

## EXECUTIVE SUMMARY

### INTRODUCTION

This executive summary provides highlights of the sixteenth meeting of the National Environmental Justice Advisory Council (NEJAC), held December 11 through 14, 2000 at the Hyatt Regency Crystal City in Arlington, Virginia. Each of the six subcommittees met for a full day on December 13, 2000. On December 11, the NEJAC hosted a public comment period that focused on the progress the Federal government has made in integrating environmental justice into its policies, programs, and activities. On December 12, the NEJAC hosted a second public comment period to receive comments about general environmental justice issues. Approximately 425 persons attended the meetings and the public comment periods.

The NEJAC is a Federal advisory committee that was established by charter on September 30, 1993 to provide independent advice, consultation, and recommendations to the Administrator of the U.S. Environmental Protection Agency (EPA) on matters related to environmental justice. Mr. Haywood Turrentine, Birmingham Urban Impact Board, serves as the chair of the Executive Council of the NEJAC. Ms. Peggy Shepard, Executive Director, West Harlem Environmental Action Inc., serves as the vice-chair of the Executive Council. Mr. Charles Lee, Associate Director for Policy and Interagency Liaison, EPA Office of Environmental Justice (OEJ), serves as the Designated Federal Official (DFO) for the Executive Council. Exhibit ES-1 lists the chair, the vice-chair, and the DFO of the Executive Council, as well as the persons who serve as chair and vice-chair of the six subcommittees of the NEJAC and the EPA staff appointed to serve as the DFOs for those subcommittees.

OEJ maintains transcripts and summary reports of the proceedings of the NEJAC meetings. Those documents are available to the public upon request. The public also has access to the executive summaries of reports of previous meetings, as well as other publications of the NEJAC, through the World Wide Web at <http://www.epa.gov/oeca/main/ej/nejac/index.html> (click on the publications icon). The summaries are available in both English- and Spanish-language versions.

Exhibit ES-1

#### NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL CHAIRS AND DESIGNATED FEDERAL OFFICIALS (DFO)

##### Executive Council:

Mr. Haywood Turrentine, **Chair**  
Ms. Peggy Shepard, **Vice-Chair**  
Mr. Charles Lee, **DFO**

##### Air and Water Subcommittee:

Ms. Annabelle Jaramillo, **Chair**  
Ms. Alice Walker, **co-DFO**  
Dr. Wil Wilson, **co-DFO**

##### Enforcement Subcommittee:

Mr. Luke Cole, **Chair**  
Ms. Savonala Horne, **Vice-Chair**  
Ms. Shirley Pate, **DFO**

##### Health and Research Subcommittee:

Dr. Marinelle Payton, **Chair**  
Ms. Rose Marie Augustine, **Vice-Chair**  
Ms. Brenda Washington, **co-DFO**  
Ms. Aretha Brockett, **co-DFO**

##### Indigenous Peoples Subcommittee:

Mr. Tom Goldtooth, **Chair**  
Ms. Jennifer Hill-Kelly, **Vice-Chair**  
Mr. Daniel Gogal, **DFO**

##### International Subcommittee:

Mr. Arnaldo Garcia, **Chair**  
Mr. Alberto Saldamando, **Vice-Chair**  
Ms. Wendy Graham, **DFO**

##### Waste and Facility Siting Subcommittee:

Ms. Vernice Miller-Travis, **Chair**  
Mr. Kent Benjamin, **DFO**

### REMARKS

Mr. Steven Herman, Assistant Administrator, EPA Office of Enforcement and Compliance Assurance (OECA), noted that the meeting marked the last meeting of the NEJAC during the Clinton administration, under which the NEJAC had been conceived. Continuing, he stated that, for all the persons who had created the NEJAC and worked with it over the preceding seven years, that effort had brought great joy and satisfaction -- in the

nature of the work and the people that that effort had brought together, in the very difficult issues that the NEJAC had taken on, and in the victories and the frustrations all involved had experienced together.

Mr. Michael McCabe, Deputy Administrator, EPA, began his presentation by expressing his appreciation to Mr. Turrentine and the members of the NEJAC for their time and commitment. He then remarked that the pending change in administrations is an opportunity to celebrate successes, solidify gains, and reaffirm commitments. While the Clinton administration may not have moved as rapidly or acted as comprehensively as some may have wished, he observed, its commitment to the cause never wavered. Staff of EPA take their responsibility very seriously, he continued.

Mr. McCabe stated that EPA was to continue to review and revise its administrative procedures related to public involvement in policymaking. Commenting on the progress made during the preceding six years, Mr. McCabe stated that interagency integration of environmental justice is becoming a reality and that the Interagency Working Group on Environmental Justice (IWG) had made substantial progress. He then stressed that, to maintain the momentum of the preceding six years, Federal agencies must continue to work in partnership. Through partnerships, he pointed out, EPA is: (1) making great strides in protecting the health of children and communities, (2) working with community-based public health partners across the country to help diagnose and treat asthma, (3) revitalizing communities and creating jobs through its Brownfields Revitalization Initiative, and (4) addressing public health and the environment in urban areas.

Mr. McCabe acknowledged that maintaining momentum under the new administration would be a challenge. He stated, however, that both he and Ms. Carol Browner, EPA Administrator, would communicate to the new president that it is essential that the agency maintain its commitment to environmental justice and to the communities that EPA serves.

Mr. Brad Campbell, Regional Administrator, EPA Region 3, expressed his gratitude to members of the NEJAC, past and present, for their contribution not only to the work of EPA, but also to his work in prior positions at the White House and the U.S. Department of Justice (DOJ). He said that, while there is a sense of "winding down" as the current administration prepares for transition, EPA is committed to "keeping the bar high" until the very last day of that administration.

Mr. Campbell then highlighted a few areas in which EPA Region 3 is moving forward, adding that he believed that the initiatives reflect the larger agenda that lies ahead. First, he said, Region 3 is continuing its efforts to better integrate EPA's mission with that of other agencies, recognizing that it is not sufficient to take the position that a particular problem confronting a community is not within the jurisdiction of EPA. Second, Mr. Campbell continued, Region 3 is continuing its efforts to improve the health data that are available to communities. Finally, Mr. Campbell stated, EPA region 3 is continuing its efforts to highlight the links between the environmental problems suffered by low-income and minority communities and the economic opportunities that the process of addressing those problems might create.

Mr. Barry E. Hill, Director, OEJ, began his presentation by welcoming all participants to the current meeting of the NEJAC. He read the statement of the issue which was to be the focus of the meeting: "What progress has the Federal government made toward integrating environmental justice into its policies, programs, and activities, consistent with existing laws and of Executive Order 12898." The meeting, he emphasized, was designed to be not only retrospective, because it provides all participants with the opportunity to look back over the preceding six to eight years, but also prospective, because it provides an opportunity to look forward and to develop strategic plans to be implemented in the future.

Mr. Hill pointed out that the policy question speaks to the basic purpose of government and the important role that government plays in the lives of all citizens and residents of the nation. Mr. Hill declared that residents of every community throughout the country, as citizens of this democracy, are entitled to clean air, clean land, and clean water and that it is the responsibility of the government to secure, preserve, and protect that fundamental right.

He then explained that the underlying question the panelists and the members of the NEJAC should consider is whether the Federal government, as a public servant, is serving the public effectively and efficiently by ensuring clean air, land, and water for everyone in the nation. Concluding his remarks, Mr. Hill noted that the IWG represents a clear effort to bring about fundamental change in how the government operates and

provides effective services and resources to the public to ensure clean air, clean land, and clean water. However, he acknowledged, the government is not perfect in the performance of its duties. Therefore, EPA and the other members of the Federal family have asked the members of the NEJAC to provide their advice and recommendations about how the government can serve the public better.

### PANELS ON FEDERAL AGENCY INTEGRATION

The NEJAC, in its continuing efforts to provide independent advice to the EPA Administrator about areas related to environmental justice, focused its 16th meeting on federal efforts to integrate environmental justice into its policies, programs, and activities in a manner consistent with the provisions of existing laws and of Executive Order 12898 on Environmental Justice. On Monday and Tuesday, December 11 and 12, 2000, the members of the NEJAC listened to a series of panels made up of various federal stakeholders. The panel discussions were designed to provide insight into issues and concerns related to integration of environmental justice concerns by Federal agencies (Section 3 of Chapter 1 of this meeting summary presents a detailed description of the presentations made by each panel). The panel presentations included:

- *Panel 1: Executive Order 12898* – Mr. Gerald Torres, University of Texas Law School, discussed the historical context in which Executive Order 12898 on Environmental Justice originated. He provided an independent analysis of areas of significant progress as well as those of significant deficiency, related to the implementation of the Executive order. Mr. Torres also offered recommendations for strategies for future integration of the principles of environmental justice into the policies, programs, and activities of Federal agencies.
- *Panel 2: Discussion of the Interagency Working Group on Environmental Justice and the Integrated Federal Interagency Environmental Justice Action Agenda* – The members of the panel provided a discussion of the formation of the IWG and an analysis of progress in integrating the principles of environmental justice throughout the Federal government. The members of the panel also stated that the Integrated Federal Interagency Environmental Justice Action Agenda (action agenda) brings a “new sense of direction, innovation, and vigor” to environmental justice throughout the Federal family. The panelists noted that the action agenda provides a “living” framework through which Federal agencies can develop and expand upon collaborative, multiparty environmental justice initiatives. The approach to environmental justice taken by the Action Agenda, they said, is to view distressed communities “in a holistic way” and to develop strategies that address the environmental, public health, economic, and social concerns of such communities in an integrated manner.
- *Panel 3: Individual Federal Agency Panels* – Representatives of 11 Federal agencies made presentations about the implementation of Executive Order 12898 on Environmental Justice by their respective agencies. Presentations were made by DOJ, the U.S. Department of Defense (DoD), the U.S. Department of Energy (DOE), the U.S. Department of Transportation (DOT), the U.S. Department of the Interior (DOI), the U.S. Department of Labor (DOL), the National Institute of Environmental Health Services (NIEHS), the U.S. Department of Health and Human Services (HHS), the Agency for Toxic Substances and Disease Registry (ATSDR), the U.S. Department of Agriculture (USDA), and the U.S. Department of Housing and Urban Development (HUD). The presentations were intended to be both retrospective and prospective. The presentation emphasized lessons that could be learned to shape recommendations for better and more effective integration of the principles of environmental justice in the policies, programs, and activities of the various Federal agencies represented. Each panelist also provided recommendations on strategies that could be pursued to incorporate environmental justice more fully into the mission, as well as for better integration in all Federal agencies.
- *Panel 4: Integrated Interagency Demonstration Projects* – The panel consisted of a variety of non-Federal partners involved in several of the 15 integrated interagency environmental demonstration projects currently underway. The panelists reported that the demonstration projects focus on various areas, such as environmental protection, economic development and community revitalization, improvement of public health, and community education and capacity-building.

- *Panel 5: Stakeholder Perspectives on Integrated Interagency Strategies* – The panel included representatives of communities; academia; industry; civic and philanthropic organizations; and state, tribal, and local governments. The panelists presented their views about the viability of the action agenda, particularly as it applies to their various constituencies. The members of the panel also offered recommendations for future development of integrated interagency strategies.

## PRESENTATIONS

The members of the Executive Council received the following presentations:

- Mr. Damu Smith, GreenPeace International, provided an update on activities related to the investigation of dioxin exposures in Mossville, Calcasieu Parish, Louisiana that had been carried out since the May 2000 meeting of the NEJAC. Mr. Smith stated that, since that meeting, a number of meetings had been held in the community among representatives of the communities; staff of OEJ, including Mr. Hill; representatives of EPA Region 6; and representatives of ATSDR. Representatives of EPA, ATSDR, the Louisiana Department of Environmental Quality (LDEQ), and the Louisiana Department of Health and Hospitals (LDHH) also had visited Mossville to meet with the community and its experts. Mr. Smith stated, “We are a long way from where we need to be, but we are certainly a long way from where we were in May.”
- Mr. Hill made a presentation on EPA’s draft national environmental justice policy guidance document titled “A Guide to Assessing and Addressing Allegations of Environmental Injustice.” He explained that the purpose of the guidance document is to provide a conceptual framework for explaining environmental justice as both a civil rights and an environmental issue and, consequently, to develop sound policy in that area.
- Mr. Jack McGraw, Deputy Regional Administrator, EPA Region 8, provided an overview of the activities of the Environmental Justice Training Collaborative (EJTC). The EJTC is a national network of EPA staff who work in partnership with stakeholders to develop environmental justice education tools, meet crucial information needs, and facilitate dialogue to advance environmental justice through training workshops.
- Mr. Anthony Guadagno, Office of General Counsel (OGC), EPA, presented a legal memorandum titled “EPA Statutory and Regulatory Authorities Under Which Environmental Justice Issues May Be Addressed in Permitting” that OGC had distributed to the NEJAC on December 1, 2000. Mr. Guadagno explained that the memorandum identifies opportunities to promote environmental justice under EPA permitting programs, specifically under programs conducted under the authority of the Clean Water Act (CWA), the Clean Air Act (CAA), Resource Conservation and Recovery Act (RCRA), the Safe Drinking Water Act (SDWA), and Title I of the Marine Protection, Research, and Sanctuaries Act (commonly referred to as the Ocean Dumping Act).
- Mr. Brandon Carter, EPA Office of Solid Waste and Emergency Response (OSWER), provided an update on the activities of the NEJAC Federal Facilities Working Group. He stated that the members of the working group had been identified and that a memorandum of understanding (MOU) had been signed to formalize the Federal partnership with the working group. Mr. Carter explained that communities and the public would have significant opportunity to participate in the activities of the working group. He informed all present that the working group was accepting requests for proposals for potential case studies to be reviewed by the working group.
- Ms. Barbara Arnwine, Executive Director, Lawyer’s Committee for Civil Rights Under Law (lawyer’s committee), provided a retrospective view of missed opportunities for advancing environmental justice through environmental litigation. Reflecting on the current state of environmental justice, Ms. Arnwine discussed the challenges the committee had addressed through litigation and the successes and failures all parties involved in the environmental justice movement had experienced in their efforts to advance the issue.
- Mr. Marty Halper, Senior Science Advisor, EPA OEJ, presented a report on the Community-Based

Health Research Model. He explained that, in response to issues discussed at the May 2000 meeting of the NEJAC, a 20-member work group had been formed to develop a draft proposal that was distributed to the Executive Council of the NEJAC in October 2000.

### **PUBLIC COMMENT PERIODS**

The NEJAC hosted public comment periods on December 11 and 12, 2000. Approximately 40 people participated in the two public comment periods. Significant concerns expressed during the public comment periods included:

- Several commenters continued to express concern about failure to enforce Title VI of the Civil Rights Act of 1964 as it pertains to the siting of facilities.
- Several commenters recommended increased involvement of citizen groups with the Federal Facilities Working Group.
- Several commenters expressed concern about the lack of action on the part of EPA to address issues related to multiple chemical sensitivity (MCS), an acquired disorder characterized by recurrent symptoms that occur in response to exposure to various chemically unrelated compounds at doses far below those determined to cause harmful effects in the general population. Commenters recommended that government agencies create a disease registry for those who suffer from MCS.
- Many commenters continued to express concern about environmental justice issues associated with Federal facilities. Commenters explained that many people of color and low-income communities suffered adverse effects from actions carried out at Federal facilities throughout the United States.
- Several commenters requested that EPA (1) fund research on the environmental damage to the island of Vieques, Puerto Rico; (2) deny the U.S. Department of the Navy (Navy) its National Pollution Discharge Elimination System permit because of harmful noise pollution, the spreading of existing toxins by inert bombs, and past violations; and (3) closely monitor the cleanup of Vieques to ensure that no hazardous material is left behind. Every effort should be made to restore the land completely so that the community of Vieques may have future access to and use of the part of the island affected by Navy operations, the commenters emphasized.

### **OTHER CONCERNS AND COMMITMENTS OF THE NEJAC**

During the meeting, members of the NEJAC:

- Requested clarification of the role of the NEJAC as an advisory committee to the EPA Administrator. Mr. Lee assured the members that the Agency considers the NEJAC an advisory committee, but stated that the definition of a federal advisory committee needs to be clarified and that this discussion should be continued.

*(Note: Subsequent to the December 2000 meeting of the NEJAC, a special meeting has been scheduled for August 2001 of the Executive Council to meet with EPA to discuss the NEJAC role and responsibilities as a federal advisory committee.)*

- Recommended that additional representatives of communities and community-based organizations be appointed as members of the NEJAC work group on Federal facilities.
- Questioned the effectiveness and strength of EPA's legal memorandum on enforcing environmental justice principles under existing laws and statutes. The members also expressed concern that EPA has not been more proactive in using existing laws to protect low-income communities and people of color from disproportionate effects of environmental contamination.
- Questioned why Federal agencies continue to fail to provide to communities opportunities for public participation related to assessing and addressing potential health effects caused by environmental

contamination. The members of the NEJAC reiterated that communities are in the best position to inform government agencies about issues related to public health that affect their communities.

### SUMMARIES OF THE SUBCOMMITTEE MEETINGS

Summarized below are the deliberations of the members of the six subcommittees of the NEJAC during the subcommittee meetings held on December 13, 2000.

#### ***Air and Water Subcommittee***

The members of the Air and Water Subcommittee heard presentations and reports from:

- Mr. David Rowson, Director of the Center for Healthy Buildings of the Office of Radiation and Indoor Air, EPA Office of Air and Radiation (OAR), who provided information about the agency's asthma initiative. He described (1) current research by EPA on the asthma epidemic and its effect on environmental justice communities, (2) challenges encountered in the effort to address asthma in those communities, and (3) EPA programs that conduct outreach and prevention activities related to asthma.
- Ms. Jeneva Craig, Office of Policy Analysis and Review, OAR, who provided an update on the agency's guidance on reducing toxic loadings. Ms. Craig noted that EPA had received comments on the guidance from members of the NEJAC and various stakeholders. Continuing, she reported that three primary concerns had been identified: (1) incentives are necessary to encourage communities to voluntarily develop toxics reduction plans; (2) EPA must provide additional direction for developing toxics emissions inventory and set a baseline for use in tracking progress; and (3) the provisions of the guidance must be tested in pilot studies.
- The members of the subcommittee met with their respective subcommittee work groups and then presented a status report on the deliberations of each work group.
- The members of the Work Group on Cumulative Permitting discussed four primary issues: (a) EPA OAR's draft guidance on reducing toxic loadings; (b) EPA Office of Civil Rights' (OCR) *Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs* and the *Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits*; (c) EPA's White Paper Number 3, a draft guidance on designing flexible air permits; and (d) public participation requirements under EPA's Tier 2 gasoline rule.
- In 2001, the members of the Work Group on Fish Consumption are to address two primary tasks: (a) review of EPA's fish consumption report and (b) provision significant involvement in the planning of the next meeting of the NEJAC, to be held on December 3 through 6, 2001 in Seattle, Washington. The meeting will focus on risk communication and management in environmental justice communities in the areas of subsistence consumption and water quality standards.
- The members of the Work Group on Public Utilities discussed three action items of the work group: (a) develop a guide for environmental justice communities that will provide emissions data and information about the enforcement status of new and existing facilities; (b) review four items of proposed legislation intended to further reduce proposed air emissions; and (c) review programs of the Federal government that examine power demand for power, energy efficiency, and management of energy resources. The work group also stressed that issues related to Puerto Rico must remain on the agenda.
- The members of the Work Group on Urban Air Toxics discussed four primary issues: (a) the results of EPA's National Air Toxics Assessment that will be issued in early 2001; (b) information needed about the Agency's urban air toxics monitoring strategy; (c) the structure of state, local, and tribal programs that deal with urban air toxics; and (d) the proposed diesel fuel rule.
- The members of the subcommittee also established priorities among action items that were identified

during the meeting of the Air and Water Subcommittee that focused on power plants in Puerto Rico. At the meeting, held in New York, New York on October 18, 2000, participants examined air quality and human health issues that affect the San Juan, Puerto Rico metropolitan area and that may be attributable to various industrial and commercial activities.

- The members of the subcommittee discussed and made final its mission statement:

“The mission of the Air and Water Subcommittee is to identify, review, and recommend creative, sustainable, and environmentally just solutions so that informed policy decisions can be made. In all of its efforts, the Air and Water Subcommittee will encourage active stakeholder input.”

### **Enforcement Subcommittee**

The members of the Enforcement Subcommittee heard presentations and reports from:

- Ms. Betsy Ryan, Senior Equal Opportunity Specialist, Office of Fair Housing and Equal Opportunity, HUD, who provided information about HUD’s implementation of Title VI of the Civil Rights Act of 1964 (Title VI). Ms. Ryan noted that 200 HUD inspectors have been trained to address issues related to Title VI.
- Mr. Marc Brenman, Senior Policy Advisor, Office of Civil Rights, DOT, who provided information about DOT’s implementation of Title VI. Mr. Brenman noted that the principles of environmental justice and Title VI are integrated into transportation planning. In addition, he reported, DOT has created a web site on environmental justice.
- Mr. Andy Strojny, Deputy Chief (Legal), Coordination and Review Section, Civil Rights Division, DOJ, who provided information about the activities of that division.
- Ms. Yasmin Yorker, OCR, who provided an update on EPA’s Title VI Work Group. Ms. Yorker noted that the revised draft guidance documents will be made final in 2001. She acknowledged that a heavy backlog of administrative complaints filed under Title at EPA remains to be addressed; however, she announced, OCR had hired four temporary employees to work to decrease that backlog.
- Ms. Deeehn Ferris, President, Global Environmental Resources, Inc., who provided a historical overview of Executive Order 12898 on Environmental Justice. Ms. Ferris then discussed her role in helping to influence public policy by working with state, regional, and community organizations on issues related to environmental justice.
- Mr. Herman, who discussed the ways in which the agency has improved its efforts in planning and targeting enforcement activities. He reviewed several examples of enforcement cases related to environmental justice.

During their meeting, the members of the subcommittee discussed the topics described:

- Ms. Zulene Mayfield, Chester Residents Concerned for Quality Living, and Mr. Torres, both members of the Enforcement Subcommittee, discussed environmental justice issues related to supplemental environmental projects (SEP). Ms. Mayfield cited several examples of SEPs that had been implemented in her community, Chester, Pennsylvania, and then discussed the problems related to the SEPs that her community had encountered. The members of the subcommittee then undertook a discussion that concluded with a recommendation that EPA provide assistance with or a program for community-based SEPs.
- The members of the subcommittee discussed at length with Mr. Herman enforcement issues related to environmental justice.
- The members of the subcommittee expressed concern about the lack of community representatives

among the new members of the subcommittee, as well as the process by which EPA is selecting a new chair of the subcommittee. The members also expressed concern that communities will lose their voice and continuity with the addition of five new subcommittee members who represent academia and industry. The members also requested that Mr. Herman provide assistance to ensure a smooth transition for the new members of the subcommittee. In addition, the members asked for Mr. Herman's assistance in identifying effective and collaborative mechanisms to address with OEJ and the Executive Council of the NEJAC issues related to the composition of the subcommittee.

### **Health and Research Subcommittee**

Members of the Health and Research Subcommittee heard presentations and reports from several individuals representing Federal agencies who were asked to speak about the involvement of their agencies in (1) building healthy communities and (2) working in collaborative partnerships with other agencies to integrate the principles of environmental justice. The following individuals provided such presentations.

- Dr. William Sanders, Director, Office of Pollution Prevention and Toxics (OPPT), EPA, and Dr. Harold Zenick, Acting Deputy Assistant Administrator for Science, EPA Office of Research and Development (ORD), provided opening remarks related to environmental justice activities at EPA.
- Mr. Brenman and Mr. David Kuehn, DOT, stated that DOT not only regards health as a safety issue, but also recognizes the importance of transportation to low-income and minority communities, in which residents rely on public transportation to travel from their homes to their jobs and other places. Continuing, Mr. Brenman and Mr. Kuehn provided a brief update on DOT's ongoing efforts focused on low-income, minority, and tribal communities, including a disadvantaged business enterprise program for minorities and entrepreneurs; participation in a children's health interagency task force; and participation on a steering committee to eliminate health disparities among racial and ethnic groups. They also discussed three principal areas in which DOT is working to apply the principles of environmental justice: research, training and outreach, and program oversight.
- Mr. Robert McAlpine and Ms. Antoinette Sebastian, HUD, provided an update on HUD's efforts to improve the health of low-income and minority populations. Both pointed out that, although HUD's mission does not include the principles of environmental justice explicitly, HUD is involved actively in addressing issues related to lead-based paint, building healthy communities, and taking action under other initiatives designed to improve conditions in low-income and minority communities.
- Mr. Thomas Mela, Office of Civil Rights, U.S. Department of Education, noted that his agency originally was not identified in Executive Order 12898 on Environmental Justice; he explained that he did not know why the agency had not been listed. Mr. Mela then provided an overview of the department's activities related to civil rights and disabilities, which, he explained, are related to environmental justice.
- Ms. Heather Stockwell, DOE, provided a handout that summarized DOE's activities and urged members of the subcommittee to review DOE's web site to obtain detailed information about DOE's activities. Ms. Stockwell acknowledged that, while DOE has an Office of Environmental Justice and has made some progress toward achieving environmental justice, more remains to be done.
- Mr. Quentin Pair, DOJ, noted that the IWG had compiled an environmental justice directory. The directory, he said, is the beginning of an attempt to provide points of contact within Federal agency so that members of communities can determine whom to call to obtain answers to their questions or to discuss issues. Mr. Pair referred members of the subcommittee to the agency's web site to obtain details about DOJ's environmental justice activities. He then reviewed a lead-based paint initiative jointly implemented by DOJ, HUD, and EPA; DOJ's Weed and Seed program designed to improve conditions in low-income and minority areas; and a demonstration project in South Carolina in which HUD is working with the Office of the U.S. Attorney to augment services provided under the project.
- Ms. Patricia Reyes, DoD, explained that DoD does not have an office of environmental justice but has identified one person who is authorized to spend about 25 percent of his time on issues related to



environmental justice issues. In addition, she noted, individual DoD staff around the country are “doing the right thing.” Ms. Reyes also described DoD’s efforts to assist in improving the health of communities, including indirect efforts, such as contributing resources for use in health clinics.

- Dr. Maria Morandi, University of Texas School of Public Health and a member of the Integrated Human Exposure Committee of EPA’s Science Advisory Board (SAB), provided information about the SAB’s review of methodologies for identifying disproportionate effects on communities.

Three community members also made presentations: Ms. Charlotte Keys, Jesus People Against Pollution, informed members of the subcommittee about an upcoming environmental justice summit planned for April 2000 and invited the members to attend; Ms. Patty Lovera, Center for Health, Environment and Justice, discussed the problem of the location of schools on contaminated property that poses health risks to low-income children and children of color; and Ms. Yvonne McSwain Powell, People Effective Against Chemical Eugenics (PEACE), expressed concern about contaminated drinking water in Richton, Mississippi.

During their meeting, the members of the subcommittee discussed the issues described below.

- The members of the subcommittee heard from various representatives of Federal agencies and discussed the necessity of identifying (1) whether environmental justice is incorporated in principle into the missions of each agency and, if not, why that is not the case; (2) to what extent Federal agencies have entered into partnerships with one another to address issues related to environmental justice; and (3) in cases in which agencies have successfully worked together on projects, the specific factors that were present that contributed to success. In addition, members of the subcommittee expressed a desire to know, in cases in which no progress has occurred, how Federal agencies plan to incorporate the principles of environmental justice into their missions and day-to-day activities.
- The members of the subcommittee discussed the problem of a lack of focus on and attention to issues of environmental justice at all levels within Federal agencies. The subcommittee agreed, therefore, to request that the Executive Council of the NEJAC recommend the initiation of a program to train “middle management” staff of Federal agencies in incorporating the principles of environmental justice into their day-to-day work. It was suggested that the program include a component that would allow the “educating” of staff in the Senior Executive Service, to raise their level of awareness of issues related to environmental justice. It was agreed that that educational component is needed because, although senior staff may not be responsible for carrying out day-to-day activities, they must understand what environmental justice is. The members stated that, to effectively facilitate change throughout each agency, senior managers must consider environmental justice a priority.
- A principal topic of discussion throughout the meeting was the way in which Federal agencies can collaborate specifically in the area of providing health services to low-income and minority communities. The discussion of the topic emphasized that agencies must look beyond the limitations and restrictions of their mandates and consider ways to share resources so that the health problems of communities can be addressed. For example, members stated, an agency that does not have in its mandate a clause that specifically allows the direct provision of health care may be able to share funds or other resources with an agency whose mission is to provide health care.
- The members of the subcommittee also agreed that many topics they had discussed were related to topics discussed during the May 2000 meeting of the subcommittee and are included in the subcommittee’s subsequent report on health issues. The members of the subcommittee therefore agreed to review that report in light of the current discussion and determine where and how the report should be amended to incorporate specific issues raised and suggestions made during the current meeting.

### **Indigenous Peoples Subcommittee**

The members of the Indigenous Peoples Subcommittee heard presentations and reports from:

- Mr. Dean Suagee, Vermont Law School and member of the Indigenous Peoples Subcommittee, who reported on the recommendations developed at the Interagency Tribal Environmental Justice Roundtable held in Albuquerque, New Mexico in September 2000.
- Dr. Jeff Romm, College of Natural Resources, University of California at Berkeley, who discussed efforts related to the provision of meaningful consultation with the U.S. Forest Service, USDA, on better approaches to representing Native American populations in California who do not live on reservations.
- Mr. Scott Jones, Public Relations Director, Lower Brule Sioux Tribe, discussed issues faced by the Lower Brule Sioux Tribe in working with Federal agencies to protect natural and cultural resources on tribal lands.
- Mr. Robert Gough, Secretary, Intertribal Council On Utility Policy (COUP), and Co-chair, Native Peoples/Native Homelands Climate Change Workshop, discussed a proposal to produce electrical power at windmill farms on tribal lands in South Dakota.

In addition, the Indigenous Peoples Subcommittee heard presentations and reports from representatives of various Federal agencies. Those individuals discussed (1) how Federal agencies are integrating the principles of environmental justice into their policies and programs and (2) how the activities of Federal agencies affect tribes and Alaska Native villages. The following representatives of Federal agencies made presentations to the subcommittee:

- Mr. Francisco Tomei-Torres, ATSDR
- Mr. Len Richeson, Office of Environmental Quality, Office of the Deputy Under Secretary of Defense for Environmental Security, DOD
- Ms. V. Heather Sibbison, Counsel to the Assistant Attorney General, Indian Resource Section, DOJ
- Ms. Valerie Hauser, Coordinator, Native American Program, Advisory Council on Historic Preservation (AHP)
- Ms. Elizabeth Bell, Counsel to the Assistant Secretary, Bureau of Indian Affairs (BIA), DOI
- Mr. James Floyd, HUD
- Ms. Dorothy FireCloud, Tribal Coordinator, U.S. Forest Service, USDA,
- Mr. Robert Ragos, Office of Civil Rights, U.S. Forest Service, USDA
- Mr. Derrick Watchman, Director of Indian Affairs, DOE
- Ms. Deldi Reyes, EPA Region 8
- Ms. Karen Suagee, Office of Education Research and Improvement, U.S. Department of Education

During their meeting, the members of the subcommittee discussed the presentations made by the representatives of Federal agencies. The members of the subcommittee then considered common themes in the agency presentations and the presentations made by Mr. Jones and Mr. Gough. The members of subcommittee then developed a list of draft recommendations related to the integration of the principles of environmental justice, indigenous peoples, and the activities of Federal agencies. This list was to be forwarded to the Executive Council of the NEJAC.

### **International Subcommittee**

The members of the International Subcommittee heard presentations and reports from:

- Mr. Tseming Yang, Vermont Law School and member of the International Subcommittee, who led a discussion with representatives of the U.S. Department of State and the United States Trade Representative (USTR) about issues related to trade and the environment. Ms. Carmen Suro-Bredie, USTR; Mr. Dominic Bianchi, USTR; and Mr. Michael Shelton, U.S. Department of State, described the process by which each agency makes decisions about trade agreements.
- Mr. Alberto Saldamondo, International Indian Treaty Council and member of the International Subcommittee, who led a discussion of the World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance with representatives of the White House Interagency Task Force on the United Nations World Conference Against Racism. Ms. Sharon Kotok, White House Interagency Task Force on the United Nations World Conference Against Racism, and Ms. Mary O'Lone, OGC, provided the members of the International Subcommittee an update on the activities of the World Conference Against Racism.
- Mr. Alan Hecht, Principal Deputy Assistant Administrator, EPA Office of International Affairs (OIA), who presented an overview of the Border XXI Program, as a program that not only is undergoing changes, but also is influenced by the new presidential administrations in both Mexico and the U.S.
- Mr. Gregg Cooke, Regional Administrator, EPA Region 6 and Ms. Olivia Balandran, Environmental Justice Coordinator, EPA Region 6, who provided the members of the International Subcommittee a brief presentation on recent accomplishments and activities related to pesticide prevention training in Region 6.
- Mr. José Bravo, Just Transition Alliance, who read a facsimile transmission from Mr. Cesar Luna, Environmental Health Coalition, who had been unable to attend the meeting. That document provided an overview of recent activities related to the Metales y Derivados site, a contaminated lead smelting site in Tijuana, Mexico.
- Ms. Delta Valente, EPA Office of Prevention, Pesticides and Toxic Substances (OPPTS) and Ms. Carol Parker, OPPTS, who provided an update on increased efforts by EPA to train workers and community members on issues related to pesticide prevention.
- Mr. Alan Sielen, Deputy Assistant Administrator, OIA, who provided an update on EPA's increased efforts to conduct outreach to tribal communities. He highlighted a new initiative under which his office conducts monthly conference calls with representatives of tribes that will provide to participants scientific information about an environmental topic, while also providing a forum through which EPA can gather information about that topic from tribal communities.
- Mr. Mark Kasman, OIA, and Mr. Lionel Brown, OIA, who provided an overview of both new and existing Internet projects related to the global environment.

During their meeting, members of the subcommittee discussed the issues described below.

- In response to the presentations made by representatives of USTR and the U.S. Department of State, members of the International Subcommittee questioned the process by which public participation opportunities are provided during the trade policy decision-making process, both for the United States and for the respective trade partner. The members of the International Subcommittee and the representatives of USTR and the U.S. Department of State agreed to continue to engage in such discussions in the future.
- The members of the subcommittee provided a preliminary response to the request of representatives of the White House task force for comments on the following draft documents, *Excerpted Material Developed by the U.S. Interagency Task Force on the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance* and *UN World Conference Against Racism (WCAR) – The Environment Position Paper*. Members indicated that a definition of environmental justice that uses such language as “minority” or “disproportionate” is not appropriate in an international context. In such cases, the race of the polluter compared with the race of the victims might be a more accurate indicator of environmental injustice the members agree. In addition, members of the International Subcommittee expressed concern about countries that do not

acknowledge certain races living in those countries.

- In response to the presentations made by representatives of EPA on farm worker training initiatives, Tribal outreach programs, and global Internet technology pilot projects, the members of the International Subcommittee expressed their support and encouragement, as well as their interest in receiving further updates on such projects.
- In response to the public comment presentation of Ms. Betsy Boatner Amazon Alliance on the escalation of the herbicide spraying program of the government of Colombia, the subcommittee decided to request a general policy statement on the part of the NEJAC that sets forth the reasons for which the United States should not provide financing for aerial fumigation of drug crops with chemical herbicides that pose a serious threat to the health of indigenous peoples.

### **Waste and Facility Siting Subcommittee**

The members of the Waste and Facility Siting Subcommittee heard presentations and reports from:

- Ms. Linda Garczynski, Director of Outreach and Special Projects Staff, OSWER, who presented information about the report *Environmental Justice, Urban Revitalization, and Brownfields: The Search for Authentic Signs of Hope*. Ms. Garczynski also discussed activities related to EPA's Brownfields Economic Redevelopment Initiative.
- Mr. Louis Kistner, Millennium Inorganic Chemicals, Inc., who provided information about "Responsible Care." The presentation focused his organization's participation in community outreach programs.
- Ms. Melissa Raack, OSWER, who provided information about SEPs. Ms. Raack also reviewed the seven categories of SEPs.
- Dr. Antonio Rivera-Castano, Committee For the Rescue and Development of Vieques, who provided an update on the Navy's bombing activities on the island of Vieques, Puerto Rico. Dr. Rivera-Castano expressed his belief that the people and the environment of the island are suffering adverse effects from the bombing.
- Reverend Curtis Dias, Calvary Pentecostal Church, who discussed issues related to environmental injustice that have arisen in East Freetown, Massachusetts. Reverend Dias explained that a small minority community has been suffered adverse effects brought about by the town's industrial zoning laws.
- Mr. Brian Holtzclaw, Environmental Justice Coordinator, Waste Management Division, EPA Region 4, who presented a brief historical summary of contamination at the Anniston Polychlorinated Biphenyls (PCB) Superfund Site in Anniston, Alabama. Mr. Holtzclaw also provided an update on the status of EPA's activities related to that site.
- Mr. David Ouderkirk, OSWER, and Ms. Brenda Richardson, Women Like Us and member of the Waste and Facility Siting Subcommittee, who presented information about the Bridges to Friendship project in Washington, D.C. The program, he reported, is an Interagency Environmental Justice Demonstration Project. In addition, the project is a partnership of community stakeholders who have agreed to work together to achieve community revitalization, he said.
- Ms. Suzanne Wells, Director of Community Involvement and Outreach Center, EPA Office of Emergency and Remedial Response (OERR) and Ms. Pat Carey, OSWER, who updated the members of the subcommittee on EPA's Superfund relocation policy. They distributed copies of *Release of Appraisals for Real Property Acquisition at Superfund Sites Memorandum* to the members of the subcommittee.
- Mr. Bill Luthans, Deputy Director, Planning and Permitting Division, EPA Region 6, who provided information about the goals of EPA Region 6 related to permit oversight.

- Mr. Samuel Coleman, Director, Compliance Assurance and Enforcement Division, EPA Region 6, presented information about EPA's national oversight program.
- Ms. Jewell Harper, Deputy Director, Waste Management Division, EPA Region 4, and Mr. Harold Mitchell, Regenesys, Inc. and member of the Waste and Facility Siting Subcommittee, discussed environmental justice activities underway in Spartanburg, South Carolina.
- Ms. Noemi Emeric, Team Manager, EPA Region 5, presented information about the collaborative partnership model program in East St. Louis, Illinois.

During their meeting, subcommittee members discussed the following issues:

- Local land use and zoning issues related to facility siting
- An update on the status of EPA's brownfields program
- A report on the "Responsible Care" initiative provided a representative of the industry
- A report on SEPs

#### **NEXT MEETING**

The next meeting of the NEJAC is scheduled for December 3 through 6, 2001 in Seattle, Washington. The meeting will focus on fish consumption and water quality standards. Planned activities will include two opportunities for the public to offer comments. More information about the pending meeting, is available on the NEJAC's home page on the Internet at : [http://www.epa.gov/oeca/main/ej/nejac/conf\\_ne.html](http://www.epa.gov/oeca/main/ej/nejac/conf_ne.html) or telephone on EPA's toll-free environmental justice hotline at 1 (800) 962-6215.

**MEETING SUMMARY**

of the

**EXECUTIVE COUNCIL**

of the

**NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL**

**December 11, 12, and 14, 2000**  
**Arlington, Virginia**

**Meeting Summary Accepted By:**



**Charles Lee**  
**Office of Environmental Justice**  
**U.S. Environmental Protection Agency**  
**Designated Federal Official**



**Peggy Shepard**  
**Acting Chair**

**CHAPTER ONE  
MEETING OF THE  
EXECUTIVE COUNCIL**

**1.0 INTRODUCTION**

**Exhibit 1-1**

The sixteenth meeting of the Executive Council of the National Environmental Justice Advisory Council (NEJAC) took place on December 11 through 14, 2000 at the Hyatt Regency Crystal City Hotel in Arlington, Virginia. Mr. Haywood Turrentine, Birmingham Urban Impact Board, continues to serve as the chair of the NEJAC. Ms. Peggy M. Shepard, Executive Director, West Harlem Environmental Action, Inc. and member of the Health and Research Subcommittee, continues to serve as the vice-chair of the NEJAC. Mr. Charles Lee, Associate Director for Policy and Interagency Liaison, Office of Environmental Justice (OEJ), U.S. Environmental Protection Agency (EPA), continues to serve as the Designated Federal Official (DFO) for the Executive Council. Exhibit 1-1 presents a list of members of the Executive Council who were present and identifies those members who were unable to attend. More than 465 people attended the meeting.

On December 13, 2000, each member of the Executive Council participated in the deliberations of one of the six subcommittees of the NEJAC. Chapters three through eight of this meeting summary describe those deliberations.

In addition, the Executive Council hosted two public comment periods, a *Focused Public Comment Period* on the evening of December 11, 2000 on the integration of environmental justice issues into the programs and policies on Federal agencies, a *General Environmental Justice Issues Public Comment Period* on the evening of December 12, 2000. Approximately 36 people offered comments during those sessions. Chapter Two presents a summary of the comments offered during the two public comment periods.

This chapter, which provides a summary of the deliberations of the Executive Council, is organized in six sections, including this *Introduction*. Section 2.0, *Remarks*, presents summaries of the remarks offered by various speakers. Section 3.0, *Panel Sessions on Integrated Environmental Justice Implementation in the Federal Government*, provides summaries of the panel sessions presented by representatives of various Federal agencies and other stakeholder groups. The

**EXECUTIVE COUNCIL**

**Members  
Who Attended the Meeting  
December 11 through 14, 2000**

Mr. Haywood Turrentine, *Chair*  
Ms. Peggy M. Shepard, *Vice-Chair*  
Mr. Charles Lee, *DFO*

Mr. Don J. Aragon  
Ms. Rose Augustine  
Mr. Luke Cole  
Dr. Michel Gelobter  
Mr. Tom Goldtooth  
Ms. Jennifer Hill-Kelley  
Ms. Patrica K. Wood  
Ms. Annabelle Jaramillo  
Ms. Vernice Miller-Travis  
Mr. Harold Mitchell  
Dr. Marinelle Payton  
Ms. Rosa Hilda Ramos  
Mr. Alberto Saldamando \*  
Ms. Jane Stahl  
Mr. Gerald Torres  
Ms. Jana Walker  
Mr. Damon Whitehead  
Mr. Tseming Yang

**Members  
Who Were Unable to Attend**

Mr. Fernando Cuevas  
Mr. Arnoldo Garcia  
Mr. Carlos Padin  
Mr. Robert W. Varney

\* Mr. Saldamando served as a proxy for Mr. Garcia

panelists made presentations that were designed to provide insight into issues identified and concerns voiced with respect to implementation of environmental justice throughout the Federal government. Section 4.0, *Reports and Presentations*, provides summaries of reports and presentations made to the Executive Council on various topics. Section 5.0, *Reports of the Subcommittees*, summarizes reports submitted to the Executive Council about the deliberations of

each of the six subcommittees during their meetings on December 13, 2000. Section 6.0, *Miscellaneous Business*, presents summaries of discussions by the Council of other items before the Council, including a recognition of those members whose terms were due to expire. Appendix A presents the full text of each resolution that was approved by the Executive Council. Appendix B presents a list of the members of the NEJAC. Appendix C provides a list of the participants in the meeting. Appendix D provides a copy of the written statements submitted to the NEJAC during the two public comment periods.

## 2.0 REMARKS

This section summarizes the remarks of the Assistant Administrator of EPA's Office of Enforcement and Compliance Assurance (OECA), the Deputy Administrator of EPA, the Regional Administrator of EPA Region 3, and the Director of OEJ.

### 2.1 Remarks of the Assistant Administrator, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency

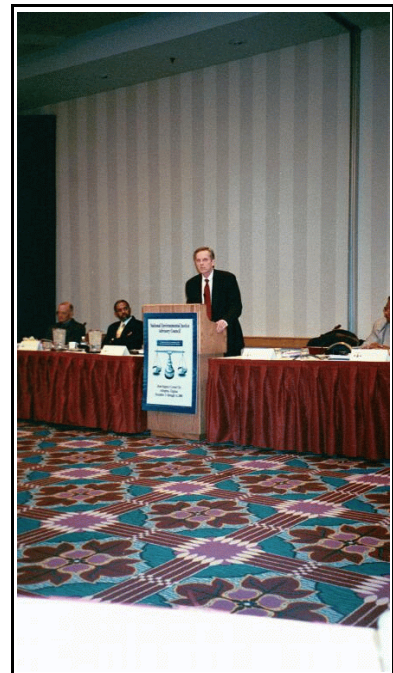
On behalf of OECA, Mr. Steven Herman, Assistant Administrator, OECA, welcomed the members of the Executive Council and all the participants in the sixteenth meeting of the NEJAC. Noting that the meeting marked the last NEJAC meeting of the Clinton administration under which the NEJAC had been conceived, Mr. Herman commented that, for all the persons who had created and worked with the NEJAC over the preceding seven years, this effort had been one of the areas that had brought great joy and great satisfaction – in the nature of the work and the people that the effort had brought together, in the very difficult issues that the NEJAC had taken on, and in the victories and the frustrations all involved had experienced together. Mr. Herman observed that the NEJAC had provided crucial and important advice to the EPA Administrator over those seven years and as a result had direct influence on many of the Agency's initiatives.

Introducing Mr. Michael McCabe, Deputy Administrator of EPA, Mr. Herman stated that one of the areas, both inside and outside the Agency, about which Mr. McCabe had been "absolutely passionate," is environmental justice and that Mr. McCabe's commitment to environmental justice is "second to none." Continuing, Mr. Herman stated that Mr. McCabe's commitment had helped to "move the ball" on environmental justice within EPA and within the entire Federal government.

### 2.2 Remarks of the Deputy Administrator, U.S. Environmental Protection Agency

Mr. McCabe expressed to the members of the NEJAC his appreciation for the time and effort they had devoted to important issues related to environmental justice. He then recognized the leadership of Mr. Turrentine during his tenure as chair of the Council, stating that, under Mr. Turrentine's leadership, the NEJAC had established priorities among the issues on its agenda. Currently, he continued, the NEJAC focuses on a wide range of specific policy issues – policy issues that are important to the communities that the members of the NEJAC represent.

Referring to the pending change in administration, Mr. McCabe remarked that both EPA and the NEJAC would undergo a "changing of the guard." The change, he said, represents an opportunity to celebrate successes, solidify gains, and reaffirm commitments. It also presents an opportunity to chart a new blueprint for the future, he said.



*Mr. Michael McCabe*

The Clinton-Gore administration, said Mr. McCabe, had been committed to implementing programs, policies, and activities that ensure that "the health of a community does not depend on the wealth of the community" or on the race of the families of that community. While the administration may not always have moved as rapidly or acted as comprehensively as some may have wished, its commitment to the cause never wavered, he said. Staff of EPA take that responsibility very seriously, he continued. In keeping with that commitment to fairness and equal opportunity, he stated, one guiding principle has been that all citizens, regardless of race, color, or national origin, are entitled to a safe and healthy environment. Further, said Mr. McCabe, EPA recognizes that meaningful participation in the Agency's decisionmaking process is essential to the accomplishment of that mission.



Mr. McCabe stated that EPA would continue to review and revise its administrative procedures related to public involvement in policymaking. He announced that EPA soon was to release for comment its draft policy on public involvement. The policy, he said, would strengthen EPA's commitment to early and meaningful public involvement. The policy also would ensure an understanding of the interests and concerns of peoples and entities affected and would include them in the environmental decisionmaking, he added. Mr. McCabe then stated that he intended to request that the NEJAC review the document and provide comment on it.

Commenting on the progress made during the preceding six years, Mr. McCabe stated that interagency integration of environmental justice is becoming a reality and that the Interagency Working Group on Environmental Justice (IWG) had made substantial progress. Thanks to the tireless work of all members of the NEJAC and the unified voices of communities across the nation, he said, environmental justice is becoming a right, rather than a privilege.

Mr. McCabe then stressed that, to maintain the momentum of the preceding six years, Federal agencies must continue to work in partnership. Through such partnerships, he continued, EPA is making great strides in protecting the health of children and communities. EPA is working with community-based public health partners across the country, especially in urban cities and rural areas, to help diagnose and treat asthma, as well as warn parents about environmental factors, such as high levels of particulate matter in the air, that are likely to trigger an asthma attack, he said. EPA's goal, he declared, is to eliminate the disproportionate burden of asthma among minorities and the disadvantaged.

Through partnerships, he continued, EPA is revitalizing communities and creating jobs through its Brownfields Revitalization initiative. Revitalization of brownfields properties in primarily low-income or minority neighborhoods had created more than 8,300 construction jobs, he pointed out. After the work was carried out, he added, another 22,000 jobs were created or retained. The program is bringing both environmental justice and economic opportunity to the neighborhoods in which the sites are located, said Mr. McCabe.

Again, through partnerships, Mr. McCabe continued, EPA is addressing public health and the environment in urban areas. Over the years, concerns about lead poisoning had been a topic of

debate at environmental justice forums and conferences across the country, he said. During the time frame of those debates, he explained, exposure to lead among young children had been reduced dramatically through a concerted effort by Federal, state, and local government agencies, along with voluntary actions in the private sector. In high-risk urban areas, he noted, EPA sponsors programs like the Lead-Safe Babies Project, which employs outreach workers to visit new parents to teach the parents how to take preventive measures to protect their newborns. But much remains to be done, Mr. McCabe stated.

Mr. McCabe acknowledged that maintaining momentum under a new administration would be challenging. He stated, however, that both he and Ms. Carol Browner, EPA Administrator, would communicate to the new president that it is essential that the Agency maintain its commitment to environmental justice and to the communities that EPA serves. Although challenges remain, he continued, he takes pride in "the things that we have accomplished together." Through such collective efforts, he said, all involved are helping to secure a healthy and sustainable future for the next generation.

Concluding his remarks, Mr. McCabe quoted Sir Isaac Newton, who wrote, "If I have been able to see further, it is because I stood on the shoulders of giants." On behalf of Ms. Browner, and for himself, he thanked the members of the NEJAC for being EPA's "giants."

### **2.3 Remarks of the Regional Administrator, U.S. Environmental Protection Agency Region 3**

On behalf of the staff of EPA Region 3, Mr. Brad Campbell, Regional Administrator of that region, expressed pleasure in hosting the meeting of the NEJAC. Mr. Campbell also expressed his gratitude to members of the NEJAC, past and present, for their contribution not only to the work of EPA, but also to his work in prior positions at the White House and the U.S. Department of Justice (DOJ). He thanked them for their contribution to his personal understanding of the depth, complexity, and importance of environmental justice issues at all levels of government.

Mr. Campbell said that, while there is a sense of "winding down" as the current administration prepares for transition, EPA is committed to "keeping the bar high" until the very last day of the administration. The Agency is committed to keeping as much movement on the environmental justice front as possible, he said.

He then highlighted a few areas in which EPA Region 3 is moving forward, adding that he believed that the initiatives reflect the larger agenda that lies ahead.

First, he said, Region 3 is continuing its efforts to better integrate EPA's mission with that of other agencies, recognizing that it is not sufficient to take the position that a particular problem confronting a community is not within the jurisdiction of EPA or is not within the Agency's statutory mandate. The region, he explained, will continue to work to build links with other agencies and to deliver the resources of the entire Federal government to resolve whatever environmental justice problem confronts it.

Second, Mr. Campbell continued, Region 3 will continue its effort to improve the health data that are available for communities. He stated that data increasingly indicate that causes of cancers and other illnesses are primarily environmental, rather than genetic. He acknowledged that local health data on most communities concerned about risks are very limited, often too limited to support scientifically strong conclusions about the potential links between those very real health problems and environmental conditions in the community. While efforts to establish a national system of monitoring have been undertaken, he continued, EPA Region 3 is endeavoring to model community-specific efforts to gather better health data. For example, he explained, the region recently had initiated a site-specific epidemiological study of residents living near the Lower Darby Creek Superfund Site in Darby Township, Pennsylvania.

Continuing, Mr. Campbell stated that EPA Region 3 is continuing to work on efforts to highlight the links between the environmental problems suffered by low-income and minority communities and the economic opportunities that could arise from the process of addressing those problems. The region, he said, is working to address brownfields properties in distressed minority and low-income communities and revitalize those sites for future development. He added that Region 3 also is pursuing other means of creating links between clean air and economic opportunity. For example, he added, he recently had met with the president of the African-American Chamber of Commerce of Philadelphia, Pennsylvania to discuss ways to link the need for alternative-fuel vehicles to potential economic opportunities in low-income and minority communities, so that the very communities that have suffered disproportionately from air quality problems may be the first to benefit when economic opportunity is created by addressing

those problems. He explained that air quality problems have contributed to asthma rates in low-income and minority communities that are double and triple the rates in other communities. Mr. Campbell then stated that the region is evaluating ways to develop a broader use of alternative-fuel vehicles to address the problem, while establishing an opportunity for minority entrepreneurs to benefit from the economic opportunities that will be created.

Mr. Aragon commented that he had been pleased to hear of the initiative to improve local health data because the quality and quantity of health data for communities on Indian reservations are very poor, as well. He pointed out that many Indian people rely on subsistence foods; they can become exposed to environmental contaminants in many of their food sources, which are contaminated with substances originating from industrial sources, he said.

#### **2.4 Remarks of the Director, Office of Environmental Justice, U.S. Environmental Protection Agency**

Mr. Hill began his presentation by welcoming all participants. The meeting, he emphasized, was designed to be not only retrospective, because it provides all participants with the opportunity to look back over the preceding six to eight years, but also prospective, in that it would provide an opportunity to look forward and to develop strategic plans to be implemented in the future.

Mr. Hill then read the statement of the issue that was to be the focus of the meeting:

*"What progress has the Federal government made toward integrating environmental justice into policies, programs, and activities, consistent with existing laws and Executive Order 12898?"*

Mr. Hill pointed out that the policy question speaks to the basic purpose of government and the important role that government plays in the lives of all citizens and residents of the nation. Continuing, Mr. Hill noted that government is one of humanity's oldest and most important institutions; some form of government has been a vital part of every society, he said. Questions about the role of government often are directed at the relationship between government and the public it serves and protects, he continued. One of the most basic questions about that relationship, he added, is "What right is so fundamental to the public that it is a responsibility of the government to secure, preserve and protect that right?" He then

commented that Reverend Jesse Jackson had offered a response to that question on Earth Day 1990, when he stated "Over the years, I've led many demonstrations, for the right to public accommodations, the right of open housing, the right to be free of a third world war, the right to register and vote. Yet, none of those rights are more basic than the right to breathe free, for unless I have the right to breathe free, the right to drink good drinking water, no other right can be realized." In other words, declared Mr. Hill, residents of every community throughout this country, as citizens of this democracy, are entitled to clean air, clean land, and clean water, and it is the responsibility of the government to secure, preserve, and protect that fundamental right.

Then, quoting Ms. Deeohn Ferris, former chair of the Enforcement Subcommittee of the NEJAC, Mr. Hill stated that "environmental justice is not about equal pollution; environmental justice is about equal protection." He then explained that the underlying question the panelists and the members of the NEJAC should consider is whether the Federal government, as a public servant, is effectively and efficiently serving the public by ensuring clean air, land, and water for everyone in the nation.

Concluding his remarks, Mr. Hill noted that the IWG represents a clear effort to bring about fundamental change in how the government operates and provides effective services and resources to the public to ensure clean air, clean land, and clean water. However, he acknowledged, the government is not perfect in the performance of its duties and responsibilities. Therefore, EPA and the other members of the Federal family have asked the members of the NEJAC to provide their advice and recommendations about how the government can serve the public better. On behalf of the Agency, he said, he was looking forward to a vibrant meeting, a robust discussion, and the constructive advice that would follow.

## 2.5 Remarks of NEJAC Members

Dr. Michel Gelobter, Rutgers University and member of the Air and Water Subcommittee, expressed his opinion that, under the Clinton-Gore administration, EPA had mobilized at a unprecedented level to make environmental justice as much a reality as possible and that EPA had set a very high standard for the next administration. He then expressed his appreciation to Mr. McCabe, Mr. Herman, Mr. Fields, Mr. Lee, Mr. Hill, and others for their hard work and dedication.

Mr. Don Aragon, Wind River Environmental Quality Commission and member of the Health and Research Subcommittee, expressed his appreciation that EPA had developed an Indian policy and continues to work with Indian tribes throughout the United States; however, he said, he had not observed similar efforts on the part of other Federal agencies. Mr. Aragon then stated his hope that the entire Federal family would follow the leadership of EPA.

Mr. Tom Goldtooth, Indigenous Environmental Network and chair of the Indigenous Peoples subcommittee, agreed that the future of environmental justice is uncertain. The NEJAC had served as a forum through which local communities could voice their concerns, he said. On the basis of those concerns, the NEJAC had made recommendations to EPA on issues related to environmental justice, and EPA administrators under the Clinton-Gore administration had supported most of those recommendations, he continued. It will be essential that the next administration continue to hear from local communities through a forum such as the NEJAC, said Mr. Goldtooth. He then asked Mr. McCabe and the members of the NEJAC to communicate to the next administration the importance of listening to local communities.

Noting that it is difficult to change the culture of a bureaucracy, Ms. Shepard expressed her appreciation to EPA administrators for their leadership in advancing environmental justice concerns within EPA. She added that the NEJAC would encounter many new challenges under the new administration; she stressed that the members of the NEJAC must work together, remain focused, and take strategic action if the NEJAC is to remain strong and effective in the years to come.

Ms. Rosa Hilda Ramos, Community of Cataño Against Pollution and member of the Air and Water Subcommittee, also expressed her appreciation to the EPA senior managers for constructing a solid basis for environmental justice. Ms. Ramos explained that the administrators had expounded the concepts of environmental justice, so that they cannot be ignored by any administration. She then pointed out that the environmental justice movement was not created by a party, but was created by the people, and the people, she declared, will not allow any party to ignore environmental justice. Therefore, she said, she is optimistic about the future of environmental justice.

Mr. McCabe stated that the remarks that had been made were indicative of the passion for environmental justice shared by the members of the NEJAC. He stated that he wished the members good luck over the coming four days as they charted the course for the next administration and in all their future endeavors.

### **3.0 PANEL SESSIONS ON INTEGRATION OF ENVIRONMENTAL JUSTICE INTO PROGRAMS AND POLICIES OF FEDERAL AGENCIES**

In its continuing effort to provide independent advice to the EPA Administrator in areas related to environmental justice, the NEJAC focused its sixteenth meeting on a specific policy issue – the integration of environmental justice into the programs and policies of Federal agencies. On Monday and Tuesday, December 11 and 12, 2000, the members of the NEJAC heard a series of presentations from panels made up of various stakeholder groups. The presentations were designed to provide insight into the progress the Federal government has made toward integrating environmental justice into its policies, programs, and activities, as required under existing laws and Executive Order 12898. Exhibit 1-2 identifies the panel members who participated in the discussions.

Mr. Lee stated that the NEJAC would consider the following questions:

- How have the efforts undertaken benefitted low-income, minority, or indigenous communities?
- What lessons have been learned from efforts undertaken to increase interagency cooperation, including the implementation of interagency model projects on environmental justice?
- What opportunities exist for greater utilization of existing statutes?
- What areas could be developed further and through what mechanisms?
- What barriers exist to integrating environmental justice, and what strategies would be helpful in overcoming those barriers?

Mr. Lee emphasized the following points to be considered during discussion of the integration of environmental justice by Federal agencies:

- The NEJAC's examination of the implementation of environmental justice throughout the Federal government should be "forward-looking." The members of the NEJAC should identify lessons learned from prior efforts to implement the Executive Order and make recommendations about how to further integrate environmental justice into the programs, policies, and activities of the Federal family.
- The members of the NEJAC should examine implementation of environmental justice in two basic areas: (1) progress in and lessons learned through implementation by individual agencies and (2) development of collaborative interagency strategies.
- NEJAC's recommendations should provide a very clear and definitive statement of the directions and strategies that should be pursued during the next administration to ensure that environmental justice is made a part of the ongoing work of the Federal government.

Mr. Lee informed the members of the NEJAC that the formal record of the meeting would be open for comments until January 31, 2001, so the comments and testimony would be included in the current year's record.

Mr. Lee then recognized the EPA senior staff present at the meeting. He thanked the senior staff members for their attendance, commenting that their presence at the meeting displayed their commitment to environmental justice. He stressed that such commitment is crucial to the development of effective collaborative interagency strategies.

The following sections provide summaries of each of the various panel presentations on integration of environmental justice into the programs, policies, and activities of Federal agencies.

#### **3.1 Panel 1: Overview of Executive Order 12898**

Mr. Gerald Torres, University of Texas Law School, provided an overview of the historical context of Executive Order 12898. Exhibit 1-3 describes the focus of Panel 1.

**MEMBERS OF THE PANEL SESSIONS ON INTEGRATION OF ENVIRONMENTAL JUSTICE INTO PROGRAMS AND POLICIES OF FEDERAL AGENCIES****Panel 1: Overview of Executive Order 12898**

- Gerald Torres, Vice Provost, University of Texas Law School
- Gail Small, Director, Native Action (*Due to weather constraints Ms. Small could not attend the meeting.*)

**Panel 2: Discussion of the Interagency Working Group on Environmental Justice and the Federal Interagency Environmental Justice Action Agenda**

- Timothy Fields, Assistant Administrator for Solid Waste and Emergency Response, U.S. Environmental Protection Agency (EPA)
- Charles Lee, Associate Director for Policy and Interagency Liaison, Office of Environmental Justice, EPA

**Panel 3: Individual Federal Agency Panels**

- Lois Schiffer, Assistant Attorney General, U.S. Department of Justice
- Sherri Goodman, Deputy Under Secretary of Defense for Environmental Security, U.S. Department of Defense
- Carolyn Huntoon, Assistant Secretary for Environmental Management, U.S. Department of Energy
- Ron Stroman, Director, Office of Civil Rights, U.S. Department of Transportation
- Willie Taylor, Director, Office of Environmental Policy and Compliance, U.S. Department of the Interior (DOI)
- Lisa Guide, Acting Assistant Secretary for Policy, Management and Budget, DOI
- Jerry Clifford, Deputy Regional Administrator, Region 6, EPA
- Roland Droitsch, Deputy Assistant Secretary, Office of the Assistant Secretary for Policy, U.S. Department of Labor
- Charles Wells, Director, Environmental Health Sciences, National Institute of Environmental Health Sciences
- Herbert Avent, Director for Urban Health, Bureau of Primary Health Care, Health Resources and Services Administration, U.S. Department of Health and Human Services
- Reuben Warren, Associate Administrator for Urban Affairs, Agency for Toxic Substances and Disease Registry
- Terry Harwood, Director of Hazardous Materials Management Group, U.S. Department of Agriculture
- Marvin Wentz Turner, Special Actions Office, Office of the Secretary, U.S. Department of Housing and Urban Development

**Panel 4: Integrated Interagency Demonstration Projects**

- Admiral Chris Weaver, Department of the Navy, DoD
- Mary Nelson, Bethel New Life, Inc.
- James Talley, Mayor, City of Spartanburg, South Carolina
- José R. Rodríguez-Santana, Asthma Coalition of Puerto Rico, Pediatric Pulmonary Program, Cystic Fibrosis Center
- Emil Jason, Great Rivers Alliance of Natural Resource Districts
- Richard Mark, East St. Louis Lead Project, St. Mary's Hospital

**Panel 5: Stakeholder Perspective on Integrated Interagency Strategies**

- Charlotte Keys, Executive Director, Jesus People Against Pollution
- Sue Briggum, Director, Government and Environmental Affairs, Waste Management, Inc. (*statement presented by Patricia Wood, Georgia-Pacific Corporation*)
- Jesus Nava, Deputy City Manager, City of San Jose, California
- Terry Williams, Commissioner for Natural Resources and Fisheries, The Tulalip Tribes
- Richard Gragg, Center for Environmental Equity and Justice, Florida A & M University

**Exhibit 1-3****FOCUS OF PANEL 1**

This panel provided the historical context of Executive Order 12898. The panelist also provided an analysis of the legal, programmatic, and organizational foundations of the Executive order. This understanding of goals and motivating factors was designed to provide an overall framework on which a balanced assessment of implementation of environmental justice within the Federal government can be built. The panelist provided an independent analysis of areas of significant progress, as well as those of significant deficiency. In addition, the panelist provided an analysis of the most significant challenges for future implementation of the goals of the Executive order. Last, the panelist offered recommendations for strategies for future integration of environmental justice.

Mr. Torres began his presentation by stating that, before the Executive order was issued, the environmental justice movement moved in “fits and starts” in the effort to change the way in which the Federal government responds to issues related to environmental justice. A fundamental change had been needed in the institutional culture within Federal agencies that respond to the issues being raised by the environmental justice movement, he explained.

Mr. Torres then stated that, the authors of the Executive order faced one difficulty, in that an Executive order does not inherently create enforceable rights for the people it protects. On the other hand, he continued, the principal audience of the Executive order is the Federal agencies that are directed to change the way they make decisions. The most challenging task for Federal agencies is to incorporate into their decisionmaking processes consideration of issues that fall outside of their mandates, he explained.

Continuing, Mr. Torres stated that the National Environmental Policy Act (NEPA) had been used as one model for implementing Executive order 12898. He explained that, when NEPA first was passed, it had been perceived as weak and lacking enforceability. However, he continued, one of the goals of NEPA had been to increase the weight given to environmental factors in the Federal decisionmaking process. Mr. Torres stated that NEPA had been somewhat successful in motivating Federal agencies to change their decisionmaking structures so that environmental issues would be considered in those processes.

Therefore, Mr. Torres stated, one of the hopes for Executive order 12898 was that those agencies would be further motivated to include considerations of environmental justice in their decisionmaking processes.

Concluding his remarks, Mr. Torres observed that some Federal agencies had responded more readily and strongly to Executive Order 12898 than others. He commented that a thorough analysis of the extent to which the principles of environmental justice have permeated the Federal decisionmaking structure would be useful, as would an evaluation of the extent to which interagency coordination affects that structure.

### **3.2 Panel 2: Discussion of the Interagency Working Group on Environmental Justice and the Integrated Federal Interagency Environmental Justice Action Agenda**

Mr. Fields initiated the panel discussion by providing assurance, that despite the pending change of administration, the issue of environmental justice is “very much alive” and the effort to address the issue will continue “very emphatically and strongly” into the next administration. Exhibit 1-4 describes the focus of Panel 2.

**Exhibit 1-4****FOCUS OF PANEL 2**

This panel provided a discussion of the formation of the Federal Interagency Working Group on Environmental Justice (IWG) and an analysis of implementation of environmental justice throughout the Federal government. This panel also emphasized that the Integrated Federal Interagency Environmental Justice Action Agenda (Action Agenda) brings a new sense of direction, innovation, and vigor to environmental justice to the entire Federal family. The panel touched on the philosophical and programmatic background of the interagency strategy.

Mr. Fields focused his presentation on the significance and future of the IWG’s Integrated Federal Interagency Environmental Justice Action Agenda (Action Agenda). He explained that the Action Agenda provides a framework that Federal agencies can use to develop and expand on future collaborative Federal environmental justice initiatives. Exhibit 1-5 describes the IWG and provides background information about the Action Agenda.

**DESCRIPTION OF THE INTEGRATED FEDERAL INTERAGENCY ENVIRONMENTAL JUSTICE ACTION AGENDA**

The Integrated Federal Interagency Environmental Justice Action Agenda (Action Agenda) seeks to build dynamic and proactive partnerships among Federal agencies to benefit environmentally and economically distressed communities. Increased coordination and cooperation among Federal agencies will enhance efforts to identify, mobilize, and use Federal resources, as well as enhance the capability of distressed communities to improve environmental decision making and more efficiently access and leverage initiatives sponsored by the Federal government. The Action Agenda will improve quality of life for minority or low-income populations that suffer disproportionate environmental effects. Those populations also may include indigenous and tribal communities.

The Action Agenda will include examples of interagency environmental justice projects and agency-specific initiatives that were undertaken or implemented by various Federal agencies in 2000. The Action Agenda seeks to build the constructive problem-solving capacity of communities in partnership with state, tribal, and local governments. The Action Agenda is not intended to replace or supersede existing Federal, state, tribal, or local government decisionmaking processes.

Goals outlined in the Action Agenda include:

- The promotion of greater coordination and cooperation among Federal agencies.
- The facilitation of a more accessible and responsive government.
- The formulation of strategies to ensure the integration of environmental justice into the policies, programs, and activities of Federal agencies.
- The initiation of environmental justice demonstration projects on which to base the development of integrated, "place-based" models for addressing livability issues affecting communities.

Mr. Fields expressed his pleasure in working on the development and implementation of the Action Agenda. It had been his pleasure, he said, to be involved in environmental justice from the perspective of his own program areas, which include Superfund, the Resource Conservation and Recovery Act (RCRA) Hazardous and Solid Waste Program, the Federal Facilities Program, the Underground Storage Tank (UST) Program, and the brownfields cleanup and redevelopment effort, he added. He also expressed his pleasure in beginning to work with other Federal agency partners on ways in which the Federal government can collaborate through interagency partnerships to address environmental justice issues.

Mr. Fields remarked that the Executive order had been necessary so that the Federal government would do what is within its power to eliminate disparate situations that had direct and indirect effects on real communities. He stressed that no one person, and no one agency, could hope to remedy decades and centuries of injustice singlehandedly. Working together, however, he declared, agencies can achieve those goals.

In the spirit of the Executive order, Mr. Fields explained, the IWG had provided leadership throughout the Federal government on ways to collaborate and work together in communities across America that have serious concerns related to environmental justice. The Executive order provided the framework for the progress that Federal agencies had made to date, he said. Further, the Executive order, he continued, established the framework for addressing and solving the challenges that lay ahead.

