

**NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL**  
**Public Teleconference Meeting**  
**Thursday, August 26, 2010**

**Written Summary**

Approved:	<i>Elizabeth Yeampierre</i> Elizabeth Yeampierre, Chair	<i>Victoria Robinson</i> Victoria Robinson
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The Executive Council (Council) of the National Environmental Justice Advisory Council (NEJAC) convened for a three-hour public teleconference meeting on Thursday, August 26, 2010, from 1:00 to 4:00 p.m. Eastern time. The meeting included a public comment period. This document summarizes U.S. Environmental Protection Agency (EPA) presentations to the Council, discussions among Council members, and community concerns expressed during the public comment period.

The NEJAC is a federal advisory committee that was established by charter on September 30, 1993, to

**Exhibit 1**

**Members of the NEJAC Executive Council**

**Members in Attendance**

Ms. Elizabeth Yeampierre, NEJAC Chair, UPROSE, Inc.  
Mr. John Ridgway, NEJAC Vice-Chair, Washington State Department of Ecology  
Mr. Don Aragon, Wind River Environmental Quality Commission  
Ms. Teri E. Blanton, Kentuckians for the Commonwealth  
Ms. Sue Briggum, Waste Management, Inc.  
Dr. M. Kathryn "Katie" Brown, University of Cincinnati College of Medicine  
Ms. Jolene Catron, Wind River Alliance  
Ms. Wynecta Fisher, Collaborative Solutions Group, E2 Inc.  
Ms. Stephanie Hall, Valero Energy Corporation  
Ms. Savonala "Savi" Horne, Land Loss Prevention Project  
Mr. Hilton Kelley, Community In-Power and Development Association  
Mr. J. Langdon Marsh, National Policy Consensus Center, Portland State University  
Ms. Margaret May, Ivanhoe Neighborhood Council  
Ms. Vernice Miller-Travis, Maryland State Commission on Environmental Justice and Sustainable Communities  
Dr. Paul Mohai, University of Michigan  
Father Vien T. Nguyen, Mary Queen of Viet Nam Community Development Corporation  
Ms. Edith Pestana, Connecticut Department of Environmental Protection  
Mr. Nicholas Targ, American Bar Association  
Ms. Kimberly Wasserman, Little Village Environmental Justice Organization

**Members Not in Attendance**

Mr. Chuck Barlow, Entergy Corporation  
Mr. Peter Captain, Sr., Yukon River Intertribal Watershed Council  
Ms. Jodena "Jody" Henneke, The Shaw Environmental & Infrastructure Group  
Dr. Shankar Prasad, Coalition for Clean Air  
Ms. Nia Robinson, Environmental Justice and Climate Change Initiative  
Ms. Patricia Salkin, Albany Law School

provide independent advice, consultation, and recommendations to the EPA Administrator on matters related to environmental justice. The NEJAC is governed by the provisions of the October 6, 1972, Federal Advisory Committee Act (FACA). The Council is comprised of 25 members, representing academia, business and industry, community-based organizations, non-governmental and environmental groups, state and local governments, tribal governments, and indigenous organizations. One EPA staff member serves as the Designated Federal Officer (DFO) for the NEJAC. Exhibit 1 lists the members of the Executive Council who participated in the teleconference meeting, as well as those who were unable to attend.

This summary contains the following sections, which correspond to the meeting agenda:

1. Welcome and Opening Remarks
2. EPA Plan EJ 2014
3. EPA Charge on Incorporating Environmental Justice into Permitting
4. Public Comment Period
5. Closing Remarks

In addition, three appendixes are included. Appendix A lists the NEJAC Members and shows their affiliations by stakeholder category, Appendix B provides a list of meeting attendees, and Appendix C contains written public comments provided to the NEJAC.

## **1.0 Welcome and Opening Remarks**

Ms. Victoria Robinson, NEJAC Program Manager and DFO, EPA Office of Environmental Justice (OEJ), welcomed all participants to the 35<sup>th</sup> public meeting of the NEJAC. In her opening remarks, Ms. Robinson pointed out that the Council had provided advice to EPA for more than 16 years.

She noted that more than 200 people had registered to participate in the teleconference meeting, and reminded participants of the two primary agenda topics: EPA's Plan Environmental Justice (EJ) 2014 and EPA's charge to the NEJAC on incorporating environmental justice into the permitting process. Appendix B contains a list of meeting attendees.

Ms. Robinson informed participants that, as part of EPA's commitment to ensure transparency and public access to information, the meeting was being audio recorded. She announced that Podcast segments, a written transcript, and a meeting summary would be posted on EPA's NEJAC Website ([www.epa.gov/environmentaljustice/nejac/](http://www.epa.gov/environmentaljustice/nejac/)) within a few weeks following the meeting. She added that an encore audio recording would also be posted on the NEJAC Website the week following the meeting.

Mr. Aaron Bell, NEJAC Program Manager, OEJ, conducted a roll call of the NEJAC members. Ms. Robinson confirmed that enough members were present to establish a quorum (as required under FACA) and, therefore, the meeting could proceed.

Ms. Elizabeth Yeampierre, Executive Director, UPROSE, Inc., and NEJAC Chair, welcomed all the NEJAC and community members participating on the call. She described the meeting as the start of EPA "thinking deep[ly]" about how to address environmental justice in its permitting and rulemaking processes. She noted the full agenda and encouraged members to limit their comments to three minutes. She stressed the importance of allowing the public an opportunity to provide input and respecting the limited time and resources of the grassroots representatives participating in the three-hour call.

Ms. Yeampierre announced that two NEJAC subgroups had been formed. She noted that Mr. John Ridgway, NEJAC Vice-Chair and Manager, Information Management and Communications Section, Washington State Department of Ecology, would chair the Council's subgroup on EPA's charge to the NEJAC on permitting. She also reported that Ms. Kimberly Wasserman, Coordinator, Little Village Environmental Justice Organization, would chair the Council's Plan EJ 2014 subgroup.

Ms. Yeampierre referred to the documents on Plan EJ 2014 and the permitting process that EPA distributed prior to the meeting, and she expressed hope that the Council members had reviewed the materials.

## **2.0 EPA Plan EJ 2014**

Ms. Yeampierre began the discussion of EPA's Plan EJ 2014 by referring to the related comments made by Council members during the NEJAC's July 2010 in-person meeting in Washington, D.C. She noted that she was impressed with the comments and pointed out that the purpose of this discussion was to provide guidance to the NEJAC's Plan EJ 2014 subgroup. She explained that the subgroup would meet and develop its findings, report back to the full Council on its findings, and NEJAC would develop final recommendations for submittal to EPA.

Ms. Yeampierre referred to the EPA Plan EJ 2014 Discussion Framework document that had been distributed to the members prior to the meeting. She reminded the Council of the five Cross-Agency Focus Areas outlined in the plan:

- Incorporating Environmental Justice into Rulemaking.
- Considering Environmental Justice Concerns in EPA's Permitting Process.
- Accelerating Compliance and Enforcement Initiatives.
- Supporting Community-Based Action.
- Fostering Administration-Wide Action on Environmental Justice.

Ms. Yeampierre reviewed the following three discussion questions presented in the Discussion Framework document:

1. Are the five Cross-Agency Focus Areas the correct ones?
2. How can EPA strengthen specific actions within the five Cross-Agency Focus Areas?
3. How would you prioritize the five Cross-Agency Focus Areas?

