to be in compliance with federal standards due to averaging with areas with cleaner air, with the result that residents of the low-income community will be forced to continue to live with unhealthy air.

NOW THEREFORE BE IT RESOLVED, that NEJAC urges and advises EPA to:

- (1) Revise its particulate matter air quality standards to assure that there are no

disparate impacts on low-income communities and communities of color resulting from the use of spatial averaging.

#### **5.2 Resolutions from the Indigenous Peoples Subcommittee**

This section presents the text of the resolutions forwarded by the Indigenous Peoples Subcommittee to the Executive Council of the NEJAC that were approved at the February 1998 meeting.

#### **Resolution on Uranium in Situ Leach Mines in Two Navajo Communities**

WHEREAS, the United States Environmental Protection Agency (EPA) is a federal agency which was created in 1970, with the direct purpose and responsibility to develop and implement strategies that protect public health and the environment; and

WHEREAS, the National Environmental Justice Advisory Council (NEJAC), established on September 3, 1993, is comprised of representatives of academia, business, industry, Federal, State, Tribal, local government, environmental organizations, community groups and non-governmental organizations, with the goal of providing advice to the EPA on matters related to environmental justice and racism for minority populations and low-income populations, and

WHEREAS, the Indigenous Peoples Subcommittee has been approached by indigenous community members regarding a proposed project and has brought it back to the full NEJAC for consideration and action, to with:

Hydro Resources, Inc. (HRI) is proposing to construct and operate three uranium in situ leach (ISL) mines on sites in and within two miles of the Navajo community of Crownpoint, New Mexico (the "Crownpoint Lease" and "Unit 1" site respectively) and on a site in the Church Rock (N.M.) Chapter of the Navajo Nation inhabited and used by Navajos; and

WHEREAS, the proposed ISL, or solution mining is proposed to be conducted in a geologic

formation that provides the sole source of drinking water for from 5,000 to 15,000 people, most of whom are Navajos who live in the town of Crownpoint and in several other Navajo communities located within 45 miles of Crownpoint; and

WHEREAS, it is reported to NEJAC that many Navajos routinely haul water from Crownpoint because public water supply systems and other sources of high-quality water for human and livestock consumption do not exist in most rural Navajo communities in northwestern New Mexico; and

WHEREAS, the Nuclear Regulatory Commission (NRC), in its Final Environmental Impact Statement (FEIS) has determined that the "unprecedented" close proximity of Crownpoint's five municipal water wells to solution mining operations at the Crownpoint Lease site (a maximum distance of less than 2,000 feet) necessitates the relocation of those wells because "the potential risk [of contamination from solution mining] is too great for groundwater to be degraded below EPA primary and secondary drinking water standards and the NRC 0.44 mg/L [milligram per liter] of uranium standard"; and

WHEREAS, the U.S. Environmental Protection Agency regulates underground injection associated with ISL mining pursuant to the federal Safe Drinking Water Act (SDWA) (42 U.S.C. nn 300f *et seq.*) and its implementing regulations (40 C.F.R. Parts 144, 146 and 147), including such mining on Indian lands of the Navajo Nation (40 C.F.R. n 147.3000(a)); and

WHEREAS, the SDWA's Underground Injection Control (UIC) requirements prohibit endangerment of underground drinking water sources and do not authorize exemptions of aquifers that currently serve as sources of drinking water; and

WHEREAS, according to NRC's FEIS, NRC has determined that groundwater under and near the Crownpoint Lease site and Unit 1 site meet EPA's criteria for the definition of underground source of drinking water; and

WHEREAS, NEJAC is advised that, the opinion of the staff of the Ground Water Office of EPA, Region IX, is that aquifers lying within, and in the vicinity of, the solution mining zone at the Church

Rock mine also constitute underground sources of drinking water; and

WHEREAS, the existing quality of water obtained by Crownpoint-area residents from town water wells is better than current EPA and Navajo Nation primary and secondary drinking water standards; and

WHEREAS, the NRC has proposed a license condition that would require HRI to relocate Crownpoint's water wells and associated water distribution system before ISL mining can occur at the Crownpoint Leases site, without benefit of a feasibility study to determine whether any other locations within the same aquifer or any other aquifers in the region can provide the same or better quantity and quality of drinking water now used by area residents with the equivalent accessibility or better; and