Mr. Fields then stated that the progress made in developing the Action Agenda could be attributed to the foresight and fortitude of the authors of the Executive order, he said. Although it had taken years to educate the bureaucracy about environmental justice, he added, the hard work and effort had begun to produce some results. He stated that he had met regularly with senior leadership in various Federal agencies, and, at each meeting, he had been greeted enthusiastically. Representatives of those agencies, he added, had exhibited a sincere desire to conduct business in a manner that will have a positive effect on environmental justice in

communities across the country. Senior managers at the Federal agencies had committed their time and staff to the effort to develop and implement meaningful and effective resolutions of environmental justice issues, he continued.

Environmental justice demonstration projects are an excellent example of how Federal agencies and other stakeholders, including communities, businesses, and state and local governments, can work together to develop and implement meaningful, effective, and desirable solutions, said Mr. Fields. He explained that 15 demonstration projects are now underway, under which two or more Federal agencies are working with state governments, local governments, tribal governments, private partners, and community representatives to address environmental injustice in meaningful ways. The Action Agenda and demonstration projects represent the new baseline by which environmental justice and community involvement and participation will be measured, he added. They provide a new starting point for tomorrow's successes, he stressed. See Section 3.4 of this chapter for a summary of the presentations about several demonstration projects, as well as a list of the projects initiated under the Action Agenda.

Continuing his remarks, Mr. Fields described his vision of the future of environmental justice:

- More partnerships among all stakeholders, from the community to the local government and the private sector, all working together with Federal, state, and local governments and Tribal governments to address concerns related to environmental justice.
- More emphasis on preventing disparity before it becomes a serious issue of environmental injustice in a particular community.
- Fostering of relationships between Federal agencies and groups like the NEJAC and the IWG.
- Coming together of communities and businesses from which mutual benefits can be identified.
- Full integration of the goals and principles of environmental justice and the Environmental Justice Action Agenda into not only the fabric of the Federal government, but also into the threads of state and local government and into the decisionmaking processes of tribal governments and communities across America.

Mr. Fields stated that he anticipated that the demonstration projects underway would evolve into a full-fledged program in the coming years and provide a guide to the way in which the Federal government should deal with other stakeholders in addressing the significant environmental justice concerns of communities. Such a program, he continued, will be one in which people and organizations will clamor to participate because "it is the right thing to do." When we live up to the principles of environmental justice, he stated, we are holding America to its greatest promise. We cannot and will not shirk from that great opportunity and the even greater opportunity the future holds, he declared.

Continuing the discussion, Mr. Lee focused his presentation on the background, philosophy, goals, and future direction of IWG's Action Agenda. He explained that the premises of the Action Agenda are to (1) promote Federal support of solutions that "begin in the community and remain in the community;" (2) link federal, state, and local governments with a community-based, comprehensive planning process; (3) seek collaboration and integration so that resources can be targeted and leveraged more effectively; (4) develop a template for holistic, community-based solutions to environmental justice issues; and (5) serve as a platform for advocating a new way of doing business. The Action Agenda presents a collaborative partnership model for achieving economic vitality, social equity, and environmental quality, he said.

Reflecting on the definition of environmental justice, Mr. Lee explained the concept as (1) fair treatment and meaningful involvement of people in environmental decisionmaking; (2) management of environmental, public health, economic, and social concerns in an integrated manner; and (3) collaborative and constructive problem-solving that includes holistic solutions that are early, truly proactive, and truly comprehensive. Further, environmental justice requires the comprehensive and holistic integrated efforts of all stakeholders – local, state, tribal and Federal governments; community-based organizations; civic and religious groups; academic institutions; business and industry; philanthropic groups; and labor and professional organizations, he continued. The Action Agenda and the demonstration projects have begun to form the vision of that collaborative, partnership approach, he stated.

Mr. Lee explained that two environmental justice listening sessions (the first held on July 11, 1998, in Los Angeles, California and the second held on



March 6, 1999 in New York City, New York), both jointly sponsored by the White House Council on Environmental Quality (CEQ) and EPA, were held to allow senior Federal officials new opportunities to respond directly to affected communities, as well as opportunities for meaningful dialogue among all stakeholders. Development of the goals of the Action Agenda, Mr. Lee continued, was based on ideas and lessons learned that had been discussed during the listening sessions.

In closing, Mr. Lee reiterated that the Action Agenda advocates a new way of doing business. A new way of business will be formed through integrative technology, collaborative partnerships, community-based capacity-building, and the targeting and leveraging of resources, he explained, and will lead to a truly proactive and comprehensive community-based approach to problem-solving.

Ms. Shepard asked how communities could begin to gain access to the process outlined in the Action Agenda. Mr. Fields responded that many Federal agencies already had identified communities that they would like to include in the next round of interagency demonstration projects. In addition, EPA soon will post a notice on its Internet Web site to request that communities that wish to be considered for a demonstration project submit applications by the end of March 2001, he said. Selection criteria would be developed, he continued, suggesting that such criteria might include the willingness of two or more Federal agencies to participate and provide resources to assist the community in dealing with environmental justice issues and the existence of a demonstrated need or a documented environmental justice concern that adversely affects the community. The IWG will review the applications and make selections for the next round of projects, said Mr. Fields.

Mr. Alberto Saldamando, International Indian Treaty Council and proxy for Mr. Arnaldo Garcia, chair of the International Subcommittee, commented that Executive Order 12898 mandates that Federal agencies identify communities that are affected by the activities of those agencies. He stressed that the Federal agencies should make a commitment to identifying those communities themselves, rather than waiting for a community to organize an initiative and secure the participation of Federal agencies. Agreeing, Mr. Lee responded that Federal agencies should be proactive, but, he added, communication from the communities themselves is essential, as well. Federal agency action can not be done in the absence of extensive communication, input, and leadership from communities themselves, Mr. Lee emphasized.

Mr. Fields then explained that all the candidate projects, as well as those selected as IWG demonstration projects, will be announced to the public. He stated that several candidate projects, particularly those at which significant concerns about energy or military issues have been identified, had been called to the attention of the IWG by various Federal agencies because they say they can better address concerns if other Federal partners assist them. Other projects had been suggested by communities, he continued. Mr. Fields added that the IWG had been pleased to hear from private-sector entities that wished to become involved in the IWG demonstration projects and expressed willingness to work with communities and local, state and Federal governments to address environmental justice concerns.

### **3.3 Panel 3: Individual Federal Agency Panel Presentations**

Mr. Lee introduced the third panel session, explaining that the panel discussion was intended to provide a thoughtful review of the progress that had been made in integrating environmental justice into the policies, programs, and activities of all Federal agencies. Rather than a "report card," he explained, the session was meant to provide a review of the accomplishments, challenges, and barriers experienced by the individual agencies and to identify opportunities for addressing environment justice in the future. Exhibit 1-6 describes the focus of the panel.

#### **3.3.1 U.S. Department of Justice**

Ms. Lois Schiffer, Assistant Attorney General, DOJ, focused her presentation on three areas: DOJ's work in environmental litigation; coordination of civil rights efforts; and DOJ's community-based programs. The role of DOJ under the Executive order, she explained, is to implement the principles of the Executive order in all litigation. Ms. Schiffer added that, as Assistant Attorney General for DOJ's Environment and Natural Resources Division, her job is to enforce the nation's environmental laws; defend the actions of Federal agencies in environmental lawsuits; and work on cases related to public lands that involve natural resources, wildlife cases, land condemnation cases, and some issues related to Indian tribes.

### FOCUS OF PANEL 3



The intent of the panel presentations was to be both retrospective and prospective. Emphasis was placed on what lessons could be learned to shape recommendations for better and more effective integration of environmental justice into the policies, programs, and activities of Federal agencies. Each agency was requested to focus on examples of particularly notable lessons, both positive and negative. Each agency also was asked to recommend strategies that may be pursued to more fully incorporate environmental justice into its mission, as well as to achieve better integration in all Federal agencies. Special emphasis was placed on how existing laws and regulations have been used to integrate environmental justice into the work of the agencies.

One of the key principles of environmental justice, continued Ms. Schiffer, is meaningful community participation in agency decisionmaking. She added that community participation is one of the most important legacies of the environmental justice movement and is the concept DOJ has worked most assiduously to incorporate into environmental litigation. As an example, Ms. Schiffer stated that DOJ had sought the views of affected communities in the settlement of affirmative civil enforcement cases. Comment from affected communities was particularly helpful when DOJ was considering injunctive relief to cleanup problems and when the department was exploring the component of settlements known as supplemental environmental projects (SEP). Ms. Schiffer explained that SEPs are environmentally beneficial projects the defendants in such enforcement cases agree to undertake to settle the enforcement actions. SEPs are efforts that the company is not legally required to take action on, but which the company undertakes in addition to

the payment of a civil penalty and injunctive relief, she said. Continuing, Ms. Schiffer stated that a SEP project must have a connection, or “nexus,” with the underlying violation and that SEPs usually directly benefit affected communities.

DOJ puts much effort into consultation with environmental justice communities when selecting SEPs, she said. For example, Ms. Schiffer stated, DOJ resolved some complaints under the Clean Air Act (CAA) against the city of Chicago, Illinois that arose from the operation of a now-closed municipal incinerator. The incinerator, she explained, is located on the near west side of Chicago, a community that has a significant low-income and minority population. Soon after DOJ notified the city of the pending enforcement action, the facility began the process of community outreach with a grassroots umbrella organization, the West Side Alliance for a Safe, Toxic Free Environment (WASTE), which was made up of more than 20 community-based groups, she

continued. As the litigation went forward, DOJ met with the leaders of the group on several occasions and held community meetings. Under the terms of the settlement, the city agreed to pay a civil penalty of \$200,000 and perform SEPs that were valued at \$700,000. The SEPs, the selection of which the community had significant involvement, included two brownfields projects and two lead abatement projects, added Ms. Schiffer.

Continuing, Ms. Schiffer said that another effective means of achieving environmental protection and environmental justice is the development of initiatives that focus on particular problems. Over the past two years, she explained, DOJ, the U.S. Department of Housing and Urban Development (HUD), EPA, and state and local governments around the country had embarked on a nationwide initiative to enforce the Residential Lead-Based Paint Hazard Reduction Act. The legislation, she said, requires that landlords and sellers of older housing warn prospective tenants and buyers of the dangers of lead paint and disclose information about lead paint in buildings. Ms. Schiffer then stated that, in the past year, DOJ had secured a number of settlements with major landlords in the District of Columbia. One result, she reported, had been the provision of more than \$2 million for measures to prevent lead poisoning, such as inspections, abatement projects, and community-based projects, and the provision of portable blood measuring devices that can be used to test blood lead levels in children.

Ms. Schiffer stated that other coordinated enforcement efforts that benefit low-income and minority communities include DOJ's continuing role in Superfund enforcement to clean up hazardous waste sites and help to redevelop brownfields properties in consultation with affected communities. Ms. Schiffer explained that DOJ had been involved in promoting brownfields redevelopment through (1) completing its Superfund cases; (2) playing a role in approving prospective purchaser agreements; and (3) taking steps to protect a prospective buyer from liability under Superfund for existing contamination caused by previous property owners if the purchaser had no role in causing that pollution. In return, prospective purchasers typically agree to pay for or perform some of the response actions at the site by providing reassurance to buyers of contaminated lands on the issue of their liability, she said. Prospective purchase agreements, she pointed out, do not provide protection for prospective purchasers who create new contamination or to those that were involved in causing the contamination already present at the site.

In all the cases she had described as examples of litigation support, Ms. Schiffer emphasized, DOJ is one player in coordinated interagency efforts to "bring the pieces of the puzzle together."

Turning her attention to DOJ's role in the enforcement and implementation of civil rights laws, Ms. Schiffer stated that the Attorney General is charged by Executive Order 12250 with coordination of action taken under Title VI of the Civil Rights Act of 1964 (Title VI), and implementation and enforcement of Title VI.

Over the past few years, said Ms. Schiffer, DOJ's Environment and Natural Resources Division and Civil Rights Division have worked to coordinate Title VI issues as they relate to environmental justice. The Coordination and Review Section had committed a significant percentage of its resources to consulting on and coordinating Title VI complaints that raise environmental justice issues, she said. Many of the complaints involve a number of agencies, and the Civil Rights Division is in a unique position to bring the various parties together, she added.

For example, she said, DOJ's Coordination and Review Section currently was coordinating the response to Title VI complaints filed with the U.S. Department of Defense (DoD), EPA, the U.S. Department of Health and Human Services (HHS), and HUD related to the cleanup and reuse of Kelly Air Force Base in San Antonio, Texas. In a sense, she noted, DOJ's Civil Rights Division is acting as "the glue for the separate pieces of the puzzle."

DOJ also works with other agencies to promote environmental justice through community-based programs, said Ms. Schiffer. As an example, she described, Operation Weed and Seed, a community-based strategy that focuses on "weeding out" crime, drug abuse, and gang activity and "seeding" human services and neighborhood revitalization. Local Weed and Seed programs, she explained, are guided by steering committees operated through the offices of the United States Attorneys, and the mayors, chiefs of police, district attorneys, and residents of communities. All the partners work together to improve quality of life in targeted communities, she said. Recently, she continued, the Weed and Seed Program Office had conducted a nationwide survey of the approximately 250 sites in the program to identify environmental concerns. On the basis of the results of that survey, she said, DOJ had selected four sites for follow-up assistance: St. Louis, Missouri; Dade County, Florida; Portland, Oregon; and Phoenix, Arizona. DOJ soon will convene

meetings at each of the four sites to better identify and understand the environmental issues each community faces and to develop a strategy for addressing such problems.

Continuing, Ms. Schiffer stated that another example of a DOJ community-based program that promotes environmental justice is the Community-Oriented Policing Services (COPS) program. The COPS program provides funds and trains law enforcement officials in community-oriented policing, a community-driven approach to law enforcement and problem-solving, she explained. Recently, DOJ had been working with COPS, EPA, and the U.S. Department of the Interior (DOI) to explore ways in which environmental protection can be incorporated into the community policing model, she said. Under one such project, environmental training for police officers is being incorporated into the basic COPS training program, she stated. She added that DOJ had worked with Indian tribes in the COPS program, as well. She added that funding under the COPS program is available to fund environmental officers.

Concluding her remarks, Ms. Schiffer emphasized that DOJ and other Federal agencies had been working hard to put together the “pieces of the puzzle” and solve the complex, multi-jurisdictional and multi-dimensional problems that face low-income, minority, and Native American communities. Much remains to be done, she stressed. Further, she stated, the collective wisdom and efforts of the affected communities, Federal agencies, tribes, states, industry, and other stakeholders are needed. It is up to the people present to maintain pressure on the next administration to ensure that it continues to work on the puzzle, she stated, citing the Chinese proverb: “The person who says it cannot be done should not interrupt the person who is doing it.”

Ms. Ramos then expressed her appreciation to DOJ for proceeding against what she termed as “the criminal acts” of the government-owned power plants in Puerto Rico. However, she stated, the plants have not complied with the terms of the probation, but DOJ had taken no action in response to that failure. Ms. Ramos then asked that DOJ revise its policy to oppose in court the reimbursement of legal fees to affected communities, especially when the expenses would be paid by violators. She stated that the policy is incompatible with the principles of environmental justice.

### 3.3.2 U.S. Department of Defense

Ms. Sherri Goodman, Deputy Under Secretary of Defense for Environmental Security, DoD, presented an overview of progress DoD has made in implementing Executive Order 12898. Most recently, she began, DoD had hosted a stakeholder forum in St. Louis, Missouri to provide community members and citizens a final opportunity during the current administration to talk to defense leaders about cleanup activities in their communities and to express their views about ways to improve the Department’s efforts in the future. Several individuals representing environmental justice communities in the vicinity of such sites as the Defense Depot, Memphis, Tennessee (DDMT); Kelly Air Force Base; and the Hunter’s Point Naval Shipyard had attended the forum, she said. They had expressed great concerns that DoD is not doing enough to address the minority communities and low-income populations living and working in those communities, she continued.

Ms. Goodman stated that, after listening closely to the testimony about DoD’s activities at DDMT and the health concerns of local citizens, she had become very concerned that DoD could be doing more. Ms. Goodman said that she had asked her staff to meet with the lead health investigator at the Agency for Toxic Substances and Disease Registry (ATSDR) to discuss how DoD could help that particular community. Together, she continued, her staff and ATSDR had developed some ideas, and they are working directly with the community to determine whether those ideas would be beneficial. One promising idea is the possibility of providing surplus government property, such as computers or trailers, to the community for use in establishing more accessible health care facilities, she said, much in the same manner as when the U.S. Air Force recently had transferred surplus trailers to an Indian community to be used to provide much-needed housing.

Continuing, Ms. Goodman discussed other concrete actions DoD had taken to implement the Executive order. After President Clinton signed the Executive order, she explained, DoD took steps to design an implementation strategy that focuses on institutional changes, rather than one-time events, to implement the Executive order, she said. She explained that DoD first had identified five principles of strategy: (1) promotion of partnerships with all stakeholders; (2) identification of impacts of DoD activities on communities; (3) streamlining of government; (4) improvement of day-to-day operations at installations that are

related to environmental justice concerns; and (5) fostering of non-discrimination in all DoD programs and activities.

Continuing, Ms. Goodman stated that DoD had issued to its military departments and agencies regulations based on that strategy, requiring that an analysis of the impacts of proposed actions on minority and low-income populations be performed as part of DoD's implementation of NEPA. Each of the military departments had issued correspondent requirements for its environmental justice analyses, she explained. She cited the following examples:

- U.S. Department of the Navy (Navy) had issued policy guidance with the goal of having all Navy commands include environmental justice considerations in evaluating applicable mission-related activities, she said. In addition, the Navy had incorporated an environmental justice guidance into its installation planning, design, and management guide and into the Marine Corps Environmental Compliance and Protection Manual.
- Department of the Air Force had issued similar guidance based on its experiences with several environmental impact statements and other planning activities, usually in urban areas or built-up areas of small towns. The guidance focuses on the determination of potentially disproportionate adverse effects on low-income and minority populations.

DoD's work with Native American tribes also falls under the Executive order, said Ms. Goodman. In 1998, she explained, then Secretary of Defense William Cohen had signed the first formal DoD policy governing how DoD would work with Federally recognized tribes. Noting that the policy is truly a milestone for DoD, Ms. Goodman stated that she believed the policy is the most comprehensive policy among those of all Federal agencies, adding that it exceeds the requirements of the Presidential memorandum on government-to-government relations with Federally recognized tribes and the Clinton administration's Executive order on consultations with Indian tribal governments. The policy brings uniformity to DoD's interactions with tribes and helps DoD meet its responsibilities under the Federal Trust Doctrine, treaties, and other obligations, she continued. The policy also establishes the groundwork that allows tribes to function as equal partners in DoD actions that affect them, she said. For example, she continued, DoD actively uses

cooperative agreements to assist tribes in working directly with DoD to address the environmental effects of its actions on tribal land.

Such cooperative agreements create a partnership between DoD and the tribal government, she explained, enabling the tribe to play a significant role in mitigation efforts in projects carried out on their lands, while also providing them opportunities for capacity-building. Cooperative agreements provide a mechanism through which DoD and the tribes can work cooperatively to mitigate adverse environmental effects and enable a tribe to receive technical assistance and training so that it can function as an equal partner, she said. During the past three years, she continued, DoD had entered into cooperative agreements with more than 16 Federally recognized tribal governments or tribal consortia. DoD had received funding to support those cooperative agreements, assist in training, and enable tribal organizations to undertake some of the cleanup and environmental mitigation work, she added.

Continuing, Ms. Goodman stated that in addition to developing policies and guidance documents, DoD had reached out to environmental justice communities through restoration advisory boards (RAB). She explained that RABs provide communities affected by DoD's cleanup activities the opportunity to participate in the environmental restoration process and provide comment on DoD's decisions about cleanup. To assist RABs in understanding the restoration process and how it affects them, DoD makes technical assistance for public (TAP) grants available to support independent technical consultation and scientific advice, she said. RABs empower members of communities to take an active role in the protection of their health and safety and that of the environment, she continued. The understanding that grows out of such partnerships increases trust among members of the community, as well as the community's confidence in the environmental restoration activities when that process is working well, she said. Ms. Goodman acknowledged that some efforts are not successful in some communities, adding that she had heard from representatives of such communities in a meeting she had attended that day. However, she pointed out, of the more than 250 RABs operating nationwide, only a handful have not been successful.

Highlighting another example of community outreach, Ms. Goodman discussed an effort of the Defense Logistics Agency (DLA) that focuses on youth. In California, she explained, a partnership

between DLA and youth of the local community rescued the endangered Palos Verdes blue butterfly from extinction. The Palos Verdes blue butterfly had been thought to be extinct, she continued, but had been found several years earlier to live only on a fuel depot located south of Los Angeles. The rescue not only saved a rare species, but also provided skills and opportunities for a number of disadvantaged youth in the community, she continued. One former member of a gang who had served time in prison, currently is employed at the DLA depot where he supervises the effort to breed more than 1,000 butterflies to maintain the endangered species. Ms. Goodman acknowledged that not every project is as successful as that particular effort, but expressed the hope that DoD would be able to implement more such efforts in the future.

Ms. Goodman then stated that DoD also provides technical assistance outreach directly to minority academic institutions, including historically black colleges and universities (HBCU), institutions that serve Hispanic populations, and tribal colleges and universities. Such technical assistance, she said, includes information about the organizations, missions and responsibilities of various components of DoD, and the programming and budgeting processes, as well as information about the acquisition process and preparation of bids and proposals. Ms. Goodman explained that the overall purpose of the program is to present opportunities for minority academic institutions to participate in DoD's contracts, grants, and programs.

Continuing, Ms. Goodman stated that DoD is implementing its policies and ensuring that personnel understand the Executive order through training efforts. DoD has produced an environmental justice videotape that explains to military and civilian personnel the requirements of the Executive order on environmental justice and the effect of the Executive order on the policies and programs of DoD. The goal of the effort is to increase awareness of environmental justice among military and civilian personnel and to infuse the spirit and intent of the Executive order into DoD's decisionmaking process, she explained. For example, DoD has recently embarked on an aggressive program to provide sensitivity training in American Indian and Alaskan Native cultures to military and civilian personnel who work with tribes, she said. The training provides DoD personnel at all levels an understanding of DoD policy applicable to American Indian tribes and Alaskan Natives villages and of the need to interact with tribes on a government-to-government basis, she explained.

Ms. Goodman informed the participants that DoD maintains an environmental justice web site; many documents, brochures, and pamphlets on environmental justice are available on the web site, she noted. To communicate with the environmental justice community, DoD also uses other media such as conferences, meetings, workshops, and postings in community newspapers. Bilingual versions of printed materials also are available, she said. She added that the Army's Chemical Demilitarization Program also makes a number of documents available for distribution, both through the Internet and by other means. She explained that the Chemical Demilitarization Program is responsible for identifying and disposing of chemicals at more than 200 known and suspected sites around the country, including eight stockpile sites and numerous non-stockpile sites. Some of the sites are located in minority or low-income communities, she said. The program is taking an aggressive approach to ensuring that minority and low-income communities are aware of all actions that may be taken to dispose of the materials, continued Ms. Goodman. For example, program officials plan to compile census tract data for each potential site to determine accurately whether minority or low-income populations reside in the vicinity of the site, perform site-specific research for outreach consultation purposes, and conduct risk communication and cultural sensitivity training for personnel responsible for cleanup operations, she explained.

Turning her attention to the IWG's environmental justice demonstration projects, Ms. Goodman stated that DoD was taking the lead in two of the 15 pilot projects supported by the Action Agenda. A pilot project led by DoD addresses environmental concerns on the Annette Islands Indian Reserve located in southeast Alaska, she continued. Through a partnership with Federal, tribal, and local government agencies and organizations, she explained, an approach for cleaning up contamination on the reserve is being developed. The master plan addresses land use and future development on the reserve, she added. To date, five Federal agencies had been involved actively in investigating and cleaning up contamination on the reserve, she continued. Benefits the pilot project brings to the community include the establishment of a collaborative relationship between the tribe and Federal officials, protection of the customary and traditional use of food resources, enhancement of tribal capacity to manage and conduct environmental programs, and provision of Federal technical assistance.



Concluding her remarks, Ms. Goodman acknowledged that DoD can and should do more for communities in the vicinity of its installations. DoD must be a good neighbor to the communities in which those installations are located, she said. Ms. Goodman stated that she believed that DoD had made enormous progress in earning the trust of communities located near their facilities, but acknowledged that DoD work remains to be done. Continuing, she stated that she hoped that the effort DoD had begun under the current administration will maintain its momentum and that, with the help of the NEJAC and the Federal Facilities Working Group, DoD will be able to help “write the next chapter on environmental justice interaction” in a way that helps establish levels of trust that lets DoD accomplish its mission, while addressing the real health concerns of citizens. In that way, she said, DoD will continue to be a good neighbor in the community.

Ms. Miller-Travis asked Ms. Goodman how the participation of environmental justice organizations in San Antonio, Texas, was being incorporated into the RAB process at Kelly Air Force Base. Ms. Goodman responded that Kelly Air Force Base conducts an extensive public outreach program in addition to the activities of the RAB. She acknowledged, however, that the community continues to be concerned about health problems. Ms. Goodman stated that the Air Force was continuing to work on addressing those concerns. She explained that the situation at Kelly Air Force Base is difficult because many complicating factors are present, not only on the base, but also in the community. Ms. Goodman then stressed that the Air Force is committed to addressing the problems at Kelly Air Force Base.

Directing several comments to the representatives of DoD, Mr. Goldtooth informed Ms. Goodman that military fly-bys commonly disrupt a religious ceremony on the Lakota Reservation at Standing Rock, South Dakota, despite numerous requests by the Lakota that DoD discontinue the fly-bys during the ceremony. Mr. Goldtooth then commented on the issues surrounding the cleanup of formerly used defense sites (FUDS) in Alaska. That serious issue, said Mr. Goldtooth, had received little management attention or funding; he then asked representatives of DoD to address the issue. Finally, Mr. Goldtooth commented that DoD seems to have immunity from environmental laws.

Ms. Goodman referred Mr. Goldtooth to Mr. Len Richeson, DoD’s Environmental Justice Coordinator, who she said would assist in obtaining action on the issue of the military fly-bys

over the Lakota Reservation during religious ceremonies. In response to Mr. Goldtooth’s comment about the FUDS program, Ms. Goodwin stated that she was working to double the funding of the FUDS program for the next fiscal year. Continuing her response to Mr. Goldtooth’s comments, Ms. Goodman stressed that DoD is not exempt from environmental laws and stated that DoD, like all other Federal agencies, must comply with environmental laws.

Addressing the issue of DoD’s commitment to international environmental justice issues, Ms. Goodman stated that DoD had been involved heavily in negotiations related to climate change. She pointed out that DoD had decreased by two-thirds the greenhouse gas emissions from military operations and other DoD activities. Ms. Goodman stressed DoD’s commitment to making a significant contribution to the effort to reduce persistent organic pollutants (POP) in the global environment.

Mr. Saldamando commented that the Executive order requires Federal agencies not only to examine the effects of their previous activities but also to evaluate their current programs and policies that have a significant effect on environmental justice. He stressed that, if environmental justice is addressed at the policy level, environmental injustices can be avoided. For example, he continued, the IWG Action Agenda identified Fort Belknap as a community that suffers disproportionate environmental degradation; however, DoD is considering installing a bombing range in the same community. If environmental justice were to be incorporated into DoD’s policy, he pointed out, such a situation could be prevented.

### 3.3.3 U.S. Department of Energy

Dr. Carolyn Huntoon, Assistant Secretary for Environmental Management, U.S. Department of Energy (DOE), focused her presentation on DOE’s environmental justice activities and accomplishments. Dr. Huntoon first stated that environmental justice had become a part of the fabric of DOE’s programs and policies. She emphasized that the programs and policies implemented by DOE had benefitted low-income, minority, and indigenous communities and that DOE had taken action to institutionalize environmental justice within the culture of the Department.

Dr. Huntoon stated that DOE had achieved a number of successes. For example, she said, the Environmental Justice Resource Center, which is sponsored by DOE, had become the nation's premiere institution of its kind. Located at Clark Atlanta University, the center serves as a research, policy, and information clearinghouse for issues related to environmental justice, race, the environment, civil rights, land use planning, and other equity issues, she said. DOE also has entered into a cooperative agreement with the National Conference of Black Mayors, she added. Under the cooperative agreement, she explained, DOE is assisting in the effort to rebuild the city of Princeville, North Carolina, which was almost destroyed by Hurricane Floyd in 1999. In addition, DOE's Samuel B. P. Massey Chairs of Excellence Program, which supports environmental experts of national and international renown from nine HBCUs and one Hispanic-serving institution, is assisting the National Conference of Black Mayors and disadvantaged communities in improving sewage systems and solid waste incineration facilities and in addressing other municipal environmental issues, she continued. The Massey Chairs also assist educationally disadvantaged students in grades kindergarten through 12 who reside in small towns and rural areas by providing them with opportunities to participate in environmental research and earn college scholarships, she said.

Continuing, Dr. Huntoon stated that DOE's Office of Efficiency and Renewable Energy provides throughout the United States a home modernization program for more than 80,000 low-income residents. Further, she added, recognizing the increasing need for communications in an increasingly digital world, DOE has provided disadvantaged communities with the technology and the training needed to participate in that world. For example, she said, DOE, in partnership with EPA, provided to the Hyde Park/Aragon community in South Carolina located near DOE's Savannah River site, used computers and training to research enforcement issues affecting the community. Ultimately, members of the community used their new-found expertise to apply for and win an EPA brownfields grant to clean up areas affecting their community.

Turning her attention to the institutionalization of environmental justice within DOE, Dr. Huntoon stated that DOE maintains an environmental justice coordinator in its Office of Economic Impact and Diversity and has designated points of contact for environmental justice issues in each of its major programs and field centers, she said.

Environmental justice considerations have been incorporated into DOE's NEPA review process, she added.

Dr. Huntoon stated that an increasing number of DOE offices offer training in environmental justice to educate and sensitize managers and staff. DOE's Office of Environment, Safety, and Health conducts health studies in communities near DOE sites, she added. In addition, DOE's Office of Energy Efficiency and Renewable Energy is using environmental justice considerations in its review process for awarding funding, she said. She then stated that another ongoing DOE activity is an aggressive public information outreach effort designed to reach all affected peoples and communities. That effort, she reported, includes the following activities:

- DOE's Office of Energy Efficiency and Renewable Energy's Center for Sustainable Development operates a bilingual web site that provides information about "green building," transportation, rural issues, efficiency in the use of resources, and economic issues.
- DOE's Center for Environmental Management Information provides information about the Department's environmental management program, including distribution of the Executive order and DOE's environmental justice strategy and maintaining the center's Environmental Justice web page.
- DOE's Office of Environment Management is working in partnership with EPA's Office of Federal Facilities Restoration, Savannah State University, and Citizens for Environmental Justice, to support workshops and public involvement programs for communities near the Savannah River site that have suffered adverse effects as a result of conditions at that site. Activities include community workshops that provide hands-on training, literature and exhibits on environmental radiation, weekly radio programs, and interaction with site managers and members of the Savannah River Citizen Advisory Board.

Concluding her remarks, Dr. Huntoon reiterated that DOE is an active participant in the IWG and had taken the lead on several interagency demonstration projects. She stressed that DOE had made a commitment to environmental justice, but acknowledged that much more remains to be done. She stated that it is in the common interest of the entire nation to be able to live in a clean, safe, and healthy environment.



### 3.3.4 U.S. Department of Transportation

Mr. Ronald Stroman, Director of the Office of Civil Rights, U.S. Department of Transportation (DOT), explained that DOT's essential approach to environmental justice has been to attempt to influence "the front end" of the planning process for transportation projects around the country. He stated that DOT was optimistic that the department would be able to issue a final rule on the joint planning process of the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) before the end of the current administration. Mr. Stroman stated that DOT expected that concerns, analysis, and approaches related to environmental justice would be included in that final rule.

Mr. Stroman explained that DOT's planning process requires that local metropolitan planning organizations (MPO) devise a recommended plan for transportation projects. He added that DOT's proposed rule builds on a memorandum that was issued in October 1999 by the FHWA and the FTA that clarified the procedure for including consideration of environmental justice issues as part of that planning process. Before the memorandum was issued, he said, environmental justice issues were paid "lip service" in the review of the planning process by local MPOs. That, however, is no longer the case, he said. For the first time in the history of DOT, continued Mr. Stroman, two local MPOs had been given conditional certification under which they are required to reexamine their plans and incorporate environmental justice concerns into the analysis of transportation projects in their regions.

Discussing another DOT approach for incorporating environmental justice, Mr. Stroman explained that, several years earlier, DOT had received a notice of intent to bring law suits against DOT from a number of environmental justice organizations in the Atlanta, Georgia area. After meeting with the environmental justice groups in Atlanta, the groups had agreed to the conduct of a two-part environmental justice review of the Atlanta area, in lieu of litigation, he said. After conducting an investigation, DOT developed a public participation approach that included local environmental justice organizations, as well as the Georgia Department of Transportation, the Atlanta Regional Transportation Commission, and the Metropolitan Atlanta Regional Transit Agency, the local transit agency, he stated. The approach consisted of some 25 recommendations for implementing change in the public participation process in the metropolitan Atlanta area, he said.

The second phase of the review includes an analytical analysis of the benefits and burdens of transportation projects in the Atlanta area, continued Mr. Stroman. DOT had hired an independent organization to conduct a study over the next several years and to develop a method of measuring the effects of transportation projects on low-income and minority communities in the Atlanta area, he explained.

Continuing, Mr. Stroman reported that DOT had settled an environmental justice lawsuit involving the Jersey Heights neighborhood near Salisbury, Maryland, a predominantly African-American community that had been uprooted when U.S. Route 50 was built. After the community was resettled, the state of Maryland had undertaken an effort to build another highway project that would have had an adverse effect on the community. Mr. Stroman explained that the outcome of the settlement had been a "win-win" result for the community and the state of Maryland. That settlement had set the stage for the way in which DOT had begun to address environmental justice complaints in the future, he said. DOT has established an Environmental Justice Review Committee made up of senior officials of DOT who discuss, share information on, and coordinate considerations of environmental justice on transportation projects on minority communities and low-income communities throughout the country, he explained. Through the efforts of the committee, he continued, DOT has expanded the application of the principles of environmental justice beyond the FHWA and the FTA.

Mr. Stroman then listed other examples of the integration of environmental justice into the activities of DOT, including:

- Implementation of major environmental justice analysis of the effect of a pipeline in minority and low-income communities in Texas, a task that falls under DOT's responsibility to regulate the safety of interstate pipeline.
- Application of environmental justice principles in the actions of the U.S. Maritime Administration in the area of scrapping of ships and to the Federal Aviation Administration in the area of airport expansion.
- Development of a better coordinated, team effort to address complaints related to environmental justice and Title VI.

- Provision of training and workshops on the principles of environmental justice for staff of DOT, local departments of transportation, and MPOs.

Ms. Miller-Travis expressed her opinion that MPOs are “woefully” lacking in diversity and most often are not representative of the metropolitan areas that they serve. She added that, if MPOs remain the principal instrument for local transportation planning, DOT would remain exclusive of the needs and concerns of environmental justice communities. Ms. Miller-Travis then asked Mr. Stroman how DOT’s implementation of Title VI differs from EPA’s implementation plan. Mr. Stroman responded first that he agreed with her statement about MPOs. He explained that MPOs operate on a one vote per jurisdiction basis. New York City, for example, may have exactly the same representation as a suburban area in the region and, therefore may be outvoted consistently when transportation projects are considered, he said, despite a larger population. DOT is exploring options for instituting a proportional voting representation system, he continued. With regard to implementation of Title VI, he then stated, DOT currently was revising its Title VI procedures to make them more consistent with EPA’s plan.

### 3.3.5 U.S. Department of the Interior

Mr. Willie Taylor, Director, Office of Environmental Policy Compliance, DOI, provided an overview of DOI’s Environmental Justice Strategic Plan. He began his presentation by explaining that DOI’s overall mission is to protect and to provide access to the nation’s cultural and natural resources and to honor its trust responsibilities to tribes. He also explained that DOI is made up of eight major bureaus: the Bureau of Indian Affairs (BIA), the Bureau of Land Management (BLM), the Bureau of Reclamation, the Minerals Management Service, the National Park Service (NPS), the Office of Surface Mining, the U.S. Fish and Wildlife Service (FWS), and the U.S. Geological Survey (USGS). Together, the bureaus are responsible for more than one-half billion acres of land, he continued. Mr. Taylor stated that DOI’s Environmental Justice Strategic Plan provides a method for coordinating each individual bureau’s environmental justice efforts. The plan, which Mr. Taylor noted is available on DOI’s web site, includes a natural resources component.

To implement the plan, explained Mr. Taylor, the bureaus have on staff environmental justice coordinators who focus their efforts on (1) cooperating with other Federal agencies, state and

local governments, and communities; (2) ensuring the protection of cultural and natural resources; and (3) fulfilling the trust responsibilities to American Indians and Alaskan Natives.

Citing examples of efforts to implement DOI’s Environmental Justice Strategic Plan, Mr. Taylor stated that DOI’s Office of Surface Mining had provided \$25 million to the Appalachian Clean Streams Program, an initiative undertaken to clean 68 streams and address acid mine drainage that affects those streams. In addition, DOI had played an integral role in 4 of the 15 environmental justice demonstration projects, including Bridges to Friendship, the Metlkatla Indian Community Unified Interagency Environmental Management Task Force, the New York City Alternative Fuel Summit, and the Environmental Justice in Indian Country Roundtable, he continued. See Section 3.4 of this chapter for a discussion of the interagency demonstration projects.

Continuing, Mr. Taylor explained that DOI had participated in and provided funding for the remediation of contamination caused by sheep-dipping operations located on the Navajo Reservation. The pesticides used in several of those operations can cause serious health problems, he explained. DOI is working to remediate two of those sites, he said. He then stated that DOI had worked with ATSDR to identify areas in which residents are experiencing health problems and to remediate contamination causing such problems.

Concluding his remarks, Mr. Taylor stressed that DOI is committed to working with the Federal community as a whole.

Ms. Lisa Guide, Acting Assistant Secretary for Policy, Management, and Budget, DOI, provided information about DOI’s responsibility for protection of the subsistence diet of Native Americans in Alaska, particularly efforts to address POPs in the American and Canadian Arctic regions. POPs, she explained, are industrial chemicals and pesticides that are by-products of industrial activities. Although most POPs are not produced in the American Arctic region, she explained, the region acts as a sink for POPs that are pulled there by air and water currents, or brought there by migrating species. In the winter, she added, the arctic front even extends into the continental United States and encompasses the northern part of the Great Lakes.

POPs and heavy metals have been detected in the traditional food sources of Native Americans in Alaska, such as marine mammals and fish, she continued, where they accumulate in the fatty tissues of mammals. As nutrients move up the food chain, the concentration of POPs is magnified, she said. Studies of the human health effects of POPs on Alaskan Natives are limited, she continued; however, toxicological data indicate that POPs can cause reduction of reproductive ability, decreased function of the immune system, impairment of neurological function, and developmental problems, she added. She added that nursing babies and developing fetuses are most vulnerable to the effects of POPs.

Research conducted in the Canadian Arctic indicates that the blood levels of polychlorinated biphenyls (PCB) among the native Inuit population average seven times higher than the average blood levels among non-Inuit Canadians, and is higher than that among Native Americans who do not reside inside the Arctic Circle, in the Aleutian Islands, or in the chain of Alaskan islands that lie near Russia – one of the areas thought to contribute POPs to the environment, she stated. She added that there are high levels of dichlorodiphenyltrichloroethane (DDT) in sea otters and killer whales in the North Pacific.

Continuing, Ms. Guide stated that the United States has a strong Clean Air Act (CAA) and an equally strong Clean Water Act (CWA). Enforcement of environmental laws in the United States, she said, has reduced the amount of POPs released to the environment from the continental United States. However, she continued, the production of POPs by other countries has offset the reduction the United States has achieved through domestic regulation. In the continental United States, 36 states still have fish advisories and other advisories in place, most issued in the Great Lakes region, because of the presence of POPs, she said. Native Americans and non-native Americans living in the Great Lakes region who rely on subsistence diets exhibit tissue levels of contaminant that are two to three times higher than the average level found in Americans who do not consume subsistence diets, she added.

To address POPs in the American Arctic region, Ms. Guide stated, DOI had initiated several efforts. In conjunction with the National Oceanic and Atmospheric Administration (NOAA) and the state of Alaska, DOI developed a report, *Contaminants in Alaska*, that focuses on the effects of POPs and the correlation between the presence of POPs in the Arctic region and their generation in the

continental United States, she explained. DOI will provide funding for more cooperative research on the subject and for monitoring, she said. DOI also had been working to strengthen partnerships with agencies and universities, continued Ms. Guide. Finally working with the U.S. Department of State and other Federal, state, tribal communities, DOI prepared an international treaty for reduction in the use of and the eventual banning of 12 hazardous POPs, she said. She explained that the proposed treaty soon would be sent to the United States Senate and to 120 other nations for ratification. In closing, she stated her hope that the international treaty would be signed in May, 2001.

Ms. Miller-Travis then asked Ms. Guide and Mr. Taylor about DOI's plan of action for responding to the high blood levels of POPs in the Inuit population. Mr. Taylor responded that DOI anticipates that adoption and implementation of the proposed International treaty discussed by Ms. Guide will help to reduce or alleviate exposure of the Inuit population. He acknowledged that DOI had not yet formed a plan for addressing past exposure. Mr. Taylor added that addressing the issue would require an interagency effort.

Regarding the proposed international treaty for the reduction of POPs, Mr. Goldtooth stated that he had been appalled at the lack of policy or commitment on the part of Federal agencies that the language of the treaty makes evident. Stating that Federal agencies have established policies and developed guidance for addressing environmental justice domestically, Mr. Goldtooth asked about the commitment of such agencies to environmental justice in international matters, such as the proposed treaty on POPs, climate change, and the United Nation Commission for Sustainable Development.

### **3.3.6 U.S. Environmental Protection Agency Region 6**

Continuing the presentations of Federal agencies, Mr. Jerry Clifford, Deputy Regional Administrator, EPA Region 6, focused his comments on what he termed "food for thought" for the members of the NEJAC as they continue to fulfill their role in addressing environmental justice issues in the nation and around the world. Commenting that much of the day's discussion had focused on what had been accomplished under the current administration, he pointed out that much that agency officials had learned falls into three important areas: interrelationships, integration, and initiative.

Since the NEJAC was formed, Mr. Clifford stated, Federal agencies had received an extensive education in environmental justice and had taken effective steps in determining how to address such issues, primarily within their respective agencies and departments. As government agencies look to the future, he said, it is their responsibility to determine how they can coordinate their efforts so that they can approach a community together, covering a multiplicity of issues in unity. Agencies at all levels of government must learn to form interrelationships and work collaboratively to address the issues that are most pertinent to communities, he added.

As they look to the future, Mr. Clifford stressed, government agencies also must find ways to integrate the principles of environmental justice within their respective agencies and departments, so that a separate Office of Environmental Justice or equivalent will not be necessary. Government agencies must strive to implement programmatic environmental responsibilities under the environmental statutes and regulations in a manner that institutionalizes environmental justice issues in their everyday work, he said.

Mr. Clifford suggested that the NEJAC could help government agencies achieve that end by advising them about which agencies or programs have been or are becoming most successful in doing so and by identifying lessons learned.

Last, Mr. Clifford spoke about initiative and leadership. He stated that there is no question that the departments and agencies speaking today had accomplished more during the past eight years to address issues of environmental justice than at any earlier time. He noted that EPA could not have accomplished as much in the preceding eight years without the leadership of the administration of EPA. That leadership must continue at the national level, he said, but there is a need as well for similar initiative and leadership at the regional, state, and local levels. Mr. Clifford suggested that the NEJAC could be replicated at the regional level – that is, establish regional environmental justice advisory committees that could work through the IWG to help support interagency coordination.

Mr. Clifford commented that significant change in all agencies in the area of environmental justice cannot be accomplished simply through 15 pilot demonstration projects. He explained that agency partners could not devote the necessary resources for the demonstration projects and still have adequate resources to replicate the projects in hundreds and hundreds of similar communities

across the country. Therefore, governmental agencies must learn how to use the pilot projects to create institutional change, he said. Doing so will require leadership at the state, local, and regional levels, he stressed.

Concluding his remarks, Mr. Clifford agreed with the remarks offered by Mr. Goldtooth about international environmental justice issues. He then requested that, during future meetings, the NEJAC discuss how Federal agencies can begin the process of ensuring that the actions they take to address international environmental justice issues meet the same standards that they must meet in the United States.

### **3.3.7 U.S. Department of Labor**

Mr. Roland Droitsch, Deputy Assistant Secretary, Office of the Assistant Secretary for Policy, U.S. Department of Labor (DOL), stated that several DOL programs and initiatives fit well into the environmental justice movement, he said. However, he explained, the principal area in which DOL had contributed and can contribute to environmental justice is through employment and training programs.

For example, continued Mr. Droitsch, DOL has been working with Partnership for Environmental Technology Education (PETE) to develop a number of courses that communities in need of job training and development programs can access. He explained that there are many career opportunities in the environmental technology field, such as careers in lead abatement and the cleanup of hazardous waste. He stated that environmental justice communities affected by economic as well as environmental problems, could access the programs.

Continuing, Mr. Droitsch stated that DOL also was involved with the National Training Collaborative for Environment Justice in educational efforts. He added that DOL also is a participant in a number of the IWG demonstration projects, including the Bridges to Friendship project in Washington, D.C.

Reflecting on the challenges encountered in the Bridges to Friendship project and other demonstration projects, Mr. Droitsch explained that the Federal and state agencies and local community-based organizations combined efforts to initiate the project, but encountered significant legal difficulties and problems related to laws governing appropriations. He stressed that identifying ways to resolve such problems is a key contribution of the demonstration projects.

Solutions developed through the efforts of the demonstration projects can benefit other communities in the future, he said. He then observed that the Bridges to Friendship project could transform the entire Anacostia River area in a way that supports community-based organizations and brings the entire area together.

Mr. Luke Cole, Center on Race, Poverty, and the Environment and chair of the Enforcement Subcommittee, expressed his disappointment that DOL's environmental justice program is quite limited, stating that occupational illness and injury affect people of color much more severely than non-minority individuals. Mr. Cole stated that DOL could and should do more to respond to Executive Order 12898.

Mr. Droitsch responded that, although DOL may not have been addressing such issues under the mantle of environmental justice, the Occupational Safety and Health Administration (OSHA) had been addressing issues of occupational illness and injury through a targeted approach, focusing its efforts first on the most dangerous sites and on segments of the workforce in which the incidence of illness and injury is high. He added that DOL's resources are extremely limited, especially when one considers the number of hazardous chemicals and conditions found at the nation's work sites.

Mr. Lee commented to Mr. Droitsch that, if his specific job description encompasses environmental justice, he should search far more broadly for ways to implement the Executive order in DOL's programs and activities than his presentation indicated is currently the case.

### 3.3.8 National Institute of Environmental Health Sciences

Dr. Charles Wells, Director, Environmental Health Sciences, National Institute of Environmental Health Sciences (NIEHS), focused his presentation on new NIEHS programs and changes in NIEHS policies that have been implemented in response to Executive Order 12898. He described several efforts underway at NIEHS:

- A community-based research project designed to implement culturally relevant prevention and intervention activities in disadvantaged and underserved populations that are exposed to adverse environmental contaminants. Currently, the project includes nine grants. An objective of the project is to refine scientifically valid intervention methods to strengthen the involvement of NIEHS with the communities that are affected by pollutants.

- NIEHS' environmental justice partnership for communication, which represents a NIEHS strategy for involving populations at risk of exposure to environmental pollution in shaping the research and allowing those populations to influence the day-to-day responsibility of NIEHS for such research. The communication program includes 15 active grants, although NIEHS was planning to fund 15 more grants in the near future.
- Environmental health research centers, each located at an academic institution. Three of the eight centers – located at the University of Iowa, the University of California at Davis, and Oregon State University – focus on environmental justice issues. A major NIEHS research program is the agricultural chemical minority health program, at which researchers at the centers are focusing on defining the risks posed to agricultural workers by chemicals used in the industry so that better prevention and intervention strategies can be developed to protect the health of those workers.

Researchers at the NIEHS environmental health centers, in partnership with the National Cancer Institute (NCI), also are conducting long-term agricultural health studies of farmers and pesticide applicators, as well as their families, to determine the real outcome of the exposures they undergo. Endpoints of the research are cancer effects, reproductive effects, endocrine disruptors, child development, asthma and other respiratory diseases, and other types of neurological effects and disease.

- Asthma studies, including the redesign of prior studies and the development of new studies. NIEHS currently is implementing a new study in five cities to assess the amount of increased risk for adverse respiratory health effects experienced by minority or disadvantaged children caused by ozone, aerosols, and other air pollutants. NIEHS, in conjunction with the National Institute of Allergy and Infectious Diseases (NIAID), also had implemented an inner-city asthma study. The objectives of the study are to design and develop asthma intervention methods in a health care setting that are aimed at reducing morbidity caused by asthma in a cost-effective manner.

Continuing, Dr. Wells discussed the efforts of NIEHS to address the issue of lead exposure in minority or disadvantaged communities. He stated

that NIEHS, in conjunction with the National Institute of Health (NIH) Office of Research for Minority Health, had instituted a clinical trial designed to evaluate the neurological and behavioral effects in individuals exposed as children to low levels of lead. The clinical trial is testing the effectiveness of a chelating drug, in reversing the neurobehavioral effects in children who have low to moderate blood lead levels. Dr. Wells pointed out that the project is unique in that it is aimed not only at developing intervention measures but also at developing therapy for the removal of lead from exposed individuals.

Another NIEHS lead study, continued Dr. Wells, is focused on the relationship between lead stored in the bones of pregnant women and low birth weight in babies. He explained that lead stored in the bones of a pregnant woman can be transferred across the placenta to a developing fetus.

Turning his attention to the changes in NIEHS policy initiated by Executive Order 12898, Dr. Wells explained that NIEHS had expanded its environmental justice efforts to address disparities in adverse health effects among various populations. Currently, NIEHS is the only institute at the National Institutes of Health (NIH) that has the responsibility for environmental justice, he said, but NIEHS is working to change that policy and is developing strategies to involve the other institutes at NIH in environmental justice issues.

Continuing, Dr. Wells stated that NIEHS conducts an outreach program that educates scientists on the importance of developing a knowledge of the populations with which they are working as partners. Further, he said, NIEHS maintains a job training program for minority and inner-city youth, educating them to identify and address environmental problems in their own communities. The job training program is implemented in conjunction with EPA, he added. Another program, he said, focuses on increasing the number of minority individuals involved in research in the environmental health sciences.

Concluding his remarks, Dr. Wells stated that, since the Executive Order had been issued, NIEHS had changed its policy and worked to implement strategies in all its programs designed to empower people in communities that are victims of environmental injustice.

Ms. Ramos urged the panelists representing health agencies to acknowledge that Puerto Ricans are a distinct ethnic group and have health problems that differ from those commonly experienced by other Hispanic groups, particularly in the case of illnesses related to asthma.

### 3.3.9 Health Resources and Services Administration

Dr. Hubert Avent, Director for Urban Health, Bureau of Primary Health Care, Health Resources and Services Administration (HRSA), an agency of HHS, began his presentation by stating that only through an integrated approach to health service delivery can HRSA begin to address the issues that face the many underserved communities in the country. Therefore, he stated, the mission of the Bureau of Primary Health Care in the future would be to increase access to comprehensive primary and preventive health care and to improve the health status of underserved and vulnerable populations through a comprehensive plan that takes into consideration primary care and community, economic, environmental, and human development.

Dr. Avent said that HRSA currently was funding more than 800 community health centers. He explained that if a community health center is to receive funding, the community-based organization that serves as the grantee must agree that the health center will provide all five cycles of care – from prenatal to gerontological – and must provide hospitalization services, including on-call service. Therefore, he said, the 800 community-based organizations funded by HRSA had established 3,700 clinic sites. The clinics employ more than 2,500 medical physicians, as well as more than 2,500 mid-level medical professionals, he said. Total employment in the Community Health Center Program is approximately 57,000 nationally, he added, noting that many of those individuals are residents of communities affected by environmental and health problems.

Dr. Avent explained that the operational budget of the Community Health Center Program is approximately \$2.8 billion, but, he added, less than \$900 million is provided by the Federal government. The remainder is generated through payments by patients, he stated, observing that good health includes the opportunity to participate in health care.

Reiterating the need for an integrated delivery system, Dr. Avent stated that all Federal agencies are partners and it takes a team to take care of one patient. In 1998, as part of HRSA's ongoing effort to improve the quality of health care, he said, HRSA entered into a memorandum of understanding (MOU) with ATSDR to implement strategies for building the capacity of environmental medicine in the HRSA Community Health Center Program. The goal of the project is

not only to provide training in environmental medicine to providers in community health centers, he said, but also to provide such training to all the providers who work with and have been partners with HRSA in terms of capacity to deliver services throughout the country.

Continuing, Dr. Avent stated that HRSA recently had entered into an agreement with CDC to develop a program called the Community Health Outreach and Educational Services Program. The program will use the existing infrastructure of community health centers to disseminate information about disparities in adverse health effects among various populations. Commenting on the success of this effort to use the existing infrastructure to implement a new program, Dr. Avent encouraged officials of other agencies to perform an asset inventory in their agencies to identify existing vehicles for their own new initiatives. As another example, he said, HRSA was entering into contracts with such community action agencies as Meals on Wheels and Head Start through which to disseminate health information. Dr. Avent stated that such integrated approaches are to be HRSA's focus in the future.

### **3.3.10 Agency for Toxic Substances and Disease Registry**

Dr. Rueben Warren, Associate Administrator for Urban Affairs, ATSDR, stated that ATSDR views environmental justice as a subset of public health because public health is simply "social justice." However, he continued, the public health community had been late to join the environmental justice movement, and, he added, the learning curve is steep. Nevertheless ATSDR is committed to working with the environmental justice community, he stated.

Dr. Warren then discussed the accomplishments of ATSDR in integrating environmental justice into its initiatives. First, he said, ATSDR had established in 1997 the Office of Urban Affairs in to focus on environmental justice and minority health issues and the redevelopment of brownfields properties. He stated that that action represented a "structural" commitment on the part of ATSDR to addressing those issues. Continuing, he stated that ATSDR was working to translate that structural commitment into a functional commitment. Dr. Warren added that combining approaches to those issues provides ATSDR with an opportunity to reach the same populations in three different ways. Second, he said, ATSDR had made progress in learning to listen to environmental justice communities. Last, he

continued, ATSDR had developed a diverse workforce, having hired many young, highly educated individuals who are interested in environmental health and in working with and in environmental justice communities.

Continuing, Dr. Warren stated that officials of ATSDR believe in the infrastructure of science. Everything they do, he said, is based on good science. ATSDR is attempting to establish a "mechanism to move forward," he said, adding that the agency can move forward most effectively by continuing partnerships with other agencies at the Federal, state, and local levels. He pointed out that ATSDR works closely with both health departments and the environmental quality departments. He added that ATSDR also works at the local level with communities and environmental justice organizations. He acknowledged that ATSDR can learn from those communities and organizations, stating that ATSDR was working to become a "better listener."

Dr. Warren stated that ATSDR also works with the academic community. For example, he said, ATSDR is collaborating with five new programs in public health at HBCUs. Four of the five programs include an environmental science component, he added.

Concluding his remarks, Dr. Warren shared the following recommendations based on major lessons that ATSDR had learned through its efforts to integrate environmental justice issues into its initiatives:

- Stay with your mission.
- Use the best science available, but acknowledge cases in which the science is absent. When in doubt, err to the side of the public's health.
- Find new partners, and ways to collaborate with others.
- Strive to be trustworthy.
- Eliminate the artificial barriers that separate Federal, state, and local governments.
- Acknowledge the history of racism and exploitation by and within government.
- Realize that resources are limited and work within those limits.

Ms. Shepard stated that the environmental justice movement always and repeatedly had asked the Federal government to err on the side of the public's health when scientific data that supports an environmental health issue is lacking. She asked Mr. Warren whether he had been discussing that issue with representatives of other Federal agencies that still cling to a cause-and-effect relationship as an indicator of a need for action. Mr. Warren responded that he was communicating to the Federal partners that it is their responsibility to err on the side of public health. He added that the principle already had been incorporated into some activities of ATSDR. Mr. Warren then said that the message he wanted to convey to the NEJAC was that ATSDR had heard the NEJAC's recommendations on the issue and was working to incorporate the recommendations into its programs and activities.

### 3.3.11 U.S. Department of Agriculture

Mr. Terry Harwood, Director of Hazardous Materials Management, U.S. Department of Agriculture (USDA), focused his presentation on activities of the USDA and the environmental justice policies USDA had established after the Executive order was issued. One policy, he said, is the incorporation of considerations related to environmental justice into all the programs of the department. Another policy is the identification, prevention, and mitigation of any adverse human health or environmental effects that are caused by the programs and activities of USDA, as well as the provision to minority and low-income populations of the opportunity to participate in planning and decisionmaking.

Continuing, Mr. Harwood stated that USDA plans to continue to develop projects to address environmental justice issues in processes not just limited to the NEPA process. For example, USDA intends to collect, maintain, and analyze information on populations that rely on fishing, hunting and trapping for subsistence, he said.

Discussing the accomplishments of the USDA program, Mr. Harwood described the following efforts:

- USDA maintains cooperative agreements with many state agencies, including health departments, to participate in pest eradication efforts. Related efforts involve evaluation and communication of health risks related to pesticide applications.

- USDA provides funds to the National Coalition to Restore Urban Waterways in six cities, including support of a project initiated by a minority environmental association in Cleveland, Ohio to test water quality in minority communities.
- USDA has provided support to minority and rural housing areas in North Carolina for the installation of clean water supplies.
- USDA has provided integrated pest management strategies to support state and local involvement in setting priorities for research, education, and regulatory controls.

Continuing, Mr. Harwood stated that USDA emphasizes the participation of small and disadvantaged businesses in its cleanup process. USDA also has responded to the needs of industrial and field workers for health protection through cotton dust control, grain dust reduction, and safe pesticide application technologies, he said, adding that USDA has contributed to the promotion of safe handling procedures for pesticides through the USDA research programs that describe the degradation of pesticides and other chemicals.

Mr. Harwood explained that USDA collaborates with other Federal agencies, state and local governments, and public and private organizations to provide grants and technical assistance to minority and low-income urban communities to accomplish conservation of urban ecosystems through local initiatives. Further, he said, USDA collects, maintains, and analyzes information about the consumption patterns of populations that rely primarily on fish and wildlife for subsistence.

Turning his attention to USDA's environmental cleanup program, Mr. Harwood stated that lack of funding had been a major barrier to implementing the program. He stated that, after much struggle to secure funds, USDA had completed cleanup of 2,000 sites; however, he added, some 2,000 sites remain to be addressed. Mr. Harwood stressed that the problem in implementing the program is one of appropriations, rather than inattention on the part of USDA.

Continuing, Mr. Harwood explained that USDA is in an unique situation because it is both an enforcement agency under Superfund and a natural resource trustee. Therefore, he continued, when USDA approaches a cleanup, the department must approach the effort from the perspective of an enforcement agency that



oversees the cleanup and one that must work with states and tribes to restore natural resources, as well.

Addressing initiatives to assist tribes, Mr. Harwood stated that USDA recently had negotiated a MOU with DOI, EPA, the state of Idaho, and various tribes in southeastern Idaho, that specifies how the parties will collaborate to clean up selenium contamination of an extensive area caused by phosphate mining. Mr. Harwood pointed out that USDA assists the tribes as a co-trustee with the tribes. He added that USDA had hired Indian-owned firms to implement the cleanups of a number of sites in Montana.

In closing, Mr. Harwood added that USDA also had worked with rural communities to involve them in EPA's brownfields redevelopment program. He pointed out that brownfields properties often are thought of only as abandoned urban industrial sites when, in fact, there are brownfields properties in many rural communities.

### **3.3.12 U.S. Department of Housing and Urban Development**

Mr. Marvin Wentz Turner, Special Actions Office, Office of the Secretary, HUD, in the interest of time, submitted a written fact sheet that outlined the steps taken by HUD to promote environmental justice. After presenting the document, Mr. Turner was available to respond to questions posed by the members of the subcommittee.

Referring to HUD's Smart Growth coalitions, Ms. Shepard asked Mr. Turner how HUD would respond to creating healthy communities, while at the same time maintaining affordable housing. Mr. Turner responded that the two are not mutually exclusive. Affordability, which is an index, is a key issue and concern of HUD, as is the ability to provide safer and sanitary housing, he explained. HUD's mission focuses on both, he said. Communities may use smart growth opportunities to create safe and sanitary housing that is affordable, concluded Mr. Turner, adding that HUD may be a central resource for those communities.

### **3.4 Panel 4: Integrated Interagency Demonstration Projects**

Mr. Lee introduced the fourth panel, which featured representatives of 6 of the 15 interagency environmental justice projects initiated under the IWG's Action Agenda. The representatives shared their successes and lessons learned. Exhibit 1-7 provides a description of the panel. Exhibit 1-8

presents a list of the 15 interagency environmental justice projects initiated under the IWG's Action Agenda.

#### **Exhibit 1-7**

#### **FOCUS OF PANEL 4**

This panel consisted of a variety of non-federal partners involved in several of the 15 interagency environmental justice demonstration projects. The projects focus on various areas, such as environmental protection, economic development and community revitalization, improvement of public health, community education and capacity-building, and others. The objectives of the projects include:

- Learn how Federal agencies can collaborate better to ensure local problem-solving.
- Achieve concrete, beneficial results for affected communities.
- Promote stronger partnerships with state, tribal, and local governments.
- Enhance existing assets within affected communities.
- Develop a template for integrated community-based solutions to environmental justice issues.
- Document lessons learned that can provide positive support to other communities.
- Recommend changes in Federal policy when appropriate.

### **3.4.1 Bridges to Friendship: Nurturing Environmental Justice in Southeast and Southwest Washington, D.C.**

Admiral Chris Weaver, Department of the Navy, DoD, provided an overview of the success of Bridges to Friendship: Nurturing Environmental Justice in Southeast and Southwest Washington, D.C., an environmental justice demonstration project underway at the Washington Navy Yard in southeast Washington, D.C. Admiral Weaver stressed that the Navy has been committed to improving the environmental situation at the Washington Navy Yard by improving the environment, improving opportunities for the residents living outside the gates, and improving the quality of the workplace for the installation's personnel. For those reasons, he explained, the Navy had "embraced its status as a Superfund site

**INTEGRATED FEDERAL INTERAGENCY ENVIRONMENTAL JUSTICE ACTION AGENDA  
ENVIRONMENTAL JUSTICE DEMONSTRATION PROJECTS**

Under the Interagency Working Group on Environmental Justice's (IWG) Integrated Federal Interagency Environmental Justice Action Agenda, 11 Federal agencies have initiated environmental demonstration projects to help 15 environmentally and economically distressed communities. Communities selected are comprised of predominantly minority or low-income populations that face negative environmental, public health, or socioeconomic effects because of environmental contamination. The 15 projects and the lead Federal agency for each are:

- Greater Boston Urban Resources Partnership: Connecting Community and Environment (Boston, Massachusetts) – U.S. Environmental Protection Agency (EPA)
- Camden: City of Children Partnering for a Better Future (Camden, New Jersey) – U.S. Department of Housing and Urban Development (HUD)
- New York City Alternative-Fuel Vehicle Summit (New York, New York) – U.S. Department of Energy (DOE)
- Addressing Asthma in Puerto Rico: A Multi-Faceted Partnership for Results (Puerto Rico) – Health Resources and Services Administration and ATSDR, both agencies within the U.S. Department of Health and Human Services (HHS)
- Bridges to Friendship: Nurturing Environmental Justice in Southeast and Southwest Washington, D.C. (Washington, D.C.) – Department of the Navy, U.S. Department of Defense (DoD)
- Community Cleanup and Revitalization in Arkwright/Forest Park (Spartanburg, South Carolina) – EPA
- Protecting Children's Health and Reducing Lead Exposure Through Collaborative Partnerships (East St. Louis, Illinois) – EPA and HUD
- Bethel New Life Power Park Assessment (Chicago, Illinois) – DOE
- New Madrid County Tri-Community Child Health Champion Campaign (New Madrid County, Missouri) – EPA and U.S. Department of Agriculture Natural Resources Conservation Service
- Easing Troubled Waters: Ensuring Safe Drinking Water Sources in Migrant Farmworker Communities in Colorado (Colorado) – EPA
- Environmental Justice and Public Participation Through Technology: Defeating the Digital Divide and Building Community Capacity (Savannah, Georgia and Fort Belknap Indian Reservation, Montana) – DOE
- Protecting Community Health and Reducing Toxic Air Exposure Through Collaborative Partnerships in Barrio Logan (San Diego, California) – EPA
- Oregon Environmental Justice Initiative (Portland and rural communities, Oregon) – U.S. Department of Justice
- Metkatla Indian Community Unified Interagency Environmental Management Task Force (Ketchikan, Alaska) – DoD
- Environmental Justice in Indian Country: A Roundtable to Address Conceptual, Political, and Statutory Issues (Albuquerque, New Mexico) – DOE

and embarked on environmental remediation." Reflecting on the factors behind the success of Bridges to Friendship, Admiral Weaver stated that the project provides a way to combine the efforts of community groups, the Navy, other Federal

agencies, private individuals, the community itself, and the District of Columbia into a "decidedly non-hierarchical and decidedly non-bureaucratic organization." That type of organization "moved the engine forward," he said. The partners in the

Bridges to Friendship project have been able to “link job needs with job opportunities with job takers with job users,” which, in turn, builds community pride and contributes to youth development. The Bridges to Friendship process, which begins in the community, provides young people at risk with life skills and job skills training, and ultimately job and career opportunities, continued Admiral Weaver. Bridges to Friendship, he stressed, provides an opportunity to take advantage of the rebirth of southeast Washington and advance social justice, both economic and environmental.

Ms. Miller-Travis asked Admiral Weaver about other opportunities within DoD, particularly within the Navy, to advance understanding of environmental justice and activities related to it. Admiral Weaver responded that, in his opinion, any situation that involves potential environmental litigation or an environmentally or economically disadvantaged population located adjacent to a DoD installation would provide an opportunity to promote the principles of environmental justice and understanding of those principles.

### **3.4.2 Bethel New Life Power Park, Chicago, Illinois**

Ms. Mary Nelson, Bethel New Life, Inc., Chicago, Illinois, began her presentation by briefly describing the power park demonstration organization. She stated that Bethel New Life, Inc. is a faith-based, community development organization with the goal of building a healthy, sustainable community. Ms. Nelson then discussed the organization’s definition of a sustainable community, which, she said, has four components: economic security through employment opportunities, environmental integrity, environmental quality, and public participation in decisionmaking.

Describing lessons learned through the implementation of the demonstration project, Ms. Nelson stated three ingredients are needed if a community redevelopment project is to be successful:

- The first element is vision. Members of the community had viewed their community as it was, then envisioned it as they would like it be in the year 2020. The members of the community then used that vision in creating the community development plan.

- The second ingredient needed for success is the development of partnerships. Bethel New Life, Inc.’s partnership with DOE’s Argonne National Laboratory had helped Bethel to evaluate technology transfers that would work the project and had helped attract the kind of intergovernmental cooperation a community redevelopment project must have.
- The third ingredient of a successful community redevelopment project is the use of an asset-based approach, Ms. Nelson continued. Members of the community should identify the community’s assets. For example, a brownfields property can be viewed as an asset rather than a liability because it presents an opportunity for development.

Ms. Nelson stated that Bethel New Life, Inc. used an asset-based approach to evaluate development opportunities at 30 brownfields properties in the community. The organization considered the marketability of the sites, the types of jobs that could be brought in, how much effort would be required to redevelop a site, and how environmentally friendly the operations that might be brought to a site would be. Through its various partnerships, the organization had identified and promoted the sites and established a development process.

Continuing, Ms. Nelson provided recommendations for effective interagency partnerships. First, she said, the lead Federal agency should designate a “point person” to coordinate activities with the community and other partners. Second, she continued, funding should be available at the onset of a project so that the project can move forward efficiently. Last, Ms. Nelson recommended that interagency partnerships include regional and local agencies so that those agencies will be informed of the process and can take part in carrying out the community development plan.

### **3.4.3 Community Cleanup and Revitalization, Arkwright/Forest Park, South Carolina**

Mayor James Talley, City of Spartanburg, South Carolina, provided an overview of activities related to the Community Cleanup and Revitalization Project in the Arkwright/Forest Park community, located on the south side of Spartanburg, South Carolina. The community has a population that is 96 percent African American, said the Mayor, with two Superfund sites located within one-quarter mile of the community. Other local areas of concern include an abandoned textile mill, an

operating chemical plant, two dumps, and several areas in which it is suspected that illegal disposal takes place, said Mayor Talley.

Mayor Talley explained that the demonstration project is a “community-driven, community-based partnership” designed to assist Regenesys, a community-based organization, in involving a variety of stakeholders in efforts to foster the identification, inventory, assessment, cleanup, and redevelopment of properties in the Arkwright/Forest Park community. Continuing, he said that the community-based partnership includes local and state agencies, financial institutions, nonprofit organizations, academic institutions, local private businesses, and a variety of Federal agencies. Through a collaborative effort, the project partners had been able to avoid duplication of efforts and maximize funding resources, he said. For example, continued Mayor Talley, approximately 65 people representing the various project partners have formed committees according to their areas of expertise. The committees work to identify and develop opportunities for action within those areas, he explained.