**Overview of Plan EJ 2014.** Mr. Charles Lee, Director, OEJ, stated that the Agency wished to receive feedback from the NEJAC and members of the public on Plan EJ 2014. He stressed that their input was critical in making the plan as effective as possible. Mr. Lee presented the overall goals of Plan EJ 2014:

1. To protect the environmental health of overburdened communities.
2. To take action to improve health and the environment.
3. To establish partnerships with local, state, tribal governments and organizations to achieve healthy and sustainable communities.

He explained that the plan is divided into three parts:

1. Cross-Agency Focus Areas, which consist of five areas Ms. Yeampierre described earlier.
2. Development of tools in the areas of science, law, and informational resources
3. Program-specific Initiatives, such as work involved in brownfields, urban waters, and air toxics,

among others.

Mr. Lee elaborated on EPA's progress in the five Cross-Agency Focus Areas:

- **Rulemaking** – Mr. Lee mentioned EPA's *Interim Guidance on Considering Environmental Justice During the Development of an Action* (EJ in Rulemaking Guidance) as an example of this cross-agency activity. He welcomed the Council's input on the guidance.
- **Permitting** – He noted that the Agency was starting to address environmental justice in its permitting process by posing questions for the NEJAC to discuss.
- **Compliance and Enforcement** – He explained that EPA addressed this Cross-Agency Focus Area in three ways: (1) selection of national enforcement initiatives; (2) targeting where to conduct enforcement, inspections, and related activities; and (3) setting penalties.
- **Community-Based Action** – Mr. Lee noted that EPA was seeking to ensure better coordination, leveraging of resources, partnerships, and outcomes in affected communities.
- **Administration-Wide Action** – He referred to an announcement made by Ms. Nancy Sutley, Chair, White House Council on Environmental Quality (CEQ) during the July 2010 NEJAC meeting, that Ms. Lisa Jackson, EPA Administrator, was reconvening the Federal Interagency Working Group on Environmental Justice (IWG) in September 2010.

**Plan EJ 2014 and EPA's Strategic Plan.** Mr. Lee explained the relationship between Plan EJ 2014 and the Agency's five-year Strategic Plan for Fiscal Years (FY) 2011 to 2015. He described the Strategic Plan as EPA's overarching plan around which the Agency would conduct its work, based on Administrator Jackson's priorities. He stated that the Strategic Plan detailed cross-cutting strategies that would be implemented by all EPA program offices, including advancing environmental justice and children's health. He reported that EPA was developing an action plan to implement these strategies, and that Plan EJ 2014 described how EPA would implement the Strategic Plan with respect to environmental justice.

This section provides highlights of the Council's discussion following Mr. Lee's presentation:

Father Vien Nguyen, Pastor, Mary Queen of Viet Nam Community Development Corporation, stressed the importance of educating state and local governments, communities, and tribes, noting that a "change in heart" was necessary to prevent attempts to circumvent regulations and environmental justice objectives.

Ms. Yeampierre noted opportunities to tie federal dollars to state and local initiatives to incorporate environmental justice into educational programs. She acknowledged the "disconnect" between the efforts of federal, state, and local agencies and expressed hope that the federal government could do more to ensure consistency throughout the various levels of government.

Ms. Stephanie Hall, Senior Counsel, Environmental Safety and Regulatory Affairs, Valero Energy Corporation, acknowledged the challenge of legislating "matters of the heart." She added that some regard environmental justice as a "matter of the heart" and said that this perspective raises the broader question, "How do you encourage environmental justice?"

Ms. Edith Pestana, Administrator, Environmental Justice Program, Connecticut Department of Environmental Protection, responded that legislation could indeed influence behavior, for example, by requiring businesses or governments to engage in outreach efforts. She encouraged EPA to consider this approach in its EJ 2014 and permitting plans.

Ms. Pestana also expressed concern about the October 1, 2010, deadline for the NEJAC to submit its

recommendations to EPA. Mr. Lee committed to discussing this concern with EPA staff and following up with the NEJAC on this matter. He stressed the Agency's desire to move forward and make as much progress as possible. He encouraged NEJAC members to not be overwhelmed, but to have a "glass half full" perspective and realize that whatever input they provide will be valued and helpful. He noted that "sometimes the worst enemy of the good is the perfect."

Ms. Vernice Miller-Travis, Vice Chair, Maryland State Commission on Environmental Justice and Sustainable Communities, referred to Page 4 of Plan EJ 2014, which states, "The initial focus of this work will be on EPA-issued permits that are important to the public health and welfare of overburdened communities..." She asked whether this meant that the Agency would not initially focus on states with delegated permitting authority.

Ms. Miller-Travis noted that EPA was engaged in numerous ongoing rulemaking activities, and cited proposed coal ash regulations as an example. She asked EPA to clarify whether Plan EJ 2014 applied to activities that would begin in FY 2014 or if it would also apply to activities currently in progress. She expressed concern about the need to integrate environmental justice into current activities. Mr. Lee clarified that implementation of Plan EJ 2014 – and environmental justice analyses – had already begun. As an example, he mentioned that the nitrogen dioxide (NO<sub>2</sub>) National Ambient Air Quality Standards (NAAQS) rule was issued at the beginning of 2010 and incorporated environmental justice considerations. He added that EPA had recently issued its EJ in Rulemaking Guidance, which was already in effect in all Agency offices.

Mr. Nicholas Targ, co-Chair, Environmental Justice Caucus, American Bar Association, reminded the Council that, during the July 2010 NEJAC meeting, they had discussed broadening the Cross-Agency Focus Area, "Supporting Community-Based Action," to include issues of collaborative problem solving. He cited this approach as a possible way to integrate environmental justice into "hearts and minds."

In terms of the relationship between Plan EJ 2014 and EPA's Strategic Plan, Mr. Targ suggested that the Agency establish metrics for addressing environmental justice issues under Plan EJ 2014 and linking those to the specific goals of the Strategic Plan. He commented that this approach would ensure a clear understanding of accomplishments under Plan EJ 2014 and how they fit into the Strategic Plan

Mr. J. Langdon Marsh, Fellow, National Policy Consensus Center at Portland State University, asked EPA to prioritize "Community-Based Action" close to the top of the list of Cross-Agency Focus Areas. He noted that, unlike the other focus areas, this was "where the rubber really hits the road." He added that collaborative decision-making would be useful in efforts in this area.

In terms of "Enforcement and Compliance," Mr. Marsh encouraged EPA to direct fines and penalties collected from polluters to address impacts that are caused by violations in the communities where those facilities are located. He mentioned Supplemental Environmental Projects (SEPs) as a way to implement this approach.

Mr. Marsh suggested that EPA consider placing greater emphasis on the Cross-Agency Focus Areas. He mentioned that EPA had invested heavily in communities through the Clean Water and Drinking Water funds, and the Superfund and Brownfields programs. He asked EPA to consider directing some of those funds toward capacity building, collaboration, and public involvement activities in affected communities. He also suggested that EPA place more emphasis on intergenerational and life cycle impacts of activities that affect communities.

Ms. Wasserman commented that EPA should provide more funding support for its grants programs, such as EJ Small Grants and Community Action for a Renewed Environment (CARE) programs. She noted that funding from other sources (such as through state programs or private foundations) was decreasing. Ms. Sue Briggum, Vice President, Waste Management, Inc., remarked that the CARE program was a wonderful mechanism for capacity building and productive collaboration.

Ms. Wasserman commented that climate change and adaptation should be part of Plan EJ 2014. In response to a clarifying question from Ms. Victoria Robinson, Ms. Wasserman stated that climate adaptation could be included either as a separate line item from the five Cross-Agency Focus Areas or integrated into the existing Focus Areas. Ms. Yeampierre noted that she was the first person on the NEJAC to raise the issue of climate change adaptation and community resilience, particularly in relation to waterfront communities facing traditional environmental justice concerns as well as increased risk of storm surges.