WHEREAS, the NEJAC is advised that NRC acknowledges in its FEIS that the "entire area of impact constitutes an 'environmental justice population' in that the vast majority of the population affected by the proposed uranium ISL mines is Navajo and has from 41 percent to 71 percent of the median household incomes of New Mexico residents and from 30 percent to 53 percent of the U.S. median household incomes; and

WHEREAS, the NEJAC is advised that, according to a petition filed with NRC by Eastern Navajo Dineh Against Uranium Mining (ENDAUM) in August, 1997, HRI's parent company, Uranium Resources, Inc. (URI), has a history of license violations at its South Texas uranium ISL mines, has never mined in Texas to the depths anticipated at the Unit 1 and Crownpoint Lease sites (400 feet to 700 feet in Texas versus 1,840 feet to 2,290 feet at Unit 1 and Crownpoint), and has mines in aquifers of considerably poorer quality than that documented at the Crownpoint, Unit 1 and Church Rock sites; and

WHEREAS, the NEJAC is further advised that the NRC's FEIS did not evaluate URI's Texas performance record; considered only the mining project's touted local job "benefits" and minimized the socioeconomic, environmental and cultural impacts; ignored or gave inconsistent statements about Navajo nation sovereignty and jurisdiction; and inhibited community participation by not widely distributing, first, a Draft Environmental

Impact Statement (DEIS) issued in November, 1994, and second, the FEIS in March 1997, by charging \$35.00 per copy for each FEIS for individuals, including community members, who had not commented in writing or orally on the DEIS, and by denying requests of ENDAUM and the Navajo Nation Environmental Protection Agency (NNEPA) that a public documents repository be established in the town of Crownpoint; and

WHEREAS, President Clinton's Executive Order on Environmental Justice provides that, "Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin"; and

WHEREAS, the NRC's own licensing panel, the Atomic Safety and Licensing Board, has determined that the provisions of Executive Order 12898 are "fully applicable to the Agency"; and

WHEREAS, the NEJAC is advised that the NRC staff on December 4, 1997, issued its Safety Evaluation Report (SER) which recommends the licensing of the proposed mines.

NOW THEREFORE BE IT RESOLVED by the NEJAC, on the basis of the foregoing reasons, that:

- (1) NEJAC urges and recommends that EPA immediately, thoroughly, and carefully scrutinize all UIC permit applications and temporary aquifer exemption applications or actions for the proposed uranium in situ leach mines in and near the Navajo communities of Crownpoint and Church Rock, New Mexico and, pending further investigation and tribal and community participation, deny or revoke the same where there is a threat to underground sources of drinking water;
- (2) NEJAC urges and recommends that the EPA Administrator, as Chair of the Inter Agency Workgroup on Environmental Justice, urge the Chair of NRC to ensure that all provisions of Executive Order 12898 are fully complied

with and carried out in "the matter of Hydro Resources Inc.," NRC Docket No. 40-8968-ML;

- (3) NEJAC urges and recommends that the EPA Administrator, as Chair of the Inter Agency Workgroup on Environmental Justice, urge the Chair of NRC to establish, fund and equip a local public documents repository for Docket No. 40-8968-ML in the town of Crownpoint, New Mexico, and to distribute, free of charge, copies of the DEIS, FEIS and SER to any person who requests them either orally or in writing; and
- (4) NEJAC urges that the EPA Administrator, as Chair of the Inter Agency Workgroup on Environmental Justice, urge the Chair of NRC to ensure that to the maximum extent allowable by law, that the Atomic Safety and Licensing Board grant ENDAUM's and seven other groups of individuals petitions who challenge the permit, applications, motions or requests to intervene in the related licensing or permitting action, and to schedule and hold an evidentiary hearing on this critical issue in order to ensure that the "Environmental Justice" community has a meaningful and realistic opportunity to participate fully in the decision making processes.

### **Resolution on Mount Shasta Ski Area**

WHEREAS, The United States Environmental Protection Agency (EPA) a federal agency created in 1970, with the direct purpose and responsibility to develop and implement strategies that protect public health and the environment; and

WHEREAS, the National Environmental Justice Advisory Council (NEJAC) was established on September 3, 1993, and is comprised of representatives of academia, business, industry, Federal, State, Tribal, local government, environmental organizations, community groups and non-governmental organizations, with the goal of providing advice to the EPA on matters related to environmental justice for minority populations and low-income populations, and

WHEREAS, the Indigenous Peoples Subcommittee specifically addresses Tribal environmental justice issues; and