In closing, Mayor Talley stated that the most significant lesson learned during the implementation of the project was the importance of community-control and community involvement. If a project is under the direction of citizens, he explained, the focus will remain on the benefits to the community.

#### **3.4.4 Addressing Asthma in Puerto Rico: A Multifaceted Partnership for Results, Puerto Rico**

Dr. José Rodríguez-Santana, Asthma Coalition of Puerto Rico, began his presentation by explaining that some 44 percent of the population of Puerto Rico suffers from asthma at some point in their lives. Further, the mortality rate for asthma is at least three times higher in Puerto Rico than the rate in the United States, he said. Dr. Rodríguez-Santana also explained that asthma is both an environmental disease – that is, asthma attacks can be triggered by environmental risk factors – and a genetic disease – genetic predisposition to asthma contributes to the high incidence of asthma among Puerto Ricans.

Dr. Rodríguez-Santana stated that the demonstration project represents the first asthma project funded by Federal agencies with the objective of reducing the incidence of asthma among native Puerto Ricans. The purpose of the

project is to maximize asthma prevention and augment current interagency efforts to develop a community asthma intervention program for children in Puerto Rico’s low-income, underserved populations, he continued. The project benefits from a partnership of Federal agencies, such as HRSA, HHS, and EPA; local health departments; community groups; private foundations; and universities, that seek to gain a better understanding of the factors that contribute to the high incidence of asthma in Puerto Rico, he said.

Dr. Rodríguez-Santana then shared information about one of the initiatives of the demonstration project, the development and implementation of “Los Colores de Asthma” or the Color of Asthma, a community asthma intervention program focused on reducing the incidence of asthma in children. Activities conducted under the program include the education of children who have asthma and their families, the promotion of self-management of asthma, the promotion of more advanced drug therapy for asthma, and access to adequate treatment for disadvantaged families and children, he said.

Ms. Ramos urged Dr. Rodríguez-Santana to focus the efforts of the project on the prevention of asthma, as well as on treatment strategies. She also urged the asthma coalition to become involved in the process of permitting new sources of air pollution by filing complaints about abuse of communities, as indicated by health data. Ms. Ramos also urged Dr. Rodríguez-Santana to invite people from the most severely affected communities to take part in his working group, commenting that those people would enrich the efforts of the working group and foster support for its endeavors in the community.

Dr. Rodríguez-Santana responded that the coalition was applying for additional funding from EPA’s SEP program. SEP funds would be used to address environmental hazards that contribute to the high incidence of asthma in Puerto Rico.

#### **3.4.5 New Madrid County Tri-Community Child Health Champion Campaign, New Madrid County, Missouri**

Dr. Emil Jason, Great Rivers Alliance of Natural Resource Districts (GRAND), provided an overview of the New Madrid County Tri-Community Child Health Champion Campaign (NMCTC) and described the project’s successes in three communities located in New Madrid County, Missouri. The communities of Lilbourn, North Lilbourn, and Howardville are agricultural

communities located in the boot heel region of Missouri, he reported. The communities lack business and industry to make them sustainable and are characterized by gross poverty and substandard housing conditions, said Dr. Jason. The purpose of the project is to provide a safer environment for children in those communities by promoting community awareness of the prevention of environmental health hazards and by building greater capacity to address the needs and concerns of the communities on a local level.

Dr. Jason explained that the project began by identifying environmental health hazards that might pose a health risk to members of the communities, especially children. Three areas of potential health hazards were identified: lead exposure, environmental triggers for asthma and allergies, and poor water quality.

Dr. Jason stated that NMCTC is a community-led initiative implemented through a collaborative partnership with a variety of local, regional, and Federal partners. Community development and leadership and capacity-building are integral parts of the project, he continued.

Dr. Jason then stated that capacity-building under the project is accomplished through education and outreach. He explained that four community facilitators from each of the disadvantaged communities were selected and given training on the potential health hazards in their own communities. The community facilitators then hosted training workshops and provided educational materials to share the information with the citizens of their communities, he said.

Dr. Jason stated that the project had been successful in meeting its goals and objectives. He pointed out that the community had continued to play a leadership role in implementing and participating in the project – one measure of success, he declared. Dr. Jason stressed that those successes were essential to the sustainability of efforts undertaken under the project.

Ms. Shepard asked how the success of the public education campaign was to be evaluated. Dr. Jason responded that baseline data on school absences and emergency room visits because of asthma were being collected. The data, he continued, will be analyzed to identify trends over time as an indication of the success of the education campaign.

### **3.4.6 Protecting Children's Health and Reducing Lead Exposure Through Collaborative Partnerships, East St. Louis, Illinois**

Dr. Richard Mark, East St. Louis Lead Project, provided an overview of the demonstration project and discussed the participation of its Federal agency partners. Dr. Mark reported that 65 percent of the population of East St. Louis, Illinois is low-income, compared with the average for the state of 27 percent, and 98.6 percent of the population is minority, compared with the average for the state of 25 percent. This region is "littered" with abandoned industrial sites and junk yards, he continued, adding that the area also has numerous abandoned lots that serve as play yards for children. Blood lead levels in children in the East St. Louis area are four times higher than levels detected in children in the nearby communities, reported Dr. Mark. The purpose of the project, he continued, is to implement a comprehensive strategy to improve children's health by reducing lead poisoning. The project is being conducted through a collaborative partnership of community groups; local hospitals; local agencies in East St. Louis and St. Clair County, Illinois; and various Federal and state agencies, he added.

Dr. Mark stated that the demonstration project involved the development of a collaborative partnership through a bottom-up approach that engaged the community, identification and establishment of priorities among the needs of the community, and development of an appropriate project plan. He stated that the next phase of the project would be to conduct blood lead screenings for 3,000 children between the ages of 6 and 12, with 1,000 screenings to be conducted each year for three years. In 1999, continued Dr. Mark, 21 percent of children tested exhibited high blood levels (more than 10 micrograms per deciliter [mg/dl]), he said. The average blood level was 15 mg/dl. In 2000, the lead screenings were conducted at schools located near abandoned industrial sites at which the soil had been demonstrated by sampling on analysis to be contaminated with lead. The results of those lead screenings indicated that 51 percent of the children tested had blood lead levels between 1 and 9 mg/dl, and 9.9 percent exhibited blood levels of more than 10 mg/dl, he said. Dr. Mark pointed out that blood levels of more than 5 mg/dl can cause learning disabilities in children.

Other plans for the next phase of the project include lead-based paint assessments, rehabilitation of housing, landscaping, and

weatherization of 75 homes in the East St. Louis area, he said, as well as soil testing and site assessments of abandoned lots that children in the community use as play yards, reported Dr. Mark.

Continuing, Dr. Mark explained that the partners in the project meet every four to six weeks, noting that participation and attendance at the meetings had been “very good.” Dr. Mark stated that one of the greatest challenges partners face is to obtain funding to continue case management for the children suffering from lead poisoning and their families and to remediate contaminated sites located near neighborhood schools. The greatest success of the project, he added, is the education and prevention campaign. Dr. Mark explained that, when the project began in 1998, participation by parents and school officials was limited. However, since the partners embarked on the education campaign and developed a videotape on the effects of lead poisoning, participation and support had increased significantly, he said.

Mr. Aragon asked about the process used to followup when high blood levels are detected in a child. Dr. Mark responded that nurses from St. Mary’s Hospital volunteer to followup with children affected by lead poisoning. Followup includes retesting to verify the screening results and seeing that the children seek the care of a physician. Dr. Mark added that St. Mary’s Hospital was working to obtain additional funding for a more extensive followup program. Further, he added, Neighbors United for Progress, a community group that is involved in the partnership, follows up with testing for lead-based paint in the children’s homes. That program is funded by a grant awarded to St. Clair County by HUD, said Dr. Mark.

### **3.5 Panel 5: Stakeholder Perspectives on Integrated Interagency Strategies**

Introducing the fifth panel, Mr. Lee pointed out that panelists would address the issue of implementing collaborative, interagency strategies and partnerships from the perspective of five different stakeholder groups: community organizations, business and industry, municipal and local government, tribes, and state-funded academic research. Exhibit 1-9 presents a description of the panel.

#### **3.5.1 Community Perspective**

Providing the perspective of a community group, Ms. Charlotte Keys, Executive Director, Jesus People Against Pollution (JPAP), Columbia, Mississippi, first stated that every government

**Exhibit 1-9**

#### **FOCUS OF PANEL 5**

This panel consisted of representatives of community-based organizations; including grassroots groups; business organizations; tribal, and local governments; state-funded research organizations. The panelists presented their views about the viability of the Integrated Federal Interagency Environmental Justice Action Agenda, particularly as it is applicable to their sectors, and offered recommendations for further development of integrated interagency strategies.

agency has a moral obligation to fulfill its mandate to protect public health and the environment. She then expressed her hope that the IWG can help Federal agencies move forward in meeting that obligation and in providing just solutions to the problems faced by communities.

Continuing, Ms. Keyes stated that past efforts and experiences of community and environmental justice groups make it apparent that the only way to succeed in accomplishing the goal of environmental and economic justice is to build trusting, honest, loyal, and long-lasting partnerships with other stakeholder groups. To be effective, she continued, community and environmental justice organizations must institute and maintain mechanisms that provide the diversity of individuals to work toward the just resolution of problems.

Commenting on the importance of the IWG, Ms. Keyes stated that the IWG can serve as a bridge that allows communities to gain access to the proper Federal agencies to seek assistance in local struggles for environmental and economic justice. However, she said, it will take time for many community and environmental justice groups to build trust in Federal agencies. She also stressed that community involvement at the beginning of the process for environmental and economic justice is essential.

In closing, Ms. Keyes stated, “Just solutions do not happen because one or two people decide that this is what we need. It happens when willing, honest, and trustworthy partners are willing to come to the table.”

### 3.5.2 Industry Perspective

Ms. Wood read a written statement submitted by Ms. Sue Briggum, Director, Governmental Affairs, Waste Management, Inc., who had been unable to attend the meeting. See Appendix C for a copy of Ms. Briggum's written statement.

In her statement, Ms. Briggum provided an industry perspective on integrated interagency strategies. She first pointed out that most environmental justice issues arise from the accumulated effects of a number of sources of health problems and environmental and economic stresses. In the classic case, she continued, a number of facilities operated by different industries or business sectors coexist in a single community that faces such challenges as heavily traveled roads, runoff from unregulated sources, and emissions from businesses and individual sources in the communities – challenges which often are cited as evidence of environmental injustice. All those challenges add to the environmental burden borne by the community, which quite often also suffers from insufficient access to medical care and other essential services, she said. Often, several government authorities have responsibilities related to conditions in the area. In many cases, Ms. Briggum continued, no one government authority is willing to take the first step to correct a problem or to assume responsibility. Ms. Briggum then observed that even a business with the best of intentions may find itself unable to define a constructive role for itself in a situation over which the company has only partial control. Similarly, it is clearly unfair to expect citizen advocates to shoulder the burden of organizing a constructive response to such concerns, she stressed.

Ms. Briggum, in her statement, then stated that she considers the interagency demonstration projects a means to “break through” that cycle of conflict. She pointed out that the pilot demonstration projects share several admirable characteristics. First, the demonstration projects assign to a Federal coordinating agency the responsibility of initiating the project and engaging the affected stakeholders in problem-solving, read the statement. Ms. Briggum also noted that the projects attempt to bring community groups together with already existing Federal resources. Further, she pointed out, the demonstration projects are based on open dialogue and cooperation, rather than confrontation. She stressed that the concept of the interagency demonstration projects makes sense because “it is place-based, tackles a manageable set of issues

and parties, and allows for trial and error.” When good models emerge, they can be replicated and expanded in the future, she added.

Ms. Briggum stated that, in many cases, the IWG's projects are similar to the early brownfields pilot projects, which began with a central agency coordinator and leveraged substantial private-sector and government investment from initial EPA grant money. She pointed out, however, that the most successful brownfields pilot projects recognized that the crucial element in resolving environmental justice concerns was the partnership between the community and the businesses whose activities affect that community. Continuing, she stated that one of the reasons for the success of the brownfields initiative was that it engaged, at the onset, local business at individual sites, supported ongoing communication between business and community, and then engaged real estate developers through their trade and professional associations to agree upon the model.

Ms. Briggum then suggested that the IWG's projects should take that same course, offering two recommendations: that each IWG demonstration project actively engage all affected businesses and that, once local businesses have been contacted, a larger infrastructure for positive contributions by business be created by engaging major trade associations in the project. Ms. Briggum suggested that the trade associations that represent affected businesses, along with representatives of major citizen advocacy groups, should be engaged in reviewing the demonstration projects and assisting the Federal government in the ongoing evaluation of the success of the projects.

In closing, Ms. Briggum stated that, by engaging citizens and business groups together to make the projects work, the Federal government, along with state and local governments, can foster a powerful coalition for future bipartisan initiatives to address environmental justice concerns.

### 3.5.3 Local Government Perspective

Mr. Jesus Nava, Deputy City Manager, City of San Jose, California, provided the perspective of municipalities on integrated interagency strategies, and offered suggestions for effectively engaging municipalities in those strategies. He first stated that local elected officials are the closest link to the people of the community and that those officials have much influence on consensus-building in a community. City council members know the “major players” in their town or district, he noted,

adding that Federal officials should recognize city council members as leaders of the local community and as potential advocates and partners in causes that require the building of consensus in those communities. Continuing, Mr. Nava stated that direct contact is an extremely valuable tool of which Federal agencies can take advantage if they work through the “proper channels.”

The autonomy of the local community should be respected as well, said Mr. Nava. He explained that most cities develop their own legislation and that most have comprehensive land use plans. Federal agencies seeking the collaboration of communities should consider that those plans most likely are the result of an extremely long citizen participation process, he pointed out. Mr. Nava urged that Federal agencies become familiar with the zoning and land use regulations established by local communities.

Another influence in effectively engaging municipalities in integrated interagency strategies is the availability of funding resources and access to Federal scientists and technical consultants, continued Mr. Nava. He explained that many cities are not fortunate enough to have the necessary revenue streams to take on the needed cleanups or environmental projects, nor do they have the funds to hire technical experts.

Continuing, Mr. Nava stated that, if Federal agencies are to form effective partnerships with communities, they must be willing to share information. He also suggested that Federal agencies keep the interagency partnership process and language simple. Finally, Mr. Nava stated that he concurred with the concept of assigning a Federal coordinating agency responsibility for initiating a project, noting that Federal agencies too often place too much of that responsibility on communities that often possess only limited resources.

#### **3.5.4 Tribal Perspective**

Mr. Terry Williams, Commissioner of Natural Resources and Fisheries, The Tulalip Tribes, provided comments on integrated interagency strategies from a tribal perspective. Specifically, Mr. Williams stated that his presentation would focus on implementation of the strategic planning process.

To communicate the unique tribal perception of environmental justice, Mr. Williams began his presentation by explaining that tribal environmental

culture is sustained to a great extent by the use of fish, wildlife, vegetation, herbs, and berries. He pointed out that those resources are the backbone of not only the tribal culture, but also the health and economy of the tribe. As an example, Mr. Williams, described the Tulalip Tribe’s historical perspective of its natural landscape, which once was home to old growth forests, an abundance of fish, and trade routes. The health of the members of the tribe was generally good because of the abundance of food sources. The landscape was healthy, he added. Today, he continued, a significant percentage of the natural landscape has been altered, and the resources that once supported the tribe are no longer available. As a result, he explained, the dynamics of the tribe’s social communication and practice have changed, and the health of its members has declined as well because of the loss of their traditional food sources. Mr. Williams stated that although his people had not fared well, they have learned to work with the Federal government to develop plans and goals, determine how to conduct assessments that encompass both science and traditional knowledge, and evaluate ways to establish accountability and enforceability.

However, Mr. Williams pointed out, the decisionmaking process is “where the action is” in addressing environmental injustice. He explained that, even if a tribe suffers the erosion of its tribal culture, a tribe can at least understand the breadth of the issues and make good decisions if it is involved early in the decisionmaking process. Mr. Williams added that, even if a tribe is unhappy with the decisions that must be made, it will make the decisions and therefore “can live with them,” unlike having to accept decisions that are forced upon them.

Turning his attention to the unique contribution that tribes can make to the interagency process, Mr. Williams stated that Federal agencies must listen to tribes and take advantage of their traditional knowledge and wisdom. As an example, he stated that he recently had been approached by the National Aeronautic and Space Administration (NASA), which wished to take advantage of the traditional knowledge of his tribe in conducting a national air study. He explained further that because records of the natural landscape in which his tribe lives are relatively limited, NASA believes the Indian people could share their traditional knowledge of how the natural landscape had looked originally. Mr. Williams then stated his belief that the integrated interagency strategies provide an opportunity for Federal agencies not only to take advantage of the traditional knowledge of tribes, but also to succeed in restoring and sustaining tribal cultures.



### 3.5.5 Academic Research Perspective

Mr. Richard Gragg, Director, Center for Environmental Equity and Justice (CEEJ) Florida A&M University, discussed the viability of the integrated Federal Interagency Environmental Justice Action Agenda in Florida. Mr. Gragg first explained that, in 1998, the Florida legislature established and funded CEEJ, giving it a mission of environmental justice research, training, education, community outreach, and policy development. The expertise of the center currently lies in environmental modeling, sampling, risk assessment and communication, environmental toxicology and human health, and environmental law and policy, he said. In 1999, CEEJ held its first meeting, a strategic planning session for stakeholders, including representatives of state agencies, grassroots organizations, and industry, he continued. In 2000, CEEJ, working in conjunction with the International City/County Management Association (ICMA), the University of South Florida Brownfields Resource Center, the Clearwater Office of Economic Development, and the Greenhood Neighborhood Associations, produced the Clearwater Brownfields Area Environmental Justice Action Agenda, he said. In the same year, he added, CEEJ held its second annual conference, during which the Florida Environmental Justice Action Agenda was established.

In its role as the environmental justice resource center for the state of Florida, said Mr. Gragg, CEEJ is promulgating the principle that the community should be the focus of environmental justice and that communities recognize environmental stressors and certain socioeconomic or cultural issues; that communities should organize and gather facts; and that communities should provide education, training, outreach, and identification and implementation of solutions to those problems. CEEJ is communicating that message to state agencies and local governments responsible for environmental justice in Florida, continued Mr. Gragg. He then stated that CEEJ also had identified and was communicating the various factors involved in the issue of environmental justice, adding that CEEJ works with ATSDR; the Institute of Public Health (its counterpart at Florida A&M); and the Florida Department of Health to address such issues.

Continuing, Mr. Gragg stated that CEEJ currently was involved in the Comprehensive Everglades Restoration Plan (CERP) and was also working with the U.S. Army Corps of Engineers (USACE)

and the South Florida Water Management District to develop a socioeconomic environmental justice management plan. Mr. Gragg explained that the 50-year project, for which the estimated cost is \$8 billion, was to be funded by the Federal government, along with the state of Florida and other non-Federal entities.

Noting the rigor of the program that Mr. Gragg outlined, Ms. Shepard asked him about the quality and breadth of the community involvement in the development of the CERP. Mr. Gragg acknowledged that the level of community involvement had been one of the shortcomings of the plan, stating that the project had included neither early nor extensive involvement of the affected communities. The communities of south Florida had raised issues related to the need for the CERP, and the principal objective of the state had been to improve water quality, he continued. The effect of the plan on the inhabitants of the area had been ignored "somewhat," he acknowledged. Continuing, he said that only recently had an effort been initiated to investigate some of the specific effects on communities that will be affected directly by the project. Ms. Shepard then asked about the quality of academic outreach to those communities. Mr. Gragg responded that CEEJ serves as the technical resource center.

## 4.0 REPORTS AND PRESENTATIONS

### 4.1 Update on Mossville, Calcasieu Parish, Louisiana

Mr. Damu Smith, GreenPeace International, provided an update on activities related to the investigation of dioxin exposures in Mossville, Calcasieu Parish, Louisiana that had been carried out since the May 2000 meeting of the NEJAC in Atlanta, Georgia. At that meeting, the Health and Research Subcommittee and the Waste and Facility Siting Subcommittee of the NEJAC met in a joint session to discuss ATSDR's exposure investigation, Mr. Smith reported. He said the stakeholders who had participated in the joint session included representatives of Mossville Environmental Action Now (M.E.A.N.), GreenPeace International, the Louisiana Department of Health and Hospitals (LDHH), the Louisiana Department of Environmental Quality (LDEQ), the Louisiana Chemical Association (LCA), EPA Region 6, and ATSDR. Exhibit 1-10 presents background information about the Calcasieu Parish Initiative.

## Exhibit 1-10

**CALCASIEU PARISH INITIATIVE**

U.S. Environmental Protection Agency (EPA) Region 6 has established the following initiatives related to environmental conditions in Calcasieu Parish, Louisiana:

- Made a commitment to meet with the Calcasieu League for Environmental Action Now (CLEAN) and other citizens of Calcasieu Parish at least four times during 2001. The Louisiana Department of Environmental Quality (LDEQ) has agreed to participate in the meetings.
- Entered into negotiations with key industries in Calcasieu Parish to develop a Superfund remedial investigation and feasibility study (RI/FS) of the Calcasieu Estuary. Other agencies involved in the negotiations include the National Oceanic and Atmospheric Administration, the U.S. Department of Commerce; the U.S. Fish and Wildlife Service (FWS), the U.S. Department of the Interior (DOI); LDEQ; the Louisiana Department of Wildlife and Forestry; and the Louisiana Department of Natural Resources. The RI/FS will be conducted to determine the scope and extent of the contamination of the estuary, as well as to identify possible remedies.
- Established at EPA Region 6 an internal Calcasieu Team that will be responsible to further evaluate and monitor activities in the Calcasieu area and actively address concerns of the citizens.
- Established an environmental compliance initiative in the Calcasieu Basin area in 1998.

communities of Mossville had believed that the agencies lacked respect for community organizations and had failed to respond to the organizations' numerous requests and recommendations about how best to respond to the situation in Mossville. Mr. Smith stated that the discussions held during and immediately after the joint session helped bring about an atmosphere conducive to constructive dialogue. He stressed that those constructive discussions had led to some very positive results.

Between May and September 2000, Mr. Smith explained, a number of other meetings had been held in the community among representatives of the communities; staff of OEJ, including Mr. Barry E. Hill; EPA Region 6; and ATSDR. He said that the residents of Mossville long had been requesting a meeting of representatives of the community and experts in pertinent scientific, technical, and legal matters. He explained further that the community had wanted to meet face to face with government agencies to establish "an equal footing" between the agencies involved and the community. The community hoped that such a meeting would provide an opportunity for the community's experts to review recommendations and progress reports on the investigation submitted by the agencies.

Mr. Smith then reported that, on October 24 and 25, 2000, representatives of EPA had visited Mossville to meet with the community and its experts. He commented that EPA staff had been well prepared and was responsive; the community had been able to obtain answers to many questions that previously had gone unanswered, he said. Mr. Smith then stated that, on November 15 and 16, 2000, a similar meeting of representatives of the community, ATSDR, LDEQ, and LDHH had been held in Mossville.

Mr. Smith reminded the members that there exists an "extraordinary health and contamination crisis" in the Mossville community. ATSDR has conducted blood tests of local residents and found dioxin levels to be three times the national average, he explained.

Mr. Smith stated that the May 2000 session had been important because it had provided an opportunity for constructive dialogue about a range of issues and policy matters that are important not only to the case of Mossville, but also to other communities that face similar circumstances. He said that one of the principal issues discussed during the joint session was the response of the various Federal and state agencies and industry to the problems in Mossville. He explained that the

Continuing, Mr. Smith stated that very constructive recommendations had been developed during the meetings. "We are still a long way from where we need to be, but we are certainly a long way from where we were in May, when there was so much contention among all the parties and we weren't getting anywhere," he said. Mr. Smith emphasized that the meetings would not have taken place if there had not been a change of attitude on the part of the government agencies at the highest levels, he said. He then expressed his thanks to the NEJAC, the staff of OEJ, Mr. Jerry Clifford, EPA Region 6, and Dr. Henry Falk, ATSDR, for playing crucial roles in making the meetings possible and constructive.

Mr. Smith stated that the community of Mossville was committed to continuing to work with EPA and other Federal agencies to address the problems in Mossville and other communities. However, he continued, the Mossville community would be remiss if it did not continue to keep pressure on the EPA and the other agencies. He cited as an example a November 21, 2000 letter representatives of Mossville had written to the Attorney General of the United States to request an investigation of the enforcement practices of LDEQ and EPA Region 6.

Concluding his remarks, Mr. Smith expressed his pleasure that the agencies are “moving in the right direction.” He then expressed his belief that the state agencies had been “dragged into the process, kicking and screaming,” but that the representatives of Mossville will keep pressure on them. Nevertheless, progress had been made, he said in concluding his presentation.

Mr. Clifford agreed that the work in the Mossville and greater Lake Charles community serve as a model for ways in which, despite tremendous resistance, communities and agencies can work through issues together. He commented that he believed that the May 2000 meeting of the NEJAC had provided the opportunity for EPA, ATSDR, and the community to take a “step back and start afresh and anew” in an effort to regain respect for one another so that they could begin to solve the problem together. Mr. Clifford then agreed with Mr. Smith’s observation that much remains to be done so that they could begin, but stated that he anticipated that work in that community would be expanded significantly.

Mr. Clifford explained that the next step will allow EPA to identify the source of the dioxin and to determine whether ongoing exposure is occurring or the dioxin detected in individuals during the investigation is the result of past exposures. He stressed that this effort would be extensive and expensive.

Concluding his remarks, Mr. Clifford stated his hope that all stakeholders are on a very good path right now and that it was EPA’s hope that they all will be able to “keep pushing the ball in that same direction.”

Mr. Smith added that staff of ATSDR had conducted dioxin training for medical personnel at the Bayou Comprehensive Health Clinic. During the November meeting with ATSDR, he stated, the representatives of the community clinic had discussed what services the clinic could provide,

offering concrete recommendations and commitments to provide additional services needed by the community, he said. The people of Mossville now would be able to obtain health services at the clinic, he said. Further, he added, it is possible that a new health clinic will be established in the community of Mossville. Therefore, ATSDR had helped to facilitate an effort to make real the promise of health services to the residents of Mossville, he stressed.

Ms. Miller-Travis asked Mr. Clifford how EPA would keep the initiative on track after the change in administration. Mr. Clifford responded that it will take leadership, persistence, and accountability to do so. He explained that, although the leadership is changing, several components of the process will remain. For example, he pointed out, he will remain in his position at EPA, as will other agency officials. Further, individuals, the community, and government officials will remain committed, and a work plan for the dioxin reassessment is intact, he stressed. EPA was working with ATSDR to resolve the problem of bridging the gap between access to health care and knowledge about environmental health issues, he said, adding that all parties intend to follow up on a regular basis to evaluate the progress they are making.

Ms. Ramos asked about the state’s contribution to the effort to find solutions to the problems in Mossville. Mr. Clifford responded that LDHH recently had participated in a meeting with EPA Region 6, HRSA, and ASTDR, to discuss the issue of health care and access to health care. Continuing, he reported that at that meeting, Dr. Dale Gidry, LDHH, had provided an informed, responsive presentation about the dioxin issues and the findings of a health survey that LDHH recently had conducted in the community. Mr. Clifford commented that the case of Mossville had been educational for state agencies, adding that officials at the highest levels in the state government are now grasping that there is a particular problem in Mossville and that there are similar problems in other parts of the state, as well.

Mr. Smith added that the representatives of the community of Mossville had been pleased that representatives of the state agencies had attended the meetings, but he emphasized that the state agencies had not participated in the meetings in the way that the community would have liked.

Ms. Jane Stahl, State of Connecticut, Department of Environmental Protection and member of the Health and Research Subcommittee, commented that recent activities related to the Mossville case

represent a move away from attempts to define cause and effect and a move toward the collaborative effort of various Federal and state agencies to address and mitigate an environmental health and environmental justice issue.

#### **4.2 Update on the National Environmental Justice Policy Guidance**

Mr. Barry E. Hill, Director, EPA OEJ, made a presentation on EPA's draft national environmental justice policy guidance document titled "A Guide to Assessing and Addressing Allegations of Environmental Injustice." Mr. Hill began his presentation by identifying the purposes of the document. The first purpose of the guidance document, he said, is to provide a conceptual framework for explaining environmental justice as both a civil rights and an environmental issue, and consequently, to develop sound policy in the area. The document is intended to provide guidance for EPA's environmental justice coordinators and EPA staff in program offices at EPA headquarters in developing a systematic approach for addressing the particular issues and concerns of a community, he said.

Second, he continued, the document is intended to provide a substantive framework for explaining EPA's environmental justice program, based on existing environmental laws and regulations. Mr. Hill stated that the EPA's environmental justice program is more than a community relations or training program, nor is it a preferential treatment program or an affirmative action program.

Mr. Hill stated that a third purpose of the guidance document is to provide a realistic framework for assessing the validity of an allegation of environmental injustice. He explained that the document includes a model for evaluating various social, economic, environmental, and health indicators in an effort to support or refute a possible issue of environmental injustice. The model also incorporates public participation and access to information in the decisionmaking process.

A fourth purpose of the document, Mr. Hill continued, is to provide a "road map" for developing and implementing a holistic approach for addressing a case of environmental injustice. He pointed out that the framework focuses on bringing together local, state, and Federal agencies and other resources, such as industry resources, to address the concerns of the community. Mr. Hill noted that the IWG and its

Action Agenda concentrate on (1) providing better coordination among stakeholders; (2) improving the accessibility and responsiveness of government; and (3) ensuring the integration of the principles of environmental justice into the policies, programs, and activities of Federal agencies. He explained that the national environmental justice policy guidance document provides a framework and model for accomplishing these goals.

Mr. Hill stressed that the objective of the guidance document is not to investigate an allegation of environmental injustice and arrive at a conclusion; rather, the objective is to promote the engagement of constructive and collaborative problem-solving to address claims of environmental injustice.

Mr. Hill then stated that OEJ had received comment on the draft guidance document from EPA headquarters and from the EPA regional offices and had incorporated changes into the present draft version of the document in response to those comments. He said that OEJ next would submit the document for public review and review by the NEJAC. He added that he hoped that the draft guidance document would be published in the Federal Register by the end of 2000.

Continuing, Mr. Hill explained that training modules on conducting environmental justice assessments were to be developed in three main areas – the CAA, the Clean Water Act (CWA), and solid waste and emergency response. In addition, standard protocols for conducting environmental justice assessments also would be developed, he said.

Ms. Shepard asked for clarification whether the draft guidance requires that every EPA region and state agency follow the guidance in response to every allegation of environmental injustice. Mr. Hill responded that every EPA region and state should develop a systematic approach for making a determination about the validity of an allegation.

Referring to the focus of the national environmental justice policy guidance, Mr. Saldamando stated that the guidance seems to require a certain standard of proof before a complaint by a community is deemed credible. Mr. Hill responded that no standard of proof is required and that no reasonable doubt must be disproved; rather, he emphasized, the guidance outlines a method of assessing information to support a response.

Ms. Miller-Travis asked who was involved in developing the draft environmental justice policy guidance document. Mr. Hill answered that the

environmental justice coordinators at EPA headquarters and at the EPA regional offices, EPA's deputy regional administrators, EPA's deputy assistant administrators, EPA's assistant administrators, and the Office of General Counsel were involved in developing and commenting on the document.

Several members of the NEJAC expressed concern and frustration that EPA OEJ had failed to request comment on the draft policy guidance document from the members of the NEJAC.

Mr. Hill responded that the members of the NEJAC, as well as the public, would have 90 days to review the draft document. He added that the document is a dynamic one that can be revised periodically, adding that EPA welcomes comments from the public at any time and would consider comments when making revisions in the future.

Mr. Saldamando pointed out that the NEJAC seems to be playing the limited role of listening to communities and putting them in contact with the appropriate EPA official, rather than being allowed to play the role intended for the NEJAC – that is, making policy recommendations to EPA. Ms. Ramos commented that inviting communities to comment at the end of the development process does not constitute real public participation.

Echoing the comments of other NEJAC members, Mr. Cole explained that the central complaint of communities grappling with environmental justice issues always has been that industry and government make decisions “behind closed doors,” inviting the public to participate only after those decisions have been made. He stated his belief that the NEJAC had been somewhat effective in educating industry and state and Federal decisionmakers that such a process does not constitute true public participation. He noted that the NEJAC had prepared guidelines for public participation that call for early, effective participation of stakeholders, who, he pointed out, are to be involved before decisions are made and definitions are developed. Mr. Cole then asked, “If the members of the NEJAC are not the [persons] helping [EPA] define what should be in an environmental justice policy document, why are we here?”

Mr. Cole stressed that the key issue is that EPA framed the issues and defined the concepts on which the draft was based without consulting the members of the NEJAC. He said that EPA does not take the NEJAC seriously as a body charged with making policy recommendations if EPA does not involve the members of the NEJAC in the drafting of an environmental justice document.

Mr. Hill responded that early, effective public participation in the environmental decisionmaking process is crucial but he pointed out that the draft guidance document does not represent an environmental justice decision. He then repeated that the document is in the draft phase and that revisions would be incorporated in response to the comments and suggestions of the NEJAC and the public.

Ms. Stahl stated that she believed that the members of the NEJAC had played an indirect role in framing the draft policy guidance. She also agreed with Mr. Hill that there is enough flexibility in the drafting and completing a Federal document to allow the NEJAC the opportunity to review and comment on the draft document. Ms. Stahl then stated that, if the document succeeds in providing environmental justice communities with a vehicle for actually resolving cases of environmental injustice, the members of the NEJAC should at least be grateful that the environmental justice movement is moving toward problem-solving because the movement thereby is moving forward.

Mr. Turrentine stated that it is difficult for communities and the members of the NEJAC to believe that industry and regulators are listening to the recommendations provided by the public through the NEJAC when the members of the NEJAC had no involvement in the development and refining of a national environmental justice policy document.

#### **4.3 Update on the Environmental Justice Training Collaborative**

Mr. Lee stressed the significance of the Environmental Justice Training Collaborative (EJTC), describing such training as an important link between the concepts of environmental justice and government policies and program development and implementation. EJTC is a national network of EPA staff working in partnership with stakeholders to develop environmental justice education tools, meet crucial information needs, and facilitate dialogue to advance environmental justice through training workshops, he said. Mr. Lee explained that the EJTC initiative had brought together experts from all 10 EPA regional offices, as well as OEJ and other stakeholder groups, such as states and community organizations, that recognize the importance of training in environmental justice. Exhibit 1-11 provides additional information on the EJTC.

### ENVIRONMENTAL JUSTICE TRAINING COLLABORATIVE

The Environmental Justice Training Collaborative (EJTC) is a national network of U.S. Environmental Protection Agency (EPA) regional and headquarters staff who work together to develop environmental justice education tools to enhance the abilities of staff to meet crucial needs for information and dialogue to advance environmental justice. The EJTC also is intended to encourage, develop, and maintain alliances and partnerships with diverse stakeholders, particularly with the Federal agencies that are members of the Interagency Working Group on Environmental Justice (IWG).

As part of this effort, EJTC members have developed a workshop on the fundamentals of environmental justice; the establishment of an environmental justice training and resources web site; the development of a methodology and materials for training environmental justice trainers; establishment of a national environmental justice training team; and an annual environmental justice training institute. The EJTC plans a series of nationwide pilot workshops from March through May 2001 to obtain more comment on the draft Environmental Justice Fundamentals Workshop.

EJTC held its first planning workshop in Boston, Massachusetts in October 2000 at which the participants began to formulate EPA's collaborative training curriculum. Planned training modules include (1) environmental justice and public participation; (2) environmental justice, natural resources, and NEPA; (3) environmental justice and cultural resources; and (4) environmental justice in Indian country. Approximately 45 persons attended the workshop, representing EPA, other Federal agencies, state agencies, community groups, and academia. EJTC also seeks the views of other key groups, such as tribal governments, tribal community groups, and industry.

Mr. Jack McGraw, Deputy Regional Administrator, EPA Region 8, provided an overview of the activities of EJTC. During the Summer of 2000, representatives of EJTC briefed the EPA regional administrators on the training collaborative and requested that the regional administrators support and participate in the initiative, he said. The representatives of EJTC explained to the EPA regional administrators that the goal of EJTC was to provide a fundamental course on environmental justice that would be pilot-tested with a wide range of stakeholders and EJTC planned to develop a national training team, he said. The national training team will consist of about 30 trainers, of whom at least four will represent entities outside the agency, he added.

Within EPA, Mr. McGraw explained, the environmental justice training effort focuses on integrating the principles of environmental justice into EPA programs and the activities of EPA program offices. He said the objective of the internal training at EPA is to enrich the dialogue about environmental justice issues by educating program directors about Executive Order 12898 and increasing their awareness of community concern and the need for valid input from communities when making day-to-day operating decisions.

Continuing, Mr. McGraw stated that EJTC was requesting that the members of the NEJAC

provide their comment and lend their support as EJTC develops the collaborative curriculum. He invited the members of the NEJAC to participate in the EJTC planning workshops and to assist the development of modules currently in the planning stage.

Providing a community perspective on the first EJTC workshop, Mr. José Bravo, Southwest Network for Environmental and Economic Justice (SNEEJ), said that he believed the workshop was an excellent start for the training collaborative. He stated that the workshop activities helped to answer for him the long-standing question, "When are we going to stop teaching and when are people going to know the subject?"

Mr. Bravo stated that the workshop had been important because representatives of numerous Federal agencies had attended it. He commented that Federal agencies are "behind" in understanding and implementing the principles of environmental justice in their policies, programs, and activities.

Continuing, Mr. Bravo suggested that future workshops include a segment on the history of environmental justice, noting that the first workshop had lacked such a section. He then called for grassroots organizations and community groups to support the EJTC.

Ms. Veronica Eady, Executive Office of Environmental Affairs, Commonwealth of Massachusetts, offering a state perspective, stated that her reaction to the EJTC workshop had been “wholeheartedly positive.” She congratulated Ms. Deldi Reyes, EPA Region 8; Mr. Running Grass, EPA Region 9; and Mr. Nicholas Targ, OEJ, on that success, stating that she had sensed those individuals had been the “driving force behind the training.”

Ms. Eady stated that the tone of the workshop had been open and receptive. For example, activities and discussion included in the training had not placed blame on state and Federal regulators for issues related to facility siting and permitting. Rather, she continued, the focus of the workshop had been on learning to understand how a person or group might react and respond to a certain issue or controversial statement related to environmental justice.

Ms. Eady expressed her pleasure that EPA had invited the state of Massachusetts and other states, to join in the EJTC effort. She stated that the training modules that the representatives of state agencies who participate in EJTC would research and develop are: (1) how environmental justice applies to the states and (2) what Title VI means to the states. In closing, Ms. Eady stated that she sees much potential in EJTC and declared that she was excited about participating in the initiative. Ms. Eady added that she would like to see a module developed on how environmental justice applies to the relationship between states and Indian tribes, commenting that many states do not have a clear understanding of their trust responsibilities.

Ms. Stahl commented that the EJTC represents a vehicle for broadening the reach of environmental justice by familiarizing more people with the concepts of environmental justice, its vocabulary, and the purposes and goals of environmental justice. She then pointed out that the states are not enemies. She suggested that, rather than discussing environmental justice and the states, the questions “How does environmental justice *apply* to the states? How does Title VI *apply* to the states?” should be restated as “How can environmental justice *be implemented through* the states? How can Title VI *be implemented through* the states?” Many State officials seek the opportunity to become partners in endeavors such as the one EJTC had undertaken, she said, adding that NEJAC should be sensitive to such issues as subtleties in language that, she pointed out “can in fact make a big difference.”

Mr. Goldtooth stated that he fully supported the EJTC initiative. He commented that EJTC should educate Federal agencies about environmental justice in Indian country. He added that representatives of tribal governments included in the training should reflect on the environmental justice needs of tribal governments and coalitions, explaining that tribal environmental infrastructures that are stabilizing and developing.

Continuing, Mr. Goldtooth stated that there is a need to educate Federal agencies about environmental justice concerns from the perspective of tribal community members or tribal grassroots organizations. He stated that environmental justice in Indian Country is a very complicated issue because the tribes support the government-to-government relationship between their tribal government and Federal and state governments, but often face environmental issues that are not mitigated by remedies applied at the tribal community level. Mr. Goldtooth provided as an example a situation in Squaw Valley, Utah. The Tribal Council has a partnership with the nuclear waste industry to use tribal lands as a nuclear waste dump, but tribal community members and grassroots organizations are opposed to such use, he said. Mr. Goldtooth stated that such issues are challenging to agency staff, as well as tribal leaders. He suggested that EJTC trainers representing tribal governments discuss such situations and the diversity of issues in Indian country.

Ms. Wood stated that she would be happy to volunteer either herself or some of the Georgia-Pacific Corporation trainers, stating that, when developing its own training program, the Georgia-Pacific Corporation had experienced a similar learning curve of developing an understanding of what different things mean to different people.

Mr. Lee concluded the discussion by pointing out that the EJTC is a developing program and that, over time, EJTC will develop many modules that examine specific applications of many environmental statutes, such as the CAA, the Resource Conservation and Recovery Act (RCRA), and the CWA.

#### **4.4 Overview of the Legal Memorandum on Statutory and Regulatory Authorities**

Mr. Anthony Guadagno, Office of General Counsel (OGC), EPA, presented a legal memorandum titled “EPA Statutory and Regulatory Authorities Under Which Environmental Justice Issues May Be Addressed in Permitting” that OGC had distributed

to the NEJAC on December 1, 2000. Mr. Guadagno explained that the memorandum identifies opportunities to promote environmental justice under EPA permitting programs, specifically under the CWA, the CAA, RCRA, the Safe Drinking Water Act (SDWA), and Title I of the Marine Protection, Research, and Sanctuaries Act (commonly referred to as the Ocean Dumping Act). He said that the memorandum includes a brief description of each of the various permitting programs, as well as the legal opportunities identified within each of those programs for promoting environmental justice. OGC, he added, was looking forward to working with the EPA media program offices to further explore the legal dimensions of taking advantage of the opportunities identified in the memorandum.

Commenting on the apparent length of the document, Mr. Cole stated that the memorandum appeared to have greatly reduced from the length of the original draft version he and others had reviewed several years earlier. He commented that a significant amount of information included in the original draft must have been lost. Mr. Guadagno responded that the memorandum had been written concisely but is comprehensive, adding that the memorandum addresses a significant number of opportunities under the various statutory and regulatory authorities.

Ms. Jana Walker, Law Offices of Jana L. Walker and member of the Indigenous Peoples Subcommittee, commented that the memorandum did not appear to include any mention of tribes or tribal governments and tribal authority. Mr. Guadagno stated in response that the principal focus of the legal memorandum is EPA actions with respect to permitting, which would be applicable in Indian country. Ms. Walker informed him that some tribal governments have permitting authority.

Ms. Miller-Travis asked Mr. Guadagno to comment on the purpose of language included in the introductory paragraph of the memorandum, which reads, "...Although the memorandum presents interpretations of EPA's statutory authority and regulations that we believe are legally permissible, it does not suggest that such actions would be uniformly practical or feasible given policy or resource considerations or that there are not important considerations of legal risk that would need to be evaluated." Mr. Guadagno replied that the language is designed to maintain the context of the document as a legal memorandum issued by OGC to its internal agency "clients," rather than as a definitive legal risk analysis. He added that it

would be largely up to the EPA program office to identify which of the authorities identified in the memorandum it wished to pursue.

Mr. Yang stated that, under Executive Order 12898, Federal agencies, including EPA, are required to implement the order in a manner consistent with and to the extent permitted by existing law. He asked whether OGC had determined the extent to which those authorities permit EPA to take certain actions – that is, how EPA will be required to take those actions under those statutory authorities. Mr. Guadagno stated that the focus of the memorandum is the amount of discretionary authority that EPA may possess to take some actions to promote environmental justice. He added that the managers of EPA's media program offices most likely would address that question as they review the memorandum and decide which opportunities they would like to pursue.

Mr. Yang also questioned why the authorities under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) were not included in the scope of the memorandum. He stated that the International Subcommittee had spent an entire morning session discussing adverse health effects on farm workers and the effects of pesticides. Mr. Guadagno responded by repeating that the discussions included in the memorandum did represent a definitive statement on every conceivable opportunity.

#### **4.5 Update on the NEJAC Federal Facilities Working Group**

Ms. Augustine, Chair of the Federal Facilities Working Group introduced Mr. Brandon Carter, Federal Facilities Restoration and Reuse Office, EPA OSWER, and DFO of the NEJAC Federal Facilities Working Group, who provided an update on the activities of the working group.

Mr. Carter explained that Federal facilities include land and property that either was owned, formerly owned, managed, or operated by the Federal government, such as military bases, research lands, and bombing ranges. The Federal Facilities Working Group had been chartered by the Executive Council of the NEJAC in May 2000, in response to public comments and requests, he said. The task of the working group, he continued, was to identify and evaluate key issues of concern to environmental justice communities related to the activities and operations of Federal facilities. The objectives of the working group, he reported, are to: (1) formulate national policy recommendations



to address such concerns; (2) provide a forum for the conduct of dialogue with communities; (3) compile a list of available resources to communities and stakeholders; (4) increase public participation; and (5) produce a written report that summarizes findings and recommendations.

Continuing, Mr. Carter stated that the members of the working group had been identified and that a MOU had been signed to formalize the Federal partnership with the working group. He informed the members of the NEJAC that the working group is made up of three community representatives, two representatives of nongovernmental organizations (NGO), two representatives of tribal governments, one representative of state government, one representative of local government, and one representative of industry. Federal partners include DoD, DOE, and DOI, he added.

Mr. Carter stated that the working group was to operate over a period of 18 months, from January 1, 2001, to July 1, 2002. He explained that the term of the working group would be divided in three six-month periods and that the working group would conclude activities and report to the NEJAC at the end of each six-month interval during the biannual meetings of the NEJAC. Recent activities of the working group, continued Mr. Carter, had included: (1) compilation of public comment related to Federal facilities that had been offered during earlier meetings of the NEJAC; (2) the development of an issues statement; and (3) the conduct of two meetings by conference call. The working group was to convene its first face-to-face meeting in late January or early February 2001, he said.

Mr. Carter stated that communities and the public would have significant opportunity to participate in the activities of the working group. He informed all present that the working group was accepting requests for proposals for potential case studies for the review by the working group. The working group was to begin reviewing case studies on January 17, 2001, he explained, adding that interested parties could contact him to obtain information or to submit a proposal. The working group would host open meetings at which the public would be invited to present testimony related to environmental justice and Federal facilities, he said. The dates and times of such meetings would be announced when available, he added.

In response to criticism of the working group and related comments levied during the public comment period held December 11, 2000 (see

Section 2.0 in Chapter 2 of this report), Mr. Carter made several additional comments in defense of the process adopted and activities conducted by the working group. Responding to criticism of EPA for embracing its Federal partners, Mr. Carter explained that EPA had done so as required under Executive Order 12580, which establishes requirements applicable to the cleanup of Federal facilities. Executive Order 12580 states that a Federal agency must act as lead agency in the cleanup of its own facilities, he explained. He also pointed out that EPA does not have the authority to enforce cleanups at Federal facilities; therefore, he stated, EPA must work cooperatively with its Federal partners to ensure that cleanups are safe, efficient, and timely.

Mr. Carter then responded to comments that charged that the scope of the work plan of the working group is limited. He commented that concerns about Federal facilities are broad and varied, citing the enormous number of properties owned by Federal agencies that are subject to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), RCRA, and other environmental laws. Mr. Carter also pointed out that the working group had not wished to duplicate the earlier efforts of other federal advisory committees formed in the past to address issues related to Federal facilities and stakeholder involvement.

Responding to comments made and criticism levied about the size of the working group and of the stakeholders groups represented on it, Mr. Carter explained that the selection process followed when establishing the NEJAC and its subcommittees had been used in determining the makeup of the working group. He explained that EPA staff has nominated candidates and reviewed those candidates according to a number of criteria, including whether they represented the constituencies of the NEJAC, geographic distribution, and relevant background or experience.

Mr. Kent Benjamin, Environmental Justice Coordinator, Outreach and Special Projects Staff (OSPS), OSWER and DFO of the Waste and Facilities Siting Subcommittee of the NEJAC, added that the NEJAC Federal Facilities Working Group had been formed using the same model that had been used in forming the Waste Transfer Stations Work Group. Referring to comments from Council members about not knowing the status of the working group, he acknowledged that EPA could have communicated more effectively with the members of the NEJAC during the six

months since the May 2000 meeting of the NEJAC. However, he pointed out that EPA had been working on a fast track because of the sensitive nature of the issues involved and the level of concern expressed at the May meeting.

Dr. Marinelle Payton, Jackson State University and chair of the Health and Research Subcommittee, asked Mr. Carter to elaborate on the review of case studies to be conducted by the working group. Mr. Carter responded that the working group was to evaluate a number of specific cases related to specific Federal facilities or national policy issues. He stated again that the working group was accepting requests for cases to be included in that effort. The proposal process would be informal, he stated. Interested parties could contact him for information or send him a request by letter or electronic mail that describes the facility or policy issue and the associated environmental justice concern, he said. He then explained that, during the review, the members of the working group would identify factors contributing to success and failure and would provide recommendations to the facility about the cleanup process that facility is undergoing.

Mr. Aragon recommended that the members of the working group collaborate with the Tribal Solid Waste (TSW) Task Group, which, he noted, is based in Washington, D.C.

Mr. Cole asked about the involvement of the Federal partners in the working group. Mr. Benjamin explained that, because the working group is a Federal advisory committee, subject to the provisions of the Federal Advisory Committee Act (FACA), representatives of Federal agencies cannot serve as members of it; however, added Mr. Benjamin, representatives of Federal agencies can be designated to work with the working group to share information and provide resources.

Mr. Cole commented that the working group was intended to provide a forum that would allow members of communities in the vicinity of Federal facilities to work with the members of the NEJAC so that their ideas could be refined and communicated to EPA by the NEJAC. He expressed his concern that only 3 of the 10 members of the working group are residents of such communities. Referring to Mr. Benjamin's earlier comments about the difficult logistics of managing a large working group, Mr. Cole commented that representatives of communities are highly motivated and dedicated. He also commented that, because those representatives most often are volunteers and may be unable to

participate in all the activities of the working group, it is even more important that a large number of them be included as members of the working group. Mr. Cole then proposed that the working group add at least three or four more community representatives.

Mr. Lee asked Mr. Cole to incorporate his comments and his proposal into an e-mail to Mr. Carter and himself, so that those comments and the related proposal could be considered further.

Ms. Augustine commented that she would like to invite representatives of DOJ to participate in the working group. Ms. Shepard recommended that the working group contact community members who, she pointed out, had been lobbying the NEJAC for years about environmental justice issues related to Federal facilities to let them know about the review of case studies the working group was to undertake.

#### **4.6 Presentation on Missed Opportunities in Environmental Law**

Ms. Barbara Arnwine, Executive Director, Lawyer's Committee for Civil Rights Under Law (Lawyer's Committee), provided a retrospective view of missed opportunities for advancing environmental justice through environmental litigation. Ms. Arnwine began her presentation by explaining that the Lawyers Committee had initiated an environmental justice project under which the committee used the "rule of law" to challenge environmentally discriminatory behaviors and decisions. Ultimately, she continued, the committee seeks justice for people of color who are fighting to clean up contamination on the land where they live or who are trying to halt environmentally harmful activities in their neighborhoods. Reflecting on the current state of environmental justice, Ms. Arnwine discussed the challenges the committee had addressed through litigation, and the successes and failures all parties involved in the environmental justice movement had experienced in their efforts to advance this issue.

Ms. Arnwine pointed out that although the concept of environmental law is a broad one, only a relatively small number of lawyers specialize in environmental justice law. However, she added, when called upon, lawyers have worked closely in partnership with communities to formulate the most effective strategies possible. Often, she continued, this has resulted in extremely innovative strategies that use creative and sound legal theories to best advocate on behalf of these

communities. For example, she explained, the most successful environmental justice legal cases have used historical patterns of segregation to argue that certain decisions that exacerbate environmental inequities perpetuate the preexisting segregation, in violation of the equal protection clause of the U.S. Constitution, Title VI, and the Fair Housing Act. Lawyers also had used environmental laws and Executive Order 12898 to argue that environmental justice concerns must be addressed, both in the permitting process and in the selection of sites for facilities that present environmental hazard, she added.

Ms. Arnwine then stated that the courts had not been very receptive of environmental justice cases. While environmental justice communities can agree that environmental and civil rights laws have been used in innovative ways to address environmental justice concerns, in most cases, she pointed out, decisionmaking at the Federal level reflects the reluctance of Federal agencies to use enforcement and civil rights laws as effectively as possible. More recently, Federal agencies had been more willing to recognize environmental justice concerns, but they generally had not used such concerns as a reason for altering the course of decisionmaking, she continued. Because of such hesitancy, environmental justice communities have had to lead the way, she continued, and to seize opportunities to use existing laws to advocate the development of that area of environmental law. Unfortunately, she said, review of case law indicates that there has been only limited success in the Federal courts, which, she noted, often are unreceptive to newly-stated legal theories, even though such theories are based on existing Federal laws.

Continuing, Ms. Arnwine discussed 13 legal cases that had been adjudicated within the past two years:

- Three cases in which communities had used the Executive order to enforce their rights had been unsuccessful: *Acorn vs. U.S. Army Corps of Engineers*, *Morongo Band of Mission Indians vs. the Federal Aviation Authority (FAA)*, and *Citizens Concerned Against Jet Noise vs. Dalton*.
- Six cases that involved the use of NEPA and the Executive order proved unsuccessful: *Atlantic States Legal Foundation vs. Browner*, *Young vs. General Services Administration*, *Acorn vs. U.S. Army Corps of Engineers*,

*Goshan Road Environmental Action Team vs. USDA*, *New York City Environmental Justice Alliance vs. Giuliani*, and *South Bronx Coalition for Clean Air vs. Conroy*.

- One case that involved the use of the CAA and the Executive order had been unsuccessful: *Sur Contra Contaminacion vs. EPA*.
- Two cases that involved the use of housing law represented real victories by environmental justice communities: *Jersey Heights Neighborhood Association vs. Glendening* and *Elliott vs. Chicago Housing Authority*.
- Two cases that focused on constitutional challenges and CERCLA had been unsuccessful: *Washington Park Lead Community, et al. vs. EPA*, and *West Dallas Coalition for Environmental Justice vs. EPA*.

Ms. Arnwine then stated that, lacking a change of strategy in using the rule of law to challenge environmentally discriminatory behaviors and decisions, environmental justice communities face “a long road ahead.” She said that lawyers representing environmental justice communities should be more strategic in fashioning legal theories that use existing environmental, civil rights, and constitutional law and in choosing the cases through which to test the theories.

Ms. Arnwine pointed out that, in every case she had mentioned above, a community or community organization was the plaintiff and a Federal or state agency or official was the defendant. She remarked that case law does not show any affirmative advocacy by Federal agencies on behalf of communities. In all the cases reviewed, the community or community group had to find private counsel to sue the government, she said.

Ms. Arnwine commented that the Federal government has an affirmative duty to pursue litigation when ongoing environmentally hazardous activities take place and to work to prevent such activities. If standards of environmental justice are to be integrated effectively with existing standards, stated Ms. Arnwine, specific legislation that addresses environmental justice issues at both the Federal and the state level must be developed. She said that the lack of such a legal framework leaves many communities at risk. In addition, there is a need for a stronger Executive order, and the Executive order should be explicitly applicable and enforceable by community groups, she continued.

Continuing, Ms. Arnwine stated that limited resources are available to support litigation by groups working on environmental justice matters. She added that because of funding limitations, that area of the practice of law had become “constricted,” with fewer organizations currently doing such work than had been doing it eight years ago.

Concluding her remarks, Ms. Arnwine stated that litigation groups and advocates of environmental justice must “reconnect, reconvene and re-strategize” to use the rule of law to challenge environmentally discriminatory behaviors and decisions in future cases. Civil rights organizations, she continued, must give greater priority to environmental justice. For example, she said, the Lawyer’s Committee was to make a recommendation at the Leadership Conference on Civil Rights that its Environmental Justice Task Force be reactivated immediately. Further, she said, environmental justice and civil rights groups should collaborate to persuade EPA and other Federal agencies, as well as members of Congress, the administration, and state and local officials to advance and include a commitment to environmental justice in their policies, programs, and decisionmaking.

Dr. Payton asked how many environmental justice cases in history had used health as a criterion for considering environmental justice issues in decisionmaking. Responding, Ms. Arnwine noted that the majority (about 70) of cases over the past decade had been decided or settled privately or brought administratively; most of the cases did involve some threat to public health. Continuing, she stated that health is a major issue in many cases, but she added that there is “a kind of callousness” in the courts, which fail to recognize and to judge what are fundamentally dangerous health problems and what situations represent permissible risks to the communities.

Ms. Shepard asked what were the common components of the successful cases. Ms. Arnwine responded that most of the successful cases used fair housing legislation in a creative way. Other successful cases involved applications of the 14th Amendment to the United States Constitution and other constitutional challenges, she said, noting that the courts seem to be more receptive to cases that are based on a constitutional challenge than to other arguments. Ms. Arnwine added that the courts seem to be more willing to consider arguments based on equal protection under the law rather than failure to comply with the provisions of NEPA, other environmental laws, and the Executive order.

#### **4.7 Report on the Community-Based Health Research Model**

Mr. Martin Halper, Senior Science Advisor, OEJ, presented a report on the NEJAC Community-Based Health Research Model. He began by stating that his presentation would draw on the proceedings of the meeting of the NEJAC in Atlanta, Georgia in May 2000. Exhibit 1-12 provides information about the panel presentations on environmental justice and discussions of the community-based health research model held during that meeting.

Mr. Halper explained that, in responses to issues discussed during that meeting, a 20-member work group comprised of members of the NEJAC and representatives of HHS and EPA, had been formed. The work group met in September 2000 to develop a draft proposal, he said, which it had distributed in October 2000 to the Executive Council of the NEJAC for a 45-day review period. Changes had been incorporated, and a conference call had been held at the end of November 2000, continued Mr. Halper. Members of the Executive Council had received copies of the document on Monday, December 11, 2000; changes in response to discussions held during the current meeting would be incorporated, he noted. Mr. Halper then expressed his hope that the revised document would be distributed to the Executive Council during the week following the current meeting to be considered for adoption.

Mr. Goldtooth requested that the attachment to the document that presents the comments and recommendations of the Indigenous Peoples Subcommittee of the NEJAC about environmental health in Indian Country be presented to the EPA Administrator as a separate document. Mr. Lee assured him that that action would be taken. Mr. Halper then explained that one-third of the document had been taken verbatim from the report of the Indigenous Peoples Subcommittee.

Ms. Payton then identified the recommendations presented in the document: (1) develop a universal definition of community-based health research; (2) devise a way to provide scientific data to fill the current data gaps related to the subject; (3) develop better coordination among agencies; (4) include socio-vulnerability issues in the decisionmaking process; and (5) provide healthcare to communities.

**PANEL PRESENTATIONS ON ENVIRONMENTAL JUSTICE  
AND DISCUSSION OF THE COMMUNITY-BASED HEALTH MODEL**

The May 2000 meeting of the National Environmental Justice Advisory Council (NEJAC) focused on Federal efforts to secure disease prevention and health improvement in communities in which there are health disparities that may be the result of, or be exacerbated by, disproportionate effects of environmental pollutants and certain socioeconomic and cultural factors. During the meeting, the members of the NEJAC received comments and information related to environmental justice and public health on the topics identified below.

Panel 1 – Overview: To what extent might an integrated community-based public health model that includes assessment, intervention, and prevention contribute to disease prevention and health improvement in environmental justice communities?

Panel 2 – Lessons from the Field: What strategies and areas of research should be pursued to achieve more effective, integrated community-based health assessment, intervention, and prevention efforts?

Panel 3 – Socioeconomic Vulnerability: How can consideration of socioeconomic status and cultural factors (a) contribute to a better understanding of health disparities and cumulative and disproportionate environmental effects and (b) be incorporated into community health assessments?

Panel 4 – Key Federal Initiatives: What strategies should be developed, implemented, and evaluated so as to insure substantial participation, integration, and collaboration by Federal agencies, in partnership with impacted communities; public health, medical, and environmental professionals; academic institutions; philanthropic organizations; state, tribal, and local governments; and the private sector?

## 5.0 REPORTS OF THE SUBCOMMITTEES

On December 13, 2000, each subcommittee met for a full day. This section presents summaries of the action items developed during those discussions, as well as updates on the activities of the subcommittees. Chapters three through eight of this report present detailed summaries of the deliberations of each of the subcommittees.

### 5.1 Air and Water Subcommittee

Ms. Jaramillo reported on the activities of the Air and Water Subcommittee. She announced that the subcommittee had met in New York, New York on October 17 and 18, 2000 to focus on issues related to public utilities. After considerable discussion, she reported, the subcommittee recommended, and EPA agreed to pursue, the actions identified by the subcommittee, with the primary goal of achieving through every practical method, a reduction to 0.5% in fuel sulfur at Puerto Rico Electric Power Authority (PREPA) power plants.

Ms. Jaramillo also reported that the Air and Water Subcommittee had heard presentations on the Agency's asthma initiative and the Agency's guidance for reducing toxic loadings. Ms.

Jaramillo then explained that, after the presentations the members of the subcommittee had separated into four work groups, each considering one of four issues: cumulative permitting, fish consumption, public utilities, and urban air toxics.

Ms. Jaramillo stated that, in the coming year, the Air and Water Subcommittee would focus on (1) developing a concept for a citizens guide that deals with existing or new power plants, (2) working on a resolution that addresses the upcoming off-road vehicle diesel rule, (3) developing comments on EPA's National Air Toxics Assessment national scale assessment, (4) developing recommendations for four proposed legislative bills aimed at further reducing emissions, (5) completing a manual on effective community involvement on environmental issues, and (6) continuing planning on the December 2001 NEJAC meeting that will focus on subsistence consumption.

Ms. Jaramillo also said that Ms. Dana Minerva, Deputy Assistant Administrator, Office of Water (OW), EPA, had offered a list of issues that the Air and Water Subcommittee might expect OW to develop in the future. Those issues include tribal water standards and the rule on concentrated animal feeding operations (CAFO).

Ms. Jaramillo announced that the subcommittee had approved its mission statement and recommended that Ms. Eileen Guana, Southwestern University School of Law, be named vice chair of the subcommittee. The Executive Council approved that nomination.

## 5.2 Enforcement Subcommittee

Ms. Savi Horne, North Carolina Association of Black Lawyers and vice-chair of the Enforcement Subcommittee, reported on the activities of the Enforcement Subcommittee. She began by stating that the subcommittee had heard a presentation about DOT's implementation of Title VI and requested that a copy of DOT's informal guidance on investigating environmental justice complaints filed under Title VI be distributed to the members of the subcommittee. She also announced that Mr. Cole had requested that staff of EPA who are responsible for SEPs convene a meeting of 8 to 10 community-based organizations that have experience in administering SEPs to identify the problems and obstacles those organizations had encountered. Ms. Horne then reported that Mr. Cole had requested that Mr. Herman provide a copy of paperwork, including pleadings and complaints, challenging air pollution from CAFOs located in Missouri, North Carolina, and Indiana.

Representatives of DOT, DOJ, and HUD had engaged in extensive discussion about the implementation of Title VI, Ms. Horne continued. She reported that HUD does not maintain a policy of dismissing Title VI complaints because they are untimely; rather it had received 5,000 to 6,000 complaints and had assigned 600 investigators, she continued. In contrast, she said, EPA's Office of Civil Rights had received more than 100 complaints and has assigned only two investigators. None of the complaints filed with EPA had been resolved, she reported, and the investigators had been provided no guidance.

## 5.3 Health and Research Subcommittee

Dr. Payton first recognized and thanked the subcommittee's new co-DFO, Ms. Aretha Brockett, Office of Prevention, Pesticides, and Toxic Substances (OPPTS), and then reported on the activities of the Health and Research Subcommittee. Dr. Payton explained that members of the subcommittee had heard presentations and reports provided by several representatives of Federal agencies who had been asked to speak about the involvement of their agencies in (1) building healthy communities and (2) working in collaborative partnerships with other

agencies to integrate the principles of environmental justice into their policies, programs, and activities.

Dr. Payton then described for the Executive Council several commitments and suggestions made during the meeting of the subcommittee:

- A commitment by Mr. Harold Zenick, Acting Assistant Administrator, Office of Research and Development (ORD), EPA, to provide to the members of the subcommittee background information on the initiatives he had discussed during his presentation.
- A recommendation that the Executive Council of the NEJAC request the EPA Administrator initiate a program to train middle managers of Federal agencies in ways to incorporate the principles of environmental justice into their day-to-day work.
- A recommendation that the Executive Council recommend that the U.S. Department of Education be included on the IWG.
- A recommendation that DoD create an environmental justice office.

Ms. Shepard announced that the subcommittee had suggested that she attend an upcoming conference on genetics in September 2001 and report to the subcommittee on the conference at the December 2001 meeting.

Mr. Goldtooth suggested that the Health and Research Subcommittee include the Indian Health Service (IHS) in its request to the EPA Administrator for documentation of ways in which Federal agencies can collaborate to provide health-based services to low-income and minority communities.

Dr. Payton then announced that the subcommittee had been invited to participate in the Environmental Justice Summit to be held in April 2001. She also reported that the subcommittee would provide to Ms. Pattey Lovera, Center for Health Environment and Justice, information about the building of schools on contaminated soil.

Dr. Payton concluded her report by providing an update on the Decision Tree Framework that was under development by the subcommittee. She announced that she had made a presentation on the Decision Tree Framework to ORD on the preceding Friday.

## 5.4 Indigenous Peoples Subcommittee

Mr. Goldtooth reported on the activities of the Indigenous Peoples Subcommittee. He first read a written statement by retiring subcommittee member Mr. Brad Hamilton, State of Kansas Native American Affairs Office. The letter expressed Mr. Hamilton's appreciation for having been able to serve as a member of the Indigenous Peoples Subcommittee. In the letter, Mr. Hamilton stated, "It has been my great honor and privilege to have walked among these leaders of environmental justice."

Mr. Goldtooth explained that the Indigenous Peoples Subcommittee had focused its deliberations on the theme of interagency collaboration and as such had invited representatives of several agencies to discuss how the agencies ensure environmental justice in Indian country. He explained that some of those Federal agencies had policies and guidance in place, while others did not. Mr. Goldtooth stated that the discussions with the representatives of the agencies had been very helpful to the subcommittee when the subcommittee developed its recommendations.

Mr. Goldtooth then listed the recommendations the Indigenous Peoples Subcommittee had developed:

- Agencies should provide financial and technical resources and training for tribes to enhance awareness and understanding of laws, regulations, and policies.
- Each agency should develop a system for tracking environmental justice complaints so that the agency can be held accountable for responding equitably to tribal concerns and needs.
- When the activities of Federal agencies are coordinated, the Advisory Council on Historic Preservation must be included as early as possible in the planning stages.
- Ensure that Federal agencies are fully aware of the Executive order on tribal colleges, as an avenue of enlisting support for those institutions.

Mr. Goldtooth concluded his report by recommending that a meeting of the NEJAC be held in Alaska so that the concerns of indigenous peoples in that area can better be addressed. Mr. Lee reminded Mr. Goldtooth that the December 2001 meeting of the NEJAC was to be held in

Seattle, Washington and that one of the primary purposes of that meeting would be a discussion of tribal issues. Mr. Goldtooth stated that that approach was unsatisfactory because many indigenous people do not have the funds to travel. He also stressed the importance of more extensive involvement of Native Americans in EPA and questioned the criteria used to define who is a Native American. Ms. Shepard then asked for information and the percentages by ethnicity and race among staff of EPA. She also requested information about the locations in which meetings of the NEJAC had been held in the past so it could be determined whether all regions had hosted one or more of those meetings.

Ms. Jaramillo then requested information about the representation of minorities on Federal advisory committees. The response indicated that such information is not available, but information about that representation by stakeholder group is available. Ms. Ramos expressed her concern that many FACA committees are "saturated" with representatives of industry. Mr. Lee stated that the DFOs and those who oversee the charters of such committees had engaged in dialogue about how to increase diversity in their membership, both racially and in representation of stakeholder groups. Mr. Lee stated he would provide information about the issue to the Executive Council. Mr. Turrentine said that the NEJAC should take on the responsibility of identifying appropriate individuals, as well as the appropriate federal advisory committees for them to serve on.

## 5.5 International Subcommittee

Mr. Saldamando reported on the activities of the International Subcommittee. Mr. Salamando asked that the Executive Council of the NEJAC approve the subcommittee's proposal that it send a letter to the EPA Administrator about the subcommittee's proposed recommendation related to "Plan Colombia." He explained that the subcommittee was requesting a general policy statement on the part of the NEJAC that sets forth the reasons the United States should not provide financing for aerial fumigation of drug crops with chemical herbicides that pose a serious threat to the health of indigenous peoples. The Executive Council approved such a letter on the condition that Mr. Whitehead meet with Mr. Salamando and Ms. Jaramillo to review the document before it is sent.

Mr. Saldamando then discussed the United Nations World Conference Against Racism (WCAR) and the Environment Position Paper. The purpose of the conference scheduled to be held in South Africa in 2001, he said, was to promote all peoples' right to a clean and healthy environment by reducing and eliminating the disproportionate share of adverse environmental burdens placed on certain communities. Mr. Saldamando commented that the definition of the word "stakeholder" set forth in the position paper is not clear. EPA should offer a better definition, he suggested, adding that the American definition of the word may not be appropriate in an international context.