Ms. Catron asked how EPA defined environmental justice and environmental justice concerns in Plan EJ 2014; and whether, for example, the Environmental Justice Strategic Enforcement Assessment Tool (EJSEAT) would be used as part of the process. She noted that, during the July 2010 NEJAC Member Orientation, members articulated different definitions of EJ. She requested that EPA consider those various perspectives. Mr. Lee acknowledged this as a good issue for EPA to consider. He stressed that the most important message that EPA wanted to convey was that the Plan is action-oriented, and that environmental justice issues would be addressed in the context of identifying environmental justice communities and their needs.

Ms. Catron noted that the NEJAC representative from Alaska (Mr. Peter Captain, Sr., Elder Advisor to the Executive Board of Directors, Yukon River Intertribal Watershed Council) was not on the call but that a public commenter from Alaska would be participating in the meeting (Mr. Nikos Pastos, environmental sociologist, Alaska's Big Village Network). She asked for EPA to pay attention to this lack of representation and the Agency's role in consultation with tribes when finalizing Plan EJ 2014. Ms. Yeampierre added that the Council rarely heard from representatives from Hawaii and Puerto Rico. She urged the NEJAC to make an effort to learn about their issues, as well as those of other communities not represented on the NEJAC or with no resources to attend the meetings.

**Next Steps for NEJAC Plan EJ 2014 Subgroup.** Ms. Victoria Robinson noted that, in addition to the NEJAC subgroup on Plan EJ 2014, there was also a NEJAC subgroup on permitting. She stated that, given the overlapping timeframes of requested recommendations from the two subgroups, NEJAC members should consider serving in either one or the other. She explained that, with the assistance of EPA contractors, the subgroups would help frame the discussion of each topic area for the Council. She added that the subgroups should be representative of the various stakeholder perspectives on the NEJAC. She confirmed with Ms. Wasserman that Plan EJ 2014 subgroup members should expect weekly 1- to 1.5-hour conference calls for about four weeks. Ms. Robinson added that the subgroups should have a maximum of 12 members, with 5 to 7 members being a more ideal number. She committed to e-mailing those who had expressed interest in serving on the Plan EJ 2014 subgroup and finalizing the list soon after the meeting.

### **3.0 EPA Charge on Incorporating Environmental Justice into Permitting**

Ms. Yeampierre introduced Mr. Ridgway who facilitated the discussion related to EPA's charge to the NEJAC on incorporating environmental justice into permitting. She noted that Mr. Ridgway would be chairing the Council's subgroup related to this topic.

Mr. Ridgway provided an outline of the discussion. He then introduced Mr. Lee and Ms. Suzi Ruhl, Senior Attorney Policy Advisor, OEJ, who presented an overview on EPA's charge to the NEJAC and the types of EPA-issued permits, respectively.

**Overview of Permitting Charge.** Mr. Lee presented a general overview of EPA's charge to the NEJAC for recommendations on how the Agency could incorporate environmental justice into its permitting process. He noted that the charge was a first step to get EPA started on a long-term effort. He acknowledged permitting as a "daunting [and] enormously complex" issue in terms of the types of permits, legal policies, technical questions, and various stakeholders involved. He noted that the stakeholders included EPA, other federal agencies, states, tribal and local governments, and others.

Mr. Lee stated the three discussion questions for the NEJAC:

1. What types of EPA-issued permits are of the greatest concern and interest to communities with environmental justice challenges and environmental justice stakeholders?
2. What types of EPA-issued permits are of the greatest importance in protecting the health and welfare of minority, low-income, and tribal communities?
3. What types of EPA-issued permits seem best able -- based on the nature of the activity being permitted, how its impacts are distributed, how permits can be used to manage those impacts, and other considerations -- to incorporate environmental justice concerns into permit decision-making in the near term?

**Overview of Types of EPA-Issued Permits.** Ms. Ruhl began by pointing out that the information included in her presentation was prepared in response to the NEJAC's request for background information on EPA's permitting process. She acknowledged the complexity of the field and said that she would try to convey the information simply.

Ms. Ruhl concluded by stating that all questions from the NEJAC would help EPA identify which permits to focus on, as well as additional information needs.

Following Mr. Lee's and Ms. Ruhl's remarks, NEJAC members asked clarifying questions that are summarized below:

In response to a question from Ms. Miller-Travis, Mr. Ridgway confirmed that the subgroup planned to review previous NEJAC recommendations on permitting. He later confirmed that, in addition to other pertinent information, the subgroup would review the NEJAC report, *Environmental Justice in the Permitting Process* (EPA/300-R-00-004), issued on July 20, 2000, which Ms. Miller-Travis, Ms. Briggum, Ms. Eileen Gauna, Professor, University of New Mexico School of Law, and others had developed. (The report is available online at <http://www.epa.gov/compliance/ej/resources/publications/nejac/permit-recom-report-0700.pdf>.)

**Clarifying Questions on EPA's Charge.** Ms. Briggum asked for clarification of the phrase, "EPA-issued permits," and wondered whether it referred to only individual facility permits that EPA directly administers through its regional offices; or the permitting programs where EPA sets permitting criteria that may be run by the states. Mr. Lee deferred to Ms. Ruhl's presentation, adding that there was not a "straight answer."

In response to Ms. Pestana's request for further clarification, Ms. Ruhl noted that the charge posed two different questions: Question 1 applied only to permits issued by EPA, not to those issued by programs

delegated to states or tribal governments; and Question 2 pertained to the broader universe of permits. Mr. Tony Guadagno, Attorney, EPA Office of General Counsel, noted the exception of air permits for prevention of significant deterioration, which he said were EPA permits that were issued by states governing the local areas.

In response to Ms. Pestana's question about whether the charge focused on permitting activities that would increase pollution, Ms. Ruhl clarified that the focus should be on permitting activities that would achieve a "net reduction in exposure to pollution." When Ms. Pestana asked whether that would include removal, remediation, and outreach activities related to polychlorinated biphenyls (PCBs) under the Toxic Substances Control Act (TSCA), Mr. Guadagno clarified that the focus should be on permit approval activities.

Mr. Ridgway referred to Question 2 of the charge, which asks, "What types of permits are best suited for exploring and addressing the complex issue of cumulative impacts..." He asked EPA to clarify the phrase "best suited." Mr. Lee responded that the subgroup should focus on areas where the Agency could make the most progress.

Ms. Pestana referred to EPA's discussion question for the NEJAC, which asks, "What types of EPA-issued permits are of the greatest concern and interest to communities with environmental justice challenges and environmental justice stakeholders?" She commented that all permits would be "of the greatest concern," depending on the community of interest. In terms of EPA's question, "What types of EPA-issued permits are of the greatest importance ...?" Ms. Pestana asserted that all permits would be important since they affect the health, welfare, and quality of life of the community. She asked whether the Council should focus on the statutes that Ms. Ruhl described.

**Clarifying Questions on EPA Permits.** In response to Ms. Pestana's question about whether the Underground Injection Control permits under the Safe Drinking Water Act applied to hydraulic fracturing, Ms. Ruhl confirmed that this was the case, to the extent that disposal of hydraulic fracturing wastes and fluids were occurring through a well.

Ms. Pestana reported that all environmental permits in Connecticut were issued by the state. She added that EPA directly issued roughly three permits in Massachusetts and New Hampshire. She requested more information on EPA's public notification processes related to permitting. Ms. Ruhl committed to summarizing and providing the Agency's general approach to encouraging public participation in the permitting process. Ms. Pestana later added that Connecticut had learned over the years to include the public participation process in a checklist for permit writers and engineers.