WHEREAS, Mount Shasta is sacred and spiritually important to Tribes in Northern California, as has been documented in the Forest Service ethnographic report and other long-standing sources of evidence; and

WHEREAS, the Forest Service proposes to approve a (second) large ski development, with associated commercial condominium development on adjacent private lands, with detrimental impacts to Native American cultural values on the entire Mountain; and

WHEREAS, the proposed project poses environmental threats to Mount Shasta and its use as a viable place for worship, cultural and other uses; and

WHEREAS, the Mount Shasta issue thus, gives rise to serious Environmental Justice concerns, under EO 12898 and EO 13007 on Indian Sacred Sites, and in the implementation of statutes and administrative guidance such as the National Historic Preservation Act, the National Environmental Policy Act, National Register Bulletin 38; and

WHEREAS, the Keeper of the National Register of Historic Places revised the boundary of the Mount Shasta Historic District in an unprecedented action on November 18, 1994 after the entire Mountain was designated as eligible to the National Register of Historic Places through EO 11593 on March 11, 1994; and

WHEREAS, to have a ski resort built, potentially being a short-term venture, which would result in significant environmental, public health, and cultural long-term impacts in an area where one ski resort has gone out of business and another continues to operate; and

WHEREAS, a Cultural Management Plan is needed for Mount Shasta as a whole in order to protect Native American cultural values and to cooperate with traditional land management practices; and

WHEREAS, the Departments of the Interior (National Register) and of Agriculture (Forest Service) have been unresponsive to requests from the Tribes to hold consultations for settling the Historic District integrity and boundary issues, and on the decision to permit a second ski development on the Mountain; and

WHEREAS, efforts over a period of ten years and more have thus far not yielded satisfactory cooperation by federal government agencies leading to resolution of these issue, and the Departments of the Interior and Agriculture have failed to meet their requirements for government-to-government consultations with the Northern California Tribes asset forth in the NHPA,

National Register Bulletin 38, Presidential Executive Orders and the President's Memorandum of April 1994; and

WHEREAS, high level departmental officials have made promises to assist in the resolution of these issues which have not come to pass,

WHEREAS, the Mount Shasta issues are an example of how a major sacred site of highest significance to Native American Tribes is being subjected to flawed processes and disproportionate impacts, potentially weakening protection under relevant statutes, executive orders and administrative guidance for all similar Native American sacred sites nationwide,

NOW THEREFORE BE IT RESOLVED that the NEJAC urges and recommends that the Administrator for EPA work with the Interagency Working Group for Environmental Justice, to the maximum extent permitted by law, assist the Tribes and the Native Coalition for Cultural Restoration of Mount Shasta in their efforts to obtain meaningful consultations with the Departments of the Interior and Agriculture at the Secretaries' level, in order to resolve issues regarding the Mount Shasta boundary and integrity question, and the Forest Service's continuing efforts to permit construction of a second ski resort on Mount Shasta,

BE IT FURTHER RESOLVED that the NEJAC urges and recommends that the EPA Administrator, as head of the Interagency Working Group on Environmental Justice, intervene and help to bring about the required government-to-government consultations, and resume the discussions to consider restoration of at least part of the original Historic District boundary area; to assist in bringing about a directive from the Department of Agriculture to abandon the ski development proposal as incompatible with the cultural significance of the Mountain, resulting in a new Record of Decision; and recommend that the Forest Service make a

commitment of personnel and funds for the development of a Cultural Management Plan for Mount Shasta,

BE IT FURTHER RESOLVED that the NEJAC urges and recommends to the EPA Administrator, to the maximum extent permitted by law, that the EPA track the issues, require responses, and if appropriate, help to mediate the discussions to resolve the Mount Shasta issues

### **5.3 Resolution from the Waste and Facility Siting Subcommittee**

This section presents the text of the resolution forwarded by the Waste and Facility Siting Subcommittee to the Executive Council of the NEJAC that were approved at the February 1998 meeting.