Mr. Saldamando also explained that there had been interest among members of the NEJAC in sending a delegation to the conference, but the attendance of such a delegation would not be possible because the NEJAC is not viewed as a national institution.

Mr. Saldamando then reviewed recommendations and requests made during the meeting of the subcommittee:

- A recommendation by Mr. Alan Hecht, Principle Deputy Assistant Administrator EPA Office of International Activities, that the United States Trade Representative (USTR) acknowledge environmental review as part of the trade agreement decision process.
- A request on the part of the subcommittee that its members participate in follow-up dialogues with the U.S. Department of State and the USTR on issues related to trade and the environment.
- A request that EPA provide to the members of the subcommittee a list of non-government organizations that usually attend various meetings at which proposals for loans to multinational development organizations are reviewed.
- A recommendation that the USTR invite and include all stakeholders in discussions of issues related to trade and the environment.
- A request that EPA explain why the current legal memorandum on statutory authorities to implement environmental justice did not include FIFRA, although earlier drafts had.

## 5.6 Puerto Rico Subcommittee

Mr. Carlos Padin, The Metropolitan University and chair of the Puerto Rico Subcommittee, submitted a memorandum to the NEJAC that reported on the activities of the subcommittee. The memorandum described the first meeting of the subcommittee held on September 26 and 27, 2000 in Manati, Puerto Rico. During that meeting, Ms. Marva King, OEJ, had presented an orientation to the NEJAC, highlighting background information and the responsibilities of the council, and Ms. Linda Smith, OEJ, had presented an overview of the types of costs associated with the maintenance and activities of the NEJAC.

The memorandum stated that Ms. Jeanne Fox, Regional Administrator, EPA Region 2, had welcomed all participants to the meeting and discussed the history of the formation of the subcommittee. The report described her discussion of the status of the pending waivers in Puerto Rico of requirements under section 301(h) of the CWA and request for the subcommittee's advice on Region 2's interim guidance on environmental justice. Mr. Terry Wesley, Environmental Justice Coordinator, EPA Region 2, had discussed the interim guidance in more detail, and Mr. Carl-Axel Soderberg, Director of the EPA Caribbean Environmental Protection Division (CEPD), had given an overview of environmental conditions in Puerto Rico, continued the report.

On the evening of September 26, the subcommittee had held a public comment period that was attended by more than 40 people, the report continued, noting that comments offered had covered a wide range of issues, including concerns about public participation, solid waste, and the continued bombing at Vieques Island, Puerto Rico.

On Wednesday, September 27, the subcommittee had focused on next steps. The members of the subcommittee had decided to form five work groups to address on the following areas: (1) public participation, (2) water quality, (3) solid waste, (4) air quality, and (5) Vieques Island, said the report. Members also had agreed to discuss the EPA Region 2 interim guidance and strategic plan for environmental justice. Subsequently, during a conference call on October 16, 2000, the members of the subcommittee decided to postpone the formation of the work groups and focus on a review of the public participation process, continued the report.



On November 14, 2000, the report continued, the subcommittee had met with Mr. Wesley and Mr. Jose Font, Deputy Director, CEPD, to discuss the region's interim guidance on environmental justice and the environmental justice analyses conducted to support the evaluation of the NPDES permits and 301(h) waivers.

The report stated in conclusion that the subcommittee had expressed concern about anticipated changes in its membership as a result of the outcome of the election in Puerto Rico. Members expected that four positions on the subcommittee would become vacant in January; the subcommittee therefore was searching for candidates and nominating them to EPA, concluded the report.

### 5.7 Waste and Facility Siting Subcommittee

Ms. Miller-Travis reported on the activities of the Waste and Facility Siting Subcommittee. She reported that the subcommittee had engaged in an active discussion, in which Mr. Fields and Mr. Steven Luftig, Acting Deputy Assistant Administrator, OSWER, had participated. The subcommittee meeting had included a two-hour review of land use planning issues, an update on the status of EPA's brownfields program, a report on the Responsible Care<sup>®</sup> initiative from a representative of industry, and a report on SEPs. The subcommittee heard presentations by representatives of communities faced with concerns about issues related to exposure to contaminants, including a representative of the Vieques Island community in Puerto Rico and Reverend Dias of Freetown, Massachusetts, said Ms. Miller-Travis.

The subcommittee then heard updates by representatives of EPA Region 4 on the Anniston, Alabama PCB site, EPA Region 6 on delegated authority and enforcement activities, and OSWER on the Agency's policy on relocation under Superfund.

Ms. Miller-Travis stated that the subcommittee had concluded the day's deliberations with a discussion of the Federal environmental justice demonstration projects pertinent to the subcommittee. The three projects reviewed by the subcommittee, she reported, were the Spartanburg, South Carolina project, the East Saint Louis, Illinois program, and the Bridges to Friendship Program in Washington, D.C.

Ms. Travis-Miller then discussed the action items adopted by the Waste and Facility Siting Subcommittee during its meeting. The members of the subcommittee agreed to develop an environmental justice paradigm for land use planning, she reported. To do so, she continued, the subcommittee would: (1) develop a best-practices manual on the environmental justice implications of local land use decisions related to the siting of waste management facilities; (2) identify implementation issues associated with land use and environmental justice; and (3) develop a resource guide on land use planning issues. The subcommittee agreed to develop a work plan for discussions to be conducted during a conference call to be held in January 2001 as a first step in implementing the land use framework, continued Ms. Miller-Travis.

The subcommittee conducted a thorough discussion of the Superfund program, reported Ms. Miller-Travis, but, more important, the subcommittee received an update on actions related to the recommendations set forth in its 1996 report on environmental justice and brownfields redevelopment. She reported that Ms. Linda Garczynski, OSWER, had presented an extensive report on the status of the brownfields program. In her presentation, Ms. Garczynski had stated that the program is a direct example of how the NEJAC has affected the outcome of enforcement issues within the Agency, said Ms. Miller-Travis.

Ms. Miller-Travis reported that the members of the subcommittee also had discussed the Superfund program. Action items resulting from that discussion included:

- A request that OSWER provide to the subcommittee, a copy of the brownfields revitalization legislation currently before the United States Senate and all relevant correspondence about it.
- The recommendation that representatives of the Massachusetts Department of Environmental Protection and members of the Freetown community meet with EPA Region 1, representatives of OSWER, and staff of the Office of the Attorney General of Massachusetts to discuss ways to resolve environmental justice issues affecting the Freetown community.
- The recommendation that, in the case of Vieques, Puerto Rico, the NEJAC Federal Facilities Working Group examine as a case

study the continued bombing of the island; that other Federal agencies, especially DoD and its military components, be asked to join EPA in a further investigation of community concerns; that Region 2 identify its community activities more clearly to the affected community; and that there will be ongoing followup with EPA Region 2, OSWER, and the Waste and Facility Siting Subcommittee on activities related to Vieques.

## 6.0 MISCELLANEOUS BUSINESS

This section summarizes the discussion on the role of the NEJAC as a provider of advice and acknowledges those members of the NEJAC whose terms have expired.

### 6.1 Clarification of the Role of the NEJAC as a Provider of Advice to the EPA Administrator

In light of Mr. Hill's presentation on the environmental justice policy memorandum (see Section 4.2 of this chapter), the members of the Executive Council of the NEJAC agreed to deviate from its agenda to focus on clarifying the role of the NEJAC as a provider of advice to the EPA Administrator. The NEJAC requested that either Mr. Barry E. Hill or Mr. Steven Herman return on Thursday to discuss in more detail the role of the NEJAC. Mr. Lee assured the members that the Agency considers the NEJAC an advisory committee, but stated that the definition of a federal advisory committee needs to be clarified and that this discussion should be continued tomorrow. Because of Mr. Hill's illness, Mr. Herman agreed to meet with the NEJAC.

At a special session on December 14, Mr. Turrentine thanked Mr. Herman for returning to meet with the NEJAC, adding that it is important for the NEJAC to have an audience with upper management of EPA who can address concerns such as those expressed by the members of the Executive Council. Mr. Lee explained that Mr. Herman had been engaged actively in the activities of the NEJAC and that he is a "friend to environmental justice."

Mr. Herman first stated that he had not hesitated to attend the meeting because of his respect for the members of the NEJAC and his pride in the work EPA and the NEJAC had completed together. He then stated that he "desperately" wishes to see that work continue; therefore, he said, he was eager to hear and resolve the concerns of the Executive Council. Mr. Herman stated that

disagreements occur, but the one shared value of environmental justice should not be forgotten. He then opened the floor to discussion.

Mr. Herman responded to the questions raised by explaining that the NEJAC is a federal advisory committee (commonly referred to as a FACA committee); therefore, its role is to advise the Agency on all matters about which the Agency requests its views, he said. The Agency, he continued, is not required to ask for advice on every policy, but that fact does not preclude the council from offering its views in other contexts. He explained that the environmental justice policy memorandum had been prepared at the requests of EPA's regional offices. The memorandum was not a final version and had not been reviewed by entities outside the Agency, he continued. Mr. Herman repeatedly assured the NEJAC that it was not the intention of the Agency to exclude stakeholders, including the NEJAC. Ms. Jaramillo supported Mr. Herman, stating that she had spoken with many representatives of industry and that those individuals had not seen the guidance.

In response to the question of why the NEJAC could not examine the environmental justice policy memorandum. Mr. Herman explained that the document was not complete and that he wanted to consult his staff before making the decision to release the document for comment. Continuing, he stated that the document is an "internal road map" of information the regional offices had requested. Mr. Herman stated that, if the members of the NEJAC truly believe they were being treated differently from members of other FACAs, as Dr. Gelobter had stated, that issue would require further examination. Mr. Aragon then stated that, since the document was not complete, the time would be opportune for the NEJAC to provide its comments. Ms. Jaramillo explained that she thought the process by which the guidance had been developed differed from that by which guidances had been developed in the past. She explained that, usually, the guidance would have been posted to a web site by its current stage of development. It would be better to seek advice while the document is in draft form, rather than risking the kind of "firestorm" the Title VI guidance had engendered, she observed.

Ms. Augustine expressed her opinion that, after seven years, EPA still does not understand the concept of environmental justice. She stated that she believed that the Executive Council had "lost the NEJAC to EPA." She explained that it was her desire to hear from communities, adding the suggestion that the public comment period held by

the NEJAC during its meetings should be made more “user-friendly” to accommodate the public. Mr. Herman responded that the public currently had more direct access to EPA and to EPA’s approach to policy than had been the case in the past.

Mr. Herman agreed to take the issue under advisement, meet with his staff, and get back to the NEJAC within two weeks with a decision on how to proceed. Mr. Lee announced that a copy of the slides used in Mr. Hill’s presentation would be distributed to the NEJAC and that a conference call would be arranged to discuss this “very important issue.”

*(Note: Subsequent to the meeting, a special meeting of the Executive Council was convened to meet with EPA and discuss the NEJAC’s role as a federal advisory committee, and how best to make recommendations to the Agency on this issue.)*

## 6.2 Acknowledgments

Mr. Lee announced that OEJ would recognize and honor members of the NEJAC whose terms were expiring on December 31, 2000. He also expressed his appreciation to Mr. Turrentine for managing the deliberations of the Executive Council of the NEJAC. Mr. Turrentine then thanked the chairs of the subcommittees for their hard work. He stated that his experience as chair of the Executive Council had been an “incredible experience.” He then asked the NEJAC to continue its hard work for its constituents. He also expressed his respect for Ms. Shepard, for her support as vice-chair of the Executive Council. Exhibit 1-13 presents the names of the retiring members of the NEJAC.

Mr. Lee presented, on behalf of OEJ, a plaque to Timothy Fields, Jr., the Assistant Administrator for Solid Waste and Emergency Response, for his commitment and leadership in the area of environmental justice. Noting that he first met Mr. Fields in 1988, Mr. Lee commented that they have worked on many different projects. The plaque read:

*"For Outstanding Leadership and Tireless Dedication to the Pursuit of Environmental Justice For All."*

Mr. Lee also recognized the following individuals:

- Ms. Mindy Lubber, Regional Administrator, EPA Region 1

## Exhibit 1-13

### RETIRING MEMBERS OF THE NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL



*Retiring members of the National Environmental Justice Advisory Council*

Mr. Don Aragon  
 Dr. Bunyan Bryant  
 Mr. Luke Cole  
 Ms. Claudia Cuykendall  
 Mr. Delbert DuBois  
 Mr. Tom Goldtooth  
 Ms. Beth Hailstock  
 Mr. Brad Hamilton  
 Mr. Michael Holmes  
 Mr. Charles Miller  
 Ms. Lillian Mood  
 Dr. Marinelle Payton  
 Ms. Rosa Hilda Ramos  
 Ms. Brenda Lee Richardson  
 Mr. Gerald Torres  
 Mr. Haywood Turrentine  
 Mr. Damon Whitehead

- Ms. Jeanne Fox, Regional Administrator, EPA Region 2
- Mr. William Muszynski, Deputy Regional Administrator, EPA Region 2
- Mr. Francis Lyons, Regional Administrator, EPA Region 5
- Ms. Gail Ginsburg, General Counsel, EPA Region 5
- Mr. Gregg Cooke, Regional Administrator, EPA Region 6
- Mr. Jerry Clifford, Deputy Regional Administrator, EPA Region 6
- Mr. William Yellowtail, Regional Administrator, EPA Region 8

- Mr. Jack McGraw, Deputy Regional Administrator, EPA Region 8
- Ms. Felicia Marcus, Regional Administrator, EPA Region 9
- Mr. William Sanders, Director, Office of Pesticides and Toxic Substances, EPA OPPTS
- Ms. Linda Garczynski, Director, Office of Outreach and Special Projects, EPA OSWER
- Ms. Clarice Gaylord, the former Director of the Office of Environmental Justice

Mr. Hill then presented an award to Mr. Lee. The plaque read,

*"The United States Environmental Protection Agency, the Office of Environmental Justice, recognizes Charles Lee for his visionary work in pursuing environmental justice for all Americans regardless of race, ethnicity, or economic status. Presented at the National Environmental Justice Advisory Council Meeting December 11, 2000."*

Calling Mr. Lee a genius, Mr. Hill explained that Mr. Lee is a "true visionary because his genius allowed him to perceive things in an 'unhabitual' way." Mr. Lee has had a unique role in why we are all gathered here today, he continued. Pointing to the 1987 United Church of Christ report "Toxic Waste and Race in the United States," authored by Mr. Lee, Mr. Hill called attention to three recommendations made in that report he said demonstrated the "genius" of Mr. Lee.

- Calling upon the President to issue an Executive Order mandating that all Executive Branch Agencies access and consider the impact of their current policies and regulations on racial and ethnic communities and to take such considerations into account when establishing new policies and promulgating new regulations. Executive Order 12898, which also established the Interagency Working Group, was issued on February 11, 1994.

- Calling for EPA to immediately establish an Office of Hazardous Waste and Racial and Ethnic Affairs to address the problems in those communities by monitoring the cleanup of uncontrolled sites, as well as the siting of new hazardous waste facilities to ensure that adequate consideration is given to the racial and socioeconomic characteristics of these potential host communities. In 1991, EPA established the Office of Environmental Equity, the predecessor to OEJ.
- Calling for EPA to establish a national advisory council on racial and ethnic concerns to be comprised of recommendation from African-American, Hispanic-American, Asian-American, Pacific Islander, and American Indian communities. The purpose of this council was to provide ongoing advice to EPA on crucial environment issues and to facilitate the dissemination of information on these issues to those communities. The NEJAC was established in 1993.

Mr. Lee also recognized several senior EPA managers who were in attendance at the meeting. Stating that their very attendance at the meeting demonstrated the commitment of senior EPA managers to the issue of environmental justice and to the importance in which they hold NEJAC, he noted that such a commitment is critical toward making sure that the collaboration with stakeholders becomes a reality.

**MEETING SUMMARY**

of the

**AIR AND WATER SUBCOMMITTEE**

of the

**NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL**

**December 13, 2000  
Arlington, Virginia**

**Meeting Summary Accepted By:**



**Alice Walker  
Office of Water  
U.S. Environmental Protection Agency  
Co-Designated Federal Official**



**Wil Wilson  
Office of Air and Radiation  
U.S. Environmental Protection Agency  
Co-Designated Federal Official**

**Annabelle Jaramillo  
Chair**

**CHAPTER THREE  
SUMMARY OF THE  
AIR AND WATER SUBCOMMITTEE**

**1.0 INTRODUCTION**

The Air and Water Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Wednesday, December 13, 2000, during a four-day meeting of the NEJAC in Arlington, Virginia. Ms. Annabelle Jaramillo, Citizens' Representative, Oregon Office of the Governor and former vice chair of the subcommittee, assumed the role of chair. Ms. Alice Walker, Office of Water (OW), U.S. Environmental Protection Agency (EPA) and Dr. Wil Wilson, Office of Air and Radiation (OAR), EPA, continue to serve jointly as the Designated Federal Officials (DFO) for the subcommittee. Exhibit 3-1 presents a list of the members who attended the meeting and identifies the member who was unable to attend.

This chapter, which provides a summary of the deliberations of the Air and Water Subcommittee, is organized in six sections, including this *Introduction*. Section 2.0, *Remarks*, summarizes the opening remarks of the new and former chairs of the subcommittee. Section 3.0, *Presentations and Reports* presents an overview of each presentation and report delivered during the subcommittee meeting, as well as a summary of the questions asked and comments offered by members of the subcommittee. Section 4.0, *Activities of the Subcommittee*, summarizes the discussions of the activities of the subcommittee, such as the progress of the four work groups of the subcommittee. Section 5.0, *Summary of Dialogue on Environmental Justice*, features discussions that occurred during the open dialogue period of the subcommittee meeting, including comments offered by representatives of OAR and OW about the future of environmental justice at EPA under the upcoming Administration of President-elect George W. Bush. Section 6.0, *Significant Action Items*, summarizes the action items adopted by the subcommittee.

**2.0 REMARKS**

Ms. Jaramillo opened the subcommittee meeting by welcoming the members present and Ms. Walker and Dr. Wilson to the fourth meeting of the Air and Water Subcommittee. Ms. Jaramillo then asked the members of the subcommittee, presenters, and members of the audience to introduce themselves.

Exhibit 3-1

**AIR AND WATER SUBCOMMITTEE**

**Members Who Attended the Meeting  
December 13, 2000**

Ms. Annabelle Jaramillo, **Chair**

Ms. Alice Walker, **co-DFO**

Dr. Wil Wilson, **co-DFO**

Dr. Bunyan Bryant

Ms. Daisy Carter

Ms. Clydia Cuykendall

Ms. Eileen Gauna

Dr. Michel Gelobter

Dr. Daniel Greenbaum

Ms. Rosa Hilda Ramos

Mr. Leonard Robinson

Mr. Damon Whitehead

Ms. Marianne Yamaguchi

**Member Who Was Unable To Attend**

Dr. Elaine Barron

Ms. Jaramillo distributed updated contact information for the members of the subcommittee. She then introduced Ms. Eileen Gauna, Professor of Law, Southwestern University School of Law, who was attending her first meeting as a new member of the subcommittee. Ms. Clydia Cuykendall, JC Penney, noted that the list of points of contact should indicate that this was to be her last meeting as a member of the subcommittee.

Dr. Michel Gelobter, Graduate Department of Public Administration, Rutgers University, and former chair of the subcommittee, explained that he had decided to relinquish his role as chair after the May 2000 meeting of the NEJAC because he felt overburdened by his personal and professional responsibilities. He thanked Ms. Jaramillo for taking over the chair.

Mr. Robert Brenner, Acting Deputy Assistant Administrator, OAR, complimented Dr. Gelobter for his efforts and accomplishments during the two years he served as chair. Mr. Brenner stated that many activities carried out by the subcommittee would be important to EPA in the upcoming years,

including its work on issues related to the concentration and combination of toxic pollutants in communities and outreach to communities. Ms. Dana Minerva, Deputy Assistant Administrator, OW, also expressed her appreciation to the members of the subcommittee for their efforts. She added that, as a political appointee, she was attending her last meeting of the NEJAC in her current capacity. She urged the subcommittee to continue working to ensure that certain communities are not affected disproportionately by pollution, regardless of the political atmosphere.

Dr. Gelobter remarked that it would be useful for the subcommittee to hear the views of Mr. Brenner and Ms. Minerva about policies that EPA could be expected to pursue during the six weeks before the presidential inauguration that may help in the struggle for environmental justice. He suggested as well that they share their views on the future of environmental justice at EPA under the Bush Administration. Ms. Jaramillo agreed with Dr. Gelobter that the subcommittee would benefit from hearing the views of Mr. Brenner and Ms. Minerva input during the open dialogue portion of the subcommittee meeting.

Ms. Jaramillo concluded the opening remarks by reviewing the agenda and inviting members of the audience to ask questions during the open dialogue period.

### **3.0 PRESENTATIONS AND REPORTS**

This section summarizes presentations made and reports submitted to the Air and Water Subcommittee about EPA OAR's asthma initiative and its Guidance for Reducing Toxic Loadings.

#### **3.1 U.S. Environmental Protection Agency Office of Air and Radiation's Asthma Initiative**

Mr. David Rowson, Director, Center for Healthy Buildings, Office of Radiation and Indoor Air, OAR, provided information about the agency's asthma initiative. He described (1) current EPA research on the asthma epidemic and its effect on communities grappling with issues related to environmental justice, (2) challenges in addressing asthma in such communities, and (3) EPA programs related to asthma outreach and prevention.

Mr. Rowson noted that, while there also are ambient air issues related to asthma, his presentation would focus on the effect of indoor air on those who suffer from asthma. Explaining that

asthma is a chronic inflammation of the airways that can lead to numerous health problems, he reported that current statistics show that more than 17 million people in the United States have been diagnosed with asthma. Mr. Rowson commented that, despite those numbers, the medical diagnosis of "chronic inflammation" and the statistics associated with the asthma epidemic are in flux. He then stated that, although asthma occurs in all populations at similar rates, (1) African Americans and Hispanic Americans are six times more likely than Caucasians to die of complication of asthma; (2) rates of emergency room visits are four times higher among African Americans than among Caucasians; and (3) African American children who live in urban communities in which the highest levels of ozone are found exhibit the highest rate of emergency room visits for asthma.

Mr. Rowson listed several challenges associated with the effort to address asthma. Lack of access to health care, misdiagnosis, and lack of awareness about the symptoms of asthma often cause underestimation of the actual number of cases of asthma, he said. Further, he added, many people who have asthma are following a comprehensive asthma management plan. These plans may not provide adequate health care due to certain barriers. Such barriers include time, money, and access, he explained, adding that managed care organizations – including Medicaid and Medicare – may not offer asthma case management. Mr. Rowson noted that another challenge associated with the effort to reduce asthma rates is competing priorities. Individuals may not have the time or money to deal with the symptoms of asthma, he said. Mr. Rowson then reported that, in some Hispanic populations, being diagnosed with asthma often is regarded as a sign of weakness. When priorities for infrastructure resources are examined, other issues that may compete with asthma include the need to eradicate gun violence and the effort to reduce rates of teenage pregnancy.

Ms. Gauna remarked that it appears that there are two principal parts to EPA's asthma initiative: (1) awareness and education and (2) the effort to address indoor air quality. She asked Mr. Rowson whether EPA has developed strategies to actually improve indoor air quality. She also asked for a discussion of the agency's efforts to improve the quality of ambient outdoor air.

Mr. Rowson referred inquiries about EPA's outdoor air efforts to others in OAR who work in the area of ambient air quality. On the subject of indoor air, he stated that most of the \$5 million program was

focused on efforts in homes and schools because that is where children most likely will be affected. In homes, EPA primarily is educating individuals and families about managing the home environment to reduce indoor conditions that can trigger an attack, he explained. Lessons include a proper medical regime, what to do in emergency situations, and how to avoid things that will trigger an attack. For schools, EPA is working with the American Lung Association and other partners to improve general air quality in classrooms, explained Mr. Rowson. He added that, at the Federal level, voluntary programs to improve indoor air quality also are under development. Exhibit 3-2 describes EPA Indoor Environments Asthma Program. He observed that EPA was supporting efforts by states to adopt requirements for the improvement of indoor air quality.

Ms. Gauna asked whether there are specific strategies to reduce the occurrence of asthma triggers in schools, specifically through mitigation and intervention. Mr. Rowson responded that good ventilation and source reduction strategies are encouraged because such approaches reduce the proliferation of molds and remove irritants.

Ms. Daisy Carter, Director, Project AWAKE, asked whether asthma is caused by industrial emissions or is hereditary. She also requested a list of Federal and state agencies and non-government organizations that have conducted or are conducting research and outreach related to asthma. Mr. Rowson acknowledged that there are several theories about the cause of asthma, which range from obesity to growing up in an environment that is "too clean," thereby limiting the development of the immune system to environmental irritants, tobacco smoke, and exposure to dust mites. He admitted that there is more understanding of the triggers of asthma than its causes. Mr. Rowson agreed to provide the list of agencies and organizations to the subcommittee, adding that new organizations are being formed constantly, especially at the state and local level.

Dr. Daniel Greenbaum, Health Effects Institute, commented that his organization had conducted significant research on asthma. He reported that many outdoor pollutants exacerbate the effects of asthma. As a follow-up to Ms. Gauna's question about work in schools, Mr. Greenbaum reported that studies that track populations in school systems located both near and distant from trucks and diesel traffic have shown conclusively that the incidence of asthma attacks is higher among those nearer to emissions sources. Mr. Greenbaum

added that, throughout much of the United States, schools were the last to see the installation of air conditioning systems, which stop the inflow of outdoor air.

Dr. Gelobter asked about examples of interagency activity related to address asthma triggers, especially any activity having an environmental justice aspect. Mr. Rowson responded that EPA is working with other agencies, including the U.S. Department of Health and Human Services, the Centers for Disease Control and Prevention, and the National Asthma Education Project (NAEP). He explained that NAEP is an entity under which many Federal agencies work together to address issues related to asthma. He added that inherent in all those efforts is an environmental justice theme because the agencies recognize that members of environmental justice communities suffer from asthma at a rate disproportionate to their number in the overall population. However, he acknowledged that NAEP has not established an environmental justice coordinating committee.

### 3.2 Guidance for Reducing Toxic Loadings

Ms. Jeneva Craig, Office of Policy Analysis and Review, OAR, provided an update on the Agency's proposed guidance for reducing the levels of toxics in a community. She noted that comments on the guidance that were provided by the NEJAC and various stakeholders identified three primary concerns:

- Incentives are necessary to encourage communities to develop toxic reduction plans voluntary.
- EPA must provide more direction for developing a toxic emissions inventory and setting a baseline for tracking progress.
- Provisions of the guidance must be tested through pilot studies.

Ms. Craig noted that the goal of the Guidance for Reducing Toxic Loadings is to encourage establishment of goals for reductions at the beginning of the planning process. She acknowledged that OAR's efforts were in an early stage. She reported that, at the next meeting of the NEJAC, her office planned to work with OW to discuss particulate matter being transferred from air to water, monitoring requirements, and ideas for educational activities.



### EPA INDOOR ENVIRONMENTS ASTHMA PROGRAM

The U.S. Environmental Protection Agency's (EPA) Indoor Environments Asthma Program features a National Awareness and Education Campaign that involves a national advertising campaign to increase awareness about asthma and how to manage its symptoms effectively. The initiative seeks to identify and replicate the most effective asthma programs that already are in place. Under the program, EPA is directing resources to programs that exhibit a positive track record related to the prevention and management of asthma. The program incorporates partnerships with national, state, and community-based efforts associated with environmental justice populations. Because one activity may not be suitable for all populations, EPA is establishing partnerships with entities that can reach target audiences.

The national advertising campaign involves a multimedia approach and a partnership with the Ad Council. Advertisements are being pilot-tested in urban Hispanic and African American communities in New York, New York; Chicago, Illinois; Miami, Florida; San Antonio, Texas; and New Haven, Connecticut. The posters and public service announcements, which are available in both Spanish and English, encourage people to actively manage their asthma on a daily basis. Members of affected communities were asked to comment on the design of the ads, and a number of their suggestions were incorporated. Information hotlines also have been established in the pilot cities.

Other partnerships supported by EPA that target asthma in environmental justice communities include:

- San Francisco, California, Department of Health emergency room education and follow-up program: The program strives to match asthma patients with a respiratory care therapist who will advise them how to manage their asthma daily and follow up on their cases three to six months later to track the patients' progress. The program is being developed in partnership with the American Respiratory Care Foundation and includes a significant evaluation component for measuring the success of the program.
- The Children's Hospital, Philadelphia, Pennsylvania, in-home asthma education and management program: Developed in conjunction with the Bureau of Primary Health Care, an arm of Philadelphia's Health and Human Services, the program provides medical services to the underserved and uninsured; educates patients in the management of asthma; works with patients to provide services, rather than dispensing medication; and focuses on establishing durable daily practices and limiting exposure to indoor triggers.

Programs aimed at reducing school-related asthma include:

- National Organization of Black County Officials pilot study in communities in Mississippi, Alabama, and Louisiana: The goal of the program is to build awareness of issues related to asthma in communities and to encourage schools to adopt better indoor air practices.
- Open Airways Program developed by the American Lung Association: The program is designed to reach out to and work with minority communities to improve air quality in schools.

Examples of awareness and education programs being implemented through the Hispanic media include:

- Hispanic Radio Network, Inc.: The network, an educational radio program, broadcasts advertisements about asthma and presents novellas or short stories about people in real-life situations who must deal with asthma. The Hispanic Radio Network also sponsored an information hotline on asthma.
- The National Council of LaRaza (LaRaza) program: In conjunction with EPA, LaRaza is working with educators to provide health-care advice to Hispanic children and their parents. The effort is unique in that instructional materials were developed in Spanish, rather than translated from English.

Ms. Craig commented that she had hoped to have more revisions ready to submit to the subcommittee for review, but, unfortunately, the revisions were not ready in time to be submitted during the meeting. She assured the members that, over the coming year, she would work to establish pilot programs to evaluate the guidance. She stated that grants from EPA and other sources would be used to support such efforts.

Ms. Craig also reported that, as part of a pilot study, EPA was working with an air advisory committee that had been established by Michael R. White, Mayor of Cleveland, Ohio. The project would examine both indoor and outdoor sources of air pollution, she explained.

Ms. Gauna asked whether EPA had received any comments on the relationship between the proposed guidance for reducing toxic loadings and EPA's guidance on addressing complaints filed under Title VI of the Civil Rights Act of 1964. She also commented that it was not clear when the guidance was to be announced in the Federal Register. Ms. Craig responded that, as yet, there had been no discussion of the announcement of the proposed guidance in the Federal Register. Continuing, she stated that the current focus was on the conduct and evaluate of the pilot studies. In terms of the relationship between the two guidance policies, Ms. Craig acknowledged that both guidances discuss area-specific agreements.

Mr. Damon Whitehead, Earth Conservation Corps, asked how the toxics reduction program considers Title VI violations. He requested clarification on the role of the program in the analysis related to Title VI. Stating that comparing the two programs resembles comparing apples and oranges, Mr. Whitehead said that Title VI pertains to permitting, while the toxics reduction program establishes incentives for reducing pollution. Mr. Brenner acknowledged that, although compilation of the guidance was conducted independently of preparation of the Title VI guidance, the question had been raised during the development of the Title VI guidance whether mitigation efforts should be considered in deciding if basic rights have been violated. Mr. Whitehead countered that either a person's rights have been violated or they have not; it is a clear-cut issue, he declared. Mr. Whitehead then stated that mitigation should be in a part of the remedy; the issue is not whether the violation occurred. Mr. Brenner stated that such issues were being discussed.

Ms. Rosa Hilda Ramos, Community Leader, Community of Cataño Against Pollution, asked whether it would be possible to establish a pilot study in Puerto Rico. Ms. Craig responded that, after the pilot study in Cleveland has been completed, additional pilot studies were to be initiated as more resources become available. She said that the Agency would keep Puerto Rico in mind as a candidate for a subsequent pilot study.

#### **4.0 ACTIVITIES OF THE SUBCOMMITTEE**

This section discusses the activities of the subcommittee, which included discussion of the progress of the four work groups of the subcommittee, the establishment of priorities among the action items identified during the October 2000 meeting of the subcommittee held to discuss power plants in Puerto Rico, and development of the mission statement of the subcommittee.

##### **4.1 Work Groups of the Subcommittee**

Members of the Air and Water Subcommittee met with their respective subcommittee work groups – specifically, the work groups on Cumulative Permitting, Fish Consumption, Public Utilities, and Urban Air Toxics. A representative of each work group then presented to the other members of the subcommittee a status report on the progress of that work group.

###### **4.1.1 Work Group on Cumulative Permitting**

The Work Group on Cumulative Permitting, chaired by Ms. Cuykendall, discussed four primary issues: (1) the draft guidance for reducing toxic loadings prepared by OAR; (2) the revised Title VI guidance prepared by EPA's Office of Civil Rights; (3) the public participation requirements under the Tier 2 Clean Fuels Initiative; and (4) White Paper No. 3, a draft guidance on designing flexible air permits prepared by OAR. Exhibit 3-3 defines the Tier 2 initiative. The work group also noted that it is awaiting EPA's issuance in the near future of guidance on public participation.

Ms. Cuykendall stated that the Work Group on Cumulative Permitting could be retained, except that she suggested it might be appropriate to revise its scope. Ms. Cuykendall commented that it might be appropriate to dissolve the work group, stating that another work group may be able to assume the responsibilities of the current work group. She reminded the subcommittee that the work group had been convened to address issues

related to cumulative permitting. She identified two issues that should be considered by the work group:

- Federal requirements for issuing permits for building schools, which had been discussed during the public comment period held on the previous evening.
- The framework for assessing the environmental justice issues presented on the previous day by Mr. Barry Hill, Director, EPA Office of Environmental Justice. Ms. Cuykendall emphasized that those individuals who had expressed frustration and annoyance because the NEJAC had not had the opportunity to review the proposed national policy guidance on environmental justice were concerned about the process by which the policy is being developed, rather than the substance of the document. She stressed that it was important that the work group focus on substance.

Ms. Gauna, the only other subcommittee member serving on the work group, stated that she was shocked that issues related to air permitting do not have a higher profile among the members of the subcommittee. She stressed that, overwhelmingly, environmental justice issues are permitting issues. She stated that it was crucial to move "such issues higher on the agenda," given the amount of interest in it. Ms. Gauna said that she would be pleased to join the Work Group on Public Utilities if the Work Group on Cumulative Permitting were dissolved. She added, however, that she was concerned that several significant permitting issues, such as the Tier 2 Clean Fuels Initiative, may not be appropriate subjects for a group that is focused on public utilities to consider. She urged that the subcommittee consider dealing with permitting in a broader context than that of public utilities. Ms. Gauna strongly recommended that the work group be retained because EPA was to undertake several significant initiatives during in the upcoming year.

Ms. Gauna encouraged the expansion of the subcommittee to include representatives of other stakeholder groups. With Ms. Cuykendall leaving the subcommittee, Ms. Gauna pointed out, she herself would become the only remaining member of the subcommittee serving on the work group. Ms. Ramos urged that representatives of affected communities be invited to participate in the work group. Ms. Gauna stated that the work group would continue to identify issues and comment on EPA's approaches to permitting.

### TIER 2 CLEAN FUELS INITIATIVE

In December 1999, the U.S. Environmental Protection Agency (EPA) announced new general emission standards (Tier 2 standards) for passenger cars, light trucks, and larger passenger vehicles. The program focuses on reducing the emissions most responsible for the ozone and the effect of particulate matter from those vehicles. The program also will, apply for the first time the same Federal standards to all passenger cars, light trucks, and medium-duty passenger vehicles.

In addition, the Tier 2 Clean Fuels Initiative will reduce average levels of gasoline sulfur emissions nationwide. Refiners will install advanced refining equipment to remove sulfur during the production of gasoline. Importers of gasoline will be required to import and market only gasoline that meets the sulfur limits.

Ms. Gauna then summarized the work group's discussions about the Tier 2 Clean Fuels Initiative, on which Mr. William Harnett, Acting Director, Office of Air Quality Planning and Standards, EPA Region 4, had presented a status report for the subcommittee. She stated that the requirements may pose an unfair or disproportionate impact on environmental justice communities. According to Ms. Gauna, Mr. Harnett had announced that an information disclosure process was to be established that will provide to agencies information on where there will be access on a county-by-county basis. In terms of baseline information, she continued, EPA will examine information from counties about local emissions from mobile sources. An evaluation of how emissions may change in light of the Tier 2 Clean Fuels Initiative then can be performed, she said. Ms. Gauna noted that Mr. Harnett had stated that educational programs would be developed to inform communities about the permitting process.

There had been little discussion of Title VI because the NEJAC as a whole, had commented on the guidance, Ms. Gauna reported. The U.S. Department of Justice (DOJ) had taken the position that it cannot involve itself in Title VI complaints until EPA makes a finding of disparate impact in response to an administrative complaint. Ms. Gauna stated that the alternative to involvement on the part of DOJ is private litigation. She reported that the Title VI guidance likely would not be reissued until summer 2001.

Ms. Gauna then discussed White Paper No. 3, a draft guidance on allowing flexibility in permitting under the Title V Operating Permits Program that was prepared by EPA OAR. Exhibit 3-4 describes the draft guidance. Ms. Gauna emphasized that the guidance is a significant initiative of the agency that requires the immediate attention of the subcommittee. She stated that the guidance should be evaluated within the context of a pilot project. There is some concern, she added, that advance approvals of flexible permits will be issued before new data on health effects become available that may contradict the data on which permit conditions were based.

#### 4.1.2 Work Group on Fish Consumption

The subcommittee's Work Group on Fish Consumption, chaired by Mr. Leonard Robinson, TAMCO, had discussed two primary tasks for the upcoming year: a review of EPA OW's National Report on State Consistency, which addresses issues related to fish consumption, and efforts to provide significant influence in the planning of the next NEJAC meeting, scheduled for December 3 through 6, 2001 in Seattle, Washington, which will focus on risk communication and management in environmental justice communities. The work group plans to incorporate the views of the public into the planning process for that meeting, reported Mr. Robinson.

Mr. Robinson conducted a discussion of the activities of the work group that included a conference call with individuals who had been unable to attend the meeting. Other members of the Air and Water Subcommittee who were present during the discussion were Ms. Marianne Yamaguchi, Director, Santa Monica Bay Restoration Project; Ms. Carter; and Ms. Jaramillo. Ms. Minerva, Ms. Walker, and Mr. Moses Squeochs, Confederate Tribes and Bands of the Yakama Nation and a member of the Indigenous Peoples subcommittee, also attended the session.

Mr. Robinson then reported that the work group had reviewed the preliminary agenda for the December 2001 meeting of the NEJAC in Seattle and identified 10 items to be incorporated into the final agenda:

- Models of successful risk communication efforts provided by various stakeholders.
- Consistency and adequacy of risk assessment in fish consumption studies (the limiting factor usually is resources, rather than policy).

#### WHITE PAPER NO. 3: DRAFT GUIDANCE ON DESIGNING FLEXIBLE AIR PERMITS

On August 7, 2000, the U.S. Environmental Protection Agency (EPA) Office of Air and Radiation (OAR) issued a draft guidance on designing flexible permits for certain sources of air pollution. The guidance provides to state and local permitting authorities information about how to design flexible permits for sources regulated under the Title V Operating Permits Program. According to EPA, flexible permits are intended for sources that make frequent and quick operational changes, generally to meet changes in market demand. Examples include the pharmaceutical and computer industries.

While the draft guidance is not mandatory, it encourages state and local permitting authorities to use flexible permits when so allowed under regulations and as resources and needs dictate. The guidance does not exempt sources from fully complying with the requirements of Title V of the Clean Air Act.

A copy of the draft guidance is available at <http://www.epa.gov/ttn/oarpg/>.

- Case studies, including Columbia River, Wilamette River Keeper, Great Lakes National Program Office, Chesapeake Bay, Gulf Program, St. Lawrence Basin, an Alaska study, and a local Seattle study.
- Demonstration of applicable technologies, including the use of geographic information systems to map areas for which fish advisories had been issued.
- Grant opportunities for research on fish consumption in environmental justice communities; grants from all Federal agencies that are related to fish consumption, specifically in environmental justice communities; may be presented as a workshop.
- Research on the health effects of fish consumption in environmental justice communities, including studies of minor, major, and long-term effects.
- Prevention and intervention strategies and cultural issues.

- A video, PowerPoint, or poster presentation, developed with the support of the Region 10 Tribal Conference to replace a site tour that may present logistics problems.
- Remediation technologies – remedies and solutions.
- Regulatory approaches – the air and water program, total maximum daily loads, quantities of fish, and multimedia approaches.

#### 4.1.3 Work Group on Public Utilities

The Work Group on Public Utilities, chaired by Dr. Greenbaum, had discussed three potential action items, presented by Dr. Greenbaum, for the work group, specifically:

- Development of a guide for environmental justice communities that provides emissions data and information about the enforcement status of both new and existing facilities.
- Review of four legislative bills intended to reduce emissions further.
- Review of Federal government programs that examine demand efficiency and management.

The work group also urged that Puerto Rico must be considered during all discussions related to public utilities, reported Dr. Greenbaum.

Dr. Greenbaum commented that the work group was relatively new and still was organizing. Other members of the subcommittee who participated in the work group were Dr. Gelobter and Ms. Ramos. Mr. Greenbaum had expressed agreement with Ms. Gauna that it is difficult for the work group to make informed recommendations when some stakeholders are not represented during its discussions. He expressed his support for the approach taken by the Work Group on Fish Consumption, which provided a conference call for individuals who were unable to attend the meeting.

Dr. Greenbaum stated that he agreed with Ms. Gauna that permitting is part of a much larger issue. He stated that there are two drivers to the permitting concerns related to public utilities: (1) a series of changes, pressures, and trends, such as deregulation, fluctuations in price, and concern about existing coal-fired facilities, most of which are near or in urban areas, in the public utilities industry that have radical implications for environmental justice communities and (2) the siting of many smaller facilities in communities and neighborhoods and the emergence of renewable and cleaner resources.

Dr. Greenbaum had stated that the work group should obtain from EPA: (1) data on existing public utilities, including the number, locations, and enforcement status and (2) summaries of four proposed legislative bills intended to reduce emissions further. Continuing, Mr. Robinson reported that Dr. Greenbaum then had stated that the work group's inquiry into the four proposed bills was intended primarily to support an analysis of the bills, rather than to be an effort to lobby Congress.

#### 4.1.4 Work Group on Urban Air Toxics

The Work Group on Urban Air Toxics of the subcommittee, chaired by Mr. Whitehead, who also reported on the discussion held by the group, had discussed four primary issues. Mr. Whitehead described those issues as follows:

- Results of EPA's National Air Toxics Assessment (NATA) national-scale assessment, a report which is to be issued in early 2001.
- Information needed by the work group about the Agency's urban air toxics monitoring strategy.
- The structure of state, local, and tribal (S/L/T) programs that deal with urban air toxics.
- The anticipated EPA diesel retrofit program.

The national-scale assessment report, which is under review by EPA's Science Advisory Board and expected to be made final in early 2001, presents data on emissions inventories and ambient concentrations from four pilot cities around the country: Raleigh, North Carolina; Detroit, Michigan; Tampa, Florida; and Portland, Oregon. Mr. Whitehead stated that the subcommittee would be called upon to provide comments when the report becomes available. Exhibit 3-5 describes the NATA program.

Continuing, Mr. Whitehead commented that representatives of EPA also had presented to the work group a briefing on its air monitoring strategy for urban areas. Mr. Whitehead stated that the presenters had noted that, when data are lacking, EPA uses modeling, adding that when actual data are obtained, they often indicate that the modeled emissions had overestimated the actual emissions. The general consensus among stakeholders about monitoring has been that additional data are required to fill data gaps, identify problem areas, and help develop better

## Exhibit 3-5

### NATIONAL AIR TOXICS ASSESSMENT PROGRAM

The National Air Toxics Assessment (NATA) program is one of four components identified in the U.S. Environmental Protection Agency's (EPA) Office of Air and Radiation (OAR) Integrated Urban Air Toxics Strategy to reduce air toxics. The NATA program will help EPA identify areas of concern, characterize risks, and track progress in achieving the agency's overall goals for air toxics programs. Activities under NATA include expansion of monitoring, improvement in and periodic updating of emissions inventories, improvement of air quality, multi-media and exposure modeling, continued research on health effects and exposures to both ambient exposure and assessment tools. The activities will provide EPA with improved characterization of risk posed by air toxics and risk reductions that are achieved through the imposition of emissions control standards and the adoption of initiatives for stationary and mobile-source programs.

models, said Mr. Whitehead. He then noted that the work group had requested that EPA OAR provide information about how the Agency plans to spend the \$16 million it has allocated for monitoring of air emissions under the urban air toxics strategy.

Mr. Whitehead then described the process EPA applied in drafting the integrated urban air toxics strategy, which had been mandated by statute and on which the NEJAC had provided comments. He also announced that Mr. Christopher Stoneman, EPA Office of Air Quality Planning and Standards, had replaced Ms. Laura McKelvey, OAR, as the EPA point of contact for the urban air toxics strategy. Noting that EPA had established a work group made up of representatives of various stakeholder groups, Mr. Whitehead stated that Dr. Bunyan Bryant, Professor, School of Natural Resources and Environment, University of Michigan, and Dr. Elaine Barron, Paso Del Norte Air Quality Task Force, also contributed to the efforts of the EPA work group. He reported that the work group was providing comments on methods of structuring the urban air toxics program to deal with risk. Exhibit 3-6 describes the urban air toxics strategy.

Mr. Whitehead requested that the other members of the subcommittee express their views about how to proceed. For example, he said, the work

group needs assistance in identifying strategies to determine how to reduce risk in urban areas. He said that the national screening-level assessment being conducted under NATA would be used as a resource because it would help characterize risks posed by air toxics nationwide by evaluating potential health risks associated with inhalation exposures to 33 hazardous air pollutants and diesel particulate matter (PM). Mr. Whitehead then stated emphatically that it was important that the NEJAC have a role in developing the program.

Mr. Whitehead then reported that the work group had discussed EPA's work plan for S/L/T programs that deal with urban air toxics. The work plan, he noted, had been developed in September 2000 by the Clean Air Act Advisory Council (CAAAC). Dr. Barron and Dr. Bryant also had been involved in the development of that work plan, he added. Mr. Whitehead then explained that the work plan describes in detail the types of programs that S/L/T communities can develop stated that it was anticipated that the work plan will be final by February 2001. The Work Group on Urban Air Toxics would provide comments on the work plan, he announced.

The work group also had discussed the issue of mobile sources compared with stationary sources, Mr. Whitehead continued, adding that implementation of the anticipated diesel retrofit program, described in Exhibit 3-7, was expected soon. The program, Mr. Whitehead observed, would be of great significance for the NEJAC and environmental justice communities. Mr. Whitehead stated that the subcommittee should obtain more information about the program and urged that EPA promote it to urban communities. He emphasized the importance of the subcommittee's support for the voluntary diesel retrofit program. Mr. Whitehead also noted that the work group also had discussed the involvement of local communities in the program.

While the work group had not made any immediate recommendations or prepared any resolutions to forward to the NEJAC, said Mr. Whitehead, he anticipated that a need for a resolution on the diesel rule would arise in the upcoming year. Mr. Brenner responded that the subcommittee might not have time to complete the resolution process because the rule was to be issued very shortly. However, suggested Mr. Brenner, the subcommittee could focus on the upcoming off-road diesel rule. Mr. Whitehead agreed, adding that the work group also would provide comments on the national-scale assessment report when it is issued.

### U.S. ENVIRONMENTAL PROTECTION AGENCY'S INTEGRATED URBAN AIR TOXICS STRATEGY

The U.S. Environmental Protection Agency's (EPA) Integrated Urban Air Toxics Strategy focuses on reducing the threats to human health posed by toxic air pollutants in urban areas in which large numbers of people live and work near a variety of sources of pollution. In the strategy, EPA outlines actions that it will take in the future to reduce emissions of air toxics and improve its understanding of the health threats posed by air toxics in urban areas.

EPA's goal for the strategy includes the reduction of risks of cancer and noncancer health threats associated with air toxics in urban areas. Several objectives of the strategy are:

- Reduce by 75 percent the risk of cancer associated with air toxics from both large and small commercial and industrial sources.
- Substantially reduce noncancer health risks (such as birth defects) associated with air toxics from small commercial and industrial sources.
- Address and prevent disproportionate effects of air toxics, such as those in areas known as "hot spots," and effects on sensitive populations in urban areas, including children, the elderly, and members of minority or low-income communities.

### Exhibit 3-7

#### VOLUNTARY DIESEL RETROFIT PROGRAM

To address the nationwide concern about pollution from diesel engines, EPA developed a program to significantly reduce pollution from new diesel engines. The program consists of a two-step approach. First, EPA will set new emission standards for diesel engines that will take effect in 2004. Then the Agency will establish even more stringent emission standards for diesel engines beginning in 2007, in combination with requiring the use of low sulfur diesel fuel. However, because these rules will not begin to take effect right away, EPA developed the Voluntary Diesel Retrofit Program to help make a difference in the immediate future. The program will address pollution from diesel construction equipment and heavy-duty vehicles that are currently on the road today.

Additional information on the voluntary diesel retrofit program is available at <http://www.epa.gov/OMS/retrofit>.

health issues in the San Juan, Puerto Rico metropolitan area, where such problems could be attributable to a variety of industrial and commercial activities.

Ms. Ramos commented that the priorities of communities had not been included among the action items developed during the October meeting. Speaking for such communities, she stressed that their priorities are to urge industries in Puerto Rico to use cleaner fuel that has a 0.5 percent sulfur content and supporting the implementation of a requirement that urging that the commonwealth to revise its state implementation plan (SIP) to achieve a mass emission limit of 0.1 pound per million British thermal units (Btu).

Ms. Cuykendall reminded the members of the subcommittee that EPA and the Puerto Rico Electric Power Authority (PREPA) were engaged in litigation about opacity standards for stationary sources and facilities. Ms. Ramos added that the Clean Air Act requires that states reconcile mass emissions standards by complying with opacity requirements. Charging that the violations by

#### 4.2 Power Plants in Puerto Rico

The subcommittee discussed the establishment of priorities among action items identified during the Air and Water Subcommittee meeting on power plants in Puerto Rico that had been held in New York, New York, on October 18, 2000. That meeting had focused on air quality and human

PREPA were criminal, Ms. Ramos urged that EPA order Puerto Rico to establish a mass emissions standard that is as restrictive as those required under Federal law in other cases.

Mr. William Muszynski, Deputy Regional Administrator, EPA Region 2, stated that the primary action item for EPA is to monitor the Federal government's 1999 consent decree. Mr. Muszynski reported that the U.S. District Court has been asked to take additional action to ensure compliance. Stating that he considers the debate to concern the proper level of opacity, he then explained that the issue is one about old power plants. He then listed other issues the agency considers to be of higher priority. He explained that EPA first will ask that the government of Puerto Rico revise its SIP, adding that the agency believes the commonwealth will agree voluntarily to make such revisions. He also remarked that the agency considers several other long-range action items identified by the subcommittee; several of them are difficult to act upon under current circumstances, he acknowledged.

When asked whether the 1999 consent decree covers facilities throughout Puerto Rico, Mr. Muszynski responded that it does not. Ms. Gauna then asked whether the modifications of the SIP would pertain only to opacity or would encompass additional issues. Mr. Muszynski stated that the proposed revision would pertain to all areas that would help facilities in Puerto Rico achieve the 0.1 pound-per-million Btu limit.

Ms. Ramos expressed her appreciation to Mr. Brenner and other representatives of EPA headquarters for facilitating the dialogue with EPA Region 2. She commented that she had known Mr. Muszynski for 10 years and stated her belief that he is a "man of his word." Reporting that Puerto Rico had just elected a new governor, Ms. Ramos emphasized the importance of making the new governor aware of the circumstances of the relationship between EPA and PREPA. She asked that the agency develop a contingency plan under which EPA would require that Puerto Rico comply with the Federal 20-percent-opacity rule, because, she cautioned, it is not known what changes might be made under the new governor's administration. Noting that corruption is a problem in Puerto Rico, Ms. Ramos also asked that EPA investigate implications of criminal activity related to the use of dirty fuel in Puerto Rico.

Mr. Muszynski responded that EPA preferred that states, and special-status entities such as the commonwealth like Puerto Rico, voluntarily make changes in compliance plans. He assured Ms. Ramos that the agency will encourage the commonwealth strongly to voluntarily comply with the opacity rule, explaining that in its negotiations with the commonwealth, the agency would present

reasons why Puerto Rico should comply with the rule, rather than attempt to force the commonwealth to comply.

Mr. Muszynski commented that PREPA is not like Consolidated Edison in New York because the governor of Puerto Rico would have more influence on the management of PREPA than would be the case in any discussions between that company and the governor of New York. If the governor of Puerto Rico considers the issue a priority, Mr. Muszynski suggested, EPA can carry out work smoothly. He noted further that, if facilities continue to be in non-compliance, EPA can notify the court that its efforts are insufficient to gain compliance. However, the agency cannot ask the court to force facilities to become cleaner, he said. The "hammer," he stated, is the fact that EPA can demonstrate cause and effect.

Dr. Greenbaum commented that he had found the October 2000 meeting in New York very helpful in understanding the situation in Puerto Rico. He stated that there did not appear to be disagreement about what must be done. Dr. Greenbaum noted that, although the list of action items developed during the New York meeting was long, the items could be grouped in two broad categories: (1) regulatory actions, including strict monitoring of compliance with the requirements of the 1999 consent decree and modification of the SIP, if appropriate, and (2) community pressure, including training of the community in detection of violations of the opacity rule, establishment of a technical team to evaluate the costs and benefits of using low-sulfur fuel and making other operational improvements at PREPA power plants, education of various audiences about the health benefits of using cleaner fuels, and enlistment of the support of the National Institutes of Health in addressing the issue. Dr. Greenbaum added that the establishment of a technical team could prove very beneficial in convincing the governor of the importance of the issue.

Ms. Jaramillo supported Dr. Greenbaum's approach of categorizing the long list of action items in two areas. She acknowledged that EPA had made a commitment to achieving the purposes of several action items that the agency had designated priority issues.

Ms. Gauna asked whether the primary pollutant of concern associated with the facilities is PM or sulfur. She also asked about attainment status. Mr. Muszynski stated that, currently, the primary pollutant of concern is sulfur. On the subject of attainment status, he reported that the



commonwealth had been in nonattainment since violations were reported in 1998 and 1999. He explained that Puerto Rico would retain its nonattainment status until the commonwealth requests that it to be changed. He added that data since have shown that the commonwealth is in compliance for particulate matter having a diameter of less than or equal to 10 microns. Dr. Greenbaum countered that it is conceivable, however, that Puerto Rico is in nonattainment for particulate matter having a diameter of less than or equal to 2.5 microns.

Ms. Ramos commented that EPA also should consider stricter emissions limits under Title V of the Clean Air Act. Mr. Muszynski explained that EPA cannot establish new emissions limits under Title V because the statute requires only that existing reporting requirements be included in a permit. Ms. Ramos reported that Puerto Rico's regulations allow the review and strengthening of emissions limits if the community can prove that it is necessary to do so.

Ms. Cuykendall commented that she does not favor making allegations of criminal activity on the basis of the information available. She stated, that if the subcommittee "goes too far," it could jeopardize the progress made in New York.

Ms. Jaramillo concluded the discussion by suggesting that the subcommittee forward to the NEJAC a letter recommending that EPA continue to take action in Puerto Rico. Ms. Ramos and Dr. Greenbaum were designated the leads for preparation of the letter. Ms. Ramos commented that a resolution would be a stronger tool for use against PREPA and for empowering EPA Region 2. Ms. Jaramillo reminded Ms. Ramos, however, that issuing a resolution requires 30 days during which the NEJAC deliberates; such a delay in the process would be undesirable, suggested Ms. Jaramillo.

#### 4.3 Mission Statement of the Subcommittee

The members of the Air and Water Subcommittee discussed the final draft of its mission statement. After numerous changes in the wording were suggested, discussed, and accepted or rejected, the mission statement was amended to read:

*"The mission of the Air and Water Subcommittee is to identify, review, and recommend creative, sustainable, and environmentally just solutions so that informed policy decisions can be made. In all of its efforts, the Air and Water Subcommittee will encourage active stakeholder input."*

## 5.0 SUMMARY OF DIALOGUE ON ENVIRONMENTAL JUSTICE

Mr. Jaramillo invited members of the subcommittee, speakers, and members of the audience to raise any issues they believed had not been addressed during the subcommittee meeting. In addition, Ms. Minerva and Mr. Brenner presented their perspectives on the future of environmental justice at the Agency under the new Administration.

### 5.1 Enforcement

Mr. Whitehead asked about the policy on startups of new facilities and how that policy is related to Title V and other permitting issues. Mr. Brenner responded that many of the underlying rules related to new source performance standards (NSPS) include provisions for dealing with startups and malfunctions of existing or new facilities. Mr. Harnett reported that, while most enforcement actions are initiated when a facility is found to be in violation of minimum limits, enforcement may not take place when there is a malfunction. He added that, as long as facilities minimize emissions and the effects of those emissions, they are given exemptions if the violations do not continue for an unacceptably long period of time.

Mr. Carl Edlund, Director, Planning and Permitting Division, EPA Region 6, stated that the Agency had found that, when some facilities experience one or two spills a day, such conditions appear to be a routine part of operations. However, he continued, when the situation is viewed from an enforcement perspective, such spills can indicate a problem. Consequently, EPA is developing guidance for establishing better monitoring practices, especially in communities located near facilities. Mr. Edlund acknowledged that the problem of routine spills remains unresolved. He added that requirements for better monitoring practices by facilities in the Houston, Texas ship channel and the St. Charles Parish, Louisiana area were scheduled for implementation in 2001. He also acknowledged that short-term emissions are difficult to measure.

Mr. Whitehead asked whether source pollution arising from a malfunction would not be considered a violation, as long as a facility reports the malfunction that is covered under its permit. Mr. Brenner replied that the facility must report such incidences if there is not a required rule. Ms. Elizabeth Bartlett, EPA Region 4, reported that, in reviewing Title V permits, she had found that many states include in their SIPs provisions that address source pollution arising from malfunctions.

Ms. Carter requested information about the life expectancy of old plants that continue to operate. She asked whether there was a plan for the phasing out of such facilities and their replacement with new technology. Mr. Brenner responded that the replacement of antiquated or outdated facilities, especially larger facilities, was one of the central issues under discussion by the CAAAC. Mr. Brenner reported that, currently, no provision requires that old plants be “retired” from operation. Owners of utilities often have claimed to retire plants after 30 to 40 years, he continued, adding that there are, however, many plants that are 50 to 60 years old. There is no evidence, however, that phasing out of such plants is being planned, he noted. Mr. Brenner stated that EPA’s new source review programs were working to address that issue. He added that, unfortunately, the Clean Air Act does not require the use of new technology.

### 5.2 Public Involvement Policy

Ms. Lisa Kahn, EPA, referring to the public involvement policy, said that the policy was to be issued within several weeks for a 120-day public comment period. Ms. Kahn stated EPA would apply the policy in making decisions related to regulations, policies, and permits. She reported that the policy includes many aspects discussed by the subcommittee, including provisions for all affected parties to express their views on such issues. Ms. Kahn then stated that EPA looked forward to receiving the subcommittee’s comments on the policy.

Ms. Gauna reported that public participation had been the focus of the work group on permitting’s discussions. Explaining that the anticipated policy statement differs from the proposed guidance on public involvement that EPA recently issued, she recommended that the upcoming policy statement be brought to the attention of the NEJAC. Although there would not be enough time for the NEJAC or the Air and Water Subcommittee to comment on the guidance as a group, she said, members should comment on it individually.

Ms. Gauna also reported that the work group had discussed impediments to the public participation process. She said the work group had been hesitant to make any recommendations to the subcommittee because stakeholders were not well represented on the work group. She stated that other stakeholder groups, such as representatives of community groups, should be present during the discussions of the work group. Citing that early involvement is crucial to success in encouraging public participation, Ms. Gauna noted that

communities not must only be called to the table from the beginning of the decision-making process, but also must have access to independent technical advice.

### 5.3 Transportation Subsidies

Mr. Marc Brenman, U.S. Department of Transportation (DOT), reviewed issues related to transportation subsidies. He stated that, in terms of the potential regressive effects of tolls and variable pricing, the Federal Highway Administration requires equity analysis to evaluate the potential effects of such costs on populations. For example, he explained, such analyses have found that individuals of lower income spend more time commuting to work than persons in higher income brackets. He added that there was “a spatial mismatch problem.” He then reported that the state of Maryland was conducting an experiment that examines the equity impact of tolls.

Ms. Gauna asked whether DOT had investigated any differences between subsidies for commuters and those for city dwellers. She also asked what the effects on air quality were in both situations. Mr. Brenman responded that EPA Region 2 had received many complaints filed under Title VI that allege that more subsidies are provided to white, middle-income riders who commute from the suburbs to downtown than to riders in lower-income, urban communities. The complaints allege disparities in subsidies, he explained, adding that the complaints state that urban commuters receive fewer subsidies. Urban commuters, who typically commute by bus, are primarily lower-income or minority residents, he noted. Mr. Brenman acknowledged that the topic was difficult to address because Congress had earmarked funds for heavy rail systems and because of the trend toward development of light-rail systems. In addition, he said, ferry riders can obtain subsidies of up to \$700 per year. DOT had begun to receive complaints about those issues, as well, he noted.

Ms. Gauna stated that “one piece missing from the puzzle” appeared to be that, if there is a disparity in subsidies and if less money is allocated to urban transportation systems than to commuter systems, the problem of overpolluting buses in urban areas then would arise. Mr. Brenman agreed, stating that one approach under examination as a resolution to the problem is a partnership among various stakeholders.

Citing a partnership established among stakeholders in the Atlanta, Georgia metropolitan area, Mr. Brenman explained that a coalition of civil rights and low-income advocacy organizations had filed a lawsuit alleging Title VI and environmental justice violations in the Atlanta area. In response, he continued, EPA Region 4 had established a partnership with the coalition, which then determined that any approach to addressing inequities should include early public participation and an equity analysis. Mr. Brenman reported that stakeholders had been involved in the process from its beginning. As part of the equity analysis, he continued, EPA Region 4 was developing a tool for transportation planners to use in improving their planning processes, he reported.

Mr. Brenman remarked that the goals of the project include changing the perception among surface transportation planners that building new roads will reduce congestion and taking an inventory of transportation needs and services. Planners therefore should examine the transportation needs of various communities and determine whether proposed remedies meet those needs, he suggested. For example, he explained, if the general tendency is to build roads, the roads will not benefit most African Americans because the percentage of African Americans who own cars is lowest among all ethnic groups in the United States. Acknowledging that the issues are “complicated,” Mr. Brenman stressed the importance of examining the benefits and burdens of surface transportation in metropolitan areas and determining how those benefits and burdens can be quantified.

#### 5.4 Future of Environmental Justice

Members of the subcommittee asked Ms. Minerva and Mr. Brenner about upcoming policies and regulations that the subcommittee should consider. The members also asked Ms. Minerva and Mr. Brenner to discuss their perspectives on how the new Administration might affect the environmental justice community.

Ms. Minerva reported on three rules that OW expected to issue in the near future:

- Tribal water quality standards: Collectively, Indian country is the size of New England, but only 15 tribes have implemented Federal water quality standards. According to Ms. Minerva, EPA, with the endorsement of the tribes, had drafted the rule to cover all of Indian country. She reported that the Tribal Operations Committee recently forwarded to EPA a resolution about that rulemaking.

- Concentrated animal feeding operations (CAFO) rule: EPA released the rule on December 15, 2000. Exhibit 3-8 describes the CAFO rule.
- Sanitary sewer overflows rule: The rule requires that sewage treatment authorities create plans under which they develop methods of addressing sewage overflows.

#### Exhibit 3-8

##### CONCENTRATED ANIMAL FEEDING OPERATIONS RULE

On December 15, 2000, Ms. Carol Browner, Administrator of the U.S. Environmental Protection Agency (EPA), signed the proposed revisions of the Nonpoint Source Discharge Elimination System (NPDES) regulations and effluent guidelines for concentrated animal feeding operations (CAFO). The proposed revisions are intended to reduce the amount of water pollution generated by 26,000 to 36,000 large livestock operations. The revisions clearly define which facilities are animal feeding operations and which are CAFOs; the latter are subject to the NPDES program. Specific requirements to be included in NPDES permits that govern handling of manure at production and land application areas also are detailed in the proposed revisions.

A copy of the proposed CAFO rule is available on the EPA Office of Wastewater Management's web site at <http://www.epa.gov/owm/afo.htm>.

Ms. Minerva also discussed the risk communication conference to be held in May 2001 in Seattle, Washington, which was to focus on issues related to fish consumption. She explained that EPA was working with states and tribes to encourage them to test fish and inform the public of the results.

Ms. Minerva also reported that EPA OW recently had issued revisions of the national guidelines related to ambient water quality criteria (AWQC). Exhibit 3-9 describes the Revised Methodology for Deriving Health-based Ambient Water Quality Criteria. Ms. Minerva stated that states and tribes that set water quality standards should not consider only general levels of consumption when they set those standards. Rather, she said, the states and tribes also should consider the effects increased consumption has on the quality of the water body. For example, she explained, if a person consumes five times more fish than

## Exhibit 3-9

### REVISED METHODOLOGY FOR DERIVING HEALTH-BASED AMBIENT WATER QUALITY CRITERIA

The U.S. Environmental Protection Agency (EPA) has published revisions of the 1980 Ambient Water Quality Criteria (AWQC) national guidelines to better protect human health. The 1980 AWQC National Guidelines outlined the methodology to be used by states and tribes to develop water quality criteria based on protection of human health. The revisions of the 1980 guidelines incorporate significant scientific advances in such key areas as cancer and noncancer risk assessments, exposure assessments, and bioaccumulation in fish. The revised methodology provides more flexibility for decision making at the state, tribal, and EPA regional levels. According to EPA, it likely would result in more stringent criteria for bioaccumulative compounds and generally similar values of nonbioaccumulative compounds.

The AWQC revised methodology is available on line at <http://www.epa.gov/waterscience/humanhealth>.

average, the water quality standard should protect that individual five times more strictly than those who consume average amounts of fish are protected. Ms. Minerva assured Ms. Ramos that the methodology document applies to all surface-water bodies and is not limited to rivers and lakes.

Mr. Brenner stated that, as a nonpolitical appointee, he would continue to serve in his position under the new Administration. He identified two items that EPA was expecting to pursue under the new Administration: (1) issuance of the mercury regulatory determination scheduled by December 15, 2000 and (2) completion of rulemaking on the voluntary diesel retrofit rule. Mr. Brenner presented information about another rulemaking related to off-road diesel generators, including construction vehicles, that is to be initiated in 2001. The states had asked EPA for help in regulating such vehicles, Mr. Brenner said. He encouraged the members of the subcommittee to participate in the rulemaking, remarking that the goals of the members of the subcommittee are well aligned with the priorities of EPA's air programs.

Ms. Gauna inquired whether there may be a potential conflict between reinvention initiatives and environmental justice. She asked whether both can be accomplished responsibly and

wondered how the subcommittee's views might be received by EPA under the Bush Administration. Mr. Brenner responded that he had worked with the NEJAC to find ways to incorporate the concerns of the NEJAC into the initiatives of EPA OAR. He stated that the goal of that office is to achieve reductions in pollution that are meaningful to environmental justice communities. As an example, he described an initiative in New York City under which community groups are asked to identify areas in which reductions could be achieved. Mr. Brenner said that he had sensed a willingness in those communities to make the project work.

Dr. Bryant commented that in the early days of the Clinton administration, representatives of the environmental justice community had met with Mr. William Riley, the EPA Administrator appointed by George Bush, and had asked that EPA make environmental justice a high priority among the goals to be explored during the transition to the Clinton Administration. He urged that the new Bush Administration be reminded that support for a national approach to environmental justice began under a Republican administration and that environmental justice should continue to have a high priority. Dr. Bryant said that stakeholders in environmental justice may have only "one shot at this."

#### 5.5 Vice Chair of the Subcommittee

Ms. Jaramillo asked members of the subcommittee to nominate one member to serve as vice chair of the subcommittee. Ms. Cuykendall nominated Ms. Gauna. Ms. Gauna commented that she would be pleased to take on the responsibility, but noted that she was new to the subcommittee. Ms. Ramos nominated Dr. Greenbaum, who declined. Dr. Bryant then moved that nominations be closed. The members of the subcommittee unanimously elected for Ms. Gauna vice chair.

#### 5.6 Manual for Effective Community Involvement in Environmental Justice Issues

Dr. Bryant, who was leading the effort to develop a guidance manual for environmental justice communities, reported that two graduate students at the University of Michigan might be able to contribute to the manual. He said that he would coordinate a meeting between EPA and the students within the coming two weeks to discuss their involvement further.

## **6.0 SIGNIFICANT ACTION ITEMS**

This section summarizes the action items the subcommittee adopted.

- ✓ Requested that EPA OAR provide information about how that office plans to spend the \$16 million that the agency allocated for the monitoring of air emissions under the urban air toxics strategy.
- ✓ Requested that EPA OAR provide information about existing public utilities that includes their number, locations, and enforcement status.
- ✓ Requested that EPA OAR provide a summary of four legislative bills intended to reduce air emissions further.
- ✓ Recommended that EPA OAR continue pursuing the actions identified by the Air and Water Subcommittee and EPA OAR during the meeting of the subcommittee held in New York in October 2000 to examine issues related to the reduction of the sulfur content of fuels burned in coal-fired power plants located in Puerto Rico.

**MEETING SUMMARY**

of the

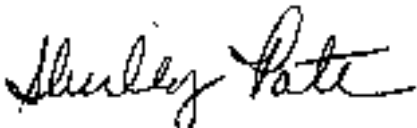
**ENFORCEMENT SUBCOMMITTEE**

of the

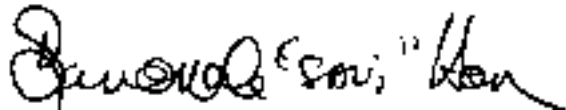
**NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL**

**December 13, 2000  
Arlington, Virginia**

**Meeting Summary Accepted By:**



**Shirley Pate  
Designated Federal Official**



**Savonala "Savi" Horne  
Acting Chair**

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**CHAPTER FOUR  
MEETING OF THE  
ENFORCEMENT SUBCOMMITTEE**

**1.0 INTRODUCTION**

The Enforcement Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Wednesday, December 13, 2000, during a four-day meeting of the NEJAC in Arlington, Virginia. Mr. Luke Cole, Center for Race, Poverty, and the Environment, continues to serve as chair of the subcommittee. Ms. Shirley Pate, U.S. Environmental Protection Agency (EPA), Office of Enforcement and Compliance Assurance (OECA), continues to serve as the Designated Federal Official (DFO) for the subcommittee. Exhibit 4-1 presents a list of the members who attended the meeting and identifies those members who were unable to attend.

This chapter, which provides a summary of the deliberations of the Enforcement Subcommittee, is organized in four sections, including this *Introduction*. Section 2.0, *Remarks*, summarizes the opening remarks of the chair of the subcommittee. Section 3.0, *Presentations and Reports*, presents an overview of other presentations and reports received by the subcommittee, as well as summaries of the questions and comments on the part of the members of the subcommittee that those presentations and reports prompted. Section 4.0, *Recommendations and Action Items*, summarizes the significant action items adopted by the subcommittee.

**2.0 REMARKS**

Mr. Cole, opened the subcommittee meeting by welcoming the members present and Ms. Pate. In his review of the guidelines of the NEJAC to remind the members and observers of the protocol to be followed, Mr. Cole stated that the meeting was conducted for the members of the Enforcement Subcommittee. The comments of observers, would be taken throughout the meeting at the discretion of the chair, he explained. At the request of Mr. Cole, the members of the subcommittee and members of the audience then introduced themselves.

Mr. Cole announced that this meeting would be

the last meeting for all but four members of the subcommittee. He explained that although the departing members primarily represent non-governmental organizations and community groups, the new incoming members largely will represent academic and industry organizations. He stated that the subcommittee members planned to discuss during the discussion with Mr. Steven Herman, Assistant Administrator, OECA, their concerns about what appears to be an imbalance in membership. See Section 3.5 of this chapter for a detailed summary of that conversation.

**3.0 PRESENTATIONS AND REPORTS**

This section summarizes the presentations made to the Enforcement Subcommittee on issues related to enforcement and compliance assurance. An interagency panel discussion was held concerning the implementation of Title VI of the Civil Rights Act of 1964 (Title VI). Following the panel presentation, representatives of EPA's Office of Civil Rights (OCR) provided an update on EPA's activities related to Title VI. Other presentations made include reports on supplemental environmental projects (SEP), an overview of the history of

**Exhibit 4-1**

**ENFORCEMENT SUBCOMMITTEE**

**List of Members Who Attended the Meeting  
December 13, 2000**

Mr. Luke Cole, **Chair**  
Ms. Savonala (Savi) Horne, **Vice Chair**  
Ms. Shirley Pate, **DFO**

Mr. Delbert Dubois  
Ms. Rita Harris  
Ms. Zulene Mayfield  
Ms. Lillian Mood  
Mr. Gerald Torres

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

Mr. Robert Varney



Executive Order 12898 on Environmental Justice, and an update on the status of EPA's targeting efforts.

### 3.1 Interagency Panel on the Implementation of Title VI

Mr. Cole remarked that the panel session was convened as part of the theme of the current NEJAC meeting: to explore interagency coordination of environmental justice issues. Before the panel discussion began, he stated that the subcommittee was interested in learning how other agencies undertake enforcement of Title VI. Labeling as "abysmal" EPA's record of enforcement, he stated that EPA has not acted on the more than 100 complaints submitted to EPA by community organizations during the previous 7 years. The subcommittee hopes that the panelists could provide lessons learned and offer "good Ideas" on civil rights enforcement that can be passed on to EPA.

Mr. Cole then introduced three speakers on the panel: Mr. Andrew Strojny, Deputy Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice (DOJ); Ms. Betsy A. Ryan, Senior Equal Opportunity Specialist, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development (HUD); and Mr. Marc Brenman, Senior Policy Advisor, Departmental Office of Civil Rights, U.S. Department of Transportation (DOT). Mr. Cole added that Ms. Yasmine Yorker, EPA Office of Civil Rights (OCR) would provide an update on EPA's civil rights guidance, as well as report on the status of the Agency's enforcement activities.

#### 3.1.1 U.S. Department of Justice

Mr. Strojny first presented a brief overview of DOJ's Coordination and Review Section. He stated that the section is charged by Executive Order 12250 with responsibility for coordinating enforcement of Title VI and all other grant related federal statutes that prohibit discrimination. See Exhibit 4-2 of this chapter for a description of the activities performed by the section.

Mr. Strojny then provided background information about Title VI, which he explained was enacted as part of the landmark Civil Rights Act of 1964, as well as how provisions of Title VI are enforced. Title VI prohibits discrimination on

the basis of race, color, and national origin in programs and activities receiving federal financial assistance, he said, adding that Title VI prohibits acts of intentional discrimination. However, he added, most funding agencies have

Exhibit 4-2

### OVERVIEW OF U.S. DEPARTMENT OF JUSTICE COORDINATION AND REVIEW SECTION

The Coordination and Review Section of the U.S. Department of Justice Civil Rights Division operates a comprehensive, government-wide program of technical and legal assistance, training, interagency coordination, and regulatory, policy, and program review, to assure that federal agencies consistently and effectively enforce various landmark civil rights statutes and related Executive Orders that prohibit discrimination in federally assisted programs and in the federal government's own programs and activities. Specifically the Section:

- Develops model regulations, policies, and enforcement standards and procedures, and reviews and approves similar products developed by individual federal agencies.
- Reviews plans and data submitted by federal agencies that describe their civil rights enforcement priorities, activities, and achievements.
- Conducts Technical Assistance Reviews of Title VI enforcement, such as the review completed in 2000 of the Federal Highway Administration's Federal Aid Highway Program.
- Provides technical assistance and training to improve the compliance and enforcement programs of individual agencies. One training course combines classroom study of legal requirements, theories of discrimination, and investigative techniques, and culminates in the hands-on workshop "investigation" of a mock complaint.

Two major documents produced by the Section, a *Title VI Legal Manual* and an *Investigation Procedures Manual*, are designed as essential building blocks for the development of an agency's Title VI compliance program. The Section also publishes a quarterly newsletter, *The Civil Rights Forum*.

promulgated regulations implementing Title VI that prohibit practices that have the effect of discrimination.

Mr. Strojny stated that the Title VI can be enforced in one of three ways: an administrative remedy, an administrative appeal for injunctive relief, and a private cause of action or lawsuit:

- Aggrieved individuals may file an administrative complaint with the federal agency providing financial assistance to recipients. Under an administrative remedy, primary responsibility for enforcement rests with the federal agency that provides the assistance. The administrative remedy process is designed to encourage people to talk about their concerns and to “work things out.”
- Under an administrative appeal, if a recipient of federal assistance is found to have discriminated and voluntary compliance cannot be achieved, the federal agency providing the assistance can either initiate proceedings to terminate funding or refer the matter to DOJ for injunctive relief. If an agency chooses the latter, DOJ attempts to seek assurances that the party will comply with Title VI. DOJ formalizes this agreement with a “contract” that spells out how compliance will be achieved. This appeal process also focuses on resolving issues without resorting to court sanctions.
- Aggrieved individuals may file in federal district court a private cause of action for appropriate relief. With the limited number of such cases, one can look to case law for enforcement of Title IX of the Civil Rights Act of 1964 to see how this process would work.

Mr. Strojny also explained several differences between pursuing an administrative remedy and pursuing a private cause of action, notably the time frame in which a complaint can be filed. He explained that under an administrative remedy, which is promulgated by regulation, aggrieved individuals must file a complaint within 180 days of the act of discrimination. Under a private cause of action, which has court-made limitations, there is no statute of limitations for filing a complaint, he continued, adding that the courts have set as a standard the closest applicable state action that is “like” Title VI.

Mr. Strojny explained that most cases filed under Title VI have been brought as private rights of action. Citing a case currently before the U.S. Supreme Court, he stated his opinion that the only issue at hand is whether a private citizen can use a private right of action to enforce the discriminatory effects clauses of agency regulations implementing Title VI. He said that he could not identify any other federal statute that precludes an individual from enforcing implementing regulations through a private right of action. In fact, he said, most federal circuit courts have ruled that enforcement statutes do not preclude such action.

Mr. Strojny then returned to a discussion of the role of DOJ in civil rights enforcement. He stated that DOJ coordinates enforcement across agencies, conducting coordination reviews that examine how each agency conducts its civil rights enforcement and identifying specific items that agencies can emulate. He added that no federal agency can promulgate regulations to implement Title VI unless the U.S. Attorney General, as the President’s designee signs off on the regulations. Mr. Strojny added that DOJ also is responsible for coordinating complaints filed with multiple agencies. Resolution of such cases often are lengthy and time-consuming, he explained, because DOJ must seek consensus among all federal agencies involved. Although the Executive order has assigned to DOJ responsibility for resolution, DOJ can not make unilateral decisions because its authority over other federal agencies is limited, he continued. For example, DOJ can not affect the budget of another federal agency, he remarked.

Mr. Strojny described DOJ as a major provider of federal financial assistance, noting that recipients of DOJ funds include state and local law enforcement agencies, courts, corrections systems, juvenile justice systems, and a variety of non-governmental entities. Under agreements reached with several DOJ funding components, the Section conducts administrative investigations of selected complaints of discrimination by recipients of financial assistance provided by DOJ, he continued. The Section seeks case resolutions through the use of alternative dispute resolution techniques, if appropriate, in lieu of full field investigations, he stated, adding that in other cases, investigations may result in the issuance of formal findings of compliance or non-

compliance. If voluntary compliance cannot be achieved where non-compliance is found, the Section refers the case to the appropriate DOJ Division for litigation or, in cooperation with the appropriate funding component within the Department, seeks to terminate the Federal financial assistance through an administrative hearing, said Mr. Strojny.

Mr. Strojny reported that DOJ has published a *Title VI Legal Manual* to assist federal agencies that provide financial assistance, the wide variety of recipients that receive such assistance, and the actual and potential beneficiaries of programs receiving federal assistance. He explained that the manual sets forth legal principles and standards. Additionally, the Department has published an *Investigation Procedures Manual* that provides to federal agencies practical advice about how to investigate Title VI complaints, he added. Also available on the Section's Internet web site are many other materials that may be helpful to those interested in ensuring effective enforcement of Title VI, he said.

Ms. Mood asked Mr. Strojny to describe the role of DOJ in overseeing the implementation of Title VI by other federal agencies. Has DOJ established a procedure by which it requests and uses representatives of other agencies to help with oversight, she added. Mr. Strojny stated that in response to Executive Order 12250, agencies meet quarterly to discuss concerns and implementation plans about a variety of complaints received by agencies. Many of the complaints filed by agencies involve Title VI and Section 504, he said, although most of the case backlog involves Section 504. However, the problem is that only Title VI offers a clear enforcement mechanism, but it is being stretched into areas that it does not fit, he said. Ms. Mood commented that including the viewpoint of the community could help in those interagency discussions. She recommended involving a member of the NEJAC to help provide this perspective.

### 3.1.2 U.S. Department of Transportation

Mr. Brenman reported that DOT is very much involved with enforcement of Title VI as well as environmental justice. He stated that in addition to issuing its own environmental justice order, the Department has established regulations for

implementing Title VI. When a complaint under Title VI is filed with DOT, it is referred for investigation to one of DOT's 10 operating administrations if it concerns a single mode of transportation, he explained. For complaints involving multiple modes of transportation or intermodal operations, different administrations within DOT must work together to resolve the complaint. He reported that the Federal Highway Administration had issued guidance for Title VI, as well as an environmental justice order. The Federal Transit Administration, currently operating under the Title VI Circular issued more than 15 years ago, has started to develop new procedures for implementing Title VI, he said. Mr. Brenman also reported that he had developed a manual describing how to investigate environmental justice complaints under Title VI.

Mr. Brenman stated that DOT's environmental justice order emphasizes Title VI. Through the order, DOT has tried to institutionalize environmental justice concepts throughout its programs and policies, he said. The agency also has issued guidance to recipients of DOT financial assistance on the provision of separate language services to people with limited English proficiency, he said, which emphasizes Title VI. However, he stated, one of problems with relying on enforcement of Title VI as the primary remedy for environmental justice is that it does not specifically address low-income populations. He stated his belief that the Robert T. Stafford Disaster Assistance and Emergency Relief Act of 1993, which concerns the provision of post-disaster emergency assistance, is the only federal statute that explicitly prohibits discrimination on the basis of income. Fortunately, he added, a significant number of low-income people are addressed by other statutes because many are included among minority populations, as well as among those individuals with limited proficiency in English.

DOT uses a variety of approaches to investigate Title VI complaints, continued Mr. Brenman. In addition to traditional investigative processes, DOT utilizes alternative dispute resolution in accordance with the Executive Order that encourages federal agencies to explore using such techniques. However, Mr. Brenman acknowledged, DOT has not been "hugely" successful in mediating civil rights cases. We do not know exactly why, he admitted, explaining

that mediation could be affected by such factors as the unfamiliarity of the mediation community with environmental justice cases, the selection of the “wrong mediator,” or the Department may have not selected appropriate cases for mediation. Perhaps DOT’s failure in mediation is because none of the parties are willing to budge from their positions, he continued.

Discussing another DOT approach for incorporating environmental justice, Mr. Brenman explained that, several years earlier, DOT had received a notice of intent to bring law suits against DOT from a number of environmental justice organizations in the Atlanta, Georgia area. After meeting with the environmental justice groups in Atlanta, the groups had agreed to the conduct of a two-part environmental justice review of the Atlanta area, in lieu of litigation, he said. After conducting an investigation, DOT developed a public participation approach that included local environmental justice organizations, as well as the Georgia Department of Transportation, the Atlanta Regional Transportation Commission, and the Metropolitan Atlanta Regional Transit Agency, the local transit agency, he stated. The approach consisted of some 25 recommendations for implementing change in the public participation process in the metropolitan Atlanta area, he said.

Mr. Brenman stated that other approaches employed by DOT to investigate Title VI complaints include the use of stakeholder partnerships as a way to encourage all the parties to work together. He cited a study conducted in the metropolitan Atlanta, Georgia area in response to a letter notifying DOT of an intent to sue the Department for alleged violations of the Clean Air Act (CAA). DOT responded quickly, he continued, to address environmental justice concerns in the metropolitan Atlanta area because of the environmental justice implications. Working closely with affected stakeholders, including local government agencies and community groups, DOT has developed a two-step approach to addressing the issues of concern, he added. The first step focuses on improving public participation in the planning process, said Mr. Brenman, noting that such participation is essential throughout the lengthy planning transportation process. When communities file complaints late in the process, such as when

construction is about to begin, they will face tremendous barriers because of the extensive planning that has been conducted over what is often a 20 plus year period, he warned.

Mr. Cole asked what options are available to the “innocent” landowner who has never been informed that plans are underway until “the bulldozers show up one day.” Mr. Brenman responded that the real question may not be whether they had received notice, but rather, was the notice effective and had the person been afforded an equitable opportunity to participate.

Mr. Brenman stated that the second part of DOT’s response in Atlanta features an equity analysis that identifies the transportation needs of a community and examines how well these needs are being served. He said the analysis is being conducted to address allegations that a substantial gap exists between a community’s needs and what services are being supplied. Noting that car ownership among African Americans is very low in comparison to other ethnic groups, Mr. Brenman reported that one question the equity analysis is examining is whether a regional transportation plan that is almost exclusively oriented toward roads adequately serves the African American community.

Continuing, Mr. Brenman reported that DOT had settled an environmental justice lawsuit involving the Jersey Heights neighborhood near Salisbury, Maryland, a predominantly African-American community that had been uprooted when U.S. Route 50 was built. After the community was resettled, the state of Maryland had undertaken an effort to build another highway project that would have had an adverse effect on the community. Mr. Brenman explained that the outcome of the settlement had been a “win-win” result for the community and the state of Maryland. That settlement had set the stage for the way in which DOT had begun to address environmental justice complaints in the future, he said.

Mr. Brenman cited several other examples of the types of issues for which Title VI complaints have been filed alleging inequalities in:

- Responses to noise pollution (for example, when state highway departments install

sound barriers in response to complaints by white residents while ignoring the complaints of inner city, largely minority residents)

- Road tolls, which could effectively bar low-income persons from accessing communities and jobs that would require the use of a toll road
- Subsidies on different modes of transportation that typically serve different constituencies (for example, transit buses in minority communities and commuter trains used by white suburban commuters)
- Location of bus facilities (complaints allege that minority communities are home to noisy, polluting diesel buses while white communities are getting quieter, cleaner natural gas buses)

Mr. Brenman stated that the lessons DOT has learned are: (1) Title VI does not have jurisdiction in all complaints alleging environmental injustice; (2) reminding many recipients of federal financial assistance who think Title VI imposes new requirements that Title VI has been around since 1964; and (3) there is an unending need for stakeholder education, both internally and externally. There is a need for more training, an area in which the members of the subcommittee could help, he continued. DOJ can not be everywhere, doing all the training, he emphasized.

Turning to a discussion of socioeconomic concerns, Mr. Brenman stated that agencies and consultants conducting environmental impact assessments need to understand that an equity analysis should be a part of the impact analysis. An analysis of environmental justice concerns should be commensurate with the analysis conducted of other issues under NEPA, he urged.

Mr. Cole asked how many Title VI complaints have been filed with DOT. Mr. Brenman responded that fewer than 20 environmental justice complaints are pending; all but one currently are being addressed, he explained, with some new cases at the initial complaint intake stage. He added that very few cases have been resolved because the process is a long one. He acknowledged that the established

relationships between regional transportation offices and state transportation offices can be “both good and bad.” Their can be a level of trust that allows DOT to go in and attempt to settle the complaint, as well as the perception that the interests of the people giving the money is identical to those of the people getting the money, he explained. Mr. Brenman stated that for some issues, a simple telephone call can resolve complaints.

In response to a request by Mr. Cole, Mr. Brenman agreed to provide the members of the subcommittee and EPA OCR with a copy of DOT’s informal ‘cookbook’ on investigating environmental justice complaints under Title VI. Mr. Cole remarked that although the document is not an official document of the agency, it is a strong document that seeks to discover “what the problem is and attempt to solve it” rather than seek to block the complainant out at every step, Mr. Cole said.

Referring to a case in Texas involving the reopening of a 50-year old, 700 mile former crude oil pipeline, Mr. Gerald Torres, University of Texas Law School and member of the Enforcement Subcommittee, stated that the case technically does not fall under the jurisdiction of Title VI. However, there are issues related to the conduct of an environmental assessment (EA) that did not address environmental justice concerns, he said. He added that an environmental impact statement (EIS) would be preferred through which to address Title VI concerns. Although the plan raises concerns about threats to an endangered salamander, and the impact of the pipeline on the Karst aquifer, local residents in predominantly black and brown communities have significant fears about the potential for explosions when the pipeline reopens carrying gasoline under pressure. Calling Mr. Torres comments “well taken,” Mr. Brenman responded that DOT had the week before participated in a meeting with several stakeholders. They concluded that DOT needed to conduct more research and prepare an emergency response plan, he continued.

Mr. Delbert Dubois, Four Mile Hibernian Community Association, Inc. and member of the Enforcement Subcommittee, asked whether federal agencies used a “report card” system to track or monitor the status of Title VI cases. Mr. Brenman responded that DOT has a

computerized tracking system through which it tracks Title VI complaints. However, he added, the system does not include some litigation in which DOT is involved nor those environmental justice complaints that do not legally constitute a complaint or fall under the jurisdiction of Title VI. To enhance case monitoring and improve coordination between the operating administrations within DOT, the agency has convened an environmental justice council of senior management officials who meet periodically to discuss new cases and the status of pending cases, said Mr. Brenman. The Council has been moderately successful in getting the different operating administrations to work together in a coordinated approach, he added, explaining that DOT has begun to use a team approach to investigate complaints. These teams bring together technical and legal experts and staff knowledgeable of DOT programs, he said.

Mr. Dubois asked whether the subcommittee could prepare a report card that tracks Title VI complaints within the various federal agencies. Citing the subcommittee's mission to provide advice to EPA, Mr. Cole suggested that a report assessing the ways various agencies are approaching its obligations under Title VI, could prove useful to EPA in assessing its own procedures. Mr. Torres added that the assessment also would provide advice to EPA on how to drive interagency cooperation. Mr. Brenman recommended the subcommittee examine the surveys of the U.S. Commission on Civil Rights in which it assesses every 10 years what each federal agency has done or is doing for civil rights enforcement.

### **3.1.3 U.S. Department of Housing and Urban Development**

Ms. Ryan opened her presentation by describing how HUD processes complaints received by the Department. She explained that HUD's 10 regional offices conduct intake for complaints alleging discrimination. She noted that in addition to complaints filed under Title VI and Section 504 of the Americans with Disabilities Act, a significant number of complaints are received alleging discrimination under Title 8 in which no federal financial assistance is received. Investigators in HUD's 50 offices also may be assigned to investigate complaints, she said. Ms. Ryan reported that HUD coordinated an

extensive training effort with DOJ, in which 200 of the agency's 600 investigators were trained. She added that HUD prefers to use a team approach to address major complaints. This team approach, modeled after the teams used for compliance reviews, brings together staff with different areas of expertise, such as legal and knowledge of program and policy issues.

Ms. Ryan stated that having the proper equipment on-site is essential; the lack of laptops, printers, and digital cameras makes it difficult to conduct an investigation in a short period of time, she explained. In addition, specific roles for staff conducting the investigation should be clearly identified, she said.

Turning to the number of complaints currently pending before HUD, Ms. Ryan reported that approximately 675 complaints have been filed, with an additional 75 active cases slated for compliance reviews. She acknowledged that progress toward resolving these complaints has been hampered because HUD has had to direct significant resources to responding to a lawsuit in which 70 housing authorities in East Texas have been charged with violating Title VI. The investigation requires HUD to conduct compliance reviews of each housing complex, she continued. To date, HUD has completed 52 of the 70 reviews, she added. Because of time limits imposed by Congress, fair housing complaints are given priority over other complaints, she commented.

Ms. Ryan noted that 12 of the 675 complaints involve issues related to environmental justice. She stated that HUD has not done a good job responding to the environmental justice complaints. Part of problem is the lack of technical resources and expertise onsite to address concerns, such as groundwater, which do not fall under the jurisdiction of HUD, she explained. However, EPA has been helpful in responding to these concerns, she said. Interagency cooperation also has proven useful in several other cases, Ms. Ryan stated, adding that having more than one agency exerting pressure can help move the process faster.

Ms. Lilian Mood, South Carolina Department of Health and Environmental Control and member of the Enforcement Subcommittee, asked Ms. Ryan to provide an example of an environmental

justice complaint handled by HUD. Ms. Ryan referred to one case in which public housing subsidized by HUD had been built on a contaminated site. The question for HUD has been do you tear down the housing or build new housing, Ms. Ryan continued. Other cases cited by Ms. Ryan involve the construction of new homes for low-income residents on land in which the shallow groundwater may be contaminated, and the proximity of low-income housing to contaminated sites such as a lead smelter. There are not enough resources to go around, she stated.

Ms. Zulene Mayfield, Chester Residents Concerned for Quality Living and a member of the Enforcement Subcommittee, stated that one of her primary concerns relates to the relocation of families where housing is contaminated with lead. She urged that all housing subsidized by HUD should be tested before families are placed into the unit. Ms. Ryan responded that part of the problem is that private individuals own Section 8 housing, in which the rent is subsidized by funds received from HUD through a local housing authority. Ms. Ryan stated that although she was unfamiliar with how lead is addressed in Section 8 housing, HUD has an active program for lead abatement in public housing units. In addition to the fact that landlords participating in the Section 8 program are not direct recipients of federal financial assistance, many low-income residents go into the private rental market, find a unit, which in turn is subsidized by a local housing authority. Ms. Mayfield stated that despite the local housing authority "middle man," the money leads back to HUD. HUD should do more to test for contamination, she emphasized.

Referring to a recent request for funding in which HUD is working in cooperation with the U.S. Department of Agriculture (USDA) to address the rural housing needs of farm workers, Ms. Savonala "Savi" Horne, Land Loss Prevention Project and member of the Enforcement Subcommittee, suggested HUD include a component in which EPA monitors pesticides in these communities. Including pesticides monitoring as part of rural housing plans, would further enhance interagency cooperation, said Ms. Horne. Ms. Ryan agreed to forward to HUD the suggestion that the two agencies collaborate on this issue.

Mr. Cole asked how HUD conducts

environmental reviews. Ms. Ryan responded that the agency requires local housing authorities to conduct an environmental assessment (EA). However, some local governments do not complete each step fully, she added, explaining that they may not examine concerns that should be considered during the project. Unfortunately, HUD has very few environmental officers who can perform in-depth reviews of EAs, she continued, stating that with those limited resources, HUD can only monitor that an EA has been completed. Ms. Ryan added that when HUD discovers that an EA has not been completed properly, it can impose program sanctions, including affecting funding.

Ms. Rita Harris, Community Living in Peace and member of the Enforcement Subcommittee, asked whether HUD, given its limited in-house environmental expertise, had sought interagency support from EPA. Ms. Ryan stated that HUD consults regularly with EPA, but added that the problem is not having an environmental expert on site when conducting investigations. Although EPA has been very helpful, it is better to have an expert on site who can address issues as they arise, Ms. Ryan said.

When asked how each agency handles Title VI complaints when a suit is filed simultaneously in court, Ms. Ryan stated that HUD defers action on the complaint until the litigation is resolved. Mr. Brenman added that, absent any extraordinary circumstances, administrative deferrals are the standard approach taken by federal agencies because agencies do not want to get into a dispute where the court decides one way and the agency another. However, deferrals would be made only in those cases in which the litigation addresses the same issues and involves the same parties, interjected Mr. Strojny. One of the benefits of deferral are that federal judges have more power to impose equitable remedies because federal agencies are limited to the withdrawal of federal financial assistance.

Mr. Cole remarked that EPA has taken the position that it will dismiss administrative complaints filed with it when litigation also has been initiated. NEJAC has voiced strong objections to this policy, he stated, because it effectively eliminates the administrative complaint as a viable option for remedy. If a complainant attempts to refile the administrative

complaint after litigation has concluded, typically more than 180 days after the alleged discrimination, the statute of limitations would prevent consideration of the complaint.

Ms. Mayfield stated that she recognizes that action by federal agencies on Title VI often is hampered by financial constraints. However, she added, the very allocation of resources by an agency in which environmental justice concerns routinely fail to be addressed because of insufficient funds is, in itself, a form of discrimination. Agencies are not in compliance with Executive Order 12898 on environmental justice, she emphasized. Ms. Ryan responded that HUD has given “top priority” to environmental justice; such cases are forwarded to HUD headquarters for resolution, she said. Ms. Mayfield recommended that, in light of the financial constraints, agencies should look for creative ways to ensure that complaints relating to environmental justice and Title VI are given equal consideration.

### 3.1.4 Update on the EPA Title VI Guidance

Ms. Yorker provided an update on the status of the administrative complaints filed with EPA. She acknowledged that EPA has not processed complaints timely, adding that the Agency has a backlog of cases. EPA’s Office of Civil Rights (OCR) is “under the gun,” she commented. Unfortunately, EPA is “short on resources,” she stated, explaining that currently three case managers and one technical expert have been allocated to process the more than 100 complaints on file. However, EPA recently has been given the authority to hire four temporary staff members to help OCR attack the backlog that exists, she announced.

Ms. Yorker then discussed the efforts by EPA to prepare guidance on Title VI. She reported that after a “robust” stakeholder involvement process, EPA published in the Federal Register on June 27, 2000 for public comment two draft guidance documents related to Title VI. The first document was the *Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs* (Draft Recipient Guidance), which was written at the request of the states and is intended to offer suggestions to assist state and local recipients in developing approaches and activities to address potential Title VI concerns. During the comment

period, OCR conducted seven public listening sessions throughout the U.S.

Ms. Yorker also discussed EPA’s *Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits* (Draft Revised Investigation Guidance), which describes a framework for how OCR will process complaints that allege discrimination in the environmental permitting context. Public comments for this document also were accepted through August 28, 2000.

Ms. Yorker stated that during the 30-day comment period, OCR had received 96 comments, with an additional 5 comments received after the comment period had concluded. She said that while most of the comments focused on specific areas of concern to the commenter, several comments commended OCR on making a significant effort to involve all stakeholders during the drafting of the documents. Ms. Yorker stated that the key areas of controversy identified by the comments falls into four general areas: justification, the recipient’s scope of authority, “due weight” accordance, and who has a standing to file a complaint. In a memo distributed by Ms. Yorker to the members of the subcommittee, OCR had summarized for each key area, the general concern expressed by four stakeholder groups:

- Justification
  - Industry: too narrow
  - Community: should be limited to the legitimate interests of the recipient
  - Civil Rights: economic development should not justify disparate impacts
  - States: guidance lacks details on adequate justification
- Recipient Scope of Authority
  - Industry: scope of impact should be limited to what is within the authority of the permitting agency
  - Community: states should be responsible for all impacts, whether or not they have the authority
  - Civil Rights: all impacts from a permit should be considered because Title VI is not a sub-component of EPA’s environmental responsibilities
  - States: guidance does not address land use decisions not made by the recipient



- Due Weight Accordance
  - Industry: should be granted beyond Area Specific Agreements (ASA)
  - Community: ASA will shield states from investigation
  - Civil Rights: OCR and communities should have a role in ensuring that ASA and other settlements between recipients and complainants are enforced
  - States: guidance lacks details
- Who Has Standing
  - Industry: standing should be limited to those in the community
  - Community: guidance limits who can file the complaint

Ms. Yorker reported that, in addition to analysis of all key issues, OCR is preparing a list of key issues sorted by stakeholder. OCR anticipated receiving a draft summary of comments by the end of December 2000, she said. After all comments have been considered carefully, OCR will make final the draft guidance documents and publish them in the Federal Register, Ms. Yorker concluded. In response to Ms. Horne's question about whether the NEJAC would be able to provide additional comment to OCR's final analysis, Ms. Yorker said she would refer the matter to the Director of OCR.

When asked whether copies of the written comments would be made available to the public, Ms. Yorker stated that each document can be accessed from OCR's Internet web site at <[www.epa.gov/civilrights](http://www.epa.gov/civilrights)>. She explained that each document had been scanned and could be retrieved simply by clicking on the name of a specific commenter.

Referring to earlier discussions about the "standard practice" of deferring administrative complaints filed simultaneously with litigation, Mr. Cole requested that OCR explain why EPA policy is to dismiss complaints rather than defer them for later consideration, which runs counter to the standard policy of other federal agencies. He expressed concern that EPA's policy is just one part of EPA's pattern of "hurting" civil rights complainants. The anti-complainant "mind-set" is very troubling, he said.

### 3.2 Update on Supplemental Environmental Projects

Mr. Torres opened the discussion with a brief overview of supplemental environmental projects (SEP). He stated that the presentation would focus on limitations on the capacity of affected communities to negotiate what a SEP would be. He asked to members of the subcommittee to consider ways to get all relevant and affected stakeholders to play an active role in the formulation of SEPs. He then turned the presentation over to Ms. Mayfield, who presented information to the members of the Enforcement Subcommittee on the obstacles faced by her organization in operating a SEP.

Ms. Mayfield, whose Chester, Pennsylvania community had initiated a lawsuit alleging violations of the Clean Air Act (CAA) by the a local sewage treatment facility, stated that her community initially had not known about EPA's SEP program, nor had federal, state, or local government agencies informed her community about what could be accomplished with one. She stated that the members of her community had believed that the penalties paid by polluters was sent directly to the federal and state government rather than invested back in the affected community. When they had inquired about developing a community-driven SEP, the members of her community had been told that a community could never implement or operate a SEP, she explained, adding that any SEP programs were controlled by the polluter or contractor for the polluter. Subsequently, she declared, they had discovered that several communities were running SEPs across the country, despite claims to the contrary by EPA.

Ms. Mayfield continued by explaining it was not until her community had initiated a lawsuit, that EPA and the Pennsylvania Department of Environmental Protection (DEP) had become involved in the suit. Eventually, it became a five-way negotiation, she said. The consent agreement, she noted, could not be implemented for three years primarily because of objections voiced by industry to the community implementing the program. There were many barriers, she said, declaring it an "insulting and extremely hard process." There were no problems with the SEP itself, she continued. Although not a typical SEP, which usually focus on beautification efforts, the Chester project was

designed to provide “something of value” to the community, Ms Mayfield said. The purpose of the project, which addresses childhood lead poisoning prevention, will be to identify children before they are exposed to lead and try to minimize their exposure or prevent that exposure from occurring, she explained.

Ms. Mayfield reported that, in light of the obstacles they had and continue to face, many members of her community believe that the EPA and the Pennsylvania DEP have not been as supportive as they could have been. However, she acknowledged there are certain individuals at EPA who have helped the community initiate, implement, and administer the SEP. However, a number of barriers imposed by federal, state, and local agencies remain, Ms. Mayfield claimed. As example, she expressed her belief that decisions made by the local government have resulted in the perception that it does not want the project to succeed. Pointing to an ongoing problem with reporting requirements, she explained that the community only has used one reporting process to date; however, she continued, it appears that the reporting mechanism no longer is valid. No one will tell the community an alternate method to use, she claimed. Ms. Mayfield admitted that the community is responsible for some of the problems. However, for those problems over which the community has no control, they are repeatedly asked to identify a solution, she emphasized. We feel we are always backed into a corner, she stated.

Ms. Mayfield explained that despite many problems, the project is running smoothly. It has had a positive effect on the community, she said. Lessons learned include the need to educate communities about SEPs and their benefits, as well as how to implement a SEP, she continued. In addition, federal, state, and local agencies need to put in place a mechanism that would ensure that communities are receiving sufficient resources to achieve the goals of its SEP, she concluded.

Mr. Cole asked whether Ms. Mayfield believed that a training program for community-run SEPs would be helpful for communities. The members of the subcommittee then recommended that EPA create such a training program for communities related to the implementation of SEPs.

Mr. Torres then stated that SEPs usually arise from litigation about a case. He explained that it is very important that the SEP does no more harm to the community than the original pollution and that is why defendants should not have as much control over SEPs as they currently do. He stated that SEPs should be recognized as a project that can help control legal issues and act as an ancillary related to environmental issues.

### **3.3 History of Executive Order 12898 on Environmental Justice**

Mr. Cole introduced Mr. Torres and Ms. Deehon Ferris, President, Global Environmental Resources, Inc., to provide a historical overview of Executive Order 12898 on Environmental Justice. Mr. Cole stated that the lessons to be drawn from the presentation particularly would be appropriate the coming years. He introduced Mr. Torres who had been the Acting Attorney General for Natural Resources, DOJ, when the executive order was drafted. Mr. Cole stated that Ms. Ferris, who had been with the Lawyers Committee for Civil Rights and the Washington Office for Environmental Justice when the order was drafted, will offer the perspective of the non-government “outsider” involved in the process. He also reminded the members that Ms. Ferris previously had served as the chair of the Enforcement Committee.

Opening the discussion, Mr. Torres explained that the Executive order illustrates the capacity of a concerted and long-term effort by community activists to change public policy. One thing that the documents from the transition between the Bush and Clinton administrations clearly demonstrate was the effort to determine the best way to address environmental justice, he continued. Although legislation had been considered, the two bills under consideration were not considered capable of passage, he said, adding that issuance of a presidential executive order would be one of the best ways to achieve the goal.

Mr. Torres stated that although DOJ had been tasked to direct the effort to draft the order, it did not do so in isolation. In addition to meeting with members of the White House Council on Environmental Equity (CEQ), DOJ had held a series of hearings at which community groups were invited to present their concerns to DOJ staff. The goal was to draft language that

defined what issues to address and how to address them in the order, as well as how to use the executive order to change the way the federal agencies do business, he continued. The process was lengthy; DOJ continued to meet with community organizations, CEQ, and representatives of other federal agencies, he said, adding that these discussions also were designed to determine the impact of an executive order on agencies whose programs and policies directly and indirectly affect the environment.

Mr. Torres added that most of the difficulty experienced by DOJ in drafting the order occurred when negotiating with CEQ and various federal agencies on the language for creating the Interagency Working Group on Environmental Justice (IWG). He stated that the IWG also has experienced obstacles in fulfilling its mission as stated in the order. He cited as an example the difficulty in obtaining environmental justice strategies for every federal agency. In addition, he stated, one intention of the executive order was for the IWG to serve as a central point of contact to whom citizens could bring complaints, which in turn would be referred to the appropriate agency for response.

One of the early working models for the order was the National Environmental Policy Act (NEPA), said Mr. Torres. Although an early critic of NEPA because it appeared to have no real law behind it, he stated he now can see that one advantage of using NEPA to address environmental justice is that we can see whether it has changed how those agencies that do not have clear environmental mandates make decisions.

Ms. Ferris noted that some of the activities that had occurred during the early stages of environmental justice public policy development are applicable to what is happening in policy development today. Notably, the tremendous momentum at the grass roots level was remarkable, she explained, adding that although she would like to see that momentum regenerated today, she understands that a number of political circumstances would continue to make that a challenge. This momentum reflected the phenomena of grass roots organizations around the country and internationally that were unifying around the position that communities should provide input

into and be involved in decisions about the environment and other issues affecting the quality of their life, she continued. Ms. Ferris added that grass roots organizations also were redefining what constituted environmental justice; environmental issues did not stop at the door but rather was a quality of life issue, she explained. As such, the umbrella of environmental justice was wide and diverse, she said.

As grass roots organizations began linking up across state, regional, and increasingly global borders, the momentum flourished, Ms. Ferris continued, and there was a growing public awareness about the issues. What initially had resonated with the public were concerns about facility siting and expansion, although that model has changed so that facility siting is just but one component of reassigning what constitutes the phrase "the environment" and how one addresses environmental issues, she said. The media played an important role in capturing and focusing the attention of the public on those issues, she added, which in turn captured the attention of government agencies, Congress, and state legislatures.

Ms. Ferris commented that its important to understand that the environmental justice movement is not populated exclusively with Democrats. Rather, she explained, environmental justice activists represent a multi-political configuration. The grass roots momentum was happening during the administration of George Bush, she added, noting that community groups had captured the attention of the then EPA Administrator William Reilly. It was during Reilly's tenure that EPA had begun to realize that certain populations of Americans were treated differently when environmental burdens and benefits were allocated, she continued. During the transition to the Clinton administration, grass roots organizations had the ear of many incoming and outgoing political officials, said Ms. Ferris, noting that this type of political support was unprecedented. She stated that she had assembled a core group of community activists who prepared a paper outlining community problems relating to environmental racism; two members of the group later served on Clinton's transition team assigned for the environment, she added.

At that time, the core group was expanded to include a broader set of diverse interests who could come together collaboratively and think collectively about what could be achieved if given a choice to define an environmental agenda for the Clinton administration, Ms. Ferris continued. In drafting the transition paper, the group extracted the most important issues to communicate, she said, noting that the paper focused on recommendations that were “true to ideals of the environmental justice movement.” Ms. Ferris commented that the process by which the paper was drafted was “very interactive.” We worked hard to communicate the views from the bottom up, she declared.

Ms. Ferris outlined several key recommendations presented in the paper which later were implemented in some form:

- Establishment of an executive order on environmental justice
- Establishment of a federal interagency council on environmental justice in recognition of the need to coordinate cross-cutting and cross-jurisdictional impacts affecting communities of color and low income communities
- Establishment of a federal advisory committee on environmental justice
- Consolidation by EPA of American Indian programs and activities into an American Indian office and establishment of a tribal coordinating council.

Ms. Ferris observed that the transition paper had foretold the environmental issues currently facing the nation. The paper addresses where the environmental agenda needs to be; where sustainable development needs to be; and the direction of global sustainability, she explained. In addition, the paper calls for increased scrutiny of state programs and the establishment of a federal role in ensuring that states fulfill their responsibilities, she added. Within that context, the recommendations discussed the applicability of Title VI and the need for states to examine how they address environmental justice, said Ms. Ferris, adding that the paper called for an extension of the federal mandate to that.

Acknowledging that congratulations are in order

for what has been accomplished, Ms. Ferris urged the environmental justice community to examine the other concerns raised in the transition paper that still need to be addressed. She cited the need for equity impact statements, which analyze the impacts on sensitive communities affected by environmental conditions. She noted that although much attention has been placed on the assessment of environmental impacts on children’s environmental health, much remains to be done. Other areas of concern include: global sustainability, sustainable development, the revitalization of blighted communities, an increase in compliance and enforcement targeting, and consideration of not only external environmental conditions but also internal environmental conditions that include lack of access to health care and other quality of life deficiencies.

Other recommendations hailed as “cutting edge” by Ms. Ferris includes urging EPA to examine the development of environmental policies in developing countries, a comparative analysis of consumption in developing countries and consumption in industrial countries, the provision of assistance to developing countries so they would not replicate the problems that industrial countries had created. She remarked that the paper also urged that EPA be elevated to cabinet-level status. In addition, the paper insisted that EPA recognize that health and environment are synonymous, Ms. Ferris explained, as well as urged the agency to examine the regressive impact of economic and environmental policies such as the trading of pollution credits. She remarked that the United States increasingly is encouraging the merging market treatment of environmental issues. Admitting that she does not necessarily oppose such a trend, Ms. Ferris urged caution.

Ms. Ferris concluded her presentation with an acknowledgment of the various persons working to address these issues, including the members of NEJAC and the EPA staff supporting them.

Ms. Harris agreed that there is a lot more work to do, particularly at the state and local level. For example, she said, the State of Tennessee is just completing its strategic plan for environmental justice. Although not pleased with all the elements of the plan, she commented that at least the state has begun to talk about the

issues. Ms. Harris expressed concern about the plan's use of the term "disparate impact on sensitive populations." Business and industry interests do not want that terminology to be used, she explained. We supposedly have come a long way since 1994 but we have a long way to go, Ms. Harris remarked.

Ms. Mood asked that copies of the Clinton Administration transition paper on environmental justice be distributed to the members of the subcommittee. Ms. Ferris agreed to provide a copy of that document.

Mr. Cole asked that, given that Ms. Ferris was among the first members of the NEJAC, what advice would she give to current members. Ms. Ferris offered the following recommendations:

- First, pay attention to "survival" because the advent of the new administration represents "changed circumstances" for the NEJAC. The NEJAC, as well as its allies should contact key congressional and administration representatives to increase empathy for and education about the importance of stakeholder involvement in environmental decision making, as well as the role of the NEJAC in making that happen. The administration needs to understand that environmental justice is not anti-business, nor is it anti-development; rather environmental justice is about broadening and diversifying the stakeholders present at the decision making table so that decisions are more informed, more holistic, and more sustainable. Environmental justice is not just about taking a place at the table but also is a recognition that the new stakeholders can offer new insights and perspectives.
- Second, stick with what we know needs to improve. The Enforcement Subcommittee should shift to bread and butter issues of compliance and enforcement and continue to make the incoming administration aware of the need to make advances in these areas. Agencies should be encouraged to take enforcement actions that will directly benefit disproportionately affected populations around the country.
- Third, urge government agencies to continue to learn about what steps can be taken with

respect to enforcement to protect populations that traditionally are under-protected.

- Fourth, continue to address the concept of permitting, especially area-wide permitting. Improve stakeholder interaction and involvement in the process for issuance of permits.

### 3.4 Status of EPA Targeting Efforts

Mr. Herman prefaced his comments by remarking that he was not attending the meeting alone. He explained that he had asked several members of OECA headquarters and EPA regional staff to attend to answer and respond to comments. He added that it always has proven helpful to hear directly what the subcommittee members are saying and asking. He assured the members of the subcommittee that their comments and recommendations do have an impact on the Agency's deliberations.

Pointing to several of the recommendations offered by Ms. Ferris, Mr. Herman commented that several are very important. He urged the NEJAC to not only reach out to those seen as allies and friends, but to widen the approach to include all key officials. Referring to the "bread and butter" issues of compliance and enforcement, he acknowledged there are different ways to approach the issues. Disagreeing with Ms. Ferris, Mr. Herman stated that he believed that there has been a significant change in the way EPA does enforcement. He cited as example the shift from bundling individual cases after the fact as a initiative to a serious and comprehensive planning and targeting process. Targeting now is focused on what we know are the most serious threats to not only the environment but serious health risks, as well, he said. He offered as example efforts undertaken by the Agency to reduce air and water pollution which are associated with premature mortality and respiratory illnesses which are rampant in minority and poor communities.

Today, the Agency is fielding fewer complaints about lack of responsiveness about enforcement actions and community concerns, said Mr. Herman, than it did when the Clinton Administration came into office in 1992. In those eight years, EPA has doubled the number of

agents assigned to its criminal program, taken on large industry cases that have disproportionately affected low-income and minority communities, and increased the amounts of fines and penalties while producing reductions in pollutants, he explained. Mr. Herman added that, overall, EPA's record of enforcement reveals that it has attempted to cultivate a program that is sophisticated and produces reductions in contaminants. He noted that although SEPs are a "slightly more cumbersome process," it is an active and vibrant program. He acknowledged that despite the current hiring freeze, he is proud of all that has been accomplished in the past eight years.

Mr. Herman stated that industry is not doing nearly as well as it would like to think it is. He said that EPA is pursuing violations by many different types of companies, even "respectable ones" who are in violation. Mr. Herman acknowledged that he was disappointed in the Agency's relationship with the states. However, he added, things are starting to turn around. Mr. Herman concluded his presentation by asking the members of the subcommittee to "keep telling EPA how it is doing and how it can improve."

Ms. Mayfield asked about the relationship between EPA and affected communities. Pointing to her Chester, Pennsylvania community as example, she questioned whether it should help companies who are slow or refuse to take action. Claiming inaction on the part of state and federal agencies, she stated that EPA has not made a strong presence about enforcement in the eight years her organization has been trying to address local concerns. Mr. Herman responded that he will try to encourage some action by the EPA Region 3 office. He acknowledged that in several instances, states have issued permits without correct information or made a token action in response to a violation. Ms. Mayfield added that she does not understand why states and industry are allowed to continue with rectifying a problem when it is known that a community is overburdened with impacts and EPA has stated that more enforcement and compliance efforts are needed. What happens in those communities in which less is known about what is going on, she asked.

Mr. Herman stated that the EPA regional offices

are working with communities around the country and has initiated several lawsuits. He agreed that to prompt swifter action by companies, fines should increase as the severity of the violation increases. Although EPA has limited tools with which to address the lack of action by states, Mr. Herman stated that EPA does retain the right to take back any programs it has delegated to a state, although it never has been done. To think that EPA would do a better job is questionable, he said. He cited recent efforts to improve enforcement in Texas in which EPA threatened to take back the water program because of the state's order privilege law. He added that the NEJAC can do more with states by inviting their representatives to attend a NEJAC meeting, either to observe or to make a presentation. EPA is trying to get the "biggest bang for its buck and do with what we have," said Mr. Herman.

Mr. Gregg Cooke, Regional Administrator, EPA Region 6, added that resources do dictate what strategies are used to confront a myriad of issues. Pointing to the state of Louisiana, which has many issues, he said that the regional office, as well as staff from OECA headquarters are working together to target various areas.

Echoing Mr. Cooke's comments about combining enforcement strategies in all sectors, Mr. Jerry Clifford, Deputy Regional Administrator, EPA Region 6, commented that the region targets inspections, tracks violations, and increases media attention to the area. In addition, penalty actions have increased, said Mr. Clifford. Mr. Herman added that EPA has been conducting additional inspections to create a statistically valid universe of data by which to assess compliance rates in the regions, as well as to help the Agency better distribute its limited resources.

A representative of EPA Region 5 noted that a recent federal court ruling suggests that EPA may have to assume Indiana's regulation of concentrated animal feeding operations. Ms. Horne added that in addition to similar cases pending in California and Michigan, the River Permitting Council has petitioned EPA to take over permitting operations in seven states, most of which are in the south.

Mr. Cole referred to earlier discussions about the difficulties experienced by citizen groups in

implementing a SEP, either due to not having the resources or training to properly implement the SEP or having restrictions placed on how the SEP was to be implemented that are not placed on other SEPs. He suggested that a SEP “cookbook” designed to help communities share knowledge and lessons learned might be useful for the Agency. Mr. Herman agreed, noting that the document also should outline what can and can not be done in a SEP and why. Mr. Herman added that before 1992, EPA had drawn criticism from Congress and the U.S. Government Accounting Office for how it handled SEPs, although the Agency has not received that criticism lately. He suggested that if it would be helpful to the subcommittee, OECA would be willing to review EPA’s policy on SEPs to help determine what kind of cookbook would be useful to communities.

Ms. Mayfield stated that although citizen organizations do need training in what a SEP is and how to manage SEP projects, staff of EPA should be trained in how they communicate with local communities to improve its sensitivity to community organizations that are willing to take the lead on a SEP. Mr. Herman responded that EPA recently had issued an internal guidance on developing uniform guidance on how to approach communities about SEPs. He reminded the members of the subcommittee that defendants can not be compelled to conduct a SEP unless they agree to.

#### **4.0 SIGNIFICANT ACTION ITEMS**

The following is a list of action items the members adopted during the subcommittee meeting:

- Requested Mr. Brenman forward to EPA OCR and the subcommittee copies of DOT’s informal guidebook that describes how to investigate environmental justice complaints under Title VI.
- Ms. Yorker agreed to forward to Ms. Ann Goode, Director, EPA OCR, the request of the NEJAC to provide additional comment to the final analysis of EPA’s guidance documents related to investigating Title VI complaints.
- Requested EPA OCR provide the Enforcement Subcommittee with an

explanation of how EPA’s policy of dismissing administrative complaints filed simultaneously with litigation was formulated, as well as how EPA can justify continuing that policy when it is at odds with the standard practice of other federal agencies is to defer such complaints.

- Requested that the staff of EPA responsible for administering SEPs, convene a meeting of eight to ten community-based organizations that have experience in implementing SEPs to identify problems and obstacles they have encountered. With the consultation of the community-based organizations, EPA should draft a manual or “cookbook” to assist community groups in implementing SEPs.
- Requested Mr. Herman provide the subcommittee a copy of the documents, including pleadings and complaints, that challenge air pollution from concentrated animal feeding operations located in Missouri, North Carolina, and Indiana.

**MEETING SUMMARY**

of the

**HEALTH AND RESEARCH SUBCOMMITTEE**

of the

**NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL**

**December 13, 2000  
Arlington, Virginia**

**Meeting Summary Accepted By:**



**Brenda Washington  
Office of Research and Development  
U.S. Environmental Protection Agency**



**Co-Designated Federal Official  
Aretha Brockett  
Office of Prevention, Pesticides,  
and Toxic Substances  
U.S. Environmental Protection Agency  
Co-Designated Federal Official**

**Rose Augustine  
Acting Chair**



**CHAPTER FIVE  
MEETING OF THE  
HEALTH AND RESEARCH SUBCOMMITTEE**

**1.0 INTRODUCTION**

The Health and Research Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Wednesday, December 13, 2000, during a four-day meeting of the NEJAC in Arlington, Virginia. Dr. Marinelle Payton, Department of Public Health, School of Allied Health Sciences, Jackson State University, continues to serve as chair of the subcommittee. Ms. Rose Augustine, Tucsonans for a Clean Environment, serves as co-chair of the subcommittee. Ms. Brenda Washington, Office of Research and Development (ORD), U.S. Environmental Protection Agency (EPA), and Ms. Aretha Brockett, Office of Prevention, Pesticides, and Toxic Substances (OPPTS), EPA, serve as the Co-Designated Federal Officials (DFO) for the subcommittee. Exhibit 5-1 presents a list of the members who attended the meeting and identifies those members who were unable to attend.

This chapter, which provides a summary of the deliberations of the Health and Research Subcommittee, is organized in five sections, including this *Introduction*. Section 2.0, *Activities of the Subcommittee*, summarizes the discussions about the activities of the subcommittee, including the status of development of the Decision Tree Framework for Community-Directed Environmental Health Assessment (decision tree). Section 3.0, *Presentations and Reports*, presents an overview of presentations and reports provided to members of the subcommittee by representatives of various Federal agencies, as well as a summary of questions asked and comments offered by members of the subcommittee. Section 4.0, *Summary of Public Dialogue*, summarizes remarks offered during the public dialogue period provided by the subcommittee. Section 5.0, *Action Items*, summarizes the action items adopted by the subcommittee.

**2.0 ACTIVITIES OF THE SUBCOMMITTEE**

This section summarizes the activities of the subcommittee that were discussed during the meeting, including a discussion of the continuing development of the decision tree. In addition to discussing the decision tree, members of the subcommittee participated in a working session to define the goals and objectives the subcommittee

Exhibit 5-1

**HEALTH AND RESEARCH SUBCOMMITTEE**

**Members Who Attended the Meeting  
December 13, 2000**

Dr. Marinelle Payton, **Chair**  
Ms. Rose Augustine, **Vice Chair**  
Ms. Brenda Washington, **Co-DFO**  
Ms. Aretha Brockett, **Co-DFO**

Mr. Don Aragon  
Mr. Lawrence Dark  
Mr. Philip Lewis  
Mr. Carlos Porras  
Ms. Peggy Shepard  
Ms. Jane Stahl

**Members  
Who Were Unable To Attend**

Mr. Michael DiBartolomeis  
Mr. Jess Womack

would pursue in response to the information presented by the representatives of various Federal agencies. See Section 3.0 of this chapter for a summary of those presentations.

**2.1 Status of the Decision Tree Framework for Community-Directed Environmental Health Assessment**

Dr. Payton began the discussion of the Decision Tree Framework for Community-Directed Environmental Health Assessment by stating that EPA had organized an adhoc group of individuals to discuss and assess the framework. Dr. Payton explained that the group had been formed in response to a recommendation made by the subcommittee to the Executive Council of the NEJAC in May 2000 and the Executive Council's subsequent request to EPA that the agency make the decision tree one of its priority research projects and provide resources for further development of the decision tree framework. Having provided that background information, Dr. Payton asked Ms. Washington to explain to the members of the subcommittee how the group was formed and to provide an update of the group's activities. Exhibit 5-2 provides a description of the

**THE NEJAC DECISION TREE FRAMEWORK  
FOR COMMUNITY-DIRECTED ENVIRONMENTAL HEALTH ASSESSMENT**

The National Environmental Justice Advisory Council (NEJAC) Health and Research Subcommittee Work Group on Community Environmental Health Assessment has been working on development of the Decision Tree Framework for Community-Directed Environmental Health Assessment (decision tree). The purpose of the decision tree is to provide a framework that communities can use to identify, prevent, and solve direct and indirect environmental problems. The decision tree consists of a series of steps. At each step, the user is prompted to assess information and set priorities among items and to evaluate possible options and actions. In addition, at each step, the user is referred to a repository of various tools, models, and data that can assist in the formulation of problems and the assessment of strategies.

The decision tree currently is under development. Planned developmental steps include:

- Identifying community and government resources
- Identifying potential links with local, state, federal, tribal, and regional resources, including universities and health agencies
- Promoting the product to community users
- Providing technical assistance to communities that will be using the product
- Arranging for evaluation by users and the collecting and analyzing the comments of users and developing a mechanism to provide ongoing comment to government agencies about research and data gaps, information and resource needs, and establishment of priorities among issues in light of comments offered by users

Throughout the development process, a conscious effort is being made to ensure that the content and language is appropriate for a broad, lay audience. That point is especially important because the subcommittee intends that the decision tree be used by a variety of people, including community members who may not have technical or scientific backgrounds.

The NEJAC Health and Research Subcommittee also has identified the following desired outcomes of the decision tree project:

- Empower communities for effective leadership.
- Strengthen links between environmental and public health agencies and affected communities.
- Identify deficiencies in the existing repository.
- Guide subsequent research and related work.

decision tree framework currently under development by the subcommittee's Work Group on Community Environmental Health Assessment.

Ms. Washington explained that staff of ORD, as well as other individuals, including a representative of the International City/County Management Association (ICMA), participated in an all-day session on December 8, 2000 to discuss the decision tree. Continuing, Ms. Washington stated that she had invited Dr. Payton to participate by telephone to present the perspective of the NEJAC on the decision tree. At the time the meeting was held, the group had not yet been made aware of "the NEJAC perspective," Ms. Washington added.

Pointing out that some confusion existed with respect to the activities of the group and the reason members of the subcommittee had not been made aware sooner of the existence of the group, Dr. Payton clarified a few historical facts. She explained that, after the December 1999 and May 2000 meetings of the subcommittee, Mr. Lawrence Martin, EPA ORD and former co-DFO of the subcommittee, had provided several presentations on the decision tree to various groups. The presentations were provided, Dr. Payton explained, despite the fact that the subcommittee had agreed that the decision tree was not yet ready for public comment. Dr. Payton stated that, after Mr. Martin's term as co-DFO of the subcommittee had ended, Mr. Martin had

initiated a cooperative agreement with ICMA under which ICMA was to provide assistance in the further development of the framework.

Of primary importance, Dr. Payton pointed out, was the fact that she had not been aware of the presentations Mr. Martin had provided, nor had she been aware of the cooperative agreement Mr. Martin had established with ICMA, until November 2000. At that time, Dr. Payton continued, Ms. Washington had asked Dr. Payton to participate in the conference call scheduled for December 8. Dr. Payton stated that she had been “shocked” to discover during the conference call that Mr. Martin was working with ICMA on the decision tree. She added that ORD and the Office of Pollution Prevention and Toxics (OPPT), EPA previously had provided resources to the subcommittee to be used in the development of the decision tree. The funding, Dr. Payton said, had helped to cover the costs of several meetings, including a meeting of the subcommittee and its Work Group on Community Environmental Health Assessment held in Chicago in September 1999. Turning her attention to the current status of the development of the decision tree, Dr. Payton requested that Ms. Pat Elliott, ICMA, explain to members of the subcommittee the nature of ICMA’s involvement in the project.

Ms. Elliott explained that she was relatively new to the project and that she had begun working on it in late May 2000. She explained that Mr. Martin had provided a presentation to ICMA’s Risk Work Group, which includes officials who represent local governments and universities. After Mr. Martin’s presentation, Ms. Elliott explained, members of the ICMA Risk Work Group commented that, as presented, the decision tree framework was “not usable by anyone below the Ph.D. level.” She explained that ICMA had been serving primarily as a “sounding board” on the usability of the framework, as well as on issues related to community involvement during both development and use of the framework.

Dr. Payton explained that no one currently was working on developing the framework, adding that the subcommittee’s Work Group on Community Environmental Health Assessment had been instrumental in contributing to the design of the framework and would continue to work on it. “The plan,” she said, “is to identify the appropriate people to work on the decision tree.”

Several members of the subcommittee expressed concern, stating that they were confused about the series of events that Dr. Payton and Ms. Elliott had

described. Of particular concern, they noted, was the amount of effort that members of the subcommittee had put into the development of the framework and the possibility that the project was being taken over by others. Ms. Augustine expressed her dismay, saying, “I feel like I’ve been had, like I’ve been used.” She pointed out that she had taken time off work without pay to volunteer her time to the project. Mr. Lawrence Dark, Columbia Willamette Area Health Education Center, expressed similar concern. He commented that “the subcommittee thought it was working on something with [EPA]; then an [EPA] employee took it and sold it to somebody else.”

Ms. Washington informed the members of the subcommittee that Mr. Martin was on a sabbatical leave from EPA for one year and that he was not working on the decision tree. She also reported that EPA intended to identify an office in ORD, as well as a senior scientist, to work with the NEJAC on the development of the framework. Ms. Washington stated further that, “as far as ORD is concerned, the decision tree is a NEJAC action item.” She stated that ORD’s goal was to work with the NEJAC.

Ms. Brockett added that OPPTS also supported development of the decision tree. She added that she also had been “shocked to find that [a staff member of] ORD had someone else working on the project.” As a co-sponsor of the project, OPPTS had not been aware of the arrangement between Mr. Martin and ICMA, Ms. Brockett said.

The participants in the meeting then engaged in a lengthy discussion of the events that led to the arrangement between Mr. Martin and ICMA and whether individuals outside the subcommittee were attempting to become involved in the development of the framework without the subcommittee’s knowledge. After the discussion, Ms. Jane Stahl, Assistant Commissioner, Connecticut Department of Environmental Protection, suggested, and members of the subcommittee agreed, that the subcommittee should forward to the Executive Council of the NEJAC a letter requesting that EPA (1) explain its agreement with ICMA related to the decision tree, (2) explain who authorized the agreement, (3) provide the subcommittee with a report of activities conducted under the agreement, and (4) submit copies of all reports developed under the agreement. In addition, the members of the subcommittee agreed that the letter should request that EPA provide assurances to the NEJAC that, in the future, ideas and products developed by members of the NEJAC and its subcommittees will not be plagiarized.

## 2.2 Subcommittee Working Session

After hearing from representatives of various Federal agencies (see Section 3.0 of this chapter for a summary of those presentations), the members of the subcommittee discussed the necessity of identifying (1) whether environmental justice is incorporated in principle into the missions of each agency and, if not, why; (2) to what extent Federal agencies address issues of environmental justice; and, (3) in cases in which agencies have worked successfully together, the specific factors that contributed to success. In addition, the members of the subcommittee wanted to know, in cases in which no progress had occurred, how Federal agencies were planning to incorporate the principles of environmental justice into their missions and day-to-day activities.

The members of the subcommittee also discussed the lack of focus on and attention to issues of environmental justice throughout all levels in Federal agencies. The members of the subcommittee agreed, therefore, to request through the Executive Council of the NEJAC that a program be initiated to train “middle management” staff of Federal agencies in how to incorporate the principles of environmental justice into their day-to-day work. It was suggested that the program include the provision of such training to staff in the Senior Executive Service to increase their awareness of issues related to environmental justice. The members agreed that such an educational component is needed because, even though senior staff may not be responsible for carrying out day-to-day activities, to effectively facilitate change throughout each agency, they must understand what environmental justice is before they can be expected to view it as a priority.

Another principal topic of discussion was how Federal agencies can collaborate, specifically in the provision of health-based services to low-income and minority communities. Through that discussion, the members of the subcommittee agreed that agencies must look beyond the limitations and restrictions of their mandates and consider ways to share resources so that health problems that should be addressed in communities can be addressed. For example, an agency that does not have in its mandate a clause that specifically allows the direct provision of health care may be able to share funds or other resources with an agency that has as part of its mission the provision of health care.

In addition, the members of the subcommittee agreed that many topics discussed during the December 2000 meeting had been related to topics discussed during the May 2000 meeting of the subcommittee and included in the subcommittee’s subsequent report on health issues. Therefore, the members of the subcommittee agreed, it was important to review that report in light of the December 2000 meeting and determine how it should be amended to incorporate specific topics and suggestions that had arisen during the December 2000 meeting.

## 3.0 PRESENTATIONS AND REPORTS

This section summarizes the presentations made and reports submitted to the Health and Research Subcommittee by representatives of various Federal agencies. Dr. Payton asked each of the agency representatives to discuss specifically the involvement of their agencies in (1) building healthy communities and (2) working in collaborative partnerships with other agencies to integrate environmental justice principles into all programs of Federal agencies.

### 3.1 Activities of the U.S. Department of Transportation

Mr. Marc Brenman, Senior Policy Advisor, Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation (DOT), and Mr. David Kuehn, Community Planner, Metropolitan Planning Division, Federal Highway Administration, DOT, presented information about the environmental justice activities of DOT. Mr. Brennan stated that the mission of DOT is to regulate “everything that flies, moves, and floats in the United States.” From an environmental perspective, he continued, this mission extends to regulating the transportation of hazardous materials, the training of first responders to incidents involving hazardous materials, and monitoring air pollution along major traffic corridors, among other activities. Mr. Brenman explained that DOT regards health as a safety issue, he said.

Mr. Kuehn added that assessing the potential number of lives saved in urban and rural areas in which people use pedestrian traffic networks, such as sidewalks and paths, is one way to view the effect of the physical environment on human health. Mr. Brenman pointed out that, as part of the agency’s environmental justice activities, DOT examines ways to make transportation available for communities of color and low-income communities. He explained that residents of such

communities rely heavily on public transportation to travel from where they live to their jobs and other places.

Ms. Peggy Shepard, West Harlem Environmental Action and vice-chair of the Executive Council of the NEJAC, commented that the creation of healthy communities can be viewed as one that has grown out of the smart growth initiative. Charging that this initiative is leaving out environmental justice communities, Ms. Shepard asked how Federal agencies will develop initiatives around rebuilding such communities while maintaining places to live for people already living in those communities.

Mr. Kuehn responded that DOT also had been conducting research on the interaction between transportation and land use, as well as their effects on communities. He reported that his office focuses on “smart growth” under which it is examining environmental justice issues, community access to services, the location of employment, and the effects of transportation networks on housing costs in low-income and minority communities. His office is trying to provide leadership on DOT’s internal research agenda and, in turn, provide that information to its partners, such as states and other grantees, he continued.

Continuing, Mr. Brenman and Mr. Kuehn provided a brief update on ongoing activities of DOT that are focused on low-income, minority, and tribal communities, including:

- A disadvantaged business enterprise program for minorities and entrepreneurs
- Participation on an interagency children’s health task force to address children’s health issues, such as the increase in cases of asthma among African American and Hispanic children in urban areas
- Participation on a steering committee, led by the U.S. Department of Health and Human Services (DHHS) to eliminate health disparities among various racial and ethnic groups
- Activities designed to benefit native American lands, including a roads program for Indian reservations
- Joint efforts with the National Urban League to examine, among other things, ways to address the higher percentages of disabilities among minorities and low-income residents

- A vehicle-miles-traveled program to monitor and address air pollution
- Collaborative efforts with minority institutions and historically black colleges and universities, including a \$1.2 million internship program
- Conduct of a one-day workshop on the application of environmental justice throughout the planning and decision-making processes of transportation projects (the training was conducted for field personnel and was delivered in 35 states and Puerto Rico)
- Coordination of an environmental justice summit, held during summer 2000, attended by approximately 100 participants representing government and community organizations (Mr. Kuehn pointed out that, since that event, two other agencies had held regional and local summits of a similar nature)

Continuing, Mr. Kuehn stated that DOT is working to apply the principles of environmental justice in three principal areas: research, training and outreach, and program oversight. Mr. Kuehn explained that DOT was conducting an analysis of public perceptions of the effects – and burdens – of transportation on communities and that DOT was concerned in particular about the interests of specific communities, such as those in which low-income and minority residents live.

The Department also has a particular interest in public participation, Mr. Brenman and Mr. Kuehn said, and would like the NEJAC to exert more pressure on metropolitan planning organizations to more actively encourage and facilitate public participation. Mr. Brenman explained that the regional offices of DOT are responsible for public participation during the development of regional transportation plans. However, improvement is needed in that area, he acknowledged, particularly because the time horizon for a typical transportation project averages 20 years. Mr. Brenman added that DOT certifies planning organizations every three years. He then stated that, in future years, the certification process would include examination of issues specific to environmental justice. “Part of the problem,” he said, “is almost no one knows how to do an equity analysis” to determine the benefits and burdens on communities of planning and transportation projects.

After the presentation, Ms. Pam Kingfisher, Executive Director, Indigenous Women’s Network, commented that she was “scared” by such issues

as the transportation of high-level radioactive waste. In particular, she asserted that “corporate contamination of highways” occurs when “waste dribbles out” while being transported by trucks. Ms. Kingfisher also said that compliance with waste-hauling and permitting regulations is poor, partly because of inadequate inspections. She asked why sovereign nations, such as Indian tribes, can not stop the transportation of such wastes across their lands.

Ms. Augustine expressed concern that highways often transect communities of color and low-income communities. She explained that population growth and the expansion of highway systems reduce the amount of land available to such communities. The issue is one that DOT must address, Ms. Augustine urged, as are other issues related to noise, dust, and the spraying of pesticides near communities. Continuing, Ms. Augustine said that she did not understand why DOT did not “look at all of these issues in a holistic manner,” particularly when all those issues affect only “certain” communities.

In response to Ms. Augustine’s comments about the need to address issues holistically, Mr. Kuehn stated that it is important to view issues as matters to be addressed by all agencies involved, rather than to place responsibility on a single agency.

Mr. Don Aragon, Wind River Environmental Quality Commission, Shoshone and Northern Arapaho Tribes, commented that agency officials and department heads often sign documents such as memoranda of understanding; however, “there is no trickle-down effect to regions and field offices” in terms of implementation and follow-through. He stated further that some of the worst roads in the country are located on Indian reservations, many of which are two-lane highways with heavy truck traffic. This is a major disparity, he continued, stating that “super highways are built to do away with environmental justice communities.” Mr. Aragon asked how and when can communities participate in decision making.

Responding to concerns expressed by Ms. Augustine and Mr. Aragon about the historical siting of transportation networks, Mr. Kuehn stated that some current problems are the result of damage done 30 or 40 years earlier, when certain highways were constructed. Since that time, he explained, laws and regulations that govern the construction and operation of transportation systems have changed. Mr. Kuehn stated that DOT is attempting to learn lessons by examining historical highway expansion programs. He also

pointed out that the agency is working to develop a “range of techniques” for interacting and communicating with communities, beyond the usual method of inviting residents to attend meetings. Some of the methods that DOT is considering, he continued, include (1) going out into communities and in people’s homes, rather than asking people to travel to DOT meetings, and (2) communicating electronically with local residents.

Mr. Philip Lewis, Rohm and Haas Company, suggested that agencies investigate the possibility of providing funding for public participation, specifically for such items as travel expenses, to allow residents to participate fully and collaboratively when issues are being discussed. Citing the success of the U.S. Department of Defense (DoD) in promoting the participation of individuals to attend meetings as a “matter of public duty”, Ms. Stahl commented that commonly used terminology should be replaced by terminology that more accurately reflects the nature of the effort needed. She suggested, for example, that the phrase “community collaboration” be used instead of “community participation.”

### **3.2 Activities of the U.S. Department of Housing and Urban Development**

Mr. Robert McAlpine, Special Assistant to the Assistant Secretary, and Ms. Antoinette Sebastian, Senior Environmental Policy Analyst, provided an update on the efforts of the U.S. Department of Housing and Urban Development (HUD) to improve the health of low-income and minority populations. Both pointed out that, although HUD’s mission does not include explicitly stated principles of environmental justice, HUD is involved actively in addressing issues related to lead-based paint, building healthy communities, and other initiatives to improve conditions in low-income and minority communities.

Mr. McAlpine informed members of the subcommittee that he was a member of a coalition that had lobbied members of Congress to pass legislation on environmental justice. He explained that after attempts to persuade Congress to enact such legislation proved unsuccessful, the coalition negotiated with the Clinton administration to develop an Executive order “to do what the intent of the proposed legislation would have accomplished.” Continuing, Mr. McAlpine explained that although an Executive order on environmental justice had been issued, funding never had been provided to allow Federal

agencies to “undertake a serious effort to build capacity at a headquarters level and throughout the regions” to carry out the intent of the order. Mr. McAlpine added that a number of crucial questions must be discussed, including:

- Whose responsibility is it to meet the provisions of the Executive order?
- How can Federal agencies build the capacity to ensure that the Executive order “has teeth?”
- What steps can be taken to ensure that environmental justice is a high priority issue in all Federal agencies?
- What are the intents of Federal agencies in terms of carrying out the Executive order, and what limitations and barriers exist that might prevent agencies from accomplishing that end?

Mr. McAlpine stated further that Federal agencies had been experiencing a period of devolution and had been returning responsibilities to the states. Responsibilities cannot be assigned to Federal agencies, he said, unless corresponding appropriations are provided to meet those responsibilities. Mr. McAlpine explained that the “Federal government does not have a mandate from Congress for public participation.” However, HUD requires grantees under the Community Development Block Grant Program to conduct public participation activities, he continued. Mr. McAlpine then explained that, because Congress “will not be prescriptive and will not tell local governments what to do,” citizens often have little leverage in efforts to persuade the Federal government to be responsive to their concerns. He cautioned members of the subcommittee to be careful when making comments about the perceived amount of latitude that Federal agencies have in the area of public participation. Federal agencies in fact are limited in terms of their ability to “hold others accountable” for public participation, he pointed out.

Adding to Mr. McAlpine’s remarks, Ms. Sebastian explained that, although HUD’s mission statement does not include an express statement about environmental justice, HUD had developed a strategy on environmental justice that includes the following three basic principles:

- HUD will promote sound environmental considerations in community development and housing policies that simultaneously preserve the affordability of housing and encourage economic growth and private investment.
- HUD will promote the environmental quality of public housing, Federally-assisted rental housing, and home ownership programs to ensure that low-income and minority residents have a safe and healthy start to greater self sufficiency.
- HUD will promote the principles of environmental justice and will “rethink” and “redesign” ways to deliver HUD’s programs and services in a way that will create opportunities for people to take action to improve their own lives.

Ms. Sebastian distributed to the members of the subcommittee a handout that provided a summary of steps that HUD had taken to incorporate environmental justice into its programs, policies, and activities. Among the items listed were (1) a draft guide HUD developed for investigating complaints related to environmental justice, (2) the conduct of four environmental justice training sessions for approximately 160 HUD compliance investigators who are responsible for enforcing Title VI of the Civil Rights Act of 1964, (3) the incorporation of environmental justice into the Notice of Funding Availability under HUD’s Brownfields economic development initiative, and (4) a regulation promulgated in September 2000 that governs the control of lead-based paint hazards in housing occupied by residents who receive federal assistance and in federally-owned housing that is being sold. Ms. Sebastian emphasized that lead remains one of the greatest environmental threats to the health of the nation’s children.

Turning her attention to HUD’s role in building healthy communities, Ms. Sebastian outlined a number of activities in which HUD is involved, including activities conducted in partnership with other agencies. Those activities include:

- Water and sewer infrastructure projects designed to provide housing that meets established standards throughout *colonias*, rural communities and neighborhoods located within 150 miles of the U.S.-Mexico border that lack adequate infrastructure and, frequently, also lack other basic services

- Empowerment zone and enterprise community initiatives intended to improve economic and living conditions in low-income areas
- Efforts to fight and eliminate lead-based paint poisoning and related health threats to children
- Guidance for choosing “environmentally safe sites” for development of housing
- A joint project of HUD and EPA that involves the creation of “E-Maps,” and an electronic geographic information system that contains spatial data

Ms. Sebastian urged the members of the subcommittee to remember that decisions about land use are made at the local level. It is at that level, she asserted, “where citizen input has the greatest impact.” Explaining that “city governments exist because states allow them to,” she explained that there are important differences between the type of citizen involvement that occurs when local decisions are being made and the type of citizen involvement that occurs in decisions made at the Federal state level. Ms. Sebastian pointed out that citizen involvement is much more effective at the local level and that Federal agencies typically are much more responsive to Congress than to local citizens. Ms. Sebastian suggested that members of the subcommittee visit HUD’s web site at: [www.hud.gov](http://www.hud.gov) to obtain more information about HUD’s initiatives.

Ms. Augustine expressed concern about the authority that Federal agencies have delegated to states because, she explained, historically there has been “a lack of follow-through.” She added that communities are not involved during the development of consent decrees and that such decrees often include legal language that members of communities do not understand. Turning her attention to a specific example, Ms. Augustine mentioned a case in Tucson, Arizona in which a consent decree allegedly was violated. The local community complained and notified the administrator of EPA Region 9, but received no response from EPA, she explained. Ms. Augustine suggested that grants be made available to communities for hiring consultants to assist communities in understanding the terms and conditions of consent decrees.

When asked what progress HUD had achieved in developing a plan of action to provide health care to communities, Ms. Sebastian described several ways communities can bring their plight to the attention of the agency. One way, she explained,

is for communities to file a lawsuit to force political appointees and staff to reexamine issues in a way they would not otherwise. Under that kind of pressure, agencies often will begin to examine problems they had not earlier viewed as problematic, she continued.

In response to other comments about the lack of participation by states in efforts to achieve environmental justice, Ms. Sebastian noted that the private sector also should be included in efforts to achieve environmental justice. She said that many corporations, such as General Motors Corporation and Microsoft Corporation, “really want to be good corporate citizens;” they often have charitable foundations that may be able to provide assistance. She added that academic institutions also should be included in efforts to collaborate to achieve environmental justice.

### 3.3 Activities of the U.S. Department of Justice

Mr. Quentin Pair, Trial Attorney, Environment and Natural Resources Division, provided an update on the activities of the U.S. Department of Justice (DOJ). Mr. Pair began his remarks by pointing out that the Federal Interagency Working Group on Environmental Justice (IWG) had compiled a directory of environmental justice points of contact that, he said, was the beginning of an attempt to identify individuals within Federal agencies so that communities could determine whom to call when questions or issues arise. Mr. Pair also described several general programs, including a lead-based paint initiative implemented jointly by DOJ, HUD, and EPA; DOJ’s Weed and Seed Program designed to improve conditions in low-income and minority areas; and a demonstration project in South Carolina under which HUD is working with the United States Attorneys’ Offices (USAO) to augment services being provided under the project. Mr. Pair referred the members of the subcommittee to the DOJ web site, [www.usdoj.gov](http://www.usdoj.gov), for more information about DOJ’s environmental justice activities.

Commenting that he frequently hears from Federal agencies that they do not have a “pot of money to address environmental justice,” Mr. Pair explained to the members of the subcommittee that funding for agencies is not the issue. Rather, leadership and training are the issues that must be addressed, he said. Mr. Pair stated that, when the IWG was formed, a “flurry of activities” took place; however, he pointed out, the level of activity later slowed. He also commented that an Executive order on environmental justice “may be better than legislation” because it offers flexibility. Continuing,



Mr. Pair explained that agencies can and should explore creative ways to assist each other with funding. Restrictions and “boundaries” do exist, he said, with respect to how agencies allocate and use funds; however, the IWG is examining steps agencies can take to use their funding creatively. Mr. Pair noted that “progress [in achieving environmental justice] is being made, but it takes time.”

Mr. Pair commented that for those individuals who have been involved for some time in the “struggle for environmental justice,” it is important to recognize that some employees within Federal agencies experience similar frustrations. While the perception may be that Federal agencies may not “be doing much” for environmental justice, there are individuals within those agencies who are making an effort, he said.

Mr. Pair commended Mr. Charles Lee, Associate Director, Policy and Interagency Liaison, Office of Environmental Justice, EPA, and others who had worked on the Integrated Federal Interagency Environmental Justice Action Agenda, recently signed by senior executives of various Federal agencies. The President’s Management Council also has accepted the agenda, Mr. Pair said. Continuing, Mr. Pair stated that the Executive order on environmental justice requires that Federal agencies develop environmental justice strategies and prepare reports on their progress in implementing those strategies. Mr. Pair urged the members of the subcommittee to use the Federal interagency directory of points of contact to request copies of the environmental justice strategies of the various agencies, as well as copies of their reports on the status of implementation efforts.

Ms. Stahl commented that the subcommittee could “argue about resources all day long.” She suggested, however, that instead of discussing the budgets of Federal agencies or the lack thereof, the members of the subcommittee would be better served by hearing about and discussing (1) how the agencies are integrating the concept of environmental justice into their activities, with or without resources, and (2) how agencies are addressing health effects arising from environmental hazards. Ms. Stahl pointed out that such a focus was necessary if the subcommittee was to be able to make recommendations.

Expressing his frustration that much of the emphasis of the discussion was being placed on issues related to funding and the missions of Federal agencies, Mr. Carlos Porras, Communities

for a Better Environment, commented that such questions as “how to get justice out of DOJ and equity out of HUD” should be addressed. Mr. Porras stated further that, if agencies “truly were fulfilling their responsibilities,” there would be no environmental justice issues. Continuing, Mr. Porras remarked that agencies must begin to conduct business in ways that are equitable to communities, as, he pointed out, they are supposed to do. That issue, he declared, should be the focal point of the discussion, rather than quibbling about sources of funding. Mr. Porras then expressed his frustration that for years Federal agencies have pledged to resolve inequity issues; but when he returns to the community, these same agencies remain “part of the problem, not the solution,” he said. To now hear Federal agencies claiming that funds are insufficient is especially frustration, he emphasized.

#### **3.4 Activities of the EPA Offices of Pollution Prevention and Toxics and Research and Development**

Dr. William Sanders, Director, OPPT, and Dr. Harold Zenick, Acting Deputy Assistant Administrator for Science, ORD, provided an update of the activities carried out by OPPT and ORD.

Dr. Sanders explained that various efforts were underway in OPPT, including:

- Ongoing efforts to translate various OPPT announcements and documents into Spanish and to make those materials available to non-English-speaking populations
- Development of a standard rule on lead to address lead contamination in soil, paint, and dust
- An initiative to address specifically biological and toxic chemical contamination

Dr. Sanders pointed out that the lead rule was on schedule for release by December 22, 2000 and that an effort had been made to address comments received from the Executive Council of the NEJAC and members of the health and research subcommittee. Additional efforts, descriptions of which, Dr. Sanders said, were to be posted on EPA’s web site.

Joking that if cloning technology was available today, he would clone Mr. Pair because of his understanding of issues related to environmental justice, Dr. Sanders described the difficulties

Federal agencies have encountered in developing among their staffs an understanding of environmental justice issues. He explained that the problem exists because “not everyone understands what his or her job is and not everyone understands the issues.” In addition, Dr. Sanders said, Federal agencies should increase their outreach to state and local agencies in an effort to better engage those agencies in issues of environmental justice. He pointed out that “there are still people who don’t think that environmental justice is real . . . there are scientific types who don’t see environmental justice as part of their jobs.” Dr. Sanders suggested that a great effort should be done to educate executive-level staff of the various agencies about environmental justice issues. He suggested that a two-pronged approach was necessary to (1) educate senior-level agency executives and raise their awareness of environmental justice issues and (2) teach those responsible for implementing programs and policies how to incorporate the principles of environmental justice into their day-to-day work.

Dr. Zenick began his remarks by expressing disappointment that no representatives of the Centers for Disease Control and Prevention (CDCP) or the National Institute for Environmental Health Sciences (NIEHS) were present. He then outlined various activities that feature interagency components that had been initiated primarily during 2000:

- Establishment of a National Health Tracking System, under a program that had been developed for implementation by States to increase the capability of states to monitor health crises
- Preparation of a Government Accounting Office report entitled “Toxic Chemicals: Long-term Coordinated Strategy Needed to Measure Exposure in Humans,” which recommends the integration of the activities of various Federal agencies to address human health issues; EPA and NIEHS are to form a task force on the issue and develop a human exposure “report card” designed to provide data on the effects of 25 chemicals on human health
- Establishment of a Council for State and Territorial Epidemiologists, including several work groups to address issues related to human health

- Establishment of CDCP’s Environmental Public Health Indicators Project, which was inspired by the efforts of one work group and which focuses on indicators that provide information about the status of certain health conditions
- A focused federal effort to develop guidance on the conduct of environmental health assessments and to expand the integration of environmental health into health-care education and medical practice
- A protocol, developed by the National Association of City/County Health Organizations, for assessing community excellence in environmental health

During the discussion that followed Dr. Sanders’ comments, members of the subcommittee agreed to request that the Executive Council of the NEJAC recommend that a program be initiated to train “middle management” staff of Federal agencies in how to incorporate the principles of environmental justice into their day-to-day work. The members of the subcommittee also agreed that the program should include a component for educating staff in the Senior Executive Service because those key staff must understand what environmental justice is, even though they may not be responsible for carrying out day-to-day program activities. The members of the subcommittee agreed that, to effectively facilitate change throughout each agency, senior managers in Federal agencies must view environmental justice as a priority.

### **3.5 Activities of the Health Resources and Services Administration**

Mr. Hubert Avent, Director, Urban Health, Health Resources Services Administration (HRSA), provided an update on the activities of the agency. Mr. Avent informed members of the subcommittee that progress had been made in the area of environmental health, although he characterized that progress as slow. He also identified a need for a strategy for integrating environmental requirements and community development with primary health care.

Mr. Avent informed the members of the subcommittee that, in 1998, HRSA and the Agency for Toxic Substances and Disease Registry (ATSDR) had entered into an agreement to discuss ways to “build capacity to support environmental health medicine” in HRSA agencies, including methods of training medical clinicians, such as nurses. Mr. Avent added that two training

sessions recently had been held and that the agreement between HRSA and ATSDR is being used as an opportunity for the agencies to discuss general issues related to environmental health.

In addition to working with ATSDR, Mr. Avent explained, HRSA is working with HUD to integrate environmental health into HUD's empowerment zone and enterprise community initiatives. He added that HRSA intends to begin working with academic health centers that provide training for health professionals to explore ways to achieve positive results in improving health in affected communities.

Mr. Avent pointed out that "the challenge is to look at the assets, not just the needs, that exist within communities." He explained that HRSA is beginning to look at the existing infrastructure in communities, such as primary care facilities. Continuing, Mr. Avent stated that HRSA is exploring ways to encourage existing primary care facilities to include components addressing environmental health medicine into their policies.

Concluding his remarks, Mr. Avent stated his willingness to work with the members of the subcommittee, and he agreed to provide the subcommittee with information about the ongoing efforts of HRSA.

### **3.6 Activities of the Indian Health Services Agency**

Mr. Eric Broderick, Deputy Director, Office of Public Health, Indian Health Services, DHHS, provided an update of the activities of that agency. Mr. Broderick explained that the mission of IHS is to "raise the health status of Native Americans and tribes." He pointed out that the reason the health needs of Native Americans and tribes are served by the IHS is "rooted" in the treaties made with Indian tribes over the past 150 years. Mr. Broderick explained that IHS had been created under the former U.S. Department of War to protect soldiers from infectious disease. The mission of the agency has evolved and today, the agency currently provides health care to more than 500 tribes living in geographically remote and isolated areas, he said.

Continuing, Mr. Broderick explained that the delivery of potable water and the disposal of wastewater are two primary concerns of his agency. Pointing to the seriousness of those issues to Native Americans and tribes, Mr. Broderick stated that deaths caused by gastrointestinal and infectious diseases are a

major concern. He added that while one percent or less of homes in the United States do not have safe drinking water, a significantly higher percentage of homes in Indian country lack safe drinking water. In addition, Mr. Broderick said, deaths among people between the ages of 1 and 44 are "a big problem" among Native Americans and tribes.

As an example of interagency efforts to address problems specific to Native Americans and tribes, Mr. Broderick continued, IHS has entered into an agreement with HUD to deliver safe drinking water on Indian reservations on which Superfund sites are located. He added that HHS is required to involve tribes in decision-making processes. Mr. Broderick pointed out that, lacking "proper" involvement of communities in decision-making processes, it is difficult to "get past the mere discussion and acknowledgment of problems and complaints." He added that IHS acknowledges that with such communities, consultation must be conducted during the planning stages of programs and projects to achieve effective outcomes that are acceptable to communities.

### **3.7 Activities of the U.S. Department of Education**

Mr. Thomas Mela, U.S. Department of Education, Office of Civil Rights, provided an update on the activities of that department. Mr. Mela informed members of the subcommittee that the Department of Education initially had not been listed in the Executive Order on environmental justice, noting that he did not know the reason for the department's omission. He then provided an overview of the activities related to civil rights and disabilities issues that the department conducts.

Mr. Mela remarked that two of the three laws for which it is responsible to enforce provisions have a direct bearing on environmental justice. He informed the members of the subcommittee that under Title VI of the Civil Rights Act of 1964, the department has jurisdiction over schools and colleges that receive federal funds. He pointed out that, as a condition of the receipt of such funds, those institutions cannot discriminate on the basis of race or national origin. In addition, Mr. Mela continued, Section 504 of the Rehabilitation Act of 1973 requires that educational institutions that receive federal funds must not discriminate against individuals who are disabled. He noted that issues related to disabilities can be linked to environmental justice because such chronic illnesses as asthma, which occurs at disproportionate rates among minority and low-

income populations, can be classified as disabilities. In addition, Mr. Mela explained that, such circumstances as the need to renovate school buildings and the occurrence of indoor air pollution, can affect the health of students in a way that can be classified as an “environmental disability.” Mr. Mela then stated that school districts have an obligation to both students and employees who are disabled.

Turning his attention to specific types of complaints to which his office responds to, Mr. Mela informed members of the subcommittee that, before the Clinton administration had taken office, his office had responded almost exclusively to complaints related to disabilities, which were lodged almost exclusively by residents of suburban areas. He then stated that during the Clinton administration, staff of the department’s Office of Civil Rights had expended almost half of their time on matters he described as “proactive.” Clarifying the importance of that approach to the environmental justice movement, Mr. Mela explained that his office receives few complaints from parents of children who attend inner-city schools. Therefore, he said, the extent to which environmental justice issues are addressed by the department may become an increasingly significant issue after President Clinton has left office, particularly because, he suggested, the department’s Office of Civil Rights then may return to the “reactive mode” of simply responding to complaints.

Continuing, Mr. Mela stated that he was unsure whether the department’s Office of Civil Rights had legal authority to address issues related to the siting of schools on contaminated federal property. He also informed the members of the subcommittee that he was not aware of any formally coordinated efforts by his office to address issues of environmental justice with other Federal agencies. Mr. Mela pointed out, however, that he personally has developed contacts with his counterparts at EPA.

Members of the subcommittee asked whether the U.S. Department of Education would be added to the list of Federal agencies identified in Executive Order 12898 on Environmental Justice. Mr. Mela responded that he was unsure whether the agency “officially” would be added to the list. He noted, however, he had been made aware that other agencies had volunteered to be included on the list.

### 3.8 Activities of the U.S. Department of Energy

Ms. Heather Stockwell, Director for Science, Office of Health Studies, U.S. Department of Energy (DOE), provided and briefly reviewed a handout that summarized an agenda for conducting, in partnership with HHS, public health activities at DOE sites. DOE developed the agenda in partnership with HHS, ATSDR, CDCP, the National Center for Environmental Health, and the National Institute for Occupational Safety and Health, she explained, adding that the agenda had been released for public comment and that DOE had received approximately 40 to 50 comments to it. Ms. Stockwell reported that the agenda included a plan outlining public health activities to address contamination at various sites and the resultant health effects on nearby residents. She noted that those sites include:

- Brookhaven National Laboratory Site, Upton, New York
- Santa Susana Field Laboratory Energy Technology Engineering Center, Simi Valley, California
- Fernald Environmental Management Project, Fernald, Ohio
- Lawrence Livermore National Laboratory, Livermore, California
- Los Alamos National Laboratory, Los Alamos, New Mexico
- Monticello Mill Tailings Site, Monticello, Utah
- Nevada Test Site, Nye County, Nevada
- Oak Ridge Reservation, Oak Ridge, Tennessee
- Paducah Gaseous Diffusion Plant, Paducah, Kentucky
- Rocky Flats Plant, Golden, Colorado
- Salmon Test Site, Lamar County, Mississippi
- Savannah River Site, Aiken, South Carolina

Ms. Stockwell acknowledged that, although DOE had established an office of environmental justice and some progress had been made toward achieving environmental justice, more remains to be done. She also urged the members of the subcommittee to visit DOE’s web site <[www.doe.gov](http://www.doe.gov)> to obtain additional information about DOE’s activities.

Ms. Stahl asked at what point DOE solicits the involvement of ATSDR or CDCP at a particular site. In response, Ms. Stockwell stated that involving ATSDR or CDCP in activities at a site was a routine part of the process of addressing contamination, rather than a step reserved for sites about which complaints have been filed. She added that ATSDR and CDCP are involved at all

DOE facilities, from “start to close.” Ms. Stockwell then stated that, although ATSDR and CDCP conduct assessments of conditions at each DOE facility, health studies are not necessarily conducted for each facility because those agencies sometimes decide that a study is not warranted.

Mr. Aragon asked about the effects on tribes of projects under which uranium mill tailings are being cleaned up. He cited the case of one site for which DOE had signed a cooperative agreement, but the tribal attorneys were having difficulty deciphering the agreement. Ms. Stockwell replied that she did not know the specifics of the case to which Mr. Aragon had referred and suggested that he write a letter to the Secretary of Energy. Ms. Stockwell also suggested that Mr. Aragon contact ATSDR, noting that the agency conducts assessments if so requested by citizens.

### **3.9 Activities of the U.S. Department of Defense**

Ms. Patricia Reyes, Director, Outreach, U.S. Department of Defense (DoD), explained that although DoD does not have an office of environmental justice, it has assigned and authorized one person to spend about 25 percent of his time on environmental justice issues. In addition, individual DoD staff around the country are “doing the right thing,” Ms. Reyes stated. She also informed the members of the subcommittee that DoD had conducted activities “indirectly” to assist in improving the health of communities located near DoD facilities. She cited the contribution of resources for use in health clinics as an example of such indirect activities.

Ms. Reyes explained that DoD and other agencies often may react to situations from the perspective that the matter is not within the jurisdiction of the agency; however, she suggested, if agencies can look beyond that perspective, they often can be of assistance to communities. As an example, Ms. Reyes explained that DoD recently had been asked to build a health clinic in Memphis, Tennessee. The agency’s initial response, she continued, was that building health clinics was not a part of DoD’s mission. She said that DoD instead was working to assist others in building the health clinic, by providing trailers and office equipment and offering other support. She explained that after construction the trailers are to be converted into small clinics.

Continuing, Ms. Reyes informed the members of the subcommittee that ATSDR conducts all of

DoD’s health studies. She pointed out, however, that DoD was “having problems” with ATSDR and was working to improve its relationship with ATSDR or to devise a better approach to the conduct of health studies.

In addition, Ms. Reyes stated, DoD had asked Mr. Timothy Fields, Jr., Assistant Administrator, EPA Office of Solid Waste and Emergency Response, to assign two EPA staff to assist DoD in implementing environmental justice. She explained that field staff of DoD projects lack training in the area of environmental justice.

After Ms. Reyes concluded her remarks, the members of the subcommittee and the representatives of the agencies discussed the need for coordination among agencies to address infrastructure issues, as well as to actually provide health care. Ms. Reyes responded that DoD had been able to provide infrastructure assistance, although the agency does not provide direct health care. Dr. Zenick stated that, unless HRSA and other agencies are involved, there is no means of actually providing the health care, even when the infrastructure exists. Ms. Kingfisher noted that the Indigenous Women’s Network had trained many doctors and that community groups could conduct internship programs to provide opportunities for medical interns to learn while providing assistance at clinics.

Mr. Philip Lewis, thanked Ms. Reyes for her candor and suggested that DoD examine creative ways, such as training or recruitment initiatives, to provide assistance to communities. Mr. Lewis added that EPA should request that DoD revise its mission statement to include the provision of assistance to communities through such training and recruitment initiatives. That is, he explained, DoD would not necessarily directly provide health care at clinics, but the agency could provide to clinic workers training on such topics as environmental health effects, and the agency could put forth an effort to recruit staff skilled in such areas.

### **4.0 SUMMARY OF PUBLIC DIALOGUE**

Dr. Payton, chair of the subcommittee, opened the floor to public dialogue. Three members of communities made presentations.

#### 4.1 Ms. Charlotte Keys, Jesus People Against Pollution

Ms. Keys informed the members of the subcommittee about an environmental justice summit meeting scheduled for April 2001. She invited the members of the subcommittee to attend the event.

#### 4.2 Ms. Patty Lovera, Center for Health, Environment, and Justice

Ms. Lovera spoke about schools located on contaminated property, particularly contaminated property owned by Federal agencies. She explained that, when schools are located on contaminated property, children who attend those schools are exposed to health risks. The problem, said Ms. Lovera, is particularly prevalent in low-income communities and communities of color.

#### 4.3 Ms. Yvonne McSwain Powell, People Effective Against Chemical Eugenics Organization

Ms. Powell expressed concern about the health risks posed by contaminated drinking water. She specifically expressed concern about contaminated drinking water in Richton, Mississippi and the negative health effects that contamination has had on local residents.

Executive Order 12898 on Environmental Justice and as a step toward achieving the intent of the order.

- ✓ Members of the subcommittee agreed to review the subcommittee's report on health issues that was developed after the May 2000 meeting of the subcommittee and identify areas in the report that are linked directly to discussions held during the December 2000 meeting. The subcommittee then will prepare an addendum to the report that highlights the issues discussed during the December 2000 meeting.
- ✓ Forward a recommendation to the Executive Council of the NEJAC to request that the EPA Administrator solicit documentation of how Federal agencies can collaborate in providing health services to low-income and minority communities. The documentation should highlight success stories.
- ✓ Members of the subcommittee agreed that they should obtain copies of the strategic plans, goals, and objectives of Federal agencies and review them to determine whether those documents include environmental justice and, specifically, whether they include any language about the provision of health care to communities. Subsequently, the subcommittee should identify agencies that do not include such provisions in their plans and request that the Executive Council of the NEJAC recommend that the IWG request that those agencies take action to incorporate environmental justice and provision of health care communities into their strategic plans.
- ✓ Forward a recommendation to the Executive Council of the NEJAC to request that Federal agencies establish "collaborative funds" to address the health needs of communities. (Collaborative funds were deemed especially important in the context of the reality that funds are "earmarked" and the lack of flexibility in how agencies can spend funds.)
- ✓ Forward to the Executive Council of the NEJAC a recommendation to request that the U.S. Department of Education be added to the IWG.

### 5.0 ACTION ITEMS

This section summarizes the action items adopted by the subcommittee.

- ✓ Recommend that the Executive Council of the NEJAC request that the EPA Administrator initiate a program to train "middle management" staff of Federal agencies in how to incorporate the principles of environmental justice into their day-to-day work. "Middle management" is defined as those responsible for carrying out policies and programs that have an effect on communities. Also suggested that the recommendation include a component for educating staff of the Senior Executive Service to increase their level of awareness of environmental justice issues.
- ✓ Forward a recommendation to the Executive Council of the NEJAC to request that the EPA Administrator request that DoD make a commitment to establishing an environmental justice office, as an indication of DoD's commitment to fulfilling the requirements of

- ✓ Members of the subcommittee agreed to (1) identify agencies such as the U.S. Department of Education, the Nuclear Regulatory Commission, and U.S. Department of State that are not included among agencies listed in Executive Order 12898 on Environmental Justice and (2) forward a recommendation to the Executive Council of the NEJAC to request that EPA urge Federal agencies that are not listed to subscribe voluntarily to the intent of the order.
- ✓ Recommended that the subcommittee write and forward to the Executive Council of the NEJAC, a letter requesting that EPA (1) discuss its agreement with the International City/County Management Association pertaining to the decision tree framework for community health assessment; (2) reference who approved the agreement; (3) provide the subcommittee with a report of activities conducted under the agreement; and (4) provide copies of all reports developed under the agreement.

**MEETING SUMMARY**

of the

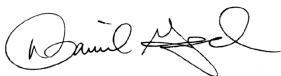
**INDIGENOUS PEOPLES SUBCOMMITTEE**

of the

**NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL**

**December 13, 2000  
Arlington, Virginia**

**Meeting Summary Accepted By:**



**Daniel Gogal  
Co-Designated Federal Official  
Office of Environmental Justice  
U.S. Environmental Protection Agency**

**Jennifer Hill-Kelley  
Acting Chair**

**Robert Smith  
Alternate Designated Federal Official  
American Indian Environmental Office  
U.S. Environmental Protection Agency**



**CHAPTER SIX  
MEETING OF THE  
INDIGENOUS PEOPLES SUBCOMMITTEE**

**1.0 INTRODUCTION**

The Indigenous Peoples Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Wednesday, December 13, 2000, during a four-day meeting of the NEJAC in Arlington, Virginia. Mr. Tom Goldtooth, Indigenous Environmental Network, continues to serve as chair of the subcommittee. Mr. Daniel Gogal, U.S. Environmental Protection Agency (EPA), Office of Environmental Justice (OEJ), continues to serve as the Designated Federal Official (DFO) for the subcommittee. Exhibit 6-1 presents a list of the members who attended the meeting and identifies those members who were unable to attend.

This chapter, which provides a summary of the deliberations of the Indigenous Peoples Subcommittee, is organized in five sections, including this *Introduction*. Section 2.0, *Remarks*, summarizes the opening remarks of the chair and the DFO. Section 3.0, *Focused Federal Agency Presentations*, summarizes discussions provided by representatives of Federal agencies about how those agencies are integrating environmental justice into their policies, programs, and activities that affect tribes and Alaskan Native villages. Section 4.0, *Presentations and Reports*, presents an overview of other presentations and reports received by the subcommittee, as well as summaries of the questions and comments on the part of the members of the subcommittee that those presentations and reports prompted. Section 5.0, *Draft Recommendations*, summarizes the draft recommendations and action items adopted by the subcommittee.

**2.0 REMARKS**

Mr. Goldtooth, opened the subcommittee meeting by welcoming the members present and Mr. Gogal. In his review of the guidelines of the NEJAC to remind the members and observers of the protocol to be followed, Mr. Gogal stated that the meeting was conducted for the members of the Indigenous Peoples Subcommittee. The comments of observers, rather than open discussion, would be welcome, he explained.

Exhibit 6-1

**INDIGENOUS PEOPLES SUBCOMMITTEE**

**List of Members Who Attended the Meeting  
December 13, 2000**

Mr. Tom Goldtooth, **Chair**  
Ms. Jennifer Hill-Kelly, **Vice Chair**  
Mr. Daniel Gogal, **DFO**  
Mr. Bob Smith, **Alternate DFO**

Mr. Brad Hamilton  
Mr. Moses Squeochs  
Mr. Dean B. Suagee  
Ms. Jana L. Walker

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

Ms. Sarah James  
Mr. Charles Miller

Mr. Goldtooth requested Mr. Moses Squeochs, Yakama Nation Environmental Program, Confederated Tribes and Bands of Yakama Nation and member of the subcommittee, lead the subcommittee in invocation in the "manner of his people." Mr. Squeochs first led the invocation through a song-prayer and then interpreted the meaning of the song to the audience.

Mr. Goldtooth added that because it is difficult to compartmentalize environmental protection because "everything is intertwined," this is why such an invocation is used to open meetings of the Indigenous Peoples Subcommittee. It is one way in which tribal elders teach Native peoples to always respect Mother Earth, he explained. He stated that starting with an invocation also serves to remind non-Native Americans of native peoples' connection with Mother Earth.

Remarking that this meeting would be his last as chair of the subcommittee and as a member of NEJAC, he stated that one of his constant missions is to educate representatives of Federal agencies on the traditional values of his people in protecting the environment of Mother Earth. Mr. Goldtooth added that he feels he has accomplished his objectives as chair.

### 3.0 FOCUSED FEDERAL AGENCY PRESENTATIONS

Mr. Goldtooth explained that the purpose of today's meeting is to discuss how considerations of environmental justice are being integrated into the policies of Federal agencies. For a discussion of issues affecting tribes, it is important to bring together representatives of Federal agencies responsible for the trust relationship, he said. Indians are different than the general public because of the legal and political relationship between tribes and the Federal government, he reminded the audience. He asked the presenters to provide a "snapshot" of how agencies are integrating environmental justice into their policies, programs, and activities affecting Tribes and Alaskan Native villages.

### 3.1 AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY

Mr. Francisco Tomei-Torres, Agency for Toxic Substances and Disease Registry (ATSDR), announced that Mr. Dean Seneca recently had been appointed Director, ATSDR Office of Tribal Affairs. The office, established in response to tribal requests, will assist with tribal-specific environmental health needs resulting from exposure to hazardous waste sites and pollution, he explained.

Mr. Tomei-Torres described ATSDR as an agency that can not promulgate regulations or authorize permits, nor does it possess enforcement power. Continuing, he described ATSDR as an agency created under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to ascertain the effects on public health of Superfund sites. Noting that one provision of the Executive order on environmental justice calls for agencies to assess disproportionately high health effects resulting from the activities of Federal agencies, he stated that ATSDR, as a "site-oriented agency," must be petitioned by an outside source to conduct site-specific health studies. ATSDR provides written or oral responses to address specific requests for information about health risks related to a particular site, chemical release, or hazardous material, he explained. These consultations, he continued, are intended to evaluate exposures and recommend specific actions, such as restricting use of or replacing water supplies, reducing site access, or removing contaminated material.

Pointing to a second provision of the Executive order to promote public participation, Mr. Tomei-Torres stated that ATSDR has been promoting public comment on community health studies. He then discussed the Board of Scientific Counselors, a Federal advisory committee that has established a standing subcommittee to address tribal issues. The board, comprised of scientists, provides advice to the U.S. Department of Health and Human Services (HHS) and ATSDR, on the adequacy of science in ATSDR-supported research and emerging problems that require scientific investigation, he said. ATSDR also has established an Office of Urban Affairs to address issues related to minority health, brownfields redevelopment, and environmental justice, he said, commenting that oversight of tribal affairs falls under ATSDR's Division of Health Assessment and Consultation. The agency has created a Community Involvement branch within the division with the function of researching community needs that can be addressed by ATSDR, he said. Mr. Tomei-Torres stated that ATSDR also has championed two brownfields redevelopment proposals submitted by tribes which have been approved for funding. He then re-emphasized that most contract funding comes from the Division of Health Assessment and Consultation.

He continued that ATSDR is one of the few Federal agencies to have prepared a written strategy on environmental justice. The strategy, currently under revision, focuses on community participation. Mr. Tomei-Torres stated that the strategy is designed not to designate a site as an environmental justice site simply because an affected community is an environmental justice population. Rather, he continued, ATSDR designates a site as an environmental justice site when ATSDR has not addressed a site with known environmental injustice. Currently, ATSDR has designated six sites as environmental justice sites, none of which are located on tribal lands, he said, adding that all but one site is located in EPA Region 4 and involves African-American communities.

Mr. Tomei-Torres then reported that ATSDR executes demographic studies to assess community needs by: (1) developing a geographic information system (GIS) map; (2) including diverse segments of the population in clinical studies; and (3) conducting investigations of cases of both multiple and cumulative exposure. Currently, he stated, no such studies had been undertaken on tribal lands; however, Congress recently had appropriated \$500,000 in funding for studies of fish consumption among Alaskan

Natives, he added. Mr. Tomei-Torres then expressed his belief that it is important to note that, before beginning the studies, representatives of the ATSDR had traveled to Alaska to meet with members of communities.

Mr. Tomei-Torres turned the focus of his presentation to the members of the subcommittee by asking for their views about the issues of sovereignty and “urban Indians.” Addressing the concept of sovereignty, he stated that Federal agencies are instructed to work with tribes on a government-to-government basis. However, he continued, he would like further guidance for pursuing such an approach with Alaskan Native tribes, who, he said, are not considered sovereign entities because they have not entered into a treaty with the United States government. Turning to the subject of “urban Indians,” or Indians who live outside the boundaries of a reservation typically in urban communities, Mr. Tomei-Torres requested direction on the issue of responsibility for the health of such individuals. He added that staff of his agency are in need of training in addressing the needs of Alaskan Native villages and urban Indians.

Mr. Tomei-Torres then suggested that ATSDR could transfer its function to tribes through cooperative agreements. The process, he continued, would be the same as that by which ATSDR currently delegates authority to state health departments. In sum, the delegation of the function of ATSDR to tribes would best meet the need to work with tribes on a government-to-government basis, he concluded.

In response to Mr. Tomei-Torres’ comments about tribal sovereignty, Mr. Squeochs stated that, if Federal agencies are to best fulfill their charge to work with tribes on a government-to-government basis, each agency must understand its specific role in relation to those of other Federal agencies in how it addresses the needs of tribes and Alaskan Natives. Continuing, Mr. Squeochs stated that treaties had set aside lands upon which Native people could live and sustain their culture. Agency delegation of the functions of Federal agencies to tribes, he declared, would act as an impetus for acculturation and assimilation of Native people into the culture outside the reservation.

Mr. Dean Suagee, First Nations Environmental Program, Vermont Law School and member of the subcommittee, stated that he had been disturbed to hear Mr. Tomei-Torres inquire whether all tribes are sovereign. Mr. Suagee pointed out that the sovereignty of tribes and Alaskan Natives is a right

guaranteed not solely under the provisions of a treaty. Noting that having a treaty with the United States is not prerequisite for tribal sovereignty, Mr. Suagee said that he understood the inquiry to have referred only to Alaskan Native villages. Mr. Suagee then said that, in *Alaska v. Native Village of Venetie Tribal Government*, in which the U.S. Supreme Court had ruled that lands owned by the Tribe were not “Indian country” and that therefore the Tribe did not have authority to impose a tax, the Court quoted with approval language from a concurring opinion in the 9<sup>th</sup> Circuit, saying that the intent of Congress in the Alaska Native Claims Settlement Act was to preserve Indian tribes as “sovereign entities for some purposes, but as sovereigns without territorial reach.” Thus, the Court recognizes that Alaska tribes are sovereign, he said.

Mr. Squeochs then stated that the charge of ATSDR, while limited, is key. ATSDR has the capability to assess health risks to Indian communities by conducting studies of communities in which subsistence life styles prevail, he said. Continuing, he stated that ATSDR is a sister agency to the Indian Health Service (IHS) and the Centers for Disease Control and Prevention (CDCP), all three of which are agencies under the banner of HHS. Those agencies can work more efficiently together and achieve greater effectiveness, especially within the realm of health risks arising from the pursuit of subsistence life styles, said Mr. Squeochs. The trust responsibility is key, he emphasized, if agencies are to execute their mandate properly on tribal and Alaskan Native lands.

Mr. Brad Hamilton, State of Kansas Native American Affairs Office and member of the subcommittee, then expanded upon Mr. Squeoch’s comment, stating that IHS currently restricts the services it provides to communities that are located in areas removed from urban centers. If IHS is to fulfill its mandate to provide health care to tribes and Alaskan Natives, he said, the agency must expand its service area to include less rural areas.

Mr. Goldtooth stated that a primary mission of environmental justice is to ensure that Federal agencies effectively provide community outreach to alleviate disproportionate adverse health or environmental effects on low-income or minority communities. The consensus developed over the years, he continued, is that many segments of minority population, including Native Americans, have been left unprotected by Federal agencies. In the case of “urban Indians,” he continued, the

Federal government still has a responsibility to provide services, especially because, during the 1950s, it was Federal policy to relocate many tribal peoples to urban areas.

ATSDR, Mr. Goldtooth continued, has an obligation to serve urban populations of tribal members while the issue is under debate, rather than deny service until a decision has been made. He then stated that, notwithstanding the debate about responsibility, it remains the responsibility of Federal agencies to work on a government-to-government basis with tribes and Alaskan Native villages. He then observed that working with all tribes and Alaskan Native villages appears to be an unmanageable task for by Federal agencies. A major issue for all tribes and Alaskan Natives, he continued, is whether their populations are affected by the processes of bioaccumulation and biomigration of toxic substances. Mr. Goldtooth then stated that ATSDR is responsible for determining whether tribes and Alaskan Natives indeed are affected by those processes. It seems, however, he observed, budget constraints always preclude research in that area.

Mr. Tomei-Torres responded that other Federal agencies, such as IHS, can provide more meaningful services than ATSDR is capable of offering. IHS, he continued, has a large environmental justice grant program for community outreach and has just announced the availability of grant funds totaling \$1.5 million for Native American Research Centers for Health. Mr. Tomei-Torres then invited the members of the subcommittee to forward their comments to his office. He emphasized that his office champions research and is involved actively in establishing a national coordinated research agenda.

In response to Mr. Tomei-Torres' reference to the establishment of a national coordinated research agenda, Ms. Jana Walker, Law Offices of Jana Walker and member of the subcommittee, called the attention of the participants to a document prepared by the Indigenous Peoples Subcommittee titled *Recommendations on Environmental Health Needs Within Indian Country and Alaska Native Villages* (November 2000). The document presents recommendations on infrastructure, research needs, and collaboration among tribes, as well as recommendations for actions to be taken by various Federal agencies, she said. She then added that the document is available to the general public, as well as representatives of Federal agencies that have an interest in Native American health needs and research.

### 3.2 U.S. DEPARTMENT OF DEFENSE

Mr. Len Richeson, American Indian and Alaskan Native Liaison, Office of the Deputy Under Secretary of Defense for Environmental Security, U.S. Department of Defense (DoD), began his presentation by emphasizing that DoD has a trust responsibility to tribes that was included as part of the United States' obligations under its original treaties with Indian tribes. To fulfill that trust responsibility, he said, DoD's first responsibility is to address adverse environmental and health effects on or near tribal and Alaskan Native lands that result from DoD activities and operations. Risks can originate with such operations as the storage, treatment, and disposal of hazardous waste, he noted, while unexploded ordnance (UXO) and unsafe buildings and debris also can present problems. A preliminary assessment of the potential effects of DoD activities on Indian lands had indicated nearly a \$300 million inventory of projects. Currently, he added, DoD is currently working with more than 150 tribes that suffer from adverse environmental effects.

Mr. Richeson then reviewed the objectives of DoD with regard to its relations with tribes. First, he stated, the Department is making every effort to comply with Executive Order 12898, as well as the Presidential memorandum on the conduct of government-to-government relations with Native American Tribal Governments. Second, he continued, DoD now is implementing a policy on consulting with American Indian and Alaskan Natives that had been developed through a process that included, he added, direct consultation with tribes, the Congress of the United States, and the National Tribal Environmental Council (NTEC). The policy, he added, is available to the public on the Internet at:

[www.denix.osd.mil/denix/public.html](http://www.denix.osd.mil/denix/public.html). Mr. Richeson stated that it is important to DoD that its employees know and understand the principles outlined in the document.

Mr. Richeson then stated that DoD was working to implement congressional direction to provide funding for addressing the effects of DoD activities on tribal lands. Further, Congress had charged DoD with developing a database to better track and understand those effects, he said.

Mr. Richeson then discussed DoD's accomplishments in the effort to address the adverse environmental effects of its activities on Indian lands. He first described the Native American Lands Environmental Mitigation Program (NALEMP), which provides funding to mitigate

environmental effects on Indian lands from past military activities. Second, he continued, DoD was developing the Native American Environmental Tracking System (NAETS) to define environmental priorities among projects to address environmental effects of DoD activities on Indian lands. He added that many Alaskan Natives have charged that DoD impacts in Alaska are under-represented in the data because the populations affected are small and live in rural areas. Continuing, he explained that Alaskan Natives maintain that the relative risk models do not consider adverse effects related to the subsistence lifestyles of many Alaskan Natives. The NAETS, he suggested, will help DoD better assess the effects of its activities on such populations. Finally, Mr. Richeson discussed the NALEMP report to Congress for the year 2000, which described DoD's efficiency and effectiveness in using the funds allotted to mitigate adverse environmental effects on tribal lands.

Mr. Richeson stated that the NALEMP budget is \$10 million under the Defense Appropriations Act of 2001. He explained that the funds were to be used to mitigate adverse environmental effects on lands of Federally recognized tribes and land conveyed under the Alaskan Native Claims Settlement Act (ANCSA). Specifically, he continued, the funding is to be used to address problems that are not addressed under DoD's traditional environmental programs. Under NALEMP, he explained, DoD is able to use an unconventional assessment of risk that is better suited to the needs of tribes and Alaskan Natives than more traditional methods of risk assessment. Further, NALEMP is "a tool for maximizing the leverage of tribal environmental resources" and creating foundations for tribes to build upon, said Mr. Richeson. NAETS provides accountability to the NALEMP by setting funding priorities in an Internet-based user system and tracking adverse environmental effects, mitigation activities, and resolutions adopted by DoD and tribes. NAETS can be accessed at: [www.denix.osd.mil/denix/public.html](http://www.denix.osd.mil/denix/public.html).

Mr. Richeson then described DoD initiatives for 2001. Those initiatives include execution of NALEMP funds, sensitivity training for both military and civilian personnel of DoD, the gathering of additional data on the effects of DoD's activities on Indian lands, and implementation of the Executive Order 13084 on consultation and coordination with Indian tribal governments, he said. Tribal consultation, he continued, includes contacting tribes and Alaskan Native villages before DoD undertakes a project. Such consultation will occur early in the decision-making process, and often as

that process goes forward, he continued. Mr. Richeson then stated that training is of paramount importance, and open to employees of all Federal agencies. Well-trained personnel can implement the program more effectively than those who lack training, he pointed out. One result is improvement in the quality of the data gathered, he added. Such improved data, he emphasized, will provide greater leverage to the effort to obtain funding to address environmental issues on tribal lands.

### 3.3 U.S. DEPARTMENT OF JUSTICE

Ms. V. Heather Sibbison, Counsel to the Assistant Attorney General, Indian Resource Section, U.S. Department of Justice (DOJ), first stated that her office is housed in the Agency's Environmental and Natural Resources Division. She then stated that although DOJ does not have an environmental justice policy, it promotes environmental justice through its litigation. The primary method by which her office can advance the principles of environmental justice for Native Americans, she continued, is through enforcement of existing laws that protect Indian people. She then described two initiatives undertaken by DOJ, one she characterized as internal and the other external.

DOJ's internal initiative, Ms. Sibbison said, is the promotion of communication and cooperation between the Agency's Indian Resources Section and the Environmental Enforcement Section. The purpose of the initiative is to share knowledge about issues of concern to tribes that is available in the agency's Indian Resources Section with personnel of the Environmental Enforcement Section who are unfamiliar with the process of consultation with tribal governments. She then stated that the initiative had been effective in conveying the cultural sensitivity required for effective tribal consultation and coordination. In addition, representatives of her office attend public meetings to improve the office's performance in the area of public outreach, she said. Further, legal issues that usually are not considered in an enforcement action and that stem from treaty rights and trust responsibility are being addressed more effectively, she said. Continuing, she stated that cases that her office undertakes are flagged immediately if they involve potential effects on Indian lands.

Ms. Sibbison then discussed DOJ's Community Oriented Policing Services (COPS) initiative that was created to promote community policing and add 100,000 "community policing officers" to communities. Under the Tribal Resources Grant

Program portion of the program, funds are provided to Indian tribes to enhance their law enforcement infrastructure and increase community policing efforts; a substantial amount of money is earmarked for training for tribal law enforcement personnel and for enforcement, Ms. Sibbison continued. Tribal law enforcement personnel can be trained to identify and investigate environmental crimes, she said. Tribal enforcement of tribal environmental programs, she added, often is more effective than enforcement by nontribal entities. Currently, DOJ's Office of Community Oriented Policing Services is integrating environmental enforcement into the standard tribal law enforcement training, she continued. Further, the office is developing specific training in tribal environmental law enforcement, she added, crediting Mr. Gogal for his efforts to develop that training curriculum.

Finally, Ms. Sibbison stated that the Bureau of Indian Affairs (BIA) have entered into a partnership with the U.S. Forest Service (USFS), an agency of the U.S. Department of Agriculture (USDA), to support a community outreach program that will provide training related to the National Environmental Policy Act (NEPA). The agencies are interested in integrating environmental enforcement into their training programs, as well, she reported.

Ms. Walker inquired whether COPS funding could be extended to support tribal environmental courts that would have jurisdiction over tribal matters. Ms. Sibbison responded that the issue had yet to be brought to her attention; however, she said, she would raise the issue at the next meeting of the work group. Mr. Suagee added that, in Indian country, civil penalties work much better than criminal action. Continuing, he stated that using the funding available to build an administrative infrastructure to support environmental enforcement might be more effective than focusing exclusively on courts. Further, he stated, if the enforcement infrastructure were built first, the burden on tribal courts could be reduced because the court could limit its review to the administrative record when an enforcement action comes before it. Mr. Suagee then expressed a desire to further discuss the development of the tribal environmental enforcement training curriculum.

### **3.4 ADVISORY COUNCIL ON HISTORIC PRESERVATION**

Ms. Valerie Hauser, Coordinator, Native American Program, Advisory Council on Historic Preservation (ACHP), began by stating that ACHP

had been created as an independent Federal agency under the National Historic Preservation Act of 1966 (NHPA) to provide a forum for influencing Federal activities, programs, and policies as they affect historic resources. Continuing, she stated that ACHP is responsible for administering Federal historic preservation programs and advising the President and the Congress about matters pertaining to historic preservation. Further, the agency is responsible for educating both government employees and the general public about the regulations that govern historic preservation. However, she continued, most of the work of the agency involves oversight of the effort the agency refers to as the "NHPA Section 106 process." Ms. Hauser explained that Section 106 of NHPA requires that Federal agencies consider the effects of their actions on historic properties, provide the council an opportunity to comment on Federal projects before they are implemented, and ensure that Federal agencies consider historic preservation in planning and decisionmaking. Ms. Hauser emphasized that any property to which an Indian tribe ascribes significant religious or cultural value is an historic property.

Ms. Hauser then described the 1992 amendments to the NHPA, which expanded responsibility under the act to include direct consultation with Indian tribes and Native Hawaiian organizations during the process of identifying historic properties. She added that Federal agencies must show a reasonable and good-faith effort to identify appropriate tribes and Native Hawaiians to consult, be respectful of tribal sovereignty, and recognize the unique government-to-government relationship between the parties.

Ms. Hauser stated that ACHP had launched a number of training courses that are open to both Federal agencies and tribes. However, ACHP focuses on providing outreach by training tribes about their rights related to historic preservation, she pointed out. She stated that training tribes and Native Hawaiians is a more effective means of ensuring enforcement of those rights and protecting their role in the consultation process than relying on the actions of Federal agencies. Further, ACHP works to facilitate the efforts of tribes to develop their own historic preservation programs, she said.

Ms. Hauser stated that she is the sole staff of ACHP's Native American Office. She added that the council has a staff of 32 and a small budget, some \$3 million per year. Most of the council's funding, she continued, is used to facilitate

participation by tribes in the consultation process. Ms. Hauser stated that she maintains a database of almost 800 tribal points of contact, through which she can disseminate information about initiatives and historic preservation.

The ACHP does assist Federal agencies in historic preservation planning by helping integrate tribal consultation into agency policy, continued Ms. Hauser. She stated that ACHP had worked with the Department of the Army in developing its Tribal Consultation Guideline and had facilitated consultation with tribes and Native Hawaiians when the Army had developed its policy on historic preservation. Further, she said, her office had coordinated a day-long tribal consultation training session for the Federal Communications Commission (FCC) and representatives of the wireless communication industry. The training session, she explained, was conducted with the assistance of five tribes and the National Association of Tribal Historic Preservation Officers (NATHPO). ACHP held the session to provide representatives of the FCC the opportunity to develop the capability to conduct consultation with tribes with regard to the construction of cell towers. The effort, she noted, had facilitated the development of wireless communication in Indian Country while avoiding adverse effects on cultural resources.

Ms. Hauser concluded her presentation by stating that the NHPA requires the President to appoint a Tribal Native or Hawaiian representative as a member of the Council. In addition, the ACHP offers NATHPO a nonvoting seat on the council, to serve in an advisory capacity at the policy level for members of the council, and at the program and policy level for ACHP staff.

Ms. Jennifer Hill-Kelly asked Ms. Hauser at what point does tribal consultation begin during the National Pollutant Discharge Elimination System (NPDES) general permit process conducted in EPA Region 5. Ms. Hauser replied that tribal consultation must begin in the initial stages of permit evaluation. Generally, she added, the Section 106 process follows the procedure prescribed in NEPA. When Mr. Suagee observed that EPA has a poor record of compliance with Section 106 of the NHPA, Ms. Hauser agreed and extended that observation to include many other Federal agencies, as well. Unfortunately, she continued, most agencies consider the Section 106 process a last-minute step; therefore, the ability of tribes to discuss alternatives in the planning stages is "limited," she added. The ACHP wishes to see Federal projects permitted in a way that does no irreparable damage to cultural resources, she said.

Mr. Suagee then stated that the Section 106 process is intended to protect properties that either qualify for or are listed in the National Register of Historic Places (NRHP). Many Native American sites are not listed on the NRHP, he pointed out, because tribes have kept information about sacred sites confidential. Agencies often do not consider historic properties in the initial project planning stages because the property is not listed in the NRHP, and they do not put enough effort into identifying potentially eligible sites, only to find later that the affected properties include significant cultural resources, he explained. Once a project nears the implementation phase, he declared, it may be impossible to conduct meaningful consultation with tribes.

### **3.5 U.S. DEPARTMENT OF THE INTERIOR**

Ms. Elizabeth Bell, Counsel to the Assistant Secretary, BIA, U.S. Department of the Interior, began her presentation by informing the subcommittee that the Assistant Secretary of the Interior was scheduled to sign BIA's Consultation Policy pursuant to the Executive Order on consultation and coordination with Indian tribal governments. She noted that the signing ceremony at which the Assistant Secretary, Tribal leaders, members of Congress, and staff of the White House are expected to attend, would be held in Seattle, Washington at the same time the NEJAC would be meeting in Seattle, she said. The policy, she said represents one and one-half years of work on the part of tribal leaders and a task force of the agency.

Ms. Bell stated that BIA's consultation policy focuses on principles very similar to those set forth in the recommendations included in the subcommittee's consultation guide. First and foremost, she said, the BIA consultation policy recognizes the unique legal relationship between tribes and the Federal government, including the concepts of self-government, tribal sovereignty, self-determination, treaty rights, and the trust and the government-to-government responsibilities of the U.S. government. Consultation, as it relates to the unique legal relationship between tribes and the Federal government should be conducted as a next step, she continued. Further, the agency should favor maximum participation of tribes through deference to tribal laws and policy, she said. Ms. Bell stated further that the agency should maximize the use of technology for the dissemination of information necessary for meaningful consultation.

Continuing, Ms. Bell stated that BIA's policy establishes a preference for tribal laws and policy when setting rules and regulations for negotiated rule-making with tribal governments. BIA also endorses the use of a task force of tribal leaders to work in partnership with BIA in the development of policy. She said that the method had been very successful thus far and had been applied during the development of the agency's new trust regulations, which she added, were expected to be in place by year's end. The primary focus of the policy, she continued, is true two-way communication between tribes and Federal decision makers. She then stated that the BIA recognizes that agreement will not always be reached. However, when agreement is achieved, the BIA is responsible for identifying the various positions and record why decisions were made, she added. Ms. Bell then stated that the BIA is accountable for documenting the outcomes of consultation through quarterly and annual reports. Further, the BIA requires that all agency staff receive training in Indian law, policy, protocol, and procedures every two years.

Ms. Bell stated that the BIA does not have a specific environmental justice policy; rather, she said, the BIA uses its Indian Affairs Manual (IAM), a collection of all the BIA's guidance documents, through which it encourages and fosters the goals of environmental justice. She explained that the IAM includes three environmental policies: a general environmental protection policy, a policy that outlines the specific responsibilities of various representatives of the BIA, and a policy on compliance with NEPA. She then stated that each of the policies refers specifically to Executive Order 12898 and environmental justice and describes how BIA will integrate environmental justice into its environmental policies. She then stated that the BIA wishes to develop a more formal environmental justice policy.

Ms. Bell next stated that the BIA does not conduct specific studies to address the unique human health and environmental hazards in Indian country. Rather, she explained, the agency contracts with other Federal agencies to conduct specialized studies. Further, the BIA provides funding for ATSDR to undertake elaborate studies when health crises arise, she said. She added that the BIA had done much work under Natural Resource Damage Assessment and Recovery actions to quantify the value of natural resources to Indian communities. The challenge to the agency, she said, is to derive a dollar value for a traditional natural resource that has significant subsistence and cultural value. She then stated that, for

Superfund assessments and remedial actions that are conducted in Indian country, the agency also accounts for the significance of the unique subsistence and cultural values of natural resources. She described natural resource damage assessments and recovery actions, which provide supplemental funds under CERCLA to agencies that have trust responsibilities in common, and the integrated resource management planning program which funds "holistic" natural resource planning projects in Indian country.

Ms. Bell then stated that the primary hindrances to the BIA's environmental program are insufficient funding and staff. BIA's environmental and natural resource management program receives almost \$14 million annually, she reported, with \$2 million allocated for staff. The agency therefore receives \$12 million annually to remediate an identified \$365 million in environmental liability in Indian country, she pointed. She also stated that the BIA is subject to an Executive order to undergo an environmental audit of all BIA facilities, which, she speculated, probably would reveal even greater liability.

Continuing, Ms. Bell stated that priorities set by tribal leaders "drive the allocation of budget within BIA." She stated that programs essential to basic survival "naturally remain at the top of the priority list while the environment hovers around the sixth or seventh spot." For example, she added, the agency as a whole had received a large increase in funding, but funding for the environmental program had increased only slightly because of the number of programs having priority over it.

Ms. Bell then stated that BIA is committed to interagency collaboration. As an example of such collaboration, she identified DOJ's COPS program. Under that program, she suggested, it may be possible to obtain additional funding for tribal law enforcement, an area in which there are severe inadequacies. Further, the COPS program might provide funding for training judges in tribal environmental law, she said.

Ms. Bell then described a new interagency memorandum of understanding (MOU) that focuses on the environment, public health, and natural and cultural resources. The MOU, she said, is primarily an administrative efficiency document. Presentations on the MOU, she continued, had been made at both EPA's annual environmental management conference and the annual meeting of the NTEC. NTEC also had made the document available for public comment



on its Internet web site, she added. The MOU, she continued, establishes a steering committee comprised of senior managers of all Federal agencies except the U.S. Department of the Treasury, the U.S. Department of Labor, and the U.S. Department of Veterans Affairs. The document is expected to be presented to the White House's Domestic Policy Council for final interagency review before the end of the year, she said, adding that the BIA is working to have the document signed before the end of the Clinton administration. Once signed, the document would supercede the MOU of 1991 between the BIA, the U.S. Department of Housing and Urban Development (HUD), IHS, and EPA, except in areas in which the new MOU does not duplicate IHS guidance, she said. Under the provisions outlined in the MOU, an overall domestic policy work group would replace the environmental justice subgroup of the interagency work group on the environment and natural resources, she added.

Ms. Bell then outlined the next steps the BIA would take. She stated the first step is to encourage tribal leaders to make the environment a priority. Next, she stated, strengthening the NEPA process can be an effective means of ensuring progress toward fulfillment of the goals of public participation. She stated that the NEPA process must be conducted at the tribal level so that tribes can take action to make holistic natural resource management planning decisions. Further, she stated, the BIA must strengthen all tribal environmental programs. A great deal of economic development is taking place in Indian country, she pointed out, and states have attempted to assert regulatory jurisdiction. It is imperative, she declared, that tribes establish tribal environmental programs, including standards and codes specific to the individual tribe, rather than adopt state environmental standards.

Ms. Bell then reported that the state of Maine had applied for delegation to the state of NPDES permitting authority and had included Indian country in that application. The state had used freedom of information laws to obtain tribal records that tribal leaders had refused to release, she said. The tribal leaders consider the documents government records that are not subject to the jurisdiction of the state, she continued. The state, however, has held the tribal leaders in contempt of court and threatened to jail them. BIA had been unable to negotiate the matter with the state, and Federal courts had been unwilling to intervene, she added. Ms. Bell then stated that the repercussions of the decisions made in the case will be limited primarily to Maine, but suggested that other states might consider taking similar actions.

Ms. Bell then described the development of the Declaration on the Rights of Indigenous Peoples. There is disagreement, she said, about whether governments can use the word "peoples" in the implication of self-determination and collective rights. The BIA was developing a unified United States position on the issue and hopes to have completed a resolution before the end of the current administration, she reported. She then stated that most of the countries which formerly opposed the declaration currently were coming to recognize the self-determination of indigenous peoples as a collective right to be exercised within the nation-state, to an extent short of independence.

Ms. Hill-Kelly asked Ms. Bell how EPA works with Tribes to implement Federal environmental laws in Indian country in cases in which states pressure tribes to adopt state environmental standards. Ms. Bell responded that EPA was developing core water quality standards under the Clean Water Act, but noted that the agency's efforts had met with resistance on the part of some tribes because of a perceived threat to tribal sovereignty, she said. Tribes could use such standards as a stop-gap measure when a state claims jurisdiction, she suggested. The challenge facing the new administration would be to persuade tribal peoples that Federal stop-gap measures do not threaten tribal sovereignty; rather, their use frees tribes to develop their own programs, she added. Mr. Suagee observed that threats to tribal sovereignty are real and that those who challenge tribal sovereignty draw support from a number of decisions in the field of Indian law by the U.S. Supreme Court over the last quarter century, decisions that should be acknowledged as judicial activism. He suggested that tribes should endorse the core water quality standards, as the Indigenous Peoples Subcommittee had a year earlier, because this proposal helps to shield tribes from challenges to their sovereign authority. Ms. Bell stated her belief that the problem is lack of quality communication with tribes, adding however, that BIA does not have the resources "to go from tribe to tribe."

Ms. Hill-Kelly then asked Ms. Bell how effective the effort to instill the concept of environmental justice among staff of the BIA had been in fostering change at the BIA. Ms. Bell responded that the effort had been more successful at EPA than at the BIA because the BIA has no office specifically responsible for environmental justice. Further, she stated, it has been difficult to obtain recognition of environmental justice as a priority of the BIA. Although there is agreement among staff of the

BIA that Indian populations are disproportionately affected by environmental issues, she stated, choices must be made, for example, between education and the environment. Ms. Bell then stated that, when the tribes themselves give greater emphasis to environmental justice, the concept will be given higher priority by the BIA. The structure of BIA gives deference to tribal priorities, she pointed out; therefore, the priorities of the BIA change as tribal priorities change.

Mr. Goldtooth then raised the issue of improving the NEPA process in Indian country. He stated that one issue that arises repeatedly is whether BIA reservation superintendents can fulfill the obligation of ensuring compliance with requirements under NEPA for consultation when BIA is ultimately responsible for ensuring the NEPA process is fulfilled. Mr. Goldtooth asked Ms. Bell what the BIA was doing to ensure that superintendents fulfill that obligation. Ms. Bell stated that the BIA had identified 3,000 agency staff and 2,000 tribal staff who need training; the agency, she added, estimates that it can train approximately 500 people each year. She then stated that resources for training are limited. Therefore, she said, the challenge is to establish a higher priority for NEPA training than for training in other areas.

Mr. Suagee then asked where specifically the environmental liability, estimated by BIA to be \$360 million, is found. Ms. Bell responded that the BIA had taken a very liberal approach to the development of inventory of such liabilities. The agency considers any land or facility within the responsibility of BIA that is affected by environmental damage to be a liability. She stated that the facility management division of the BIA maintains a database that contains information about facilities in Indian country. When estimating environmental liability, the agency had searched the database and sent staff to agency offices to assess known environmental problems, she reported. She added that the agency was looking forward to the environmental audit as an opportunity to develop a more realistic figure. She then stated that the inventory had not been distributed.

Mr. Suagee then suggested that NEPA training should focus on the decision-making process, rather than treating NEPA as just a compliance requirement. NEPA, he continued, is designed to be a decision-making process through which adverse effects on the environment can be avoided. He observed that simply focusing on compliance excludes the fundamentals of public

participation and development of alternatives. Unless alternatives are developed early in the NEPA process, he said, the focus becomes mitigation, rather than avoidance of such effects. Ms. Bell added that, in Indian country, the greatest pressure originates with business councils, which in turn are under pressure from investors to comply with regulations rapidly; such circumstances, she pointed out, inhibit meaningful consultation.

### **3.6 U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

Mr. James Floyd, Office of Public and Indian Housing, HUD, began his presentation by stating that HUD is one Federal agency that fights for social and economic justice. The major issue HUD faces in that effort, he said, is enlisting the cooperation of tribes and other Federal agencies. Pointing to programs that support social and economic justice within Indian Country, he noted that HUD developed the Native American Housing and Self-Determination Act (NAHASDA) in 1996, which reorganizes the system of Federal housing assistance to Native Americans by eliminating several separate programs of assistance and replacing them with a single block grant program. In conjunction with the IHS and the BIA, NAHASDA had been intended to give tribes more sovereignty in making housing decisions and to empower tribes to make their own environmental "clearances," he said. Although many tribes do consider NAHASDA as an exertion of tribal sovereignty, he pointed out, some tribes consider NAHASDA a threat to sovereignty because it holds tribes accountable for any consequences that might arise from their decisions or environmental clearances.

Continuing, Mr. Floyd stated that the problem most likely is a result of poor communication between the agency and tribes. He then observed that Federal agencies are eager and quick to take action to address perceived problems with tribes, but are slow to listen carefully and accurately define the problems that tribes identify. He then stated that the opposite holds true for discussions between agencies; agencies are quick to listen, but slow to take action, he stated. A task force on interdepartmental agreements is preparing a collaborative interdepartmental agreement to better coordinate Federal programs in American Indian and Alaskan Native communities, he added. Mr. Floyd then reported that the task force had identified what he called "the platinum rule: "Do unto others as they would have you do unto them." Mr. Goldtooth then asked Mr. Floyd whether HUD

has, on staff at the headquarter level, a tribal environmental expert or advisor designated specifically for the environmental clearances prescribed under NAHSDA. Mr. Floyd answered that HUD offers training through its Chicago and San Francisco offices.

Mr. Suagee stated that, to his knowledge, HUD is the only Federal agency that has the authority to allow a non-Federal entity to certify compliance with environmental laws. Tribes can certify environmental compliance through NAHASDA, he continued, but must waive sovereign immunity, thereby opening themselves to liability in Federal courts. Therefore, he said, tribes or HUD must certify compliance and accept accountability. A third option under the regulations, he added, is for the tribe to prepare the environmental assessments with HUD preparing the Finding of No Significant Impact. Mr. Suagee noted that he was unaware of the extent to which that option has been exercised. Further, he said, he had discovered that any discussion of the third option had been omitted from a NAHASDA training manual.

### 3.7 U.S. FOREST SERVICE

Ms. Dorothy FireCloud, Tribal Government Program Manager, Cooperative and Internal Forestry, U.S. Forest Service (USFS), USDA, first stated that the environmental justice policies of the USFS include an agency directive on environmental justice issued in December 1997 and a guidance on environmental justice, and an interim strategic outreach plan for ensuring the participation of minority and Indian communities in all activities of USFS. Further, she reported, the agency had sponsored environmental justice training in Alaska and co-sponsored a roundtable meeting held in Albuquerque, New Mexico. USFS also had provided environmental justice training through the Southwest Strategies Tribal-Federal Subcommittee, she continued; Southwest Strategies is a group of 13 Federal agencies. In addition, USFS was co-sponsoring the Forum on the Environment to be held in Alaska in February 2001, she said.

Ms. FireCloud then described the tribal relations task force that prepared a report outlining specific issues confronting USFS. To address the issues set forth in the report, she reported, USFS had established an implementation team that includes 10 subgroups focusing on the following areas:

- Consultation
- Tribal Relations Directive

- Training
- Contracts, Grants, and Agreements
- Availability of Forest Products for Traditional Cultural Uses
- Forest Products Programs
- Occupancy and Use of National Forest System Lands
- Infrastructure of Tribal Relations Program
- Monitoring of Tribal Relations Program
- Evaluation of Tribal Relations Program

The agency plans to establish another subgroup to focus entirely on implementation of environmental justice within the agency, Ms. FireCloud said, adding that the agency currently is awaiting comments from tribes on the umbrella consultation document the agency had created in response to the Executive order on consultation. However, she added, the time line established in the Executive order had placed constraints on the agency's ability to address public comments.

Mr. Robert Ragos, Office of Civil Rights, USFS, began his presentation by first stating that USFS, the largest organization in USDA, has just begun making progress in identifying environmental justice issues related to its activities. Continuing, he stated that USFS understands that environmental justice is pervasive in all its programs. USFS had taken the position that all problems resulting from agency activities that affect communities are environmental justice issues, he explained.

Mr. Ragos then reported that a primary focus of the agency is its public outreach strategy. The agency, he said, believes that for environmental justice to be successful requires collaborative interagency engagement and stewardship of communities. Further, the strategy calls for the development of infrastructure, systems and processes, and a database that will provide staff with the resources needed to engage the appropriate communities when making decisions.

Mr. Ragos next stated that the agency had begun to establish a dialogue with individuals at all levels who play a role in environmental justice, including representatives of academia, minority populations, and Federal agencies. The dialogue in turn is used to provide focus in development of the environmental justice program, he continued. The agency, said Mr. Ragos, was implementing the principles of environmental justice in its projects. He then described the project known as the Forest for the People and People for the Forest Forum. The project, he explained, has three phases: preparation of materials, development of

partnerships, and action activities undertaken in response to issues identified through the public dialogue. The agency plans to begin the project on the west coast and expand to other geographic locations to initiate public dialogue on USFS activities around the nation, he stated. Mr. Ragos then introduced Mr. Jeff Romm, College of Natural Resources, University of California at Berkeley, to discuss the partnership development phase of the project.

Mr. Romm began by stating that environmental justice problems related to forestry issues result from the inequitable distribution of opportunity and influence and the consequential decline of forests. The environmental justice movement is giving voice to those excluded from or under-represented in such claims, he pointed out. Through its Forest for the People and People for the Forest Forum project, USFS works with communities to define the relationship those communities would like to build and maintain with USFS. Mr. Romm then stated that more than 350,000 Native Americans live in California, but only 10,000 live on reservations. Native populations living in urban areas have no engagement in the activities of USFS, he pointed out. Another under-represented voice, he said, is the labor force, made up primarily of people of color, working in forests. USFS had begun to consider the implications for program activities should these groups be given voice, he said. A final element of the project, continued Mr. Romm, is collaborative stewardship and opportunities for tribal reservation foresters and national foresters to develop practicable management programs. He then stated that a symposium will be held at the conclusion of the project to provide people an opportunity to speak openly about their needs.

In response to a question posed by Ms. Hill-Kelly, Mr. Ragos stated that all line staff of USFS are responsible for ensuring that activities of the agency have no disproportionate effects on communities. Ms. FireCloud then announced that USFS planned to hold a training session in Palm Springs, California, for all agency officers; she suggested that an hour of the training could be devoted to a presentation on environmental justice by a member of the NEJAC subcommittee.

Mr. Goldtooth stated that the subcommittee would follow up on Ms. FireCloud's request. He then asked how many Native Americans are members of the staff of USFS. Ms. FireCloud responded that there are few Native Americans on the staff; however, she added, USFS had established the American Indian Advisory Council to ensure that

more Native Americans are brought into the agency. Mr. Ragos added that Native Americans currently make up less than two percent of the agency's workforce. Mr. Goldtooth then asked at what level in the agency Native Americans generally are employed. Ms. FireCloud responded that Native Americans are employed primarily at the technical level, but one Native American is a district ranger. Mr. Goldtooth then reminded Ms. FireCloud and Mr. Ragos that under-representation of Native Americans in the USFS workforce is considered an environmental justice issue.

### 3.8 U.S. DEPARTMENT OF ENERGY

Mr. Derrick Watchman, Director of Indian Affairs, U.S. Department of Energy (DOE), opened his presentation by stating that the primary mission of DOE is the maintenance, research, and development of nuclear weaponry and energy resources. He then stated that his primary function is that of tribal facilitator. DOE, he continued, had been slow to recognize the special relationship between tribes and Alaskan Natives and Federal agencies. He reported that he had been discussing policy with appropriate representatives of DOE, but acknowledged that he had found it difficult to make progress.

Mr. Watchman then stated that many DOE properties are located on or near Tribal lands. Turnover of staff at such properties had made it difficult to achieve sustained success in addressing environmental problems affecting the properties, he added. Currently, he continued, only one percent of DOE employees are Native American. Therefore, he stated, DOE works to help tribes develop their own environmental management programs. Further, he stated, there is "a major electrical supply divide" in Indian country. DOE is attempting to provide electricity generated by Federal generating facilities to tribes, he continued. In addition, DOE is developing renewable resources, he said.

Mr. Watchman stated that DOE facilities had exercised protocols for consultation with tribes improperly. The facilities had assumed that direct communication with states constitutes consultation with tribal stakeholders, he explained. Continuing, DOE is emphasizing that only direct communication with tribal leaders and representatives fulfills requirements for consultation with tribes. Further, he said, DOE is establishing the role of Native American liaison to facilitate better communication with tribal communities. DOE also is ensuring that all

appropriate tribal leaders and representatives are included on master lists of points of contact, he added. Mr. Smith asked how DOE ensures that staff members are indeed true Native Americans. Mr. Watchman responded that DOE had solicited suggestions from members of tribal communities about how to address that issue.

Mr. Squeochs then asked Mr. Watchman how activities related to the sampling and monitoring of air and groundwater in the vicinity of Los Alamos, New Mexico, had affected subsistence activities of the pueblo communities. Mr. Watchman responded that DOE had recommended areas tribal people should and should not enter, but had left all the lands open. He then stated that the Pueblo of Jemez, New Mexico has an environmental department that performs the necessary monitoring and testing. However, he added, the pueblo currently must send the data to DOE for validation; the pueblo however, would prefer to have trained staff members who could interpret the data. In addition, the pueblo would like tribal members to have access to education and training that will qualify them to work for DOE, said Mr. Watchman.

Mr. Suagee then turned to renewable energy sources. He called the attention of the members of the subcommittee to a pamphlet developed in 1994 under a joint cooperative project between HUD and DOE that discusses energy efficiency and solar energy design in housing. He stated that the pamphlet had been sent to all the tribes in a single mass mailing, but that had been the extent of the effort to disseminate the information. However, he emphasized, the principles of energy efficiency and renewable energy sources discussed in the document are keys to sustainable development in Indian country. Mr. Suagee then stated that Mr. Watchman had failed to mention the energy efficiency technical assistance programs funded by DOE. Continuing, Mr. Suagee stated that those programs are a classic example of how Federal assistance programs administered by states fail to reach Indian communities because, unless states take responsibility or have a statutory set-aside, tribes receive no technical assistance from the states.

Further, said Mr. Suagee, NAHASDA expresses a policy of supporting access to the standard mortgage market for Federally insured mortgages. However, he stated, to qualify for Federally insured mortgages, houses must comply with the model energy code. DOE and HUD provide assistance to state governments in upgrading their building codes to incorporate the model energy codes, he

explained. However, DOE has never considered tribal governments a part of its mission for this assistance program because the relevant federal statute does not mention tribes and because the people in this part of DOE apparently do not realize that state building codes are not applicable on tribal lands, he continued. He then stated that, until a procedure for providing technical assistance to tribes in incorporating energy efficiency into their building codes has been put in place, tribal housing would continue to be second- and third-rate. Therefore, he declared, Indian families will continue to bear much higher energy costs than necessary.

Agreeing with Mr. Suagee, Mr. Watchman stated that tribal appropriations in DOE had been "hit or miss" over the past few years. For example, he said, Congress had passed the National Energy Policy Act which included Title 26 that called for the development of energy resources in Indian country. However, DOE had never embraced the provision because of lack of funding from Congress, said Mr. Watchman. He emphasized that the National Energy Policy Act would become a major issue, but stated that he was unsure what priority rank Indian country would be given at the national level. He then stated he was "positive" that renewable energy is becoming a greater priority and will be required in the very near future. For example, he pointed out, DOE currently recommends that by 2010, 10 percent of all energy be obtained from renewable sources. Further, considering the remoteness of many tribal and Alaskan Native lands, renewable energy sources are the only feasible means of providing electricity to such lands.

Mr. Watchman then stated that DOE, EPA, DOI, and DOJ had hosted an American Indian and Alaskan Native environmental justice roundtable meeting in Albuquerque, New Mexico, to bring stakeholders together to define responsibilities. A primary theme of discussions held during the meeting, he continued, was that Federal agencies must take a "holistic approach" when implementing policy in Indian country. Federal agencies also must follow the lead of tribal governments and take tribal culture and values into consideration when formulating policy that will affect tribal lands, he said.

Noting that DOE had funded the development of a tribal risk assessment policy by a university, Mr. Goldtooth asked to be provided a copy of the document if indeed it had been completed. Part of the initiative for the development of the tribal risk assessment policy had been to give direction to

DOE in addressing contaminated sites in Indian country, continued Mr. Goldtooth. Further, it had been hoped the initiative would better define “how clean is clean” in Indian country. Mr. Watchman responded that he would have a member of DOE’s environmental management staff contact Mr. Goldtooth about the matter. He also stated that there is an on-going debate about “how clean is clean.” He then reminded the members of the subcommittee that the State Tribal Working Group meets quarterly to discuss relationship of tribes with DOE.

### **3.9 EPA ENVIRONMENTAL JUSTICE TRAINING COLLABORATIVE**

Ms. Deldi Reyes, EPA Region 8, first explained that she was representing the EPA’s Environmental Justice Training Collaborative (EJTC), a network of EPA staff who are pooling their resources and attracting support from outside EPA, including the support of states, community-based groups, and academia. EJCT promotes environmental training that complements existing environmental justice training programs provided by Federal agencies, she said. Ms. Reyes announced that EJCT had initiated several initiatives, including:

- Creating a workshop on fundamentals that encourages trainers to modify educational content to meet the specific learning needs of participants in a particular workshop and establish a baseline for the development of which more advanced workshops can be developed.
- Developing a methodology and materials essential to the training of environmental justice trainers.
- Establishing an annual environmental justice training institute to provide a forum for continuing development and refinement of training materials, improve the skills of the National Environmental Justice Training Team, and trainers in techniques of evaluation and needs assessment.

In developing the training curriculum, EJTC was seeking the views and support of all stakeholders, said Ms. Reyes. She then stated that the collaborative particularly was soliciting advice into the identification of environmental justice training issues within natural and cultural resources, NEPA, and in public participation. In addition, she stated that the EJTC would welcome the views of the members of the subcommittee to assist EJTC

in defining learning objectives related to environmental justice in Indian country. She then requested that a member of the subcommittee attend one of the EJTC’s pilot training courses.

### **3.10 U.S. DEPARTMENT OF EDUCATION**

Ms. Karen Suagee, Office of Education Research and Improvement, U.S. Department of Education, began her presentation by telling the members of the subcommittee that she had been working actively with Executive Order 13096 on American Indian and Alaskan Native Education that had been signed in August 1998. An interagency task force of 14 Federal agencies and EPA is guiding work under the Executive order, she said. The priorities established under the Executive Order are to develop a research agenda, to develop education resource guidance, and to develop a policy on Federal collaboration and cooperation, she continued. In addition, the task force is creating a Federal database that identifies sources of Federal data, she said.

The task force holds community forums at which Tribal leaders, educators, researchers, practitioners, and policymakers come together to facilitate the provision of support and advice to the task force, continued Ms. Suagee. She added that the dialogue engaged in during the forums reflects many of the themes expressed during the current subcommittee meeting. The areas of interest communicated to the task force, she said, include community wellness, enhancement of tribal traditions, revitalization of Native languages, documenting authentic Indian history, environmental education, and adult education. Ms. Suagee then stated that education in Indian country is “very fragmented.” Thus far, the task force had coordinated its activities with more than 560 tribes, concentrating on kindergarten through grade 12. Approximately, 90 percent of Indian children attend non-Indian schools, and there is a tremendous amount of mobility among them, she added. Ms. Suagee then discussed a recent mandate of the state of Montana that requires that all school districts in which a certain number of Indian children are enrolled adopt curriculum that is reflective of tribal history and traditions. She emphasized that the mandate is the first of such educational mandates to require tribal consultation.

### **4.0 PRESENTATIONS AND REPORTS**

This section summarizes the presentations made and reports submitted to the Indigenous People Subcommittee.

#### 4.1 MR. SCOTT JONES, LOWER BRULE SIOUX TRIBE OF SOUTH DAKOTA

Mr. Scott Jones, Public Relations Director, Lower Brule Sioux Tribe of South Dakota, began his presentation by thanking the members of the subcommittee for their hard work. He then turned to the subject of the Indian General Assistance Program (GAP). Federal agencies, he stated, were seeking the views of tribes about, as well as their involvement in the development of, numerous environmental impact statements (EIS), environmental assessments (EA), and environmental management plans. However, he continued, he has been informed that GAP funds cannot be expended to assist tribes in implementing the NEPA process. Specifically, he said, he had been told that GAP funds cannot be used for activities conducted in response to requirements set forth under NEPA, or for the examination of the various types of government documents that propose action alternatives, policies, or principles of management. Mr. Jones stated that, absent financial support, tribes find it difficult to deal with the enormous tasks of providing meaningful comment on the development of these documents and supporting involvement in their development.

Mr. Jones then discussed grievances related to the failure of the Omaha District of the U.S. Army Corps of Engineers (USACE) to comply with Federal law. He stated that the Omaha District had constructed a series of six earthen dams on the Missouri River; the project, he continued, constituted the taking of tribal trust lands. He then stated that the taking of tribal trust lands requires an Act of Congress. No such legislation had been enacted, said Mr. Jones, nor had the appropriate Federal action been taken before the project went forward. Therefore, he pointed out, the construction of the dams had been a clear violation of existing Federal law, including the Native American Graves Protection and Repatriation Act (NAGPRA), the NHPA, NEPA, the American Indian Religious Freedom Act (AIRFA), the Fifth Amendment to the Constitution, various Executive orders, and various internal regulations of USACE. Further, the wave action of the dam water is undercutting riverbanks where ancestral burial sites are located, thereby exposing graves, destroying sites that are listed on the NRHP, and eroding land along the boundary of the Lower Brule Reservation, which includes 80 miles of riverbank of the Missouri River that falls within both Federal land to which the tribe retains certain rights and Tribal Trust lands. The tribe affected by the dams retains haying and grazing rights, as well as subsurface mineral rights, he added.

Mr. Jones stated that the tribe had received the EIS prepared for the dam project, which he described as enormous, on the closing date for public comment on the permit. USACE had granted an extension, he continued, but the closing date of the extension falls on the closing date for comments on another EIS. Therefore, he said, information for both EIS' must be reviewed at the same time despite the tribe's limited resources.

Mr. Jones then stated that the tribe had estimated conservatively that 110 acres of tribal land is lost each year because of the projects. Considering that the taking of tribal trust land requires congressional action and that USACE had taken no repertory action, he declared, his office could only conclude that USACE had been given official latitude to violate existing Federal laws.

Mr. Jones then suggested that representatives of Federal agencies should travel to Indian country to see firsthand the problems confronting tribes on Indian lands. Doing so would help Federal officials to develop a better understanding of the effects of their actions and decisions on tribes in Indian country, he suggested. In addition, those representatives could hear directly from tribes how policies and activities work "at the ground level." Mr. Jones then stated his belief that it also is important that representatives of Federal agencies come to Indian lands and hear directly from the tribes because, just as with the Lower Brule Lakota, tribal culture is an oral one and the tribal elders still communicate through traditional oral presentation techniques.

Mr. Jones then thanked the members of the subcommittee for their work on the two documents the subcommittee had prepared, the *Guide on Consultation and Collaboration with Indian Tribal Governments* and the *Public Participation of Indigenous Groups and Tribal Members in Environmental Decision Making*. He stated his hope that the documents would evolve into a Federal requirement that would guarantee tribal participation in Federal activities that affect tribal lands, as well as effective tribal consultation.

Mr. Jones then discussed the overall inability of prominent tribal representatives to participate in the consultation process to facilitate the protection of sacred sites. Continuing, he stated that such areas as Yellowstone, the Missouri River, the Black Hills of South Dakota, Pipestone Quarry in southwest Minnesota, Slim Buttes/Cave Hills Formations in South Dakota, Devil's Tower National Monument in Wyoming, Scottsbluff in Nebraska, the Little Big Horn in Wyoming, the

Badlands in south west South Dakota, and the Fort Pierre National Grasslands are managed by the National Park Service, USFS, the Bureau of Land Management, or USACE. He stated that the agencies are holding the tribal sacred sites “hostage” under the guise of management for a public that has no concept of, or insight into, the central importance of those sacred places to the continued existence of the Lakota people. The adverse environmental effects on these sacred sites result from the degradation of the quality of air and water in the vicinity of those sites, and increases in noise levels, the influx of tourists, and the development of facilities to accommodate tourism. Mr. Jones then stated that tribes need the help of the Indigenous Peoples subcommittee in bringing their concerns to the attention of the Federal government. Exhibit 6-2 provides a list of projects to protect sacred Indian sites.

#### Exhibit 6-2

#### LIST OF PROJECTS TO PROTECT SACRED INDIAN SITES

The following individuals are working to preserve sites deemed sacred by the Lakota Sioux tribe:

- Elaine and Charley Quiver, Chief Johnson Holy Rock, and Chief Oliver Red Cloud have been working to preserve areas of the Black Hills, South Dakota; and Mato Tipila at Devil’s Tower in Wyoming.
- Arvol Looking Horse and Alan Hare (Keeper of the Sacred Pipe) have been working to preserve the Lakota sacred Pipestone Quarry in Minnesota and areas of the Black Hills in South Dakota.
- Tim Mentz and the Standing Rock Lakota have been working to preserve and protect the Slim Butte/Cave Hills formations and areas of the Black Hills, both in South Dakota.
- Terry Gray and Freemont Fallis have been working to preserve the Front Range area of Colorado
- Francis Brown and the Medicine Wheel Coalition have been working for the protection of the centuries old Medicine Wheel site in northern Wyoming.

Mr. Smith suggested that Mr. Jones contact Ms. Tanya Fish, EPA American Indian Environmental Office at (202) 260-7939, to obtain more information about the purposes and activities for which funds available under GAP can be used, as well as guidance related to allowable uses of such funds. Mr. Smith then described the new

Performance Partnership Grant (PPG) Program, under which tribes can streamline the effort to meet reporting requirements by providing the required information for as many as 17 grants in a single report. The matching requirement under the PPG program currently is 5 percent for the first 2 years, he continued; however, he added, that requirement might be increased to 10 percent, depending upon the social or economic status of the tribe. The high matching percentages required under a number of Federal grant programs default to 5 or 10 percent when such grants are incorporated into the PPG program, continued Mr. Smith. Mr. Williams then added that tribes can obtain additional funding for work under NEPA through the BIA. Mr. Williams then stated the White House Council for Environmental Quality (CEQ) also offers NEPA training for at least two Tribal members a year; CEQ covers the costs of air travel, lodging, and the course itself, he added.

Mr. Suagee then repeated Ms. Bell’s earlier comment that environmental programs have little priority at the BIA; they therefore are least likely to be funded by that agency, he pointed out. Mr. Suagee then observed that there appears to be more activity on Lower Brule Lakota lands than can be managed with the current tribal resources.

Mr. Goldtooth added that he had encountered a similar problem – too much work for the available environmental staff to accomplish – when he was an environmental director in Minnesota. Referring to Ms. Bell’s earlier statement that BIA funds are allocated on the basis of priorities set by the tribes, he suggested that tribal leaders begin to give higher priority to environmental concerns in Indian country.

Ms. Hill-Kelly stated that the USACE permit for the dams must be certified and that, under the certification process, the effects of the undertaking on the tribe must be considered. Such consideration, she continued, would include the effect of the project on cultural resources. Mr. Jones responded that EPA Region 5 had coined new language that states that the impact on cultural resources is an interrelated environmental impact. Mr. Jones then stated that the tribe had conducted independent research to assess the adverse effects on the sacred sites of the construction, operation, and maintenance of the dams. That research, he charged, had been ignored. In the eyes of the tribe, he continued, USACE wanted the project to go forward and was “willing to push the project through at any cost.”



Mr. Goldtooth responded that the issues faced by the Lower Brule Tribe provide a prime example behind the purpose of the NEJAC. Continuing, he stated that many individuals who could provide help and guidance to Mr. Jones were present at the current meeting of the NEJAC.

#### **4.2 INTER-TRIBAL COUNCIL ON UTILITY POLICY**

Mr. Robert Gough, Secretary, Inter-Tribal Council on Utility Policy (COUP), first stated that six dams operated by the USACE are located on the upper Missouri River. He then stated that tribes soon would be able to buy hydroelectric power from the series of six dams, which have a direct effect on tribal land. While researching how to best supply the power from the dams to the tribal lands, he continued, COUP had discovered a huge wind resource. Mr. Gough stated that, under the 1944 Amendments to the Rural Electrification Act, surplus power from reservoir projects was to be provided to the Secretary of the Interior to be transmitted for use at the "lowest possible rates." Under the Act, he explained, tribes, which are not utilities, are entitled to preference in energy sources. Paradoxically, because of their relationship to DOI and consistent with the Act's original mission to provide inexpensive power to rural and underdeveloped regions, tribes are entitled to "cheap power," but the Federal government cannot sell power to tribes because they are not considered utilities, he pointed out. The tribes along the upper Missouri successfully lobbied for a waiver from the Western Area Power Administration (WAPA) that allowed tribes to purchase power, said Mr. Gough. The waiver established a precedent for all other areas regulated by WAPA, he observed. He then stated that he had mentioned the current events because it marked the start to ending injustice to tribes. Previously, he pointed out, the Federal government had used tribal lands and water to generate a \$1.5 billion energy economy of which tribes received almost nothing.

Mr. Gough then stated that, while engaging in the 10-year negotiations about providing hydroelectric power to tribes, his organization was involved in integrated resource planning (IRP), he continued. Specifically, COUP is exploring ways to incorporate renewable energy sources into the IRP process. His organization, he said, had discovered that wind, a renewable energy resource, could provide more energy than hydroelectric plants. He stated that South Dakota has the best wind in the Nation for use in generating power because the wind speed is particularly constant, blowing at

approximately 17 to 20 miles per hour. Mr. Gough then stated that more than 250 gigawatts of wind power could be generated on tribal lands alone, while hydroelectric plants can generate only 2 gigawatts of power along the Missouri River.

Mr. Gough then stated that he had served as chair of the Climate Change Workshop held in Albuquerque, New Mexico, two years earlier. The primary concerns expressed at that workshop related to carbon dioxide. At that event, he continued, tribes agreed to take a lead in promoting renewable energy for "the sake of the planet, the nation, and the local economy." The potential wind energy on the tribal lands in South Dakota far exceeds the needs of the reservations, he pointed out. Therefore, said Mr. Gough, tribes could provide power thereby decreasing reliance on nonrenewable sources of energy, such as coal, and curtailing the need for USACE to draw down the Missouri River.

Mr. Gough then described the Green Tag Program proposed by COUP, under which tribes could transfer the energy generated by tribal wind farms onto the Federal grid. Further, the Federal government could "green tag" that energy and buyers could be certified as users of "green power," he suggested. In addition, he continued, Federal installations could use the power. The tribe would be able to sell power economically; serve the tribes' treaty partner, the Federal government; and develop the local economy. He then stated that tribes simply need the authority to sell electric power. Mr. Gough stated that the authority to sell renewable energy would help fulfill the tribal entitlement to preference in energy sources and help meet tribal environmental and economic needs, as well.

A member of the audience asked about the effect of transferring the authority of the Federal power grids to private industry. Mr. Gough responded that the Federal government would retain certain controls over industry. Most important, he said, the Federal government could give preference to companies that use green power generated on tribal lands. Further, he continued, if a Federal agency enters into a power marketing contract with tribes under which it agrees to buy a certain percentage of power, tribes can use that contract as security when applying to banks for economic development loans.

### 4.3 UPDATE ON MEDICINE LAKE HIGHLANDS

Mr. Gogal provided an update about the environmental justice issues and status of proposed power plant projects at Medicine Lake Highlands. He stated that, after months of discussions between the Pit River Tribe, EPA, and the Native Coalition, USFS and BLM disapproved one of the two proposed power plants. The record of decision could serve as a model for Federal decisions that affect cultural resources, he said. The outcome was the result of very skillful and persistent work by the tribe and the Native Coalition, Mr. Gogal pointed out. Continuing, he said that the second power plant proposal had been approved and currently was under appeal brought by the Tribe and the Native Coalition. He stated that EPA was continuing to provide review and assistance to the tribe, including:

- Evaluation of possible problems related to air permits associated with the facility
- Provision of financial assistance to the tribe through the GAP program
- Assignment of staff to monitor the proposed development and provide assistance

### 5.0 DRAFT RECOMMENDATIONS

Mr. Goldtooth opened the subcommittee's discussions of the development of draft recommendations of the Indigenous Peoples Subcommittee to be forwarded to the Executive Council of the NEJAC. In addition, Mr. Goldtooth asked Mr. Williams to offer ideas and suggestions for making environmental justice sustainable in Indian country.

The member of the subcommittee were asked to consider the following question in its efforts to identify specific recommendations: "How do Federal agencies integrate the principles of environmental justice principles into their policies, programs, and activities that affect tribes and Alaskan Native villages?" After some deliberation, the members offered the following recommendations:

- Financial and technical resources and training for tribes and Federal agencies should be provided to enhance awareness and understanding of laws, regulations, and policies that affect Indian country.

- Each Federal agency should develop a system, such as DoD's NAETS program, to "track" complaints related to environmental justice that are levied by tribes, so that the agency can be held accountable for responding equitably to tribal concerns and needs; transparency is important.
- When Federal agencies coordinate their activities, ACHP should be included as early as possible in the planning stage.
- Interagency coordination should be enhanced to effectively protect the environment and public health, provide sustainable development to leverage inadequate Federal funding, and overcome the limits of each agency's mission to deliver services to tribes (such as BIA funding for environmental liabilities).
- The long-range environmental planning of EPA and other Federal agencies should include environmental liability; information in the possession of the BIA should be made available to other Federal agencies and to tribes.
- The recommendations generated at the environmental justice roundtable meeting of Federal agencies and tribes held in Albuquerque, New Mexico, should be reviewed thoroughly and implemented after additional comment has been obtained from tribes and tribal organizations.
- Partnerships between EPA, other Federal agencies, and tribal colleges and the American Indian Higher Education Consortium (AIHEC) should be strengthened to assist tribes in building environmental, natural resource management, and sustainable development capacity.
- Effort should be made to ensure that Federal agencies are fully aware of the Executive Order on tribal colleges, which can help bring support to those institutions.
- Demographic information about the academic disciplines studied by Native American students and the placement of such students in different types of institutions of higher education should be collected to determine how much tribal community resources potentially are available for capacity-building.

- Federal agencies should solicit information from each tribe about what that tribe needs, and the Federal agencies should seek support from Congress to meet those needs, such as reprogramming funds, or redirecting staff.
- The Federal government and the Interagency Working Group on Environmental Justice should create a document that identifies resources available to assist tribes in protecting the environment and public health, and promoting economic development.
- Develop lists of contacts at Federal agencies, including at the local and regional levels; such lists should be distributed to tribes so tribes can encourage or lead interagency coordination.
- Federal agencies should pool resources and create shared environmental justice programs to address tribal issues.
- Develop non-Federal sources of funding for projects and programs (such as renewable energy).

Mr. Williams then offered several suggestions for making environmental justice sustainable in Indian country. Identifying cultural sustainability as the goal of any such effort, Mr. Williams outlined the following recommendations to be implemented by Federal agencies and tribes.

- Define for agencies what constitutes coordination and collaboration.
  - Define for agencies what is required to foster capacity-building within tribes.
  - Identify what works best for tribes in working with agencies. The NEPA model seems to work best for tribes.
  - Evaluate environmental effects by drawing on a tribe's traditional knowledge of its physical environment, such as determining the loss of species in cases in which loss of species equals loss of culture.
- Identify what Federal agencies should do to fulfill their trust responsibility – agencies should take responsibility for fulfilling this obligation or tribes will be forced to seek redress for trust mismanagement.
  - Establish a NEPA process that will address sustainability for Alaskan Natives and protect their health; doing so will connect the people to the land.
  - Use the NEPA process to build a record of their needs. Tribes should define the process and use the interagency process to “deal” with it.
  - Demand “truth in advertising;” without an accurate view of the history of Native Americans included in the text books used in public schools, the general public otherwise will remain largely ignorant about Indian affairs and will not support efforts to meet tribal needs and goals.
  - Include among the factors evaluated during the NHPA Section 106 process an overview of relevant historical information.
  - Federal agencies and applicants that conduct environmental assessments (EA) should, at the beginning of the EA process, meet the requirements set forth in Section 106 of NHPA. The statement that tribes should be consulted “early and often” should be replaced with a statement that tribes should be consulted according to “purpose and need.”
  - Enact a Tribal Environmental Policy Act through which tribes can clearly explain their use of their homelands and their objectives and purposes in maintaining land uses.

**MEETING SUMMARY**

of the

**INTERNATIONAL SUBCOMMITTEE**

of the

**NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL**

**December 13, 2000**  
**Arlington, Virginia**

**Meeting Summary Accepted By:**



**Wendy Graham**  
Office of International Activities  
U.S. Environmental Protection Agency  
Designated Federal Official

**Alberto Saldamondo**  
Vice-Chair

**CHAPTER SEVEN  
MEETING OF THE  
INTERNATIONAL SUBCOMMITTEE**

**1.0 INTRODUCTION**

The International Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Wednesday, December 13, 2000, during a four-day meeting of the NEJAC in Arlington, Virginia. Because Mr. Arnoldo Garcia, National Network for Immigrant and Refugee Rights, who continues to serve as chair of the subcommittee, was unable to attend the meeting, Mr. Alberto Saldamondo, General Counsel, International Indian Treaty Council and vice-chair of the subcommittee, served as acting chair. Ms. Wendy Graham, Office of International Activities (OIA), U.S. Environmental Protection Agency (EPA), continues to serve as the Designated Federal Official (DFO) for the subcommittee. Exhibit 7-1 presents a list of the members who attended the meeting and identifies those members who were unable to attend.

This chapter, which provides a summary of the deliberations of the International Subcommittee, is organized in six sections, including this *Introduction*. Section 2.0, *Remarks*, summarizes the opening remarks of the vice-chair and the DFO. Section 3.0, *Dialogue on Trade and the Environment*, summarizes the subcommittee members' discussions about issues related to trade and the environment and includes summaries of presentations by representatives of the United States Trade Representative (USTR) and the U.S. Department of State (State Department). Section 4.0, *Presentations and Reports* presents an overview of each presentation and report, as well as a summary of relevant questions and comments from the subcommittee. Section 5.0, *Public Dialogue*, summarizes the discussions of the subcommittee related to public comments referred to the subcommittee by the Executive Council of the NEJAC. Section 6.0, *Action Items*, summarizes the action items considered and adopted by the subcommittee.

**2.0 REMARKS**

Mr. Saldamondo opened the subcommittee meeting by welcoming the members present, Ms. Graham, and Mr. Haywood Turrentine, Birmingham (Alabama) Urban Impact Board and chair of the NEJAC, whom Mr. Saldamondo said he had asked to monitor the morning presentation

Exhibit 7-1

NAME OF THE SUBCOMMITTEE
<b>Members Who Attended the Meeting December 13, 2000</b>
Mr. Alberto Saldamondo, <b>Vice-Chair</b> Ms. Wendy Graham, <b>DFO</b>
Mr. Jose Bravo * Ms. Beth Hailstock Mr. Tseming Yang
<b>Members Who Were Unable To Attend</b>
Mr. Albert Adams Mr. Fernando Cuevas Mr. Arnoldo Garcia, <b>Chair</b> Mr. Robert Holmes Ms. Caroline Hotaling Ms. Maria del Carmen Libran
* Mr. Bravo served as proxy for Mr. Garcia

on trade and the environment. Mr. Saldamondo explained that Mr. Turrentine's presence indicated the interest the NEJAC had taken in issues related to trade policy.

Mr. Saldamondo also expressed disappointment that many members of the subcommittee had been unable to attend the meeting. For that reason, he noted, the meeting would focus on the presentations to be offered and on concerns related to the topics of those presentations, rather than the activities and direction of the International Subcommittee.

Ms. Graham commented that Mr. Garcia had expressed regret that he had been unable to attend the meeting, which would have been his last as chair. Mr. Garcia served on the NEJAC for four years and as the chair of the International Subcommittee for the past two years, she said. Ms. Graham added that Mr. Saldamondo was to become the next chair.

### 3.0 DIALOGUE ON TRADE AND THE ENVIRONMENT

Mr. Tseming Yang, Vermont Law School and member of the International Subcommittee, introduced the discussion of issues related to trade and the environment by welcoming the representatives of USTR and the State Department. In August 1999, he then reported, the NEJAC and EPA jointly sponsored the Roundtable on Environmental Justice on the U.S.-Mexico Border, held in National City, California. At that meeting, environmental and public health problems affecting communities were discussed, said Mr. Yang. Participants involved in those discussions acknowledged the causal relationships between increased development, traffic, and industrialization in the border region and environmental and public health effects, he explained. Since the roundtable meeting, EPA had begun to address such issues in a serious manner, said Mr. Yang, adding that many issues (such as the development of infrastructure, rising population growth in the border region, failure to enforce existing laws, the effects of industrialization, and exploitation of resources), however, have been determined to be outside the scope of EPA. Mr. Yang then declared his hope that the discussion to be conducted during the current meeting would prove mutually educational for both the members of the USTR and the State Department and the members of the International Subcommittee.

Mr. Turrentine added that, as moderator, his role should be one that would facilitate the process, rather than one in which he would take an active part in the discussion. He then provided the representatives of USTR and the State Department with background information about the framework and function of the NEJAC in general and the International Subcommittee in particular. Mr. Turrentine added that he would work with the members of the International Subcommittee to build an understanding of both the opportunities for collaboration between the Executive Council of the NEJAC and the USTR and State Department and the limitations on such collaboration.

Dr. Alan Hecht, Principal Deputy Assistant Administrator, OIA, identified what he considered four important areas to be addressed in discussions of trade policy and the environment:

- The participation of all Federal agencies in environmental justice issues
- A better understanding on the part of all parties involved that the public can and should provide input through a clearly defined process

- The overall process by which trade policy is set
- Examination of issues in the border region and review of the lessons learned through the implementation of the North American Free Trade Agreement (NAFTA).

#### 3.1 Overview of the Functions of the United States Trade Representative

Ms. Carmen Suro-Bredie, Office of the USTR, began her presentation with a description of the history of trade policymaking, citing the Boston Tea Party and relating that event to the protests against the World Trade Organization (WTO) that had occurred earlier in the year in Seattle, Washington. The results of the Boston Tea Party protests, she explained, were “massive” trade sanctions against England and the birth of the concept of “no taxation without representation.”

Today, trade policy is under the control of Congress, she continued, explaining that the power to create a trade tariff in the form of a tax on imported goods falls to Congress. Under the Fast-Track trade act, legislation that had expanded the President’s power to negotiate trade deals with other nations, that authority is lent temporarily to the Executive branch and only for a specific purpose, she said. Ms. Suro-Bredie stated that, during negotiations of trade agreements, the Executive Branch often wants the authority to negotiate with other countries terms beyond simple increases or decreases in tariff levels. Simply stated, she continued, under fast-tracking, which Congress failed to renew in 1997, the Executive Branch effectively is able to change law, because the President is able to present to Congress legislation approving and implementation trade agreements on which Congress votes without amendment and within a fixed period of time. Those conditions are important because the other country or countries involved in the negotiation would be skeptical about changes in the agreement made by Congress, she said. She added that countries wish to have timely resolution of the negotiation process.

The system works, she continued, although difficulties arise when the system is forced to move quickly. To try to alleviate the “push and pull,” she continued, USTR is attempting to give more advance notice to the various trade subcommittees of Congress of the issues and to allow more time for negotiators to step back and think through the effects of various stipulations on domestic programs, industry, and policies. Exhibit 7-2

### OVERVIEW OF THE UNITED STATES TRADE REPRESENTATIVE

In 1974, the United States Congress established the private-sector advisory committee system to ensure that U.S. trade policy and the objectives of trade negotiations adequately reflect the commercial and economic interests of the United States. In three subsequent trade acts, Congress expanded and enhanced the role of the system. The advisory committees provide and advice about U.S. negotiating objectives and bargaining positions before the nations enter into any trade agreements, about the operation of any trade agreements once entered into, and about other matters relating to the development, implementation, and administration of U.S. trade policy. The system is arranged in three tiers:

The system is structured in three tiers:

- The President's Advisory Committee for Trade Policy and Negotiations (ACTPN), which is mandated by law, considers issues related to trade policy in the context of the overall national interest. In the past, the membership of the committee consisted primarily of representatives of business and labor; currently, the one third of the members represent environmental, academic, or consumer concerns. The President appoints 45 members for two-year terms. The 1974 Trade Act requires that the membership of the ACTPN broadly represent key economic sectors affected by trade.
- Representatives to six policy advisory committees are appointed solely by the United States Trade Representative (USTR) or in conjunction with other Cabinet officers. Those committees that are managed solely by the USTR are the Intergovernmental Policy Advisory Committee and the Trade Advisory Committee on Africa. Policy advisory committees managed jointly with the U.S. departments of Agriculture, Labor, and Defense and EPA are, respectively, the Agricultural Policy Advisory Committee, the Labor Advisory Committee, the Defense Policy Advisory Committee, and the Trade and Environment Policy Advisory Committee. Each committee provides advice based on the perspective of its specific area.
- Twenty-six advisory committees, which are authorized by law, are organized in two areas: industry and agriculture. Representatives are appointed jointly by the USTR and the secretaries of Commerce and Agriculture. Each sectoral or technical advisory committee represents a specific sector or commodity group (such as textiles or dairy products) and provides specific technical advice about the effect that trade policy decisions may have on that sector. Four functional advisory committees provide cross-sectoral advice on customs, standards, issues related to intellectual property, and electronic commerce. Previously, committees in this tier had included representatives of business and industry; no environmental or labor interest groups were represented. Currently, representatives of environmental organizations are assigned to each of the committees. Such groups include the Sierra Club, Friends of the Earth, and other groups that have exclusive environmental focuses that may not include environmental justice.

provides an overview of the trade policy advisory system the Congress established in 1974.

Ms. Suro-Bredie then introduced Mr. Dominic Bianchi, Office of Intergovernmental Affairs and Public Liaison, USTR, who presented information about the role of his office. He expressed his hope that the role of the liaison office would be defined more precisely during the upcoming Administration than it had been previously. The USTR, he continued, had been created by Congress, but its negotiating capabilities had been "lent" to the Executive Branch. Although the power of the Executive Branch is limited – it does not have the power to regulate commerce – Congress provides authority to the Executive Branch within specified parameters, he explained. Exhibit 7-3 presents additional information about Executive Order

13141, which addresses the environmental review of trade agreements.

Citing recent lawsuits and the protests against the WTO that occurred in Seattle in May 2000, Mr. Bianchi stated his personal belief that the system of private-sector advisory committees does not function as it should and that the USTR and the new administration should engage Congress on how to include stakeholders more effectively when making trade policy. He also added that the USTR and the new administration would need the help of Congress to effectively address the public's concerns about how the USTR receives advice from all affected stakeholders. However, Mr. Bianchi stated, Congress had been "shying away" from re-examining process.

### GUIDELINES FOR IMPLEMENTATION OF EXECUTIVE ORDER 13141: ENVIRONMENTAL REVIEW OF TRADE AGREEMENTS

On December 13, 2000, the United States Trade Representative (USTR) and the White House Council on Environmental Quality (CEQ) released final guidelines for implementing the provisions of Executive Order 13141: Environmental Review of Trade Agreements. The Executive order, signed by President Clinton in November 1999, commits the United States to careful assessment and consideration of the environmental effects of future trade agreements, including written reviews of certain major trade agreements.

Executive Order 13141 institutionalizes the use of the environmental review as an important policy tool for helping to identify the potential environmental effects of trade agreements, both positive and negative, and for helping to facilitate consideration of appropriate responses when such effects are identified. The order requires review of certain major trade agreements: comprehensive multilateral trade rounds, multilateral or bilateral free-trade agreements, and major new agreements affecting natural resource sectors. Environmental reviews also may be warranted for other agreements on the basis of such factors as the significance of reasonably foreseeable environmental effects, although the USTR anticipates that most sectoral liberalization agreements will not require review.

In developing the environmental guidelines, the USTR and the CEQ sought to involve all interested stakeholders. Draft guidelines implementing the Executive order were published in July. The views of the public, identified through a series of public workshops, a public hearing, and public comment periods, played a significant role in shaping the final product. The USTR and the CEQ also consulted closely with key members of Congress and the various trade advisory committees, including the Trade and Environment Policy Advisory Committee. Other federal environmental, economic, and foreign affairs agencies also collaborated with the USTRs and the CEQ in developing the guidelines.

The final guidelines provide for the integration of environmental considerations into the development of trade policy objectives. They provide significant opportunities for public participation, including early public outreach and consultations about what the U.S. objectives in trade agreements should be, an open and public process for determining the scope of the review, and opportunities to comment on draft reviews. The guidelines have been posted on the USTR Web site: <[www.ustr.gov](http://www.ustr.gov)>.

Previously, the United States had conducted environmental reviews of several major trade agreements, including the North American Free Trade Agreement in 1992 and 1993 and the Uruguay Round Agreements in 1994. In November 1999, the United States prepared a study of the economic and environmental effects of the proposed Accelerated Tariff Liberalization Initiative with respect to forest products.

The USTR is completing review of the Jordan Free Trade Agreement concluded in October and is conducting environmental reviews of the Free Trade Area of the Americas and the Singapore and Chile free trade agreements currently under negotiation.

The USTR, Mr. Bianchi continued, is attempting to make the process by which trade rules and standards as transparent as possible and to establish a system that includes points of contact are adopted who can provide information to the public and conduct briefings throughout negotiations. Transparency refers to the visibility and clarity of the laws, regulations, and procedures, he explained.

The USTR, Mr. Bianchi reminded the subcommittee, is a small agency, composed of 180 employees with approximately 20 to 40 individuals on loan from other agencies. In addition, he continued, the USTR is affected by the

decreases in the budgets of other Federal agencies. Because of those budget cuts, he explained, fewer individuals are loaned on "detail." For example, he said, fewer people from EPA who have expertise in trade and the environment are available to the USTR when such expertise is needed. Roughly 80 to 85 percent of the annual budget of the USTR, or approximately \$25 million, is allocated for salary, with the remainder allocated for travel, he pointed out. The USTR has three offices, continued Mr. Bianchi, with the primary office in Washington, D.C.; two employees in Geneva, Switzerland; and one employee in Brussels, Belgium.



Mr. Bianchi then described how trade policy had changed in the 50 years since Congress created the USTR. At that time, he explained, trade accounted for less than 10 percent of the gross national product (GNP) of the United States, and only a few people were interested in trade policy. That scenario changed over the decades, and changed radically over the most recent decade, he continued. He added that trade currently accounts for almost one-third of the United States GNP. The effects of trade, he explained, have become magnified as trade has come to play an increasingly significant role in the world economy.

To include public participation in the process, Mr. Bianchi continued, the USTR had prepared an Internet Web site that focuses on providing information about trade to individuals who, in the past, have expressed interest in trade issues. The USTR also conducts briefings for the general public at which information about priority issues is disseminated, he said. The USTR also posts notices in the Federal Register, he stated. In response to Mr. Yang's question about the location at which such briefings are held, Mr. Bianchi stated that public hearings usually are held in Washington, D.C.; however, during the months leading to the WTO conference in Seattle, the USTR held briefings in six locations around the country to solicit advice in preparation for that meeting, he said.

After Mr. Bianchi's presentation, Mr. Saldamondo commented that he held a different view of the USTR and that his view was similar to the view of the Seattle protesters. Communities, he explained, experience the negative effects of trade. For example, he continued, people living in maquiladoras, U.S. manufacturing plants, in Mexico suffer from adverse health effects, and the indigenous people of Chile are losing their land. Mr. Saldamondo stated that he was pleased that no one had claimed that higher wages will benefit the very people who have become marginalized by trade agreements. Trade agreements, he declared, create more poverty, and that poverty tends to affect racial minorities more than other segments of society.

Mr. Saldamondo explained that words such as "disproportionate" or "minority" used in the environmental justice context are not appropriate in the international context because indigenous people may not be minorities within their native countries. In international cases, he suggested, the race of the polluter and the race of the victim should be considered when defining environmental racism. When those factors are examined, he

stated, one must recognize the reality of environmental racism. In fairness to the USTR, he added, USTR staff "do not intend to increase cancer rates or increase the loss of species and habitats ... To them business is business." However, Mr. Salamondo added, the USTR must be aware of the damage that it creates through trade agreements. One-third of the United States' GNP accounts for much prosperity, but that prosperity is not shared and is gained at the expense of others, he said. Citing the Metales y Derivados site located in Tijuana, Mexico as an example of this exploitation, he declared that the economic trade model used by the USTR does not serve communities nor does it take into consideration the value of good health, a forest, or a baby's life. Free trade has been a disaster, Mr. Saldamondo exclaimed.

Mr. Jose Bravo, Just Transition Alliance, clarified Mr. Saldamondo's comments about free trade stating that the members of the International Subcommittee do not oppose trade, but rather support a just trade policy that considers people. He added that he believes the USTR often uses the Fast-Track process to circumvent opposing views. Ms. Beth Hailstock, Director, Environmental Justice Center, Cincinnati Department of Health, commented that she had been pleased to hear representatives of the USTR acknowledge that simply publishing notices in the Federal Register was not an effective means of communicating with the public. She then suggested that the USTR follow the guidelines published in the NEJAC document on public participation to increase community involvement in the process.

Mr. John Audley, EPA, commented that he had once been an active member of the Sierra Club and had created that organization's trade department. In his current position with EPA, he continued, he endeavors to exert pressure on the USTR to consider environmental consequences of trade policy. However, he added, no focus on stakeholders was included when the USTR was created because, at that time, Congress was not aware that such a focus was needed. Mr. Audley pointed out that, because of the existence of Haztraks, a program created jointly by the United States and Mexico to track the movement of hazardous waste between the United States and Mexico, Congress has exercised increased oversight of NAFTA, and more problems have come to light. What the United States subsequently has negotiated through its monitoring process, he continued, overshadows the implications of NAFTA. EPA is the only Federal

agency that has a trade policy, stated Mr. Audley, and EPA continued to play an active role on ten trade advisory subcommittees despite reductions in EPA's budget. That level of participation illustrates EPA's commitment to the issue, he stated.

Mr. Yang commented that it is important to provide comment on and substantive contributions to the trade policy process. It is the responsibility of the government to actively seek to identify and consider outcomes of trade agreements, he stated, rather than considering only the effects on industry. In addition, said Mr. Yang, the United States has a global responsibility to the extent that it induces change through trade agreements.

In response to a comment made by Ms. Suro-Bredie in which she recommended to the members of the International Subcommittee how to best influence the USTR as a "new interest group," Mr. Bravo commented that the members of the subcommittee are not a "new group" and that it "irks" him that other interest groups have been recognized while the interest groups that represent the people most affected have not.

Mr. Hecht then commented that he believes that the discussions had been beneficial and that the issues are challenging. He then reminded the participants that environmental review of trade policy as a process is important because it targets the societal impact on indigenous populations. EPA had built enormous capacity to target trade issues and currently was building an in-house staff to help with community outreach programs and dissemination of information. In 1989, Mr. Hecht pointed out, it would have been difficult to find a region more neglected than the U.S.-Mexico border. NAFTA, he continued, put a spotlight on the area, and the Border Environmental Cooperation Commission (BECC) and the North American Development (NAD) Bank were created; people have benefitted, he explained. Funds for programs that train people for new jobs were included in the NAFTA agreement. Under NAFTA, a means of facilitating economic change and preparing for change has never been easy, he observed. Around the world, Mr. Hecht concluded, environmental agencies are weak; the goal, he declared, is to strengthen those agencies and create a platform for discussion.

Mr. Bianchi pointed out that the majority of members of Congress had not been present during debates about the NAFTA; today, there is a new Congress and a new administration. The best means of exerting influence, he recommended, is

through Congress. Because of the change of administration and the magnitude of the issues, Mr. Bianchi predicted, such discussions would be a multiyear debate.

Mr. Bianchi stated that industry that moves into countries which environmental and enforcement mechanisms lax may have a competitive advantage. Often however, he stated, countries in which laws are enforced poorly do not have infrastructure sufficient to attract trade. Mr. Bravo then stated that trade agreements, as they currently stand, allow certain types of contamination. For example, he explained, it is not required that labels on containers identify the contents as hazardous waste, but such labels instead can indicate that the contents will be reused or recycled. That problem in labeling, he added, led to the contamination at the Alto Pacifico and Metales y Derivados sites, where stockpiles of hazardous waste accumulated and no one was accountable because the contents had been labeled for "reuse" or "recycling." There is no language in the NAFTA agreement, he added, that creates real enforcement mechanisms to prevent such problems because laws are enforced poorly and maintenance of records of the transportation of materials across the border is a voluntary activity. The laws themselves are not weak, but enforcement is, Mr. Bravo declared. The infrastructure that supports enforcement and cleanup should be better funded, he stated.

The border area provides the clearest example of the ways in which trade and environmental issues come together, Mr. Bravo continued. During NAFTA discussions before the act was enacted, he explained, people believed that displacement at the border would be minimal. However, he continued, farm workers worried that the United States would sell corn to Mexico, even though Mexico grows enough grain to meet its needs. Soon after NAFTA was enacted, he stated, the U.S. sold corn to Mexico. In addition, the people living in the *maquiladora* region have suffered discrimination on the basis of gender and age, and families have been uprooted and displaced. What are the mechanisms for enforcing environmental compliance in the region, who is responsible for a polluting company located in Tijuana the profits of which go to other countries, and what are the incentives for compliance, Mr. Bravo asked.

Mr. Hecht responded that several problems affect the border area. Repatriation of hazardous waste is based in part on the agreement between the United States and Mexico under NAFTA, and that process will continue, he said. The accountability

of multinationals, in relation to the Mexican government, should be explored in light of the new border plan that will replace the Border XXI Framework scheduled to expire in 2000. Most multinational companies, Mr. Hecht continued, will endeavor to operate at a world standard; however, because many of these companies are located farther away from the border region, they may be "divorced" from the sensitivity of such issues.

Ms. Mary Lattimer, Trade Representative, U.S. Department of Commerce, responded that she believes that many of Mr. Bravo's concerns had been addressed in the Jordan Free Trade Agreement. She acknowledged that comments received from members of the International Subcommittee are representative of the concerns the USTR must consider if change is to be implemented. Sustainable development, she continued, has three aspects:

- Economic effects
- Environmental protection
- Social development

The three aspects are of equal importance, and all must be supported in trade policies, she stated. The Jordan agreement, she added, had been the first agreement written to support the WTO provision for a transparent dispute resolution process and to encourage discussion of environmental issues with nongovernment organizations. Included in the Jordan model, she continued, were provisions for securing commitments from countries that they would enforce their own existing laws, provided those laws were deemed adequate. Ms. Lattimer added that she believed the obligation of each country to enforce its own laws was being honored.

### **3.2 Overview of the Activities of the U.S. Department of State**

Mr. Michael Shelton, State Department, briefly explained how international financial assistance helps developing countries improve environmental justice. He also described the role played in that process by multilateral development banks (MDB) and various bilateral programs and policies. The MDBs include the World Bank; the Global Environment Facility; and the five regional development banks, the Inter-American Development Bank (IDB), the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, and the NAD Bank. In 1999, he continued, the MDBs lent \$65.2 billion to developing countries, compared with \$9.6 billion in assistance provided

by the United States in fiscal year 1999. However, he added, all U.S. bilateral assistance is provided on a grant basis.

Loans from MDBs help improve the environment in developing countries in two ways, continued Mr. Shelton, either by funding projects that directly improve the environment or by funding institutions that establish and enforce environmental standards. One example of the first form of assistance, he explained further, would be a recent \$130 million loan made by IDB to Brazil for the expansion of the potable water supply, sanitary sewerage and wastewater treatment facilities in Brazil's Federal District. An example of the second form of assistance, he said, is the upcoming loan to Paraguay to establish a national environmental system that will integrate public agencies and private-sector organizations into a single system under which implementing environmental policies are to be implemented, he said.

Mr. Shelton continued, explaining that MDBs require that countries borrowing monies review the effects of their projects on the environment. Environmental impact assessments (EIA) are required for all projects that have some effect on the environment, he said, adding that countries borrowing funds are obliged to describe in detail what they will do to mitigate the negative effects of proposed projects. Resettlement action plans also are required for dams and highways and other projects that displace people, Mr. Shelton stated. He added that governments engaged in such projects must specify the compensation and other assistance that will be provided to those who are displaced.

Mr. Shelton reported that the United States opposes all MDB loans for projects that will have substantial effects on humans if an EIA has not been written and released to the public at least 120 days before the day the board of the lending bank is scheduled to vote on that loan. The reason for maintaining such a policy, he explained, is to help ensure that persons affected by projects are aware of the changes the project will bring about. Even when an EIA, complete with mitigation measures, has been prepared, the United States still may vote against a loan if the United States determines that the project will cause irreparable harm to the environment, he stated. Mr. Shelton acknowledged that a comment period of 120 days does not provide adequate time for a thorough public review of proposed projects.

For example, Mr. Shelton continued, the United States recently opposed loan to a government in Asia for a highway because the United States considered the threat to biodiversity by the proposed highway to be too great. He stated that opposition on the part of the United States alone usually is not sufficient to block approval of a loan because the weight of each member's vote is determined by the amount of that member's contribution to the paid-in capital of the fund. However, in cases in which the environment was quite severe, other donors had joined the United States to block approval of a loan, he said. Consequently, developing countries are learning how to evaluate projects and developing an understanding of what constitutes acceptable international standards, Mr. Shelton said.

Mr. Shelton then described the activities of the NAD Bank, the smallest MDB supported by the United States. He remarked that the bank, created in 1995 under the NAFTA agreement, lends funds only for environmental projects along the U.S.-Mexico border. Specifically, it provides loans to communities to help finance water, wastewater and solid waste projects, he explained. Mr. Shelton acknowledged that, although the fund had allocated \$262 million in grants through the Border Environment Infrastructure Fund (BEIF), which is funded by EPA, it had lent only \$11 million. The problem, he explained, is that, in the past, the NAD Bank was lent funds only at commercial interest rates and the small communities along the border cannot afford to pay those rates. Recently, he continued, the board of directors of the bank agreed to allocate \$50 million for loans at less than market rate for infrastructure projects in water, wastewater, and solid waste. They also agreed to consider loans for other types of environmental infrastructure projects.

Continuing, Mr. Shelton stated that the U.S. Export-Import Bank evaluates the expected effects on the environment of all capital projects before the bank provides funding for those projects. Currently, he added, the United States is attempting to convince the other G-7 Countries and the Organization for Economic Cooperation and Development (OECD) member countries to impose similar requirements on their export credit agencies and is requesting that each agree to use similar qualitative and quantitative standards.

Mr. Shelton reported that the various bilateral assistance programs sponsored by the United States and administered by the U.S. Agency for International Development (U.S. AID) also help developing countries improve local environments.

He explained that U.S. AID seeks to protect the environment by working to achieve five broad objectives: 1) reducing the threat of global climate change; 2) conserving biological diversity; 3) helping to manage urbanization, including management of pollution; 4) promoting environmentally sound energy services; and 5) managing natural resources on a substantial basis. He observed that, from the point of view of environmental justice, one of the most interesting U.S. AID programs is its work through regional urban development organizations (RUDO). U.S. AID, he continued, works through RUDOs in India, Indonesia, South Africa, Guatemala, and Poland to deliver environmental services and to create jobs in 150 municipalities.

#### 4.0 PRESENTATIONS AND REPORTS

This section summarizes the presentations made and reports submitted to the International Subcommittee. The International Subcommittee heard presentations and reports on the following topics: the United Nations (UN) World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance; the Border XXI program, a program whose mission is to identify and address environmental factors, in a binational framework, that pose the highest risk to human health so that exposure to such factors may be reduced; pesticide training initiatives; tribal community outreach programs, and pilot Internet projects related to the global environment.

##### 4.1 UN World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance

Ms. Sharon Kotok, State Department and Agency Representative, White House Interagency Task Force on Racism, opened her presentation by describing the preparation necessary for a UN world conference. Such conferences, she began, focus on a single issue or problem, with the ultimate goal of identifying recommendations for addressing that problem. The UN Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, she explained, scheduled to be held August 31 through September 7, 2001 in South Africa, will focus on five areas:

- Sources of racism
- Victims of racism
- Possible redress
- Measures for the prevention of racism
- Actions to overcome racism

The goals of the conference are to acknowledge the progress made in addressing the issues of concern and increasing awareness, examine the obstacles that remain to be overcome, and recommend specific actions, Ms. Kotok added. The conference, organized by the UN High Commissioner on Human Rights, would be “forward-looking and action-oriented,” she explained. Representatives of governments and NGOs are expected to work together to address disparities related to such issues as environmental benefits and burdens, health care, economic status, and education. However, she added, it is not the intention of the conference to single out violators or to point an accusatory finger, but rather to provide an opportunity for participants to evaluate their own actions and policies.

Ms. Kotok noted that planners were modeling the conference after the United Nations Fourth World Conference on Women held in Beijing, People’s Republic of China, in 1995. Strong recommendations, as well as new legislation and legal measures, resulted from that conference, she pointed out. She explained that the Beijing Conference was “so successful” because of the strong collaboration between participants in the conference and NGOs. Representatives of NGOs also had been included throughout the planning process and assisted in writing the documents generated as a result of the deliberations conducted during the conference, she continued.

Ms. Kotok asked that the members of the subcommittee provide comments on two documents, *Excerpted Material Developed by the U.S. Interagency Task Force on the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Draft)* and the *UN World Conference Against Racism (WCAR) – The Environment Position Paper (Draft)*, prepared by the White House Interagency Task Force on Racism. Ms. Mary O’Lone, EPA Office of General Counsel, reiterated that the documents had been submitted as placeholders and that the task force hoped to receive comments on the documents before the January 15 and 16, 2001 planning conference to be held in Geneva, Switzerland. Ms. O’Lone requested that comments or questions about the documents be forwarded to her by electronic mail (e-mail) at: [olone.mary@epa.gov](mailto:olone.mary@epa.gov).

In response to Ms. O’Lone request for comments, Mr. Saldamondo stated that the members of the International Subcommittee would need time to discuss the position of the subcommittee, but that they did have an interest in the issue. He

observed further that recognition of incidents of discrimination against “vulnerable groups” is valuable. For example, he remarked, the governments of Chile and Uruguay do not recognize that indigenous populations live within their borders. Those people are not recognized legally by their own governments, he declared, adding that such discrimination is particularly evident in the cases of people of African descent and indigenous peoples living in Central and South America.

Mr. Saldamondo then described the inadequacies of the domestic U.S. concept of environmental justice when it is applied in an international context. He stated that he believes the United States should redefine the elements of racism in an international context and revise language that is “U.S.-centric”. The term “racial minorities,” he explained, may not present an accurate picture of the victims of racism, particularly in those countries in which indigenous populations are in the majority but lack control over their environment. What also is lacking, he continued, is the participation of “civil society” and those people who are the victims of racism. There is a difference, he stated, between civil society and stakeholders; stakeholders often include groups, such as industry, that the civil society would consider part of the problem. Certainly, industry does have a role in the process, but acknowledging and considering the concerns of groups that are affected is crucial, he urged.

Ms. Mildred McClain, Citizens for Environmental Justice, added that there is a need for a link between “participating in” and “influencing” decision-making. Efforts to increase participation alone are not sufficient, she stated; language should be developed that supports increases in both the participation and influence of civil society or the general public at the world conference, she urged. The concept of environmental racism also should be well defined before the conference is convened, she advised. She added that she would take the responsibility of circulating the two draft documents in various environmental justice communities to solicit their views. Ms. McClain recommended that the White House task force also seek the “buy-in” of NGOs for the two documents.

Mr. Yang then pointed out that most documents that address environmental issues on an international level focus primarily on pollution. Issues related to the marginalization of community groups and the use of natural resources are not addressed, he said. Environmental justice also has economic implications, he continued, adding

that the flow of goods and benefits, and the accompanying externalization of the burdens related to environmental costs that tend to be “inflicted” on developing countries, should be addressed.

#### 4.2 Update on U.S.-Mexico Cooperation and the Border XXI Program

Dr. Hecht provided the members of the International Subcommittee with an update on the Border XXI Program and the new priorities established by Mexico’s Federal environmental secretariat for the Commission for Environmental Cooperation (CEC). He announced that Mr. Victor Lichtenger recently had been named the Minister of Mexico’s newly renamed Secretaria de Medio Ambiente Recursos Naturales (SEMARNAT), formerly known as the Secretaria de Medio Ambiente Recursos Naturales y Pesca (SEMARNAP). Mr. Lichtenger also was named the first executive director of the CEC, he continued. Dr. Hecht then reported that SEMARNAT had announced a series of priorities for the CEC, including:

- Develop, under articles 14 and 15 of the North American Agreement on Environmental Cooperation, procedures by which citizens can submit to the CEC petitions about the failure of the Mexican government to effectively enforce environmental laws that are “expeditious, open, and transparent.”
- Strengthen the CEC’s Joint Public Advisory Committee (JPAC) to serve as a “true organ” of public participation in the CEC’s decision-making process and to “democratize” the CEC by giving JPAC a “real role” in the development of the CEC’s budget and work program. In addition, a new position with responsibility for the promotion of public participation has been created in the CEC.
- Conclude negotiations on an “equitable” agreement on Environmental Impact Assessment in a Transboundary Context which stipulates the obligations of parties to assess the environmental impact of certain activities at an early stage of planning.

Mr. Lichtenger had pledged to emphasize the importance of maintaining the independence of the CEC in processing petitions of private citizens to address environmental problems, reported Mr. Hecht. He commented that such a commitment is “a good sign” because citizen redness has been a

source of friction among the United States, Mexico, and Canada.

In a nod to the subcommittee’s concerns about trade and the environment, Mr. Lichtenger had announced strong support for the CEC’s cooperative work program. He particularly had emphasized its trade and environment program, in light of the importance of the North American experience, in the negotiation of a free trade agreement of the Americas, said Dr. Hecht.

Mr. Lichtenger was to meet with Mexico’s new “Border Czar”, Mr. Ernesto Ruffo, to stake out a strong, common Mexican position to confront what he characterized as “lack of political will,” said Dr. Hecht.

Dr. Hecht then reported that the preparation of the Border XXI Transition Paper and consultations with states and regions was ongoing. States and tribal communities were working together more closely, he observed; a series of meetings had produced recommendations for the new border plan, he said. In addition, changes had been made within lending institutions, including the NAD Bank, the mandate of which had been, he continued. He added that issues related to money and funding are important in drafting the new border plan.

Mr. Gregg Cooke, Regional Administrator, EPA Region 6, commented that, in 1999, he had attended a meeting of the BECC in Monterrey, Mexico. He stressed that the transparency provisions of the BECC that mandate transparency must be met. Issues that must be addressed under the new border plan, he declared, include strengthening of the role and participation of the states in the process, creation of an exclusive public participation process, and expansion of infrastructure to support the effort deal with all issues.

Mr. Saldamondo reminded those present that the recommendations developed by participants in the Roundtable on Environmental Justice on the U.S.-Mexico Border, which had been sponsored jointly by the NEJAC and EPA, had included calls for an increase in the participation of indigenous communities residing on the Mexican side of the border and for enforcement of accountability on the part of polluters.

Mr. Enrique Manzanilla, EPA Region 9, commented briefly on the success of four pilot projects that EPA had chosen because they offered opportunities to explore domestic aspects

of environmental concerns. He explained that the cities had been selected to address issues other than that of transboundary waste.

Ms. Olivia Balandran, Environmental Justice Coordinator, EPA Region 6, distributed to the members of the International Subcommittee information about projects that EPA Region 6 has undertaken. She asked that the members of the International Subcommittee provide their views on the direction Region 6 has taken with those projects.

#### 4.3 Update on the Metales y Derivados Site

Mr. Bravo presented the written statement of Mr. Cesar Luna, Environmental Health Coalition (EHC), who had been unable to attend the meeting. In his statement, Mr. Luna noted that in October 1998, a petition to the CEC charged that the Mexican government had failed to enforce articles 134 and 170 of Mexico's general environmental law. The petition, which EHC had filed, cited Mexico's failure to pursue extradition of the owner of the Metales y Derivados site who currently resides in San Diego, California, explained Mr. Luna. However, the CEC does not have the authority to extradite the property owner, he continued. Residents of the affected community believe that the owner had "gotten away free," said Mr. Luna.

In his statement, Mr. Luna expressed EHC's fear that, with the change of administration in Mexico, the case will be forgotten. He requested that the International Subcommittee recommend that the NEJAC urge EPA to:

- Oversee the release to the CEC of documentation related to the case by entities on both sides of the border
- Serve as a liaison with the State Department and the U.S. Customs Service, U.S. Department of the Treasury
- Establish the Metales y Derivados site as a pilot project for a binational cleanup and enforcement effort

Dr. Hecht remarked that Mexico had agreed to allow the CEC, through a contractor, to conduct sampling of contaminated surface soils at the Metales y Derivados site characterizing that decision as a good sign of cooperation on the part of the Mexican government. Previous analysis had shown that lead levels at the site, an abandoned maquiladora owned by a U.S. citizen, were not as

high as those at locations in the city, he stated. In June 2000, the case had been brought before the CEC council on the grounds that the Mexican government allegedly had failed to clean up the site and determine which laws are applicable and whether any laws had been broken, he continued. Information still was being gathered, said Dr. Hecht. He suggested that another month would pass before the case is taken to the Council again.

Because of time constraints thoroughly, the members of the subcommittee did not discuss the case of the Metales y Derivados. The members agreed to discuss the case during upcoming conference calls of the subcommittee.

#### 4.4 Update on the U.S. Environmental Protection Agency's Pesticide Training Initiatives

Ms. Delta Valente, Project Manager, Farm Worker Health, Office of Prevention, Pesticides, and Toxic Substances (OPPTS), EPA, and Ms. Carol Parker, OPPTS, EPA, provided the members of the International Subcommittee with an update about the activities of the EPA Pesticide Worker Protection Branch. They distributed examples of literature about pesticide training and awareness that is available free through OPPTS's Web site: <[www.epa.gov/pesticides/safety](http://www.epa.gov/pesticides/safety)>. Previously, pesticide training and awareness had focused on occupational hazards, Ms. Parker explained, adding that current programs also focus on issues related to pesticide drift, contamination of well water with pesticides, and the effects of pesticides on children. One of the primary concerns of EPA's Office of Pesticide Program's (OPP) is increased protection of the public, especially children, she continued. Children's health has high priority, she explained, because children are more vulnerable to pesticides than adults. Ms. Parker stated that, to protect children from risk in the home and in the workplace, OPP seeks to educate parents who are exposed to pesticides in the workplace.

Ms. Parker also announced that, through a collaboration among EPA, the U.S. Department of Agriculture, the U.S. Department of Labor, the U.S. Department of Health and Human Services, various states, farm workers, and farmers, implementation and enforcement of the agricultural worker protection program was to be reviewed and programmatic improvements in the strategic plan for worker protection was to be developed. A series of workshops to be held in Sacramento, California (December 2000); Orlando, Florida (May 2001); and Washington, D.C. (fall 2001) will provide the basis for the collaborative effort, she

continued. Ms. Parker reported that the key themes expressed at the Austin, Texas stakeholder workshop held in June 2000 were issues related to training, enforcement, complaint and retaliation, communications, and children's health. She recommended that the members of the subcommittee obtain copies of the full report at the OPP Web site:

<[www.epa.gov/oppfead1/safety/workers/workers.htm](http://www.epa.gov/oppfead1/safety/workers/workers.htm)>.

Ms. Parker reported that EPA, in a collaborative effort with states and industry, had developed basic pesticide safety materials, as well as supported broad-scale training of farm workers in pesticide safety. For example, she explained, the National Farm Worker Environmental Education Program, conducted by the Association of Farmworker Opportunity Programs (AFOP) in partnership with the AmeriCorps Community Service Program, is the largest national pesticide safety education program for farm workers in the nation. AFOP has trained more than 250,000 farm workers in the United States in pesticide safety, she continued, noting that AFOP, a recipient of an EPA grant, also had produced five novella-style radio mini-dramas in Spanish.

Ms. Valente then described a training initiative directed at children. The initiative is a weekend program in which students from the University of Texas at Brownsville teach children about the harmful effects of pesticides, she said. Through the program, children from farm worker families also are flown to Washington, D.C. to learn how the Federal government operates, she continued. Ms. Valente, who displayed photographs of children who have participated in the program, commented that she hoped the program would continue to grow and soon would include a component that offers an internship in Washington, D.C.

Ms. Valente also described EPA's Pesticides and National Strategies for Health-Care Providers, established 1996 to ensure that health-care providers become better aware of and educated and trained in the area of health problems related to exposure to pesticides, particularly those affecting child laborers in agriculture.

Mr. Bravo asked whether there were ways to train farm workers before their arrival in the United States about the dangers associated with exposure to pesticides. He observed that any worker who comes to the United States to work should have the opportunity to be protected and to make a decent wage. However, it is not unheard

of, he continued, for workers to be paid in alcohol or marijuana instead of U.S. dollars. Mr. Bravo, who stated that members of his family had migrated to the United States to work on farms, remarked that each of them had to complete the U.S. Department of Labor's HZA agricultural guest workers program in Ciudad, Juarez, Mexico. Completion of the paperwork required from one to two days to complete, he said. He then suggested that the waiting period could provide an opportunity to deliver training in pesticide safety.

Mr. Bravo reported on the work of the University of California at Berkeley in training farm workers. The training classes, he explained, now cover how to read a material safety data sheet, understand a map of risk analysis and exposure pathways, and use appropriate personal protective equipment. He and Mr. Saldamondo identified several grassroots organizations that are active in training farm workers, including Lideres Campesinos; Indigenous People of Mexico; and the Pesticide Action Network, which has produced several Spanish-language videos that Mr. Saldamondo described as "very informative." The videos examine dangers that pesticides pose to communities.

Mr. Saldamondo commented that he had been disappointed that funding for pesticide training is provided to individual states because many states do not consider pesticide training to be a top priority. In response, Ms. Valente stated that, under the new border plan, pesticide awareness could become a focus area. In September 2001, OPP will have launch a web-based strategy aimed at health-care providers that individuals in all countries will have access to, she announced.

Mr. Saldamondo stated that he had found "a lot wrong" with EPA's risk assessment model. He suggested that the NEJAC should recommend that the EPA administrator support the international convention on the rights of migrants, which currently had been signed by only 12 states.

Mr. Yang commented that, during the entire discussion of environmental enforcement, no one had raised the issue of suspension of state programs for noncompliance. How much consideration, he asked, had EPA given to the registration status of "adverse effects" on the environment. In addition, he asked Ms. Valente and Ms. Parker to determine why the agency's legal memorandum on statutory authorities to implement environmental justice failed to include



the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), although earlier drafts of the memorandum had done so.

In response to the comments of Mr. Saldamondo and Mr. Yang, Ms. Parker explained that EPA was beginning to look at various risk assessment models. She acknowledged that the current model does not consider the cumulative effects of several pathways, but stated that work to further refine the model was ongoing. Ms. Valente added that each state has a different definition of what constitutes an inspection, adding that such issues are being addressed during that ongoing conference calls with states.

#### **4.5 Overview of the U.S. Environmental Protection Agency's Tribal Community Outreach Programs**

Mr. Alan Sielen, Deputy Assistant Administrator, OIA, provided the members of the International Subcommittee with an overview of the tribal community outreach programs EPA recently had implemented to improve integration of tribal views into EPA decisions. The focus of the communications, he continued, had been on tribes living along the U.S.-Mexico border, the border region between Canada and the Arctic, and other regions of the globe, such as areas that are affected by persistent organic pollutants, climate change, and biodiversity issues.

Mr. Sielen described one outreach effort under which EPA had initiated a series of telephone conference calls designed to inform participants about issues that affect them regionally and to create a forum through which to solicit comments in the early stages of the decision-making process. The calls, he explained, which are open to anyone, are informal and informational. The last an hour and feature a subject-matter expert who provides a briefing before the call is opened to comments and questions, he continued. Each regional office notifies individuals who have expressed an interest in environmental issues when the calls are to be conducted, he added.

Mr. Sielen reported that EPA had held two calls. The first call focused on general environmental issues, while the second call focused on mercury contamination, he said. The second call, he added, which focused on a single topic, will serve as a model for future calls. The next call, he continued, was scheduled for mid- to late-January and was to focus on the effect on tribes of issues trade on the environment, he announced.

Mr. Saldamondo commented that the members of the International Subcommittee were interested in the conference calls. He noted that the members also were concerned about including tribal members who live in Mexico. For example, in the case of the Tohono O'odham tribe, a "transboundary tribe" located in Arizona and Mexico, it is difficult to secure the participation of the Mexican members of the tribe. Mr. Sielen agreed that it would be important to include in the calls tribal members living in Mexico and responded that he would explore mechanisms for increasing their participation. However, he remarked, their participation in the conference calls might not be feasible.

Mr. Sielen then asked the members of the International Subcommittee their views on ongoing negotiations related to persistent organic pollutants (POP). Mr. Saldamondo responded that, in his experience once the State Department had adopted a position, its representatives come to meetings with instructions from which they rarely deviate. With regard to POPs, he continued, methylbromide will not be placed on the list of substances to be banned from the United States until another economically viable alternative has been selected.

#### **4.6 Update on the Activities of the South African Work Group**

Mr. Mark Kasman, Senior International Information Officer, OIA, provided the members of the International Subcommittee with an update about the activities of the South Africa Work Group carried out since the meeting of the NEJAC in Atlanta, Georgia in May. He commented that the meeting between the NEJAC and its South African counterpart had created lasting relationships. Since May, the South Africa Work Group had been working together to increase media awareness of environmental justice and publicize the issue within South Africa, he reported. The publicity, added Mr. Kasman, had gained more credibility and legitimacy for environmental justice South Africa. In addition, the work group had been assisted its South African counterpart in its attempt to obtain funding for its programs.

Mr. Kasman also announced that Ms. Elsie Motubatse, Swarananag, a community group from the northern provinces of South Africa, was named the Committee Organizer of the Year, a high honor in South Africa. President Nelson Mandela personally presented the award to Ms. Motubatse, he said.

#### 4.7 Overview of Internet Projects

Mr. Kasman and Mr. Lionel Brown, OIA, provided the members of the International Subcommittee with an overview of several new Internet projects on which the OIA currently was working. They reported that pilot projects include revision of EnviroSense, a Web site at <[www.es.epa.gov](http://www.es.epa.gov)> that designed to provide links to information, increase public participation, and provide information about mechanisms for obtaining funding for implementation of projects. Executed in several different languages, the Web site provides regional information to many countries in eastern and central Europe, Asia, Africa, and the Americas, they noted. Currently, OIA is working to include regional information pertinent to South Africa, Kenya, Nigeria, and Uganda, they reported. The goal of these Internet projects is to increase public participation and access to information, Mr. Brown stated.

Mr. Brown reported that, in response to complaints by various African community groups that available information about policy issues related to climate is insufficient, OIA also is developing a proposal for a climate network Web site. Initially, the project is to collect information about three countries to be used populate the database on the Web site, he continued. Mr. Brown added that training in how to use the information, as well as funding for Internet access, will be provided. If the project is successful in the three pilot countries, the model will be extended to other countries throughout Africa, he continued. EPA is to provide the seed money for the project, he said, adding that OIA anticipates a decision in January 2001. The funds to expand the project beyond the three pilot countries would come from outside the agency, possibly, he suggested, from the U.S. AID.

Mr. Kasman added that OIA was pursuing an Education Democracy Initiative in Africa to encourage the attendance of girls in middle school, and to promote education as a whole. He remarked that the initiative might provide an excellent opportunity to “spin” an environmental justice focus into the program. Mr. Brown added that companies such as Microsoft and Hewlett Packard have been participating as partners in these initiatives.

Mr. Brown also asked the members of the International Subcommittee to provide their views on the initiatives he had described. He then offered to provide the subcommittee updates about the initiatives.

#### 5.0 PUBLIC DIALOGUE

This section summarizes the presentations offered during a public comment period provided by the subcommittee, as well as the discussion among the subcommittee that those presentations prompted.

##### 5.1 Ms. Betsy Boatner, Amazon Alliance, Washington, D.C.

Ms. Betsy Boatner, Amazon Alliance, requested that the members of the International Subcommittee help with the wording of her recommendation to the EPA administrator about Plan Columbia, a U.S.-backed plan to destroy drug plants by deforesting parts of Columbia. Outlined in her letter were specific questions about the manner of application, the type of chemicals and quantities that would be applied, and the aircraft that would be used to spray them. The information, once received, Ms. Boatner explained, would be used by the World Wildlife Fund to assess the true environmental and social effects and any plans to monitor those effects. Chapter 2, Public Comment Period, Section 2.2.x of this report provides a summary of the comments Ms. Boatner’s made before the Executive Council of the NEJAC on December 12, 2000.

Ms. Boatner also asked that the members of the International Subcommittee submit her letter to the Executive Council of the NEJAC. In her letter, she asked that the NEJAC assist her organization in obtaining information from the agency or agencies that would be responsible for implementing Plan Columbia, she explained.

##### 5.2 Ms. Madeline Pepin, Our Lady of the Lake University, San Antonio, Texas

In response to the recommendation of the Executive Council of the NEJAC that the members of the International Subcommittee address the comments made by Ms. Madeline Pepin, Professor of Philosophy, Our Lady of the Lake University, before the Executive Council of the NEJAC. Mr. Saldamondo suggested that Ms. Pepin’s comment would be addressed most effectively by the Interagency Work Group (IWG) on Environmental Justice. Ms. Pepin’s public comment, Mr. Saldamondo explained, focused on what Ms. Pepin termed the failure of the U.S. Department of Defense and the U.S. Department of Energy to communicate with residents of the community near Kelly Air Force Base, Texas, whose first language is not English. Mr. Saldamondo explained that the IWG could

address the issue and work directly with those agencies to encourage the recognition of languages other than English in agency outreach and community relations programs. Chapter 2, Public Comment Period, Section 2.2.x of this report presents a summary of Ms. Pepin's comments.

## 6.0 SIGNIFICANT ACTION ITEMS

This section summarizes the action items adopted by the subcommittee. Ms. Yang also quickly mentioned that the letter about the Committee on the Elimination of All Forms of Racial Discrimination (CERD) prepared by him would be sent by email to the members of the International Subcommittee for comment. A final draft of the letter would be submitted to the NEJAC Executive Council after comments are incorporated, he said.

The action items adopted include:

- ✓ Requested that the International Subcommittee of the NEJAC participate in follow-up dialogues with the Department of State and the USTR about issues related to trade and the environment.
- ✓ Suggested that the USTR invite and include representatives of all stakeholders in discussions of issues related to trade and the environment to ensure representation of a broad range of affected stakeholders, the USTR should adopt the definition of constituents set forth in the NEJAC Model for Public Participation.
- ✓ Requested that the International Subcommittee distribute and review the *Excerpted Material Developed by the U.S. Interagency Task Force on the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Draft)* and the *UN World Conference Against Racism (WCAR)/The Environment Position Paper (Draft)* and provide comments on those documents to the White House Interagency Task Force on Racism. The comments should be submitted before the next conference, scheduled to be held in January 2001 in Geneva, Switzerland.
- ✓ Requested that the International Subcommittee review and provide comment on the EPA draft document Addressing EJ Issues on the U.S.-Mexico Border.
- ✓ Agreed to review and provide comments on the letter about the Committee on the Elimination of all Forms of Racial Discrimination (CERD); once changes have been incorporated in response to the comments of the International Subcommittee, the letter is to be forwarded to the NEJAC Executive Council for review.
- ✓ Requested that EPA explain why the legal memorandum on statutory authorities to implement environmental justice did not mention the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), although earlier drafts had done so.
- ✓ Requested that the NEJAC forward to the EPA Administrator a request for EPA's assistance in identifying specific details of the proposed Plan Columbia project to destroy drug plants in Columbia.
- ✓ Requested that the NEJAC persuade EPA to continue exploring cleanup options at the Metales y Derivados site located near Tijuana, Mexico.
- ✓ Agreed to ask the NEJAC Executive Council to forward to the IWG the request of Ms. Madeline Pepin, Our Lady of the Lake University, because her concerns focus on the limited awareness and recognition by Federal agencies of communities in which English is not the primary language.

**MEETING SUMMARY**

of the

**WASTE AND FACILITY SITING SUBCOMMITTEE**

of the

**NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL**

**December 13, 2000  
Arlington, Virginia**

**Meeting Summary Accepted By:**



**Kent Benjamin  
Office of Solid Waste and  
Emergency Response  
U.S. Environmental Protection Agency  
Designated Federal Official**

**Vernice Miller-Travis  
Chair**

**Veronica Eady  
Vice-Chair**

**CHAPTER EIGHT  
SUMMARY OF THE  
WASTE AND FACILITY SITING SUBCOMMITTEE**

**1.0 INTRODUCTION**

The Waste and Facility Siting Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Wednesday, December 13, 2000, during a four-day meeting of the NEJAC at the Hyatt Regency Crystal City Hotel in Arlington, Virginia. Ms. Vernice Miller-Travis, the Ford Foundation, continues to serve as chair of the subcommittee. Mr. Kent Benjamin, Environmental Justice Coordinator, Outreach/Special Projects Staff (OSPS), U.S. Environmental Protection Agency (EPA) Office of Solid Waste and Emergency Response (OSWER), continues to serve as the Designated Federal Official (DFO) for the subcommittee. Exhibit 8-1 presents a list of the members who attended the meeting and identifies those members who were unable to attend.

This chapter, which provides a summary of the deliberations of the Waste and Facility Siting Subcommittee, is organized in six sections, including this *Introduction*. Section 2.0, *Remarks*, summarizes the opening remarks of the chair and the Assistant Administrator of OSWER. Section 3.0, *Activities of the Subcommittee*, summarizes the discussions about the proposed work group on land use planning. Section 4.0, *Presentations and Reports* presents an overview of each presentation and report, as well as summaries of relevant questions posed and comments offered by the subcommittee. Section 5.0, *Summary of Public Dialogue*, summarizes discussions offered during the public dialogue period provided by the subcommittee. Section 6.0, *Significant Action Items*, summarizes the action items adopted by the subcommittee.

**2.0 REMARKS**

Ms. Miller-Travis opened the meeting of the subcommittee by welcoming the members present and Mr. Benjamin, as well as Mr. Timothy Fields, Jr., Assistant Administrator, OSWER, and Mr. Steve Luftig, Acting Deputy Assistant Administrator, OSWER. At the conclusion of Ms. Miller-Travis' welcoming remarks, Mr. Fields greeted the members of the subcommittee and thanked Ms. Miller-Travis for her words of praise and her leadership of the subcommittee. He then thanked specific members of the staff of OSWER,

Exhibit 8-1

**WASTE AND FACILITY SITING  
SUBCOMMITTEE**

**List of Members Who Attended the Meeting  
December 13, 2000**

Ms. Vernice Miller-Travis, **Chair**  
Ms. Veronica Eady, **Vice-Chair**  
Mr. Kent Benjamin, **DFO**

Ms. Denise D. Feiber  
Mr. Melvin Holden  
Mr. Michael K. Holmes

Mr. Neftali Garcia-Martinez  
Ms. Donna Gross McDaniel  
Ms. Katherine B. McGlooin  
Mr. Harold Mitchell  
Ms. Mary Nelson  
Ms. Brenda Lee Richardson  
Mr. Mervyn Tano  
Mr. Michael Taylor  
Ms. Patricia Wood

**Members  
Who Were Unable To Attend**

Mr. David Moore  
Mr. Johnny Wilson

including Mr. Benjamin and Ms. Linda Garczynski, Director, OSPS. Referring to his impending retirement, Mr. Fields then stated his belief that the future of the subcommittee will be in "good hands" with Mr. Michael Shapiro, Principal Deputy Assistant Administrator, OSWER, and Mr. Luftig.

Concluding his remarks, Mr. Fields outlined some of the initiatives in which the subcommittee had been involved. Those initiatives, he said, include, but are not limited to, the American Society for Testing and Materials (ASTM) Standard Guide for Process of Sustainable Brownfields Redevelopment; waste transfer stations, the relocation of residents under Superfund, Brownfields redevelopment, and EPA's Superfund Redevelopment Initiative. It's been a great partnership, he said. Mr. Fields then recognized three departing subcommittee members: Mr.

Johnny Wilson, Clark Atlanta University; Mr. Michael K. Holmes, Northside Education Center; and Ms. Brenda Lee Richardson, Women Like Us.

Ms. Miller-Travis thanked Mr. Fields for the hard work he had done in partnership with the subcommittee and then spoke briefly about the excellent relationship the subcommittee had had with EPA OSWER. Ms. Miller-Travis also commended Mr. Luftig's hard work on issues related to the Superfund program. Mr. Luftig commented that it is unfortunate that Mr. Fields is retiring and stated his hope that the NEJAC and the Waste and Facility Siting Subcommittee soon would have the opportunity to meet with the new Assistant Administrator of OSWER.

### 3.0 ACTIVITIES OF THE SUBCOMMITTEE

This section summarizes the discussions about the activities of the proposed land use planning work group of the Waste and Facility Siting Subcommittee. Ms. Miller-Travis began the discussion of local land use and zoning policies as they pertain to the siting of waste management facilities. She stated the objective of the discussion was to brainstorm how to involve state and local officials in the issue of locating waste facilities in communities of color or low-income communities. Ms. Miller-Travis stated that the purpose of the discussion was to synchronize the efforts of the various work groups of the Waste and Facility Siting Subcommittee under a single theme of land use. One of the goals of the discussion, she continued, was to prepare a work plan for helping EPA develop guidance for local governments on how to actively address and identify environmental justice issues when planning for land use and making zoning decisions. Such guidance, she noted, should recognize that EPA has only limited authority in the matter.

Ms. Veronica Eady, Executive Office of Environmental Affairs, Commonwealth of Massachusetts and member of the subcommittee, reported that the various work groups of the subcommittee share several common traits, including:

- Bolstering public participation in local decision making about land use.
- Developing an environmental justice paradigm for land use planning.

- Preparing case studies of how communities respond to threats posed by local development.
- Examining public health impacts of land use decisions related to the siting of waste management facilities.
- Examining the relationship between public participation and decision making related to land use.

According to Ms. Eady, guidance regarding land use planning would be extremely helpful to communities because members of communities often are not aware of the involvement of state and local authorities in land use planning and zoning decisions.

After identifying the common traits, Ms. Eady solicited the recommendations of the members of the subcommittee. Specifically, Ms. Eady asked what should be included in the work plan under development. Mr. Fields clarified Ms. Eady's request, stating that it had been requested that EPA develop guidance on land use and zoning, as well as for EPA to provide information about land use planning and facility siting. He then stated that he believed a manual on best management practices (BMP) should be developed.

Ms. Patricia Wood, Georgia-Pacific Corporation and member of the subcommittee, responded by stating her hesitation about the use of the word "guidance." She said that she was not convinced that industry is interested in an EPA guidance document on the subject. Ms. Miller-Travis then stated her belief that the involvement of EPA is necessary. She agreed, however, that the word "guidance" should not be used. Ms. Miller-Travis offered the "smart growth" policy adopted by Prince George's County, Maryland as an example of how smart growth, as a local land use planning tool, fails to consider environmental justice concerns. Mr. Melvin Holden, Louisiana Legislature and member of the subcommittee, then stated that he believed direction from EPA is essential to help differentiate between rural versus urban zoning.

Mr. Michael Taylor, Vita Nuova and member of the subcommittee, referred to a document, *Land Use in the Remedy Selection Process*, signed by former OSWER Assistant Administrator Elliot Laws. The document, he said, stipulates that site assessment is governed by anticipated future use of the site. However, he stated the articulation of current and future land use has not been

adequate. Further, he stated, people need access to employment opportunities if they are to escape the unhealthy environment in which they live and work. He questioned whether “real community planning” could be done.

Ms. Eady then endorsed Mr. Fields’ suggestion that a BMP manual be developed. She asked the members of the subcommittee to consider how effective such a document might be, especially in communities affected by decisions of land use and zoning made without input, as if slipped through the “back door.” Echoing Ms. Eady’s support for a BMP manual, Ms. Mary Nelson, Bethel New Life, Inc. and a member of the subcommittee, suggested that EPA develop a “how-to” document. She also stated that organizations representing local associations should be involved in the development of the document. “Getting the document in the right hands” would be the most effective use of it, she added. Ms. Nelson also proposed focusing such a document toward industry and local governments that promotes a “win-win” scenario. In that regard, Mr. Mosi Kitwana, International City/County Management Association (ICMA), added that it is important to engage local government associations, such as ICMA, to participate in such a dialogue. He urged the subcommittee to support the work EPA had undertaken in Clearwater, Florida to develop a land use plan that emphasizes environmental justice. The work in Clearwater is an example of a “win-win” scenario, he pointed out.

Ms. Miller-Travis commented that she envisioned the new work group to be modeled after the subcommittee’s Waste Transfer Station Work Group. Its membership should reflect the diversity of the stakeholders affected by these issues, she said.

Topics that the members of the subcommittee recommended the proposed land use work group should address include:

- Providing guidance to local communities, state and local governments, and business and industry, on the environmental justice implications of land use decision making related to the siting of waste management facilities.
- Examining how local politics affects local land use decisionmaking.
- Developing a clearer articulation of land use considerations in site assessments and determinations of future land use.

The members of the subcommittee agreed that it is imperative to ensure the broad dissemination to trade and other constituent-based associations that could be natural allies in addressing such issues related to local land use of any resulting document. Mr. Holmes observed that, in St. Louis, Missouri, small developers are not interested in such a land use document. Rather, they are interested more in economic development, he added, noting as well that developers “are not sure what community involvement is.” In response, Mr. Taylor reminded the members of the subcommittee to keep their expectations realistic. The document, he suggested, should emphasize the positive results that can be realized when developers involve communities in decisions. Perhaps use of BMP is a good way to encourage community involvement in the development process, he noted. Mr. Kitwana stated that most communities already have a process in place. The problem, he pointed out, is educating community members about that process.

Mr. Neftali Garcia-Martinez, Scientific and Technical Services and a member of the subcommittee, stated that there are external issues related to land use, as well. Land use is related to price, incentives, and the quality of various environmental media (air, water, and other media), he continued. In Puerto Rico, he said, a regional and municipal approach is taken to land use planning. Ms. Eady added that the document should acknowledge various types of land use.

Ms. Denise Feiber suggested that the subcommittee focus on mechanisms for promoting dialogue among various stakeholders. After discussing the issue, the members of the subcommittee then identified the following mechanisms:

- Prepare a resource inventory of existing communications guidances.

- Identify existing trade association resources that address local land use issues.
- Invite local governments to join the subcommittee in the deliberative process.

Ms. Nelson suggested that the subcommittee also focus on identifying content areas for the document. After discussing the issue, the members of the subcommittee agreed that a BMP manual should:

- Include “win-win” language that highlights benefits to stakeholders.
- Identify “input points” for local government.
- Provide a list of incentives for developers.
- Provide information and guidance about sources of additional information about land use.
- Identify a list of related initiatives and topics, such as Smart Growth, to which land use can be linked.

Mr. Taylor recommended that the document also focus on the lack of open space in urban areas. He stated that the new Land Use Work Group should focus on existing unsustainable local land uses, such as parking lots and new roads. Ms. Miller-Travis added that the language of the document should be “community-friendly” and able to define from an environmental perspective development that is sustainable.

Ms. Eady concluded the discussion by stating that the members had agreed that the new work group would focus on developing a BMP manual; identify a set of implementation issues associated with land use; and prepare, as an addendum to the manual, a resource guide on land use planning instruments. Ms. Eady stated further that she planned to develop a work plan for the conference call of the subcommittee scheduled for January 2001.

#### 4.0 PRESENTATIONS AND REPORTS

This section summarizes the presentations made and reports submitted to the Waste and Facility Siting Subcommittee of the NEJAC.

#### 4.1 Status of Environmental Protection Agency’s Brownfields Redevelopment Initiative

Ms. Linda Garczynski, Director, OSPS, provided an update to the recommendations outlined in the NEJAC report *Environmental Justice, Urban Revitalization, and Brownfields: The Search for Authentic Signs of Hope* published by the NEJAC in 1996. The report, a summary of the issues and concerns expressed by communities during a series of public dialogue meetings, examined and offered suggestions for addressing environmental justice concerns within the context of urban revitalization and the redevelopment of brownfields sites. Ms. Garczynski commented that the report, known as the “Public Dialogues Report” brought to the attention of EPA, a number of timely issues. The Agency’s Brownfields initiative has evolved to include themes and issues identified in the public dialogues report. She then cited specific examples of actions EPA had taken that address recommendations made by the NEJAC.

Ms. Garczynski pointed out that one key recommendation of the report called for EPA to create opportunities for outreach and bring together various stakeholders to exchange information and create opportunities for communities to be influential in decisions about redevelopment. She stated that in the four years since the report was published, EPA has held an annual conference on brownfields redevelopment, each of which featured a community caucus session in which the views and concerns of community-based groups were shared directly with EPA senior management. The next national brownfields conference is scheduled for September 24 through 26, 2001, she announced.

Other examples of EPA actions, continued Ms. Garczynski, are the Resource Conservation and Recovery Act (RCRA)-Brownfields Prevention Initiative, which links Brownfields redevelopment to current RCRA reforms that emphasize “results over process,” as well as greater community involvement. Ms. Garczynski announced that EPA anticipates that in 2001, the Agency will fund up to 6 pilot demonstration projects, up to 20 regional projects, training, and outreach activities. Exhibit 8-2 presents background information about the initiative. EPA also has funded the Brownfields Job Training and Development Demonstration Pilot projects, she said, which are designed to prepare trainees for employment in the environmental field, while facilitating the cleanup of Brownfields sites and providing trainees with “sustainable careers.” Currently, 36 job training



## Exhibit 8-2

**RESOURCE CONSERVATION AND  
RECOVERY ACT BROWNFIELDS  
PREVENTION INITIATIVE**

Under the U.S. Environmental Protection Agency's (EPA) Brownfields Economic Redevelopment Initiative, EPA has created a work group to resolve at brownfields properties challenges related to provisions of the Resource Conservation and Recovery Act (RCRA). The goals of the work group are:

- Identify and advertise good work that already is being done in the EPA regions and states.
- Focus on several important efforts, including training, outreach, and the conduct of monthly information-sharing meetings.
- Coordinate issues related to the RCRA Brownfields Prevention Initiative and develop tools, issue papers, and guidance for the consideration of EPA decision makers.

EPA will announce four pilot projects to "showcase" flexibility under RCRA and to help model future innovations in cleanup and redevelopment at sites regulated under RCRA.

pilot projects are underway, with 8 to 10 more to be added in the future, she reported. EPA has funded 363 Brownfields site characterization and assessment projects and anticipated adding 50 additional sites, she continued. In addition, due to the success of the 16 showcase communities, 12 new showcase communities recently were announced, she added.

Ms. Garczynski acknowledged that the NEJAC concern for the need to define the role and participation of youth has been only partially addressed by EPA. Pointing to a lack of funding for a formal outreach program to youth, she stated that young adults have been and continue to be reached through the job training pilots. Other ways in which youth have been involved in Brownfields activities are summer internships in EPA's Brownfields program and other outreach to colleges, Ms. Garczynski added.

Turning to Title VI of the Civil Rights Act of 1964, Ms. Garczynski stated that in 1999, EPA had conducted a series of case studies examining the effects on the Brownfields redevelopment process of EPA's interim guidance on addressing Title VI

complaints. Noting that the NEJAC's public dialogues report had called for a similar effort, she reported that the level of on-going community involvement and the types of reuses at the sites studied had mitigated the need for filing Title VI complaints related to the permitting process.

Discussing the Brownfields Revitalization and Environmental Restoration Act of 2000 (S.2700), Ms. Garczynski stated the bill currently before the United States Senate had a strong chance of passage because of strong bi-partisan support. Commenting that the bill had been introduced in the Senate during the preceding term and had attracted 67 supporters, she stated that if passed, it could potentially double funding for brownfields redevelopment and related state response programs. However, Ms. Garczynski labeled the bill a "mixed blessing," stating that passage of the bill would not only result in increased funding, but effectively "institutionalizes" the brownfields program.

Ms. Garczynski agreed to provide the members of the subcommittee with copies of the proposed Brownfields legislation.

Ms. Garczynski concluded her presentation by urging the members of the subcommittee to provide input about existing projects and identify new projects for consideration by the Agency.

#### **4.2 Presentation on the Responsible Care<sup>®</sup> Initiative**

Ms. Katherine McGlooin, American Chemistry Council and member of the subcommittee, introduced Mr. Louis H. Kistner, Millennium Chemicals, Inc., who discussed Responsible Care<sup>®</sup>, an initiative of chemical industries around the world. The Responsible Care<sup>®</sup> initiative is a commitment to continuous improvement of environmental health and safety performance, he explained, adding that the initiative also describes a "path for gaining or regaining public respect by demonstrating responsible and safe management of chemicals." Exhibit 8-3 provides an overview of the Responsible Care<sup>®</sup> initiative implemented by the American Chemistry Council, formerly the Chemical Manufacturers Association.

Mr. Kistner then focused his presentation on how Millennium Chemicals, Inc. had adopted the guiding principles of the Responsible Care<sup>®</sup> program. He stated that community awareness is one of the seven global codes of management practice adopted by his company. He commented that Millennium Chemical, Inc. has identified

### AMERICAN CHEMISTRY COUNCIL RESPONSIBLE CARE® INITIATIVE

In 1988, the American Chemistry Council, formerly the Chemical Manufacturers Association, launched its Responsible Care® initiative to respond to public concerns about the manufacture and use of chemicals. The Responsible Care® program is comprised of ten elements, including guiding principles, codes of management practices, self-evaluations, measures of performance, performance goals, and management systems verification.

The six codes of management practices focus on:

- Community awareness and Emergency Response – promotes emergency response planning and calls for ongoing dialogue with local communities.
- Pollution Prevention – commits industry to the safe management and reduction of wastes.
- Process Safety – designed to prevent fires, explosions, and accidental releases of chemicals.
- Distribution – reducing risks from the shipment of chemicals, including transportation, storage, handling transfer, and repackaging of chemicals.
- Employee Health and Safety – protects employees and visitors to sites.
- Product Stewardship – makes safety and environmental protection an integral part of designing, manufacturing, marketing, distributing, using, and recycling and disposing of products.

several key performance indicators by which it will measure progress toward achieving success under that code. Noting that the “value” to a community of a company or plant essentially is determined by the community itself, Mr. Kistner stated that the indicators measure the reduction or elimination of environmental reportable incidents; the number of complaints of local residents; the positive survey responses of employees and community members; and the reduction or elimination of negative media coverage. He also added that his company has adopted a policy that requires its plants to establish functioning community advisory panels and appoint a community liaison officer.

#### 4.3 Presentation on Supplemental Environmental Projects

Ms. Melissa Raack and Ms. Beth Cavalier, Multimedia Enforcement Division, EPA Office of Enforcement and Compliance Assurance (OECA), provided an overview of EPA’s supplemental environmental projects (SEP) program. Ms. Raack stated that the goals of SEPs are to promote EPA’s goals of protecting and enhancing public health and the environment and providing environmental protection that might not occur otherwise. Ms. Cavalier stated that SEPs can be defined as a multimedia compliance program. Further, she said, SEPs are environmentally beneficial projects that are not otherwise required

by law but included in the settlement of an enforcement action. There are some constraints on SEPs, she noted. For example, she said, EPA may not manage or control SEP funds, and a SEP cannot be designed to satisfy EPA’s obligation to perform an activity. In addition, there must be a relationship between the violation and the project, she continued, saying that a SEP can not be inconsistent with statutes.

The presenters identified the various issues addressed by SEPs such as public health, pollution prevention, pollution reduction, environmental restoration and protection, environmental assessments and audits, promotion of environmental compliance, and emergency planning and preparedness. They also identified several types of SEPs not allowed, including those projects focusing on general public education, activities required by state or local government, “outright donations,” studies without commitment, projects funded by low-interest Federal loans or grants, and projects unrelated to environmental protection.

Ms. Eady asked whether SEPs are designed to provide the opportunity for public participation. Ms. Raack replied that EPA wants to include communities in the selection and implementation of SEPs. Ms. Raack added that communities will not be involved in the development or assessment

of a SEP. The design, and implementation of a SEP does not follow a “cookie-cutter” approach, she acknowledged.

Mr. Holden asked whether EPA exercises oversight to determine whether states are taking parallel action. There is no process in place for reviewing actions taken by states, Ms. Raack replied. She then added that additional information on SEPs can be found online at [www.epa.gov/oeca/sep](http://www.epa.gov/oeca/sep).

#### **4.4 Update on the Anniston, Alabama, Polychlorinated Biphenyl Superfund Site**

Mr. Brian Holtzclaw, Environmental Justice Coordinator, Waste Management Division, EPA Region 4, updated the subcommittee on activities currently underway at the Anniston, Alabama Polychlorinated Biphenyl (PCB) Superfund Site. Currently, he reported, EPA has established an Anniston Work Group, a cross-divisional group examining all environmental issues in Anniston. The current emphasis is on examining potentially funding a water and air toxics evaluation for the city. EPA also plans to perform an independent evaluation of the west and south landfills and to evaluate the site to determine whether the site qualifies for listing on the National Priorities List (NPL) of sites most in need of cleanup, he continued. Sampling for lead in soil also was being conducted, said Mr. Holtzclaw. If necessary, EPA will perform removal actions for properties contaminated with lead. EPA also currently is conducting an investigation of potentially responsible parties, he added.

In response to questions about the time table for additional testing and sampling, Mr. Holtzclaw reported that under the provisions of an Administrative Order on Consent agreement, Solutia, Inc. is required to conduct composite surface soil sampling for lead and PCBs. EPA will provide heavy oversight of those activities, he assured the members of the subcommittee.

Ms. Donna Gross McDaniel, Laborers-AGC Education and Training Fund and a member of the subcommittee, inquired about the initial health screening of residents of the area. Mr. Holtzclaw replied that a community group had conducted testing in 1995. Mr. Grover Hankins, Tulane University Law School and legal representative for the Sweet Valley/Cobbtown Environmental Justice, added that in 1995, the Alabama Department of Public Health also had conducted health tests.

#### **4.5 Report on the Environmental Protection Agency Delegated Authority**

Mr. Bill Luthans, Deputy Director, Compliance Assurance and Enforcement Division, EPA Region 6, presented an overview of EPA’s oversight of permits under the RCRA program, with a particular emphasis on the goals of such oversight. Currently, most permits issued under RCRA are in response to statutory requirements, he said. To ensure the proper establishment of permits under RCRA, a program delegated by EPA in which authorized states manage the program, EPA and the states enter into various agreements to implement program requirements, he continued. If a state is to be authorized to conduct the RCRA programs, a memorandum of agreement (MOA) is established that addresses the basic guiding principles of the program, he said. Further, the MOA includes the principles on which the relationship between EPA and the state is based and outlines the criteria EPA will use in conducting oversight of the state program, he continued.

Mr. Luthans reported that EPA has identified 1,714 high priority facilities that need corrective action and which form the baseline of hazardous waste facilities to meet cleanup goals under the Government Performance and Results Act (GPRA). In a nod to the subcommittee’s concerns about regulatory enforcement by Texas and Louisiana, Mr. Luthans stated that those states are “onpar” with the rest of the country in terms of the number of corrective measures imposed. Exhibit 8-4 provides background information on GPRA baseline facilities.

Mr. Samuel Coleman, Director, Compliance Assurance and Enforcement Division, EPA Region 6, then presented information about EPA’s National Oversight of the RCRA delegated programs. He stated that implementation of the program, which features a national oversight database of data provided by the states, follows a four-pronged approach:

- Establishing procedures for evaluating a state’s activities under the MOA.
- Conducting enforcement by EPA if a state fails to provide effective and consistent enforcement.
- Implementing an appropriate reporting process.

### GOVERNMENT PERFORMANCE AND RESULTS ACT BASELINE FACILITIES

In the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act of 1980 (RCRA), Congress directed the U.S. Environmental Protection Agency (EPA) to require corrective action for all releases of hazardous waste and hazardous constituents from solid waste management units at facilities seeking RCRA permits. Congress also expanded EPA's authority to address cleanup at permitted RCRA hazardous waste management facilities for releases beyond the facility boundaries. Although the Corrective Action program has been in effect since 1984, concerns have been raised that companies are not cleaning up their facilities quickly enough and that properties remain contaminated, posing risks to public health and the environment.

As part of the process to formulate EPA goals to achieve outcomes under the Government Performance and Results Act (GPRA), EPA identified 1,714 high priority baseline facilities that need corrective action. EPA developed the baseline of hazardous waste facilities to meet GPRA goals. The list of facilities will be used to measure the environmental progress of EPA's Corrective Action program. The baseline was developed from the National RCRA Corrective Action Priorities Initiative and each facility was given an initial ranking with input from the states. Most facilities were ranked based on information in their RCRA Facility Assessment report. The ranking tool took into account: (1) type and design of waste management unit; (2) volume of waste; (3) waste toxicity; and (4) likelihood of releases to the environment. Other factors included: (1) depth to groundwater; (2) groundwater use; (3) distance to surface water; (4) nearest drinking water intake; (5) nearest sensitive environment; and (6) nearby pollution.

The current focus of the Corrective Action Program is to achieve by 2005 two environmental indicators at the 1,714 baseline facilities: current human exposures under control at 95 percent of the baseline facilities, and migration of contaminated groundwater under control at 70 percent of the baseline facilities. The environmental indicators are interim outcomes of progress toward the ultimate GPRA goal of restoring the baseline facilities. To initiate progress toward the achievement of the environmental indicators, EPA or authorized states can require corrective action through permits or orders which should include schedules for corrective action.

- Providing clear communication with communities about activities under the delegated program

affected by an action of the Agency with a copy of the appraisal used to establish the value of the property.

Ms. Miller-Travis asked how "grandfathered" facilities, facilities operating before enactment of a law or regulation, are handled. Mr. Luthans responded that, recently, such facilities have received greater attention. Mr. Coleman added that, once operational units have been modified, they no longer are considered to be "grandfathered" and now must adhere to the provisions of the regulations.

Ms. Carey then discussed EPA's Advisory Services Team, which is conducting a pilot of EPA's Interim Policy on the Use of Permanent Relocation as part of Superfund remedial actions. She explained that the pilot project will focus on the Escambia Arms Apartments complex in Escambia, Florida which EPA is acquiring as part of the permanent relocation of residents affected by the Escambia Wood Treating Superfund site in Pensacola, Florida. The purpose of the project, she said, is to assist residents in understanding the relocation procedures, their rights under the Uniform Relocation Act (URA), and the eligibility requirements related to the voucher system for Section 8 subsidized housing.

#### 4.6 Update on the Environmental Protection Agency Relocation Policy Under Superfund

Ms. Suzanne Wells and Ms. Pat Carey, Office of Emergency and Remedial Response (OERR), presented a status report on the EPA policy on relocation under Superfund. Exhibit 8-5 presents background information about the Agency's relocation policy. Ms. Wells announced that on November 8, 2000, EPA had issued the policy *Release of Appraisals for Real Property Acquisition at Superfund Sites*. Effective immediately, she explained, EPA would provide the owner of a residential or business property

Ms. Wells then discussed case studies that are underway at five sites: Escambia, Florida; Times Beach, Missouri; Koppers, Texas; Old Southington, Connecticut; and Grand Street, New Jersey. The purpose of the studies, she said, is to determine what action EPA took at the site, how residents were treated, and what could have been done differently or better to improve conditions for the residents.

### EPA POLICY ON RELOCATION UNDER SUPERFUND

In January 1995, the Waste and Facility Siting Subcommittee of the National Environmental Justice Advisory Council requested that the U.S. Environmental Protection Agency (EPA) develop a policy to be used in determining when citizens should be relocated from residential areas near or affected by Superfund sites. EPA initiated the national relocation pilot project at the Escambia Woodtreating Superfund Site in Pensacola, Florida. EPA reviewed sites at which cleanups had been conducted in residential areas and solicited the views of stakeholders by sponsoring a series of forums to provide stakeholders the opportunity to share their views and experiences.

In May 1996, EPA convened the Relocation Roundtable meeting in Pensacola, Florida, with community and environmental justice representatives. Seven additional forums were held in 1996 and 1997 with representatives of industry; state and local governments; public health, tribal, and environmental justice organizations; and other Federal agencies.

In June 1999, EPA issued its *Interim Final Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions*. The policy clarified when to consider permanent relocation as part of a cleanup at National Priorities List (NPL) sites. The policy also provided examples of situations where permanent relocation could be considered, although EPA's preference is to clean up and restore property so that people can live safely in their homes. Public comments to the policy were received and a multistakeholder meeting was held in Washington, D.C. on March 2 through 3, 2000.

Currently, EPA has issued "mini-guidances" on such implementation issues as the release of appraisals and the establishment of advisory service teams. There is also closer coordination with the U.S. Army Corps of Engineers, which manages for EPA, permanent relocation; and training for staff responsible for overseeing relocations.

Ms. Wells concluded the discussion by announcing that a URA course would be held on January 10 through 12, 2001 in Dallas, Texas.

Ms. Miller-Travis then thanked Ms. Wells and Ms. Carey for the presentation adding that EPA has been very responsive.

#### 4.7 Presentations of Federal Environmental Justice Demonstration Projects

Presentations were provided on three Federal environmental justice demonstration projects, conducted in partnership between EPA, the U.S. Department of Housing and Urban Development, the National Institute of Environmental Health Sciences, and state and local governments and organizations.

##### 4.7.1 Spartanburg, South Carolina

Mr. Harold Mitchell, Regenesys, Inc., and a member of the subcommittee, and Ms. Jewell Harper, Deputy Director, Waste Management Division, EPA Region 4, presented information about environmental justice activities taking place in Spartanburg, South Carolina. Spartanburg is made up of two communities surrounded by five waste sites, including two landfills, they reported. Approximately 2,000 citizens are affected by the

waste sites, and more than 45 people living within a one-half-mile radius of the waste sites have died, they continued.

Working with local officials, Regenesys, Inc., has developed many community programs that are being implemented during the cleanup process, they said, adding that major stakeholders currently were "at the table working together." They then described the Arkwright/Forest Park Environmental Justice Project which supports three research projects on the former IMC fertilizer plant, which has since been removed, and the Arkwright landfill superfund site. The project will continue and expand existing research on health surveys of residents, former employees and families of the superfund site, they reported, adding that the results will be disseminated to the residents through a monthly newsletter. This project is unique because it is totally driven by the community and includes more than 60 individuals from various organizations, Mr. Mitchell said. With the help of Regenesys, the community is turning toxic waste sites into "livable" communities and the town is being revitalized, he concluded. Mr. Fields commended Mr. Mitchell for his perseverance in pushing the projects.

#### 4.7.2 Protecting Children's Health and Reducing Lead Exposure Through Collaborative Partnerships, East St. Louis, Illinois

Ms. Noemi Emeric, Regional Team Manager, EPA Region 5, presented an overview of the East St. Louis, Illinois, Environmental Justice Demonstration Pilot Project, Protecting Children's Health and Reducing Lead Exposure Through Collaborative Partnerships. The goals of the program include promoting greater coordination and cooperation among Federal agencies and making government more accessible and responsive to communities, said Ms. Emeric. Historically, EPA had used a "top-down approach" to implement its management program, she continued. Inherent in this approach were such limitations as a primarily regulatory program directed at point sources of pollution, a lack of a framework to address multiple sources of pollution, one-size-fits-all solutions, and a lack of direct relationships between Federal and local governments, she pointed out.

Ms. Emeric then said that the East St. Louis pilot project is a model for collaborative partnerships. The model, she continued, has five levels:

- Level One: Engage the Community – listen and identify problems.
- Level Two: Understand the Problems – building collaborative partners helps to support solutions.
- Level Three: Collaboratively Design the Project – develop local capacity.
- Level Four: Create a Sustainable Infrastructure and Model.
- Level Five: Create Livable Communities.

Currently, the program is focused on the third level, she added.

Mr. Michael Holmes, St. Louis Community College and member of the subcommittee, then explained why the pilot project is needed, stating that 65 percent of the population of East St. Louis is low-income, compared to the state average of 27 percent. Approximately 99 percent of the population is minority, he continued, while minority population of the state averages 25 percent. The unemployment rate, he added, is 24 percent, and only 51 percent of the population are high school graduates. By helping the community, the region is helped, Mr. Holmes concluded.

#### 4.7.3 Bridges to Friendship, Nurturing Environmental Justice in Southeast and Southwest Washington, D.C.

Mr. David Ouder Kirk, EPA OSWER, and Ms. Brenda Lee Richardson, Women Like Us and member of the subcommittee, represented the Bridges to Friendship partnership. She presented information about the Nurturing Environmental Justice in Southeast and Southwest Washington, D.C. demonstration project sponsored by the Interagency Working Group on Environmental Justice (IWG). Bridges to Friendship is a partnership of community stakeholders who have agreed to work together to achieve inclusive community revitalization, said Ms. Richardson. The organization, she explained, was founded on the premise that nongovernment organizations, private businesses, and the District of Columbia and Federal government agencies can use existing resources and expertise to improve services. The primary "product" produced by Bridges to Friendship is the building of "organizational" bridges and fostering their use, she continued, pointing to efforts aimed at identifying and organizing the sharing of resources and serving as a broker, catalyst or implementer, as examples of how the partnership works.

Ms. Richardson identified several commitments the partnership has made to the Interagency Environmental Justice Work Group, including (1) Bridges to Friendship Strategic Goals 2000, (2) involving Community Visioning, (3) Gentrification as Rising Tide Rather than Wave of Displacement, (4) developing revitalization tools, (5) fostering envirojobs and a small business focus, (6) convening an environmental justice project dialogue meeting, and (7) serve as a link to improving government efforts.

Ms. Richardson then focused on one project, the Youth Outreach-Job Training-Employment Pipeline. The project, she said, is linked to the NIEHS Minority Youth Worker Training, with local youth outreach and life skills training provided to ensure a complete training package. To date, she continued, more than 120 participants had been trained, and 72 percent of those participants had been hired and currently were out on the job. Salaries for the participants average \$11 to 14 per hour, she added. The next step is to have "envirojobs" training program with curriculum linked to the private sector. The Navy will advertise job openings via D.C. Department of Employment Services.

## 5.0 SUMMARY OF PUBLIC DIALOGUE

When Ms. Miller-Travis opened the floor to public dialogue, the following comments were offered.

### 5.1 Community of Vieques, Puerto Rico

Mr. Garcia-Martinez introduced Dr. Antonio Rivera-Castano, Committee for the Rescue and Development of Vieques. Dr. Rivera-Castano informed the subcommittee of the status of the case of occupation by the U.S. Navy of the island of Vieques, Puerto Rico. The Navy, he said, has occupied Vieques for approximately 60 years. In the 1970s, the island was used, with the permission of EPA, for burning and exploding ordnance, he continued. In 1980, the Navy requested permission from EPA to conduct open burning of unexploded ordnance, said Dr. Rivera-Castano.

Dr. Rivera-Castano stated that such activities had led to serious adverse effects on the health of residents of the island, as well as to the natural environment. On the island of Vieques, rates of cancer, liver disease, diabetes, and heart disease are higher than those on the main island of Puerto Rico, he pointed out. Further, he said, samples of seafood had been found to contain high concentrations of heavy metals. Seafood is a staple in the diet of the residents of Vieques, Dr. Rivera-Castano reminded the members of the subcommittee. Further, recent studies of divers indicates that approximately 60 percent have some form of heart disease, he said.

Mr. Garcia-Martinez added that high concentrations of metals had been found in the hair of residents, as well as in fish and land animals. Such concentrations are not naturally occurring, he continued, noting that the main pathway for exposure to the metals is through exposure to particulate matter.

On December 31, 2001, 8,000 acres of land on the island of Vieques will be turned over to Puerto Rico without having been cleaned up, Dr. Rivera-Castano claimed that residents know what activities have occurred that have resulted in the contamination of the area with hazardous materials. He then invited the members of the subcommittee to visit Vieques to see first hand "what is going on." Dr. Rivera-Castano added that, in 1999 in Fajaida, Puerto Rico, the residents of Vieques had met with officials of EPA to discuss issues. However, no issues had been resolved during that meeting, he said.

Ms. Miller-Travis asked Dr. Rivera-Castano whether there were specific issues he would like the NEJAC to pursue. Dr. Rivera-Castano replied that he would like the subcommittee to investigate the island to help the residents in their efforts to have the island listed on the NPL. Ms. Miller-Travis asked Mr. Fields about the protocol for cleanup when the potentially responsible party (PRP) is a Federal agency, such as the U.S. Department of Defense (DoD). Comparing Vieques residents' concerns about unexploded ordnance to citizen concerns about the cleanup of the Nomans Island bombing range, Ms. Miller-Travis asked how the White House could issue a directive that uses cleanup standards that are not acceptable to local communities. Mr. Fields acknowledge that many Federal agencies would need to get involved. He expressed his hope that the NEJAC's Federal Facility Work Group would be developed into a Federal facility subcommittee of the NEJAC.

Responding to questions about whether the Vieques case might be examined as a case study, Mr. George Pavlou, Director, Division of Enforcement and Compliance Assistance, EPA Region 2, responded that it would not. He then stated that only water quality standards have been violated. The prescore ranking of the island under EPA's Hazard Ranking System is lower than the 28.5 cutoff standard for placement of a site on the NPL, he said. Therefore, he continued, the island of Vieques is not eligible for listing on the NPL. Further, said Mr. Pavlou, the Navy, rather than EPA, determines when ammunition has become waste.

Mr. Fields agreed to pursue the issue with DoD, communicate to the affected community what actions EPA Region 2 had taken, and consider the possibility of developing a pilot case study.

Citing what he termed the unwanted transportation and storage of napalm into the Baton Rouge, Louisiana, Mr. Holden asked Mr. Fields whether any current Federal regulation can be invoked to direct the Navy to consider in such incidences, factors and issues related to environmental justice. Mr. Fields responded that the Navy is required only to ensure that waste is transferred to regulated facilities that accept hazardous waste.

Ms. Nelson concluded the discussion with the suggestion that Puerto Rican communities on the United States mainland be mobilized to lobby for congressional support to terminate the Navy's use of the island as a bombing range. Ms. Miller-Travis added that EPA Region 2 encourage and

participate in a briefing to the Hispanic Congressional Caucus and other Puerto Rican members of Congress.

## 5.2 Concerns of the Citizens of Freetown, Massachusetts

Reverend Curtis Dias, Pastor, Calvary Pentacostal Church, presented to the subcommittee information about what he termed the only minority community in Freetown, Massachusetts. The residents, descendants of Africans from Cape Verde who settled in the Bradley Road area a century ago, are fighting a series of environmental injustices, he said. In recent years, he continued, zoning action taken by the local government has caused the majority of the industry in town, and the heavy commercial traffic it produces, to be clustered around Bradley Road. In 1995, the Bradley Road community had been zoned for industrial use, said Reverend Dias, resulting in a number of proposals to site heavy industrial facilities in the once "quiet" community. He added that 180 acres of underdeveloped land may potentially be developed into a waste transfer station.

Reverend Dias reported that EPA Region 1 is investigating whether the town deliberately zoned the neighborhood for industrial purposes simply because the residents are mostly low-income and black. Currently, there are 19 businesses along the two-mile Bradley Road, including trucking companies, the Massachusetts Department of Public Works, and a tire dump that had caught fire, he continued.

Ms. Miller-Travis asked Ms. Eady to describe what action the Commonwealth of Massachusetts has taken to address the situation in Freetown. Ms. Eady replied that the situation in Freetown was being evaluated under the Massachusetts Environmental Policy Act. Mr. Ira Leighton, Deputy Regional Administrator, EPA Region 1, joined the discussion, stating that the case represents a challenge and could prove to be a test case in the investigation of environmental justice concerns. He stated that given the nature of the violations, EPA is taking steps consistent with its responsibilities. Referring to an EPA investigation of two Freetown officials for the filling and delineation of wetlands, Mr. Leighton stated that EPA had attempted to involve the U.S. Army Corps of Engineers in the permitting process. EPA Region 1, he said, has now assigned a wetland expert to the case and had slowed other enforcement actions to "prevent competition." The next step the Agency would take, he added, is the conduct of a complete investigation of the situation in Freetown.

Ms. Miller-Travis recommended that the Massachusetts Department of the Environment, EPA Region 1, and OSWER discuss how they can collaborate to address the issue and then make recommendations within three months to the subcommittee.

## 6.0 SIGNIFICANT ACTION ITEMS

This section summarizes the significant action items adopted by the subcommittee. The members of the subcommittee adopted the following action items:

- ✓ Develop an environmental justice paradigm for land use planning for local decision making related to the siting of waste management facilities. To achieve that end, the subcommittee will undertake the following actions: 1) develop a "best management practices" manual on the environmental justice implications of local land use decisions related to the siting of such facilities; 2) develop a set of implementation issues associated with land use and environmental justice; and 3) develop a resource guide on land use planning instruments. To begin to implement the land use planning framework, the subcommittee will develop a work plan for discussion during its January 2001 conference call.
- ✓ Recommend that representatives of the Massachusetts Department of Environmental Protection; residents of Freetown, Massachusetts; and representatives of EPA OSWER, EPA Region 1, and other appropriate Federal and state agencies, meet to discuss how to collaborate to resolve environmental justice issues faced by the Bradley Road community of East Freetown, Massachusetts.
- ✓ Recommend that the NEJAC Federal Facilities Work Group use the issue of continued bombing of Vieques, Puerto Rico, as a case study. It is recommended that other Federal agencies, especially DoD, be asked to join EPA in its further investigation of the concerns of the residents of Vieques. It is recommended further that EPA Region 2 communicate to the community the actions the region had taken to ensure that information about wastes and cleanup activities are communicated more clearly to the affected community. There should be ongoing follow-up with EPA Region 2, OSWER, and the subcommittee about activities related to Vieques and ongoing Navy bombing activities.



**MEETING SUMMARY**

of the

**PUBLIC COMMENT PERIOD**

of the

**NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL**

**December 11 and 12, 2000  
Arlington, Virginia**

**Meeting Summary Accepted By:**



**Charles Lee  
Office of Environmental Justice  
U.S. Environmental Protection Agency  
Designated Federal Official**



**Peggy Shepard  
Acting Chair**

**CHAPTER TWO  
SUMMARY OF THE  
PUBLIC COMMENT PERIOD**

**1.0 INTRODUCTION**

During its meeting in Arlington, Virginia, the Executive Council of the National Environmental Justice Advisory Council (NEJAC) held two public comment periods, the first on Monday evening, December 11, 2000 and the second on the evening of Tuesday, December 12, 2000. During the two sessions, 36 individuals offered comments.

This chapter presents summaries of the testimony the Executive Council of the NEJAC received during the public comment periods and the comments and questions that the testimony prompted on the part of the members of the Executive Council. Section 2.0, *Focused Public Comment Period Held on December 11, 2000*, summarizes the testimony offered on that date related to progress the Federal government has made in integrating environmental justice into its policies, programs, and activities, in a manner consistent with the provisions of existing laws and Executive Order 12898. It also summarizes the dialogues between presenters and members of the Council that followed those presentations. Section 3.0, *General Public Comment Period Held on December 12, 2000*, summarizes the presentations on general environmental justice issues offered on that date, along with the dialogue those presentations prompted.

Opening the meeting of the NEJAC, Mr. Haywood Turrentine, Birmingham Urban Impact Board and chair of the Executive Council of the NEJAC, thanked members of the council and the public who had traveled considerable distances to attend the meeting. Mr. Turrentine pointed out that individuals who wished to present comments are required to register in advance. He requested that, to ensure that every person on the schedule would have an opportunity to speak, commenters adhere to the guidelines outlined in the meeting materials. Each organization would be allowed only five minutes to make a presentation, he explained, regardless of the number of representatives of the organization in attendance. Mr. Turrentine added that members of the Executive Council would have the opportunity to ask questions and share observations in response to the presentations.

**2.0 FOCUSED PUBLIC COMMENT PERIOD  
HELD ON DECEMBER 11, 2000**

This section summarizes the comments presented to the Executive Council during the focused public comment period held on December 11, 2000, along with the questions and observations those comments prompted among members of the Executive Council.

Comments are summarized below in the order in which they were offered.

**2.1 Jerome Balter, Public Interest Law Center  
of Philadelphia, Philadelphia, Pennsylvania**

Pointing out that the U.S. Environmental Protection Agency (EPA) had made no progress in preparing its interim guidance for compliance with the requirements of Title VI of the Civil Rights Act of 1964, Mr. Jerome Balter, Public Interest Law Center of Philadelphia, Philadelphia, Pennsylvania, explained that the new proposal promulgated in June 2000 in the Federal Register is more confusing than the original. The guidance is flawed, he charged, and it penalizes communities that suffer from environmental injustices.

While Mr. Balter requested that EPA develop a new guidance with the intent of enforcing civil rights, he added that EPA cannot be depended on to do so properly. Mr. Balter stated that the NEJAC should develop its own proposal, one that examines the public health of communities; deals with elevated cancer rates, birth defects, and deaths in contaminated communities; and will be understood easily by members of communities. He added that EPA does not investigate complaints about permits. Why should affected communities submit complaints to EPA, he asked, when the agency takes no action on them. Mr. Balter also stated that the handling of environmental justice issues by state agencies should be investigated.

Mr. Luke Cole, Center on Race, Poverty, and the Environment and chair of the Enforcement Subcommittee of the NEJAC, informed Mr. Balter that the Enforcement Subcommittee had investigated the proposal and was to discuss it further throughout the week's sessions.

## **2.2 Connie Tucker, Southern Organizing Committee for Economic and Social Justice, Atlanta, Georgia**

Stating that she would like to compliment EPA Region 4 for working to curb environmental racism, Ms. Connie Tucker, Southern Organizing Committee for Economic and Social Justice, Atlanta, Georgia, explained that senior managers within the region's Waste Management Division and the Environmental Accountability Division are confronting the problems in environmental justice communities and engaging communities in the development and implementation of collaborative solutions. EPA Regions 4 and 5 are cleaning up more sites than any other region, she continued, explaining that eight years ago, Region 4 was reputed to be one of the "most racist" regions in the country. Major progress has been made in the region, she stated. Ms. Tucker pointed out that the enforcement roundtable meeting held in Region 4 resulted in the criminal prosecution of owners and managers of LCP Company in Brunswick, Georgia. She then applauded Mr. Timothy Fields, Assistant Administrator, EPA Office of Solid Waste and Emergency Response (OSWER), for his leadership in providing redress in such cases as the permanent relocation of a minority community in Pensacola, Florida. She also lauded Mr. Barry Hill, Director, Office of Environmental Justice (OEJ), EPA Office of Enforcement and Compliance Assurance (OECA), and Mr. Charles Lee, OEJ and Designated Federal Official (DFO) of the council, for fostering the development of the Interagency Working Group on Environmental Justice (IWG). While those achievements represent significant progress, she continued, much more must be done to ensure that agencies follow the letter of Executive Order 12898 and establish environmental justice in all programs.

Ms. Tucker explained that the continued burning of nerve gas by the U.S. Department of Defense (DoD) in Anniston, Alabama is an environmental injustice. The community already has been exposed to intolerable levels of polychlorinated biphenyls (PCB), lead, and toxic metals, she said. In addition, she continued, it is an injustice to expose the citizens of communities in the vicinity of the Defense Depot, Memphis, Tennessee, to warfare chemicals released during cleanup efforts without informing those communities about accidental emissions during the cleanup process. Health intervention and treatment should be provided for citizens whose health has been impaired, she urged.

Ms. Tucker then pointed out that the U.S. Department of Transportation (DOT) should reassess how Federal funds are allocated for road construction in small and rural communities. Funds are allocated disparately, especially in communities in the South, she continued. Roads are paved in white communities, she said, but often go unpaved in communities of color. Equating the disparate allocation of transportation funding to apartheid, Ms. Tucker stated that if the Federal government, as the provider of such funds, does not address the inequitable use of the funds by local municipalities, then it too is to blame for environmental injustices.

Ms. Tucker stated further that public participation efforts and impact studies have failed to address adequately noncompliance with clean air standards by the municipalities that comprise the Atlanta, Georgia, metropolitan area. She urged DOT to not be conciliatory to make state and local governments happy, but rather to be proactive and to promote the education of local officials. She called for DOT to promote the building of a major train transit system, asserting however that more buses will not increase the use of public transportation, but rather an efficient regional "fast train" system will. In addition, the U.S. Department of Energy (DOE) and DOT should invest in clean energy and renewable energy research and demonstration projects, she said.

## **2.3 Kenneth Bradshaw and Doris Bradshaw, Defense Depot Memphis, Tennessee Concerned Citizens Committee, Memphis, Tennessee**

Pointing out that he had attended several meetings of the NEJAC to plead for help, Mr. Kenneth Bradshaw, Defense Depot Memphis, Tennessee Concerned Citizens Committee, Memphis, Tennessee, then congratulated Mr. Fields for his efforts to hold Federal facilities accountable for environmental injustices. The Federal government has made progress in alleviating environmental injustices that have occurred in Memphis and across the United States, Mr. Bradshaw reported, adding that such success was due to many environmental justice organizations working around the country. However, he continued, there remain many concerns about DoD's facilities and activities. DoD's control of land use should be monitored, he suggested, and DoD should remove contamination from communities affected by its activities.

Ms. Doris Bradshaw, Defense Depot Memphis, Tennessee Concerned Citizens Committee, Memphis Tennessee, reiterated that DoD should

work with communities that have been affected by contamination resulting from military activities. Pointing to recent stakeholder meetings held in San Diego, California, and St. Louis, Missouri at which many significant minority stakeholder groups such as Hispanics and Native American tribes were not present, she said that all affected stakeholders should be represented at meetings, so that DoD and representatives of the communities can collaborate effectively to develop solutions to the problems that plague such communities.

#### **2.4 Manual Mirabal, National Puerto Rican Coalition, Washington, D.C.**

Mr. Manual Mirabal, National Puerto Rican Coalition (NPRC), Washington, D.C., provided a written statement about the Navy's bombing exercises in Vieques, Puerto Rico. Since the 1940s, the Navy has used Vieques as a bombing range for military training exercises, he wrote. The Navy has ignored environmental laws, destroyed the natural environment, and introduced health hazards to the residents of the island, the statement charged.

The bombing has damaged both land and ocean ecosystems, the statement continued. The topography of eastern Vieques is disfigured, and extensive vegetation has been lost, contributing to a decrease in rainfall in that portion of the island, he continued. The ocean ecosystem is suffering, and bombs and pieces of artillery can be found in coral reefs, it continued. Research indicates that environmental restoration is urgently needed in Vieques, Mr. Mirabal said in his statement.

The statement also expressed NRPC's concern about the effect of the military exercises on the resident population. The people of Vieques suffer from a multitude of illnesses and lack adequate health care facilities to provide treatment, the statement read. The cancer rate on Vieques is 27 percent higher than on the mainland, and infant mortality rates are very high, as well, the statement continued.

There is also concern about the level of toxins released from bombing exercises that reach the food chain, said the statement. The current agreement between the Governor of Puerto Rico and DoD allows the Navy to use inert bombs and keeps open the possibility of using live ammunition in the future, noted Mr. Mirabal's statement, adding that both live and inert bombs seriously disrupt the natural environment and ecosystem.

The statement then set forth NRPC's strong belief that the Navy bombing in Vieques must stop immediately and that EPA should fund research on the environmental damage to the island. EPA should deny renewal of the Navy's National Pollution Discharge Elimination System (NPDES) permit, the statement suggested, because of past violations, noise pollution, and the current spreading of toxins by inert bombs. EPA also should monitor the cleanup of Vieques carefully, and every effort should be made to restore the land completely so that, in the future, the community of Vieques can have use of and access to the current impact area, concluded the statement.

#### **2.5 Albert Donnay, Multiple Chemical Sensitivity Referral and Resources, Baltimore, Maryland**

Mr. Albert Donnay, Multiple Chemical Sensitivity (MCS) Referral and Resources, submitted a written statement about the issue of MCS. Mr. Donnay first congratulated the NEJAC for the resolution it had adopted on May 26, 2000 and forwarded to the EPA Administrator on July 7, 2000, in which the NEJAC urges that EPA work with other agencies to establish disease registries and make MCS a reportable condition. However, Mr. Donnay's statement continued, given that several published epidemiological studies put the rate of MCS cases already diagnosed by health professionals at 2 to 6 percent of the general adult population, establishing a disease registry for MCS or making it a reportable condition would involve tracking millions of cases. Doing so clearly is beyond the scope of any Federal agency, especially when there is no medical identification code for MCS in the United States, the statement read. Establishment of new codes is the responsibility of the National Center for Health Statistics (NCHS), which last year rejected a request to adopt one for MCS. NEJAC should consider passing another resolution that specifically recommends that EPA petition NCHS to adopt a code for MCS, suggested the statement.

NEJAC's resolution also calls for funding and programs to support increased understanding, education, and research that will aid in identifying causes, diagnosis, treatment, and the prevention of MCS, read the statement. More than 30 million dollars already is being spent every year by nine Federal agencies on research related to MCS. NEJAC should seek an accounting of that research, said the statement, since the draft report of the Federal Interagency Working Group on MCS

specifies only the amount of research on MCS that was funded by the Agency for Toxic Substances and Disease Registry (ATSDR) in 1994.

Mr. Donnay, in his statement, stated that EPA's draft report on MCS neglected to address comments received from other agencies before releasing the final draft. It also is inappropriate that EPA quote an August 1998 draft that does not include an approved policy statement from the agency, the statement continued. The NEJAC, the statement suggested, should request copies of comments on the April 1997 draft so that it can identify the true extent of research on MCS and determine the opinion of EPA staff about the issue.

### **2.6 Mary Lamielle, National Center for Environmental Health Strategies, Voorhees, New Jersey**

Ms. Mary Lamielle, National Center for Environmental Health Strategies, Voorhees, New Jersey, stated that, for 15 years, her organization had been working to help people who have been injured or disabled by environmental exposures to achieve a reasonable quality of life. She pointed out that a disproportionate number of people of color, the poor, and tribes are subjected to significant levels of environmental pollutants that may cause MCS and trigger debilitating symptoms. Ms. Lamielle commended the NEJAC for its initiative in presenting the MCS resolution to EPA. However, she continued, EPA had rejected the entire resolution unnecessarily because of the erroneous information about MCS included in the draft interagency report.

Federal agencies have failed to identify and address the needs of minorities, the poor, and those who suffer from chronic and debilitating effects of chemical exposures, said Ms. Lamielle. She outlined several recommendations the NEJAC should support, including the establishment of a disease registry for MCS and support of efforts to make MCS a reportable condition. In addition, she explained, more studies of the incidence and prevalence of MCS in minority and low-income populations should be conducted. Government agencies and the public must be educated about MCS, she explained, and research opportunities must be supported. She concluded by indicating the need for housing accommodations for those who suffer from MCS and for the construction of least-toxic, segregated housing for those in minority and low-income communities who have MCS.

Mr. Turrentine suggested that Ms. Lamielle speak with Ms. Shirley Pate, EPA Office of Enforcement and Compliance Assurance (OECA) and DFO of the Enforcement Subcommittee, about EPA's comments on the NEJAC's recommendations related to MCS.

### **2.7 Ethel Lane, Neighborhood for Justice, Phoenix, Arizona**

Stating that there is no environmental justice in Phoenix, Arizona, Ms. Ethel Lane, Neighborhood for Justice, Phoenix, Arizona, explained that, in her community, members of her community have written several letters to various Federal, state, and local government agencies, she continued, but no one has acted to address community concerns about a hazardous waste site that is located next to the Rio Solado River. The waste site jeopardizes the health of the community, she said. Federal agencies are not working together to achieve environmental justice, she pointed out, and citizens should be informed about hazards that exist where they live.

### **2.8 Lawrence Plumlee, National Coalition for the Chemically Injured, Bethesda, Maryland**

Dr. Lawrence Plumlee, National Coalition for the Chemically Injured, Bethesda, Maryland and former medical science advisor to EPA's Office of Research and Development (ORD), expressed his pleasure that the NEJAC had passed the resolution on MCS. The coalition, he said, as well as U.S. Representative Udall of New Mexico, had written to the EPA Administrator to point out its agreement with the NEJAC's recommendations. Dr. Plumlee showed the council a graphic that he stated demonstrated the correlation between chemical sensitivity and environmental racism. He urged the council to inform its constituent groups about how organizations such as the Chemical Injury Information Network, which can be reached by calling (406) 547-2255, can help people who have chemical sensitivities.

Dr. Plumlee pointed out that a link between MCS and environmental justice was established at the 1994 interagency Symposium on Health Research and Needs to Ensure Environmental Justice. The recommendations adopted during that symposium must be implemented, he stated. Veterans groups, farm workers, and those exposed to hazardous waste sites include a high percentage of minority and low-income individuals, he observed, and it is crucial to establish the prevalence of MCS in those populations and to provide treatment for members of those populations who are affected by MCS.

The National Coalition for the Chemically Injured has reviewed EPA's official response to the NEJAC resolution and found it outdated and incomplete, Dr. Plumlee stated. Since the work group's draft report, he continued, a consensus definition of MCS has been agreed upon by 89 clinicians and researchers who have extensive experience in this area. EPA should not rely on the Interagency Workgroup on MCS to formulate its MCS policy, he stated. Dr. Plumlee pointed out that the work group had been unable to reach consensus in more than five years of discussion. He concluded by requesting that the NEJAC ask EPA to develop its own MCS policy that is based on information that is not tainted by biases interjected by the military or the chemical industry.

### **2.9 Richard Burton, St. James Citizens for Jobs and the Environment, Convent, Louisiana**

Mr. Richard Burton, St. James Citizens for Jobs and the Environment, Convent, Louisiana, stated that there is no environmental justice in Louisiana. In Louisiana, he explained, a majority of plants and industries are located in low-income and minority communities. EPA's mission is to protect people, he continued, and if the agency continues to do nothing, those environmental injustices will continue.

Referring to his communities successful effort to prevent Shintech from locating a facility in