Ms. Wynecta Fisher, Work Assignment Manager, Collaborative Solutions Group, E2 Inc., asked how EPA dealt with proprietary ingredients in pesticides and insecticides. Ms. Ruhl acknowledged the question and said that she needed to defer it to the appropriate office. Mr. Guadagno mentioned the issue of confidential business information requirements.

As a follow up to Ms. Fisher's question, Ms. Briggum noted the challenge and concern about the application of pesticides – and associated spray drift, timing of notices, and worker safety – which, she said, does not fall directly under EPA's jurisdiction.

Mr. Marsh referred to his past experience as a state regulator and noted that many permit-related issues were less about the permits themselves but about the facilities that they regulated. He added that permits might not be the motivating factor behind community concerns about facilities. He challenged the NEJAC to

consider which types of permits EPA should pay closest attention to, with respect to environmental justice concerns; and how EPA (or delegated state and tribal permitting authorities) should deal with environmental justice issues that come up in relation to permits. Mr. Lee clarified that these issues were embedded in the charge and said that Mr. Marsh's questions are helping to provide direction to the Agency. Ms. Ruhl added that EPA was interested in the Council applying two "lenses" when making its recommendations to EPA – one from the perspective of the permits themselves, and the other from the perspective of the overall permitting process.

**Existing Information Resources.** Ms. Yeampierre requested that EPA provide a summary of past Agency efforts to incorporate environmental justice into permitting, including accomplishments, deficits, and data gaps, to help the subgroup focus its discussions. She noted that the current system was missing a component on cumulative impacts.

Mr. Targ offered to help identify resource documents in academic literature and by EPA and other organizations. He added that EPA had an online course that addresses in detail how environmental justice could be incorporated into permitting, with a focus on RCRA. He said that EPA had also made available its analyses of public participation opportunities in the permitting process. He encouraged the subgroup to review those sources instead of starting from scratch.

Mr. Guadagno referred the NEJAC to background information on EPA's Website, including maps that show where states have delegated authority to run certain programs and where EPA administers programs directly.

**Cumulative Impacts.** Ms. Pestana asked where EPA could consider cumulative impacts in the permitting process, noting that discussions about cumulative impacts had been ongoing for at least 20 years. Mr. Lee committed to following up on this question. As resources that may be useful to address Ms. Pestana's question, Ms. Briggum mentioned reports on cumulative risk by the NEJAC and EPA; and EPA's summary slides on cumulative risk that were presented to the NEJAC during a previous in-person meeting. Ms. Hall clarified that Ms. Briggum was referring to the NEJAC report, *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts*, issued in December 2004. (The report is available online at <http://www.epa.gov/compliance/ej/resources/publications/nejac/nejac-cum-risk-rpt-122104.pdf>.)

Ms. Ruhl noted that the National Environmental Policy Act, while not a permitting statute, contained requirements to consider cumulative impacts.

**Suggestions for NEJAC Permitting Subgroup.** Ms. Ruhl suggested that the subgroup consider asking EPA for the number of facilities being regulated under a particular type of permit, the volume of releases of certain toxic chemicals, and the status of compliance (for example attainment or non-attainment) for a given environmental medium. She commented that EPA could greatly benefit from that kind of input on how to prioritize permitting-related issues. Ms. Yeampierre added that these questions should be applied to environmental justice communities.

Ms. Briggum advised the subgroup to consider the concerns that have routinely been raised by members of the public and "put those into the buckets of the permits." She commented that this approach could be useful to provide EPA with a sense of the importance of EPA permits relative to other areas such as technical assistance, grant programs and the like.

Mr. Targ urged the subgroup to consider “the representational nature of the permit” so that the group’s findings can be applied to other permits and regions of the country. Specifically, he advised the subgroup to consider environmental justice concerns under the existing regulatory framework and the frequency with which EPA issues permits across a broad geographic area, so that, for example, the implementation of the National Pollutant Discharge Elimination System (NPDES) permit in Indian country could be compared to the permit’s implementation in Alaska and New Hampshire. He also mentioned the New Source Review (NSR) permit as an example where EPA retained a great deal of permitting authority in states like California. He noted that these examples have already been subjected to analyses for opportunities to consider environmental justice issues. Those analyses, he said, are publicly available.

**Next Steps for NEJAC Permitting Subgroup.** In response to concerns expressed by Council members about EPA’s October 1<sup>st</sup> deadline for NEJAC recommendations, Ms. Victoria Robinson clarified that EPA would like preliminary responses by the NEJAC’s November 2010 meeting. She added that further discussions among the subgroup and Council were expected to continue after that.

Mr. Ridgway restated Ms. Victoria Robinson’s earlier description of the NEJAC subgroup on Plan EJ 2014, as it applied to the subgroup on permitting (for example, maximum of 12 members, ideally 5 to 6 members; weekly meetings). He asked that Council members interested in serving on the permitting subgroup contact Ms. Robinson.

Ms. Ruhl expressed her appreciation for the NEJAC’s valuable feedback thus far.

#### **4.0 Public Comment Period**

The NEJAC held a public comment period to hear from concerned citizens and members of affected communities. The public comment period convened at 3:20 p.m. and continued until almost 4:00 p.m. Spoken comments were heard from four individuals from around the country who also submitted written comments. Three additional written comments were received for inclusion in the public record.

Sections 4.1 through 4.4 summarize the spoken comments presented. Section 4.5 includes a list of individuals who submitted written comments but did not speak during the public comment period. All written comments are included in Appendix C.

#### **4.1 Ms. Lisa Arkin, Oregon Toxics Alliance, Eugene, OR**

Ms. Arkin, Executive Director, Oregon Toxics Alliance, expressed her support for two issues that had been mentioned earlier during the teleconference meeting, (1) more support for environmental justice community-based grants; and (2) greater attention on cumulative impacts.

Ms. Arkin referred to her written comments on conflict resolution, which she had submitted prior to the meeting (see Appendix C, Section C.4) and commended EPA for its training on this topic. She shared her experience in trying to implement conflict resolution techniques suggested in EPA’s training, and noted specifically that it was challenging to “get stakeholders to the table.” She stated, “the polluter has the ability to simply refuse to have a discussion, which shuts whole thing down.” She urged EPA for “more teeth to compel the polluter to come to the discussion table.”

Ms. Arkin also raised the issue of communities in rural and isolated areas that face pollution burdens but do not fall under the traditional definition of environmental justice. She added that residents in such

communities may have low income but are not minority populations. She noted that these communities lack resources and are targets for polluters that are seeking sites without much grassroots activity.

Highlights of the discussion that followed Ms. Arkin's comments are presented below:

- Ms. Yeampierre clarified that environmental justice communities do not only include communities of color or tribal communities; they also include low-income communities.
- Mr. Marsh expressed his intent to follow up with Ms. Arkin to discuss ways that EPA could improve its approach. He noted that EPA has historically been successful in bringing stakeholders to the table to address community concerns related to environmental pollution. As an example, he described the Agency's efforts in convening meetings between polluters and the West Oakland Environmental Indicators Project, a community-based organization in northern California, which resulted in a joint resolution. Mr. Marsh also acknowledged, however, that not all such cases result in successes. He stated that SEPs were another means of getting polluters to come to the table or at least extend resources for community projects.
- Ms. Catron added to Ms. Arkin's comments by urging EPA to introduce conflict resolution and collaborative problem solving to Indian Country. She stated that she had also attended the EPA training that Ms. Arkin referred to, and reported that the training had helped her plan and conduct two other trainings in Navajo Nation and Wind River. She noted that conflict resolution training was helpful in starting dialogues between community stakeholders and tribal agencies. She commended Mr. Danny Gogal, EPA Office of Environmental Justice, and his training team for their efforts.

#### **4.2 Mr. Daniel Parshley, Glynn Environmental Coalition, Brunswick, GA**

Mr. Parshley, a concerned citizen from the Glynn Environmental Coalition, referred to Page 2 of Plan EJ 2014, which identifies EPA's three environmental justice-related goals:

- Protect the environment and health in overburdened communities.
- Empower communities to take action to improve their health and environment.
- Establish partnerships with local, state, tribal and federal governments and organizations to achieve healthy and sustainable communities.

He continued by reading, "EPA will work to achieve these goals by using a combination of initiatives and efforts and will focus on and seek to be responsive to community concerns." He drew attention to the phrase, "response to community concerns," and stated that his comments would focus on the failure of the EPA regional office and headquarters to respond to community concerns.

Mr. Parshley described a Superfund site in his community that is located next to an elementary school comprised of low-income and minority students. He reported that, after 10 years of community advocacy, the Office of Inspector General concurred with the community that the analytical test method used at the site by EPA was inappropriate and ordered the Agency to develop a new method. He stated that after the EPA regional office refused to comply with the order, the community submitted their request to Administrator Lisa Jackson, only to be returned to the regional office. Mr. Parshley reported that the community sent another letter to Administrator Jackson on May 25, 2010, noting that the environmental justice concerns were rooted at the regional level. He noted that, to date, EPA headquarters had not yet responded. He asserted that regardless of any changes to the permitting process, if EPA headquarters does not respond to community concerns, "the environmental justice program is broken."

Mr. Parshley noted that the EPA Website identifies the NEJAC as the means for members of the public to submit comments to the Agency. He requested that the Council evaluate the Agency's environmental justice program by monitoring complaints from the community, and tracking and evaluating the Agency's response. He also urged EPA to establish an Office of Environmental Justice that provides a mailing address, e-mail, and phone number on the EPA Website. He noted that the Web address for OEJ was a "dead link" that leads to an error page. He added that a search for "Office of Environmental Justice" on the EPA Website generates no results. Finally, he requested that EPA provide a current (2010) list of – and biographies for – the NEJAC members on the Website. He noted that only information from 2009 was available on the Website.

Mr. Parshley also submitted written comments, which are presented in Appendix C, Section C.5.

Following Mr. Parshley's comments, Ms. Victoria Robinson confirmed that, for several years, OEJ has had a Website and a hotline, which have been used by the public to submit comments. She stated that OEJ would check its Website to ensure that all the links were working properly and the current listing of NEJAC members was posted.

#### **4.3 Mr. Nikos Pastos, Alaska's Big Village Network, Anchorage, AK**

Mr. Pastos introduced himself as an environmental sociologist working with Alaska's Big Village Network. He stated that the organization worked with tribal elders and had the mission of creating "communities of inclusion between indigenous and non-indigenous peoples to heal the mental, social, [and] physical environment."

Mr. Pastos – an American Indian from Montana from the Confederated Salish and Kootenai Tribe, now working in Alaska – noted that technological and communication gaps, and language barriers have resulted in the lack of involvement from the most disproportionately-impacted tribal communities. Continuing his comments, Mr. Pastos read the written comments that he had submitted jointly with Mr. Carl Wassilie prior to the call (see Appendix C, Section C.6).

After Mr. Pastos presented his statement, Ms. Victoria Robinson committed to resending all the written comments to the NEJAC members.

Ms. Catron encouraged Mr. Pastos to contact NEJAC member Mr. Captain, Sr., to ensure that the perspective of his community is understood and represented on the Council.

#### **4.4 Ms. Alice Wright-Bailey, Pennsylvania Department of Environmental Protection, Norristown, PA**

Ms. Wright-Bailey commented on a perceived lack of congruency between permit regulations and municipal land use planning. She asked whether EPA, through the states, can integrate and enforce environmental justice components of regulations that municipalities must comply with, when passing land use and zoning laws. She noted that environmental justice communities without local political connections often have little (if any) power to prevent industries from moving in because those decisions are often based on local politics. She added that state agencies that review permit applications are often "held hostage" because they can only base their decisions on the specific permit regulations, not on cumulative impacts.

Ms. Wright-Bailey also submitted written comments, which are presented in Appendix C, Section C.7.

Highlights of the follow-up discussion among the NEJAC are presented below:

Ms. Fisher expressed hope that the NEJAC would engage in further discussion on this issue, noting that there was a Council member (Ms. Patricia Salkin, Professor, Albany Law School) with extensive land-use planning experience. She recognized that environmental justice communities were often put in a “tight spot” when state-led permits are trumped by local zoning ordinances. She encouraged Ms. Wright-Bailey to contact a representative on her local zoning commission and request to be notified of local permit requests. She acknowledged that communities are often not aware of projects until after ground-breaking activities.

Ms. Victoria Robinson referred to Ms. Wright-Bailey’s written statement and noted the discussions of the NEJAC’s Goods Movement Work Group in relation to EPA’s role in providing guidance and “best practices” in local land-use planning. She stated that EPA would further discuss the issues raised in Ms. Wright-Bailey’s written comments.

Ms. Yeampierre suggested that Ms. Wright-Bailey connect with local environmental justice organizations in her area, recognizing that “municipalities respond when people organize.”

Ms. Miller-Travis commented that the “local land-use and zoning process is ‘all powerful’ when it comes to siting facilities,” noting that legal challenges are difficult unless emission levels are exceeded by a permit applicant. She recognized this as a challenge that the Council and EPA needed to discuss further.

Mr. Marsh echoed the need for NEJAC to further discuss EPA’s role in land-use and localized impacts from facilities that may meet zoning requirements but pose problems in the community. He mentioned that New York had adopted environmental quality review statutes that give state permitting agencies some authority to address cumulative impacts, including those associated with environmental justice concerns.

Ms. Ruhl tied Ms. Wright-Bailey’s comment to EPA’s charge to the NEJAC on permitting. She encouraged the Council to keep in mind that, while decisions related to siting facilities are made by local governments, several statutes do contain provisions that influence siting during the permitting process. Ms. Ruhl cited RCRA as an example of a statute with “locational standards.” She also mentioned the “omnibus clause” in RCRA that calls for additional measures to protect human health and the environment.

Ms. Yeampierre wrapped up the public comment period by thanking the members of the community who spoke. She noted that their input would help guide the Council in its discussions and recommendations to EPA.

#### **4.5 Written Comments**

The following individuals submitted written statements but did not speak during the meeting:

- Ms. Sally Kniffen, Saginaw Chippewa Indian Tribe of Michigan, Mt. Pleasant, MI
- Mr. David Ludder, Law Office of David A. Ludder, Tallahassee, FL
- Ms. Rosemary Ahtuanguaruak, Inupiat Community of the Arctic Slope, Barrow, AK

Appendix C presents all written comments submitted for the public record for this meeting.

#### **5.0 Closing Statements**

Mr. Lee thanked everyone for their participation and expressed appreciation for the Council members' time and effort to address "daunting" tasks. He commented that whatever input they could provide the Agency would be valuable, adding that, "we're all learning together."

Addressing the Council members, Ms. Yeampierre commented, "the window is open right now to make some transformative recommendations for our community." She acknowledged Mr. Lee, Ms. Victoria Robinson, and Mr. Ridgway for their help in facilitating the teleconference, then adjourned the meeting.

**Appendix A**  
**NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL (NEJAC)**

**LIST OF MEMBERS**

**DESIGNATED FEDERAL OFFICER**

**Victoria Robinson**  
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U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (MC-2201A)  
Washington, D.C. 20460  
Phone: (202) 564-6349  
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E-mail: robinson.victoria@epa.gov

**CHAIR**

**Elizabeth Yeampierre**  
Executive Director  
UPROSE, Inc.  
Brooklyn, New York

**VICE CHAIR**

**John Ridgway**  
Manager, Information Management and  
Communications Section  
Hazardous Waste and Toxics Reduction  
Program  
Washington State Department of Ecology  
Olympia, Washington

**OTHER MEMBERS**

**ACADEMIA (3)**

**M. Kathryn Brown**  
Research Assistant Professor  
Department of Environmental Health  
University of Cincinnati College of Medicine  
Cincinnati, Ohio

**Paul Mohai**  
Professor  
School of Natural Resources and Environment  
University of Michigan  
Ann Arbor, Michigan

**Patricia E. Salkin**  
Associate Dean and Director, Government Law Center  
Professor, Albany Law School  
Albany, New York

**BUSINESS/INDUSTRY (5)**

**Chuck D. Barlow**  
Assistant General Counsel, Environmental  
Entergy Corporation  
Jackson, Mississippi

**Sue Briggum**  
Vice President, Federal Public Affairs  
Waste Management, Inc.  
Washington, D.C.

**Wynecta Fisher**  
Work Assignment Manager, Collaborative Solutions Group  
E2 Inc.  
Metairie, Louisiana

**Stephanie Hall**  
Senior Counsel, Environmental Safety and Regulatory Affairs  
Valero Energy Corporation  
San Antonio, Texas

**Jodena Henneke**  
Program Manager, Commercial, State, and Local Division  
The Shaw Environmental & Infrastructure Group  
Austin, Texas

**COMMUNITY-BASED ORGANIZATIONS (6)**

**Teri E. Blanton**  
Fellow  
Kentuckians for the Commonwealth  
Berea, Kentucky

**Hilton Kelley**  
Director  
Community In-power and Development Association  
Port Arthur, Texas

**Margaret J. May**  
Executive Director  
Ivanhoe Neighborhood Council  
Kansas City, Missouri

**Fr. Vien T. Nguyen**  
Pastor  
Mary Queen of Viet Nam Community Development Corporation  
New Orleans, Louisiana

**Kimberly Wasserman**  
Coordinator  
Little Village Environmental Justice Organization  
Chicago, Illinois

**Elizabeth Yeampierre** [see Chair above]

**NON-GOVERNMENTAL/ENVIRONMENTAL GROUPS (6)**

**Savonala 'Savi' Horne**  
Executive Director  
Land Loss Prevention Project  
Durham, North Carolina

**J. Langdon Marsh**  
Fellow, National Policy Consensus Center  
Portland State University  
Portland, Oregon

**Vernice Miller-Travis**  
Vice Chair  
Maryland State Commission on Environmental Justice and  
Sustainable Communities  
Bowie, Maryland

**Shankar Prasad**

## Appendix A

Executive Fellow  
Coalition for Clean Air  
Sacramento, California

***Nia Robinson***

Environmental Justice and Climate Change Initiative  
Bennett College  
Greensboro, North Carolina

***Nicholas Targ***

Co-Chair, Environmental Justice Caucus  
American Bar Association  
San Francisco, California

**STATE and LOCAL GOVERNMENTS (2)**

***Edith Pestana***

Administrator, Environmental Justice Program  
Officer of the Commissioner  
Connecticut Department of Environmental Protection  
Hartford, Connecticut

***John Ridgway*** [see Vice Chair above]

**TRIBAL GOVERNMENTS**

**and INDIGENOUS ORGANIZATIONS (3)**

***Don Aragon***

Executive Director  
Wind River Environmental Quality Commission  
Eastern Shoshone and Arapaho Tribes  
Fort Washakie, Wyoming

***Peter M. Captain, Sr.***

Elder Advisor to the Executive Board of Directors  
Yukon River Intertribal Watershed Council  
Fairbanks, Alaska

***Jolene M. Catron***

Executive Director  
Wind River Alliance  
Fort Washakie, Wyoming

**Appendix B**  
**NEJAC Public Teleconference Meeting**  
**Thursday, August 26, 2010**

**List of Attendees**

Aldrich, Linda  
PDQ.net  
Houston, TX

Aronberg, Sandra  
M.D., M.P.H  
UCLA  
Beverly Hills, CA

Baecker, Renee  
South Carolina Dept. of Health &  
Environmental Control  
Columbia, SC

Barrino, Reggie  
U.S. EPA Region 4  
Atlanta, GA

Blakley, Pamela  
U.S. EPA Region 5  
Chicago, IL

Carey, Pat  
CARE Program Co-Chair  
U.S. EPA  
Washington, DC

Clark, Molly  
Manager  
American Lung Association in Rhode  
Island  
Providence, RI

Crawford, Dorothy  
U.S. EPA Region 6  
Dallas, TX

Damico, Genevieve  
U.S. EPA Region 5  
Chicago, IL

Drais, Daniel G.  
Environmental Protection Specialist  
U.S. Department of Transportation  
Seattle, WA

Amick, Sarah E.  
Environmental Counsel  
Rubber Manufacturers Association  
Washington, DC

Aspatore, Amanda  
National Mining Association  
Washington, DC

Baites, Sharon  
Aleson Environmental Justice  
Community Organization

Bathersfield, Nizanna  
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Bohac, Bridget C.  
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Texas Commission on Environmental  
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Carraway, Candace  
Environmental Justice Coordinator  
U.S. EPA  
Research Triangle Park, NC

Cooper, Ruby A.  
Environmental Specialist  
U.S. EPA  
Sault Ste. Marie, MI

Cruz, Sobeida  
Environmental Justice Coordinator;  
Director  
New York Power Authority  
White Plains, NY

De Kervor, Dylan Nicole  
Presidential Management Fellow & Civil  
Rights Analyst  
U.S. Department of Health and Human  
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Washington, DC

Duvall, Misti  
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National Association of Clean Air  
Agencies  
Washington, DC

Arkin, Lisa  
Executive Director  
Oregon Toxics Alliance  
Eugene, OR

Augurson, Shirley  
EJ Team  
U.S. EPA Region 6  
Dallas, TX

Banister, Beverly H.  
Acting Deputy Regional Administrator  
U.S. EPA Region 4  
Atlanta, GA

Bell, Aaron  
U.S. EPA  
Washington, DC

Brown, Jevra  
Wetland Specialist  
Oregon Department of State Lands  
Salem, OR

Chaisson, Christine F.  
The LifeLine Group  
Annandale, VA

Corazzin, Brendan  
U.S. EPA Region 7  
Kansas City, KS

Cutler, Adam H.  
Director  
Public Interest Law Center of  
Philadelphia  
Philadelphia, PA

Dickens, Shantray  
Title VI/EO Compliance Coordinator  
North Carolina Department of  
Transportation (NCDOT)  
Raleigh, NC

Economos, Jeannie  
Farmworker Association of Florida  
Apopka, FL

## Appendix B

Embil, Diane U.S. EPA Region 5 Chicago, IL	Epps-Price, Lena (Vickey) Environmental Protection Specialist U.S. EPA Research Triangle Park, NC	Falk, Linda EJ Team U.S. EPA Region 6 Dallas, TX
Ferguson, Cynthia Trial Attorney U.S. Department of Justice Washington, DC	Finke, John Nashville/Davidson County Pollution Control Division Nashville, TN	Foreman, Christopher H. University of Maryland College Park, MD
Fretwell, Jeff Maryland Department of the Environment Baltimore, MD	Frost, Brad Illinois Environmental Protection Agency Springfield, IL	Gallo, Kimberly M. Manager Entergy Corporation New Orleans, LA
Garcia-Costas, Arturo New York State Department of Environmental Conservation New York, NY	Gargas, Jeff Robinson Engineering	Gomez, Jennifer M. Legal Fellow Institute for Policy Integrity New York, NY
Gornick, Suzanne BP Carson, CA	Grimm-Crawford, Barbara U.S. EPA Washington, DC	Grow, Richard U.S. EPA Region 9 San Francisco, CA
Guadagno, Tony U.S. EPA	Guernica, Mimi U.S. EPA Washington, DC	Hammond, Lisa U.S. EPA Washington, DC
Hanley, Rachel Harris, Deville & Associates Baton Rouge, LA	Hansen, Jordan Minnesota Environmental Initiative Minneapolis, MN	Harris, Reginald Senior Toxicologist/Regional Environmental Justice Coordinator U.S. EPA Region 3 Philadelphia, PA
Harrison, Ben U.S. EPA Dallas, TX	Heller, Zoe U.S. EPA Region 9 San Francisco, CA	Hendricks, Stephanie Louisville Charter San Anselmo, CA
Heumann, Katharine Program Coordinator Alaska Department of Environmental Conversation Juneau, AK	Hischke, William City of Detroit Detroit, MI	Hopewell, John Assistant Director, Environmental Affairs American Coatings Association (ACA) Washington, DC
Hornback, John E. Executive Director Metro 4/SESARM Forest Park, GA	Jefferson, Rachel Family Health Care Kansas City, KS	Johnson, Robin Reach The Decision Makers Los Angeles, CA
Kabel, Arlene U.S. EPA Region 9 San Francisco, CA	Kelton, Steve Regulatory Analyst Government of the District of Columbia Washington, DC	King, Toshia U.S. EPA Washington, DC
Kwok, Rose U.S. EPA Headquarters Washington, DC	Lapierre, Kenneth Deputy Director U.S. EPA Region 4 Atlanta, GA	Lasky, Lara U.S. EPA Region 5 Chicago, IL
Lee, Charles U.S. EPA Washington, DC	Lee, Suzette Tay APEX Direct, Inc. Bartlett, IL	Levinson, Sarah U.S. EPA Region 1 Boston, MA

## Appendix B

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TM Deer Park Services Limited  
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McCant, Darrell  
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Monell, Marty  
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Murray, Sharon  
Lead Region Coordinator, Lead Region  
Coordinator  
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Nogi, Jill A.  
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Pastos, Nikos  
Alaska's Big Village Network  
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McGee-Collier, Melissa  
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## Appendix B

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Community Relations Liason  
Texas Commission on Environmental  
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Walker, Alice  
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North Carolina Department of  
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New York, NY

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Planner  
MN Pollution Control Agency  
St. Paul, MN

Yamashita, Kelly  
U.S. Department of Justice

**Appendix C**  
**NEJAC Public Teleconference Meeting**  
**Thursday, August 26, 2010**

**Written Public Comments**

This appendix contains written statements provided by members of the public for the public comment period during the NEJAC Public Teleconference Meeting on August 26, 2010.

*(Note to readers: Statements included in this appendix are shown verbatim, as provided by the individuals who submitted them, with no modifications or changes.)*

Sections C.1 through C.3 present written comments from individuals who did not verbally address the NEJAC during the public comment period:

- Ms. Sally Kniffen, Saginaw Chippewa Indian Tribe of Michigan, Mt. Pleasant, MI
- Mr. David Ludder, Law Office of David A. Ludder, Tallahassee, FL
- Ms. Rosemary Ahtuanguak, Inupiat Community of the Arctic Slope, Barrow, AK

Sections C.4 through C.7 present written comments from the following individuals who also spoke during the public comment period:

- Ms. Lisa Arkin, Oregon Toxics Alliance, Eugene, OR
- Mr. Daniel Parshley, Glynn Environmental Coalition, Brunswick, GA
- Mr. Nikos Pastos, Alaska's Big Village Network, Anchorage, AK
- Ms. Alice Wright-Bailey, Pennsylvania Department of Environmental Protection, Norristown, PA

**C.1 Ms. Sally Kniffen, Saginaw Chippewa Indian Tribe of Michigan, Mt. Pleasant, MI**

Air Permits: "EPA is taking direct final action to convert a conditional approval of specified provisions of the Michigan State Implementation plan (SIP) to a full approval. The revisions consist of requirements of the prevention of significant deterioration (PSD) construction permit program under the Federal Clean Air Act (CAA). This program affects major stationary sources in Michigan that are subject to or potentially subject to the PSD construction permit program. EPA is converting its prior conditional approval to full approval because the Michigan Department of Environmental Quality (MDEQ) submitted corrections to the rules that satisfy the conditions listed in EPA's conditional approval. This rule is final. Its effective date is May 24, 2010"

Because the EPA has delegated the authority to the State of Michigan there is no longer an avenue for the Tribes to be protected by the inherent trust responsibility held by EPA and the Federal Government. Also, because the authority was given without proper government to government consultation the tribes are less protected because they have lost the ability to address their permit concerns through the Environmental Appeals Board (EAB) process within the EPA structure.

At present there is no Environmental Justice approved plan for the EPA or the State of Michigan this coupled with a truncated appeals process leaves the tribes vulnerable to permits being issued to major contributors of green house gases and mercury, i.e mining and coal fired power plants.

A possible solution involves the combination of enforcement, consultation and restructuring of the appeals processes. The tribe would like to see EPA regulate those emissions the U.S. Supreme Court has ruled is their responsibility, i.e. carbon dioxide and mercury. The full exercise of the Tribe's rights will be compromised for generations if regulation isn't a keystone of the environmental justice program.

## Appendix C

Consultation is a process the tribe is working to improve with EPA and the State of Michigan. It is an on going process and many efforts are being utilized to ensure success.

Restructuring an appeals process is necessary to ensure environmental justice concerns have proper checks and balances within the system (liken to a Supreme Court to oversee the Legislative and Executive branches of government).

The above comments are respectfully, submitted on behalf of the Saginaw Chippewa Indian Tribe of Michigan,

Sally J. Kniffen

### **C.2 Mr. David Ludder, Law Office of David A. Ludder, Tallahassee, FL**

I will not be able to participate in the August 26 NEJAC meeting because of a previous commitment. I am providing these written comments for your consideration.

I have long been concerned that state environmental agencies are ignoring Title VI of the Civil Rights Act and 40 CFR 7.35(b) and (c) and that EPA is doing nothing to change the status quo. These provisions prohibit recipients of EPA financial assistance from administering programs (e.g., permit programs) that have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex. Currently, applicants for financial assistance merely have to certify that they comply with Title VI at the time they apply for financial assistance, but they do not have to develop or implement any programs (e.g., demographic and disparate impact analyses of individual permits) to ensure compliance with Title VI after receipt of financial assistance. Requiring states to develop and implement programs to ensure compliance with Title VI would be a giant leap forward and afford at least the possibility of equal protection for all.

I have attached a suggested rule amendment that I believe would require states to develop and implement permitting programs (including demographic and disparate impact analyses of individual permits) that ensure compliance with Title VI.

If I can be of any assistance, please do not hesitate to contact me.

### **C.3 Ms. Rosemary Ahtuanguaruak, Inupiat Community of the Arctic Slope, Barrow, AK**

The Environmental Justice program has opportunity to work with the issues that are being left to the wayside as resource development grows in our region. We have to communicate to the various entities, industry, agencies our concerns that are compounding with the continued business as usual process. We have continued to participate in the process of meetings around us. Yet the concerns we are presenting continue to build and have not been addressed. We went through various EIS processes in the region over the last years. We have commented, participated, travelled, met and repeatedly communicated our importance of traditional and cultural uses and the health of our resources and people through protecting them. We share these concerns to the process for we have seen changes to others with the fouling of the waters through resource development at these costs beyond imagination. We want to prevent the devastations from these same practices as the process is being pressed forward by others and taking to others.

The process to communicate with the descriptive variables build divisions for the issue yet the boundaries created build increased risks for those within them. Many processes have taken the resources, emitted substances, changed the natural environment, for the cost of the nations energy programs. Community infrastructure grew through this process yet the value cost variable is to others again at our cost and lags needs improvements.

## Appendix C

The process continues to build as industrial streamlining breaks the process to keep our issues at the table building profit discussions held elsewhere. When accountability is at the hands of those accountable it is easy writing but doing in the Arctic is different. Our concerns to the response to an adverse event is forever foremost in our minds as we work with others who come here with plans for changing our area that has had much of our natural state protected with our continued inhabitants beyond time immemorial. Yet devastation again and blind are the decision makers approving the process here. We know the harsh extremes we have the difficulty to travel and work here. We take the time to survive with the environment we have. Yet industry timelines march relentlessly building miles of oil and gas interaction processes.

Our traditional and cultural practice of harvesting from the marine environment is who we are with whaling, hunting, gathering from the bounty our garden the Arctic Ocean including the Beaufort and Chukchi Seas. The hopes to continue the traditions and culture is why we continue to communicate, educate, interact and share our ways with others as our elders have shared with us.

We had promises that they would work with us and address our concerns. Yet objectives are only to perform the meeting, not really work with addressing our issues. We bring our concerns to the meeting only to have them pushed aside as not relevant for the objective of making more oil and gas at our costs to traditional and cultural uses of the area. Mitigating measures have been words on paper with no enforcement to the process such as Alpine limiting flights during caribou migration and increased hunting to the village of Nuiqsut, or maintaining cause ways for fish passage. When we asked about concerns to hunting, affecting our harvest one industry representative said, "Oh, you're hungry we can offer you hot dogs."

### **C.4 Ms. Lisa Arkin, Oregon Toxics Alliance, Eugene, OR**

Brief Description of the Concern: EJ communities need to have a process by which they can bring the polluter to the table for discussion and conflict resolution. Currently, the EO doesn't have the "teeth" to compel the polluter to come to the discussion table with the impacted community. When a community files an EJ complaint or EJ petition, the polluter can quash it by simply refusing to participate in discussion (even non-binding arbitration) about disproportionate impacts to local communities. This forces the community to have to "take it to the courts" – mostly likely this will not be economical feasible for EJ communities and NGO's who are helping them.

What You Want the NEJAC to do: Create a process, or requirement by which the polluter must come to the discussion table if the EPA or state agency finds that a complaint filed by the EJ community has merit, or is likely to result in a better environmental outcome.

### **C.5 Mr. Daniel Parshley, Glynn Environmental Coalition, Brunswick, GA**

Brief Description of the Concern: Appeals to EPA HQ concerning EJ issues or violations at the Region level are routinely sent back to the Regional level for a response. EPA HQ has not responded to EJ concerns in this recent case and in the past, also.

What You Want the NEJAC to do: There are systemic problems within the EPA at the Regional and HQ levels that routinely deny communities EJ. Systemic problems need systemic changes, which EPA HQ must implement. NEJAC needs to demand that EPA HQ respond to EJ complaints at a minimum, and monitor EPA HQ responses to evaluate the effectiveness in addressing EJ concerns. Also, NEJAC should evaluate Regional and EPA HQ responses to EJ concerns on an annual basis and provide a score on overall performance

## Appendix C

### **C.6 Mr. Nikos Pastos, Alaska's Big Village Network, Anchorage, AK**

*(Submitted jointly with Mr. Carl Wassilie.)*

Environmental Justice principles, as outlined in the U.S. Environmental Protection Agency's strategic goals, must be formally included in all permitting processes in Alaska. The United States of America has a federal trust obligation to Tribal governments and their peoples. The indigenous peoples of Alaska are citizens with a distinct historical and political relationship with the United States of America. EPA, NEJAC have a mission that can equitably protect and enhance environmental justice concerns in tribal communities that have suffered so many tangible adverse impacts from fast track, hasty environmental permitting. A good place to start would be observing proper notification protocols and consultation including language and cultural accommodation based on EPA's environmental justice policy, and the Executive Order on environmental justice.

In order for any permit application to move forward in which the ecosystem, environment and (subsistence) living cultural resources of Tribal Governments and indigenous peoples could be impacted; there must be a formal review in a democratic process (tribal governments). It is a matter of the utmost significance when permitted activities have potential impacts to local food security and customary and traditional cultural lifeways of hunting, gathering, fishing, harvesting, commerce and navigation.

Given the historic cultural degradation of America's First Peoples from permitted industrial development; a hard look from the articulated goals of EPA Environmental Justice policies must be enacted in real and tangible practices to have any credibility with indigenous peoples in modernity. Furthermore resources must be allocated to Tribal Governments for building capacity to address the technical, legal and general communications to Tribal populations regarding all environmental permitting processes.

The transfer of permitting primacy by the United States of the National Pollution Discharge Elimination System (NPDES) to the proposed State of Alaska Pollution Discharge Elimination System (APDES) is legally questionable due to a Memorandum of Understanding signed by Region 10 EPA and the State of Alaska Department of Conservation. The State of Alaska has not substantively demonstrated the capacity to actually exercise oversight and compliance of simple reporting requirements of the Clean Water Drinking Act in villages of Alaska. How could tribal peoples and all other citizens have confidence or assurance that minimal federal standards for waste water discharges from mineral extraction, (oil, gas, mining), timber industries, seafood processing industries, municipalities are being properly monitored by an as yet to be created program of the State of Alaska Department of Environmental Conservation?

No development of consultation processes has yet been developed to adequately address the adverse, disproportionate, cumulative impacts of thousands of permitted and pending industrial developments in Alaska that impact indigenous peoples human rights. The federal trust obligation to Tribal Governments consent and Trust obligation of permitted activities on all resources that define Tribal citizens and indigenous peoples cultures must be addressed.

### **C.7 Ms. Alice Wright-Bailey, Pennsylvania Department of Environmental Protection, Norristown, PA**

Incorporating Environmental Justice into the permitting process.

One of the issues in regards to land use; the local municipality makes that determination and most times it is based on old laws and former manufacturing community that are now EJ communities. The proposed new permit application many times is new, unproven technology and unknown pollutants forced on a community, that is not being offered jobs or incentives to improve the quality of life of that community.

## **Appendix C**

Should the State or Federal government pass land use/zoning legislations for EJ communities that have an overabundance or cumulative impacts of pollutants/industries? Or is there a mechanism that can be incorporated in the permitting process to protect vulnerable, unhealthy community from local zoning and land use. The local municipality determines land use and zoning, State government regulates. Should the Federal government take jurisdiction over these areas? Where ever an EJ community is identified and this process relates, special efforts should be taken.