#### **Resolution on Municipal Waste Transfer Stations**

WHEREAS, the imminent closure of the Fresh Kills Landfill, New York City's only municipal solid waste landfill, in 2002 has necessitated a massive increase in creation or expansion of interim solid waste facilities, otherwise referred to as waste transfer stations, and other problems associated with the transport of solid waste to out-of-city locations;

WHEREAS, the impacts of the impending depletion of existing municipal landfill space are likely to be most heavily felt in low-income and people of color communities; for example, three such low-income and people of color communities, (i.e., Greenpoint Williamsburg, Brooklyn, South Bronx, and Southeast Queens) currently have over 70% of the waste transfer facilities in New York City;

WHEREAS, a similar situation already exists or is soon likely to exist in other municipalities across the United States and its territories where landfill capacity is quickly running out;

WHEREAS, a number of environmental justice issues are highlighted by these developments, including the following:

- such facilities emit air-borne particulates and volatile organic hazardous air pollutants from processes conducted at the facilities and from

vehicles providing transportation services to waste transfer facilities,

- such facilities are likely to be located in or adjacent to predominantly low-income and people of color communities,
- such communities are also impacted by pollution from other sources, including volatile organic hazardous air emissions and air-borne particulates from stationary facilities such as automotive and metal finishing facilities, and from emissions from mobile sources such as vehicular traffic,
- such communities suffer from disproportionately high incidence of disease including asthma and other respiratory illness, infant mortality and immune deficiencies, and
- the environment and public health of host communities are at risk because of the expansion of existing waste transfer stations and the siting of new ones;

WHEREAS, there has been no assessment of the total pollution loading and health impacts from emissions from individual waste transfer facility operations in the New York City area for purposes of determining requirements to control these emissions;

WHEREAS, there has been no assessment of the cumulative loading of waste transfer and other waste processing facilities in New York City to determine requirements to prevent health impacts associated with the clustering of such facilities in proximity to each other and residential communities;

WHEREAS, a number of existing statutes may play significant roles in developing a coherent set of guidance on the waste transfer station issue, including but not limited to the following:

- Resource Conservation Recovery Act (RCRA), which regulates the interstate transport, handling, and disposal of hazardous and solid waste,
- Clean Air Act, which regulates air emissions from mobile and stationary sources,

- Coastal Zone Management Act, which provides that facilities located in coastal zones be managed to protect ecological benefits,
- Clean Water Act, which regulates stormwater runoffs from point source facilities into waters of the United States.

WHEREAS, USEPA has not conducted a public assessment of the adequacy of the environmental regulatory programs applicable to waste transfer stations in New York and across the country, particularly with regard to USEPA's obligation to protect human health and the environment and to encourage pollution prevention, recycling and reuse;

THEREFORE BE IT RESOLVED, that the National Environmental Justice Advisory Council calls upon USEPA to examine the risks from the siting and operation of waste transfer stations for the purpose of determining its regulatory responsibilities and prescribe requirements to reduce health risks associated with such facilities. A first step in this examination should be a study of impacted communities in New York City to consist of the following:

- assessment of pollution emissions from waste transfer facilities and connected transportation that at a minimum includes quantifying particulate and volatile organic hazardous air emissions
- assessment of cumulative impacts associated with the clustering of waste transfer and other facilities in NYC impacted communities
- conducting a risk characterization analysis to assess the health and environmental risks associated with pollutants emitted from waste transfer facility operations and connected transportation
- identification based upon the above studies of requirements and regulatory actions to address human health risks through control of pollution loading from waste transfer stations that consider individual facility based controls and multi facility controls to address both

individual facility loading and facilities that impact a common impacted area;

- an assessment of the adequacy of coordination of responsibilities among federal, state and local officials and among environmental programs to address the risks from these facilities;

BE IT FURTHER RESOLVED, that NEJAC calls upon USEPA to form a citizens advisory committee to consist of representatives of community based organizations in New York City impacted communities and local environmental justice, public interest, business interests, and elected officials from impacted communities for the purposes of advising on the design and implementation of this study;

BE IT FURTHER RESOLVED, that the NEJAC calls upon USEPA to support the formation of a NEJAC Working Group to evaluate such issues as the adequacy of current standards to address emissions to all media, illegal commingling of hazardous and medical waste, and appropriate regulatory response, the adequacy of coastal zone regulatory standards to address the transport of waste from city, interstate and regional environmental and health impacts, and means to assure public participation in all phases of the transition in waste disposal caused by closure of municipal land fills such as Fresh Kills;

BE IT FURTHER RESOLVED, that the NEJAC calls upon USEPA to undertake a study on the demographic characteristics associated with the location of municipal waste transfer stations; and

BE IT FINALLY RESOLVED, that the NEJAC calls upon the USEPA Administrator to communicate to the City of New York USEPA's concerns regarding the problems associated with the proliferation of waste transfer stations and USEPA's intended response actions to this resolution.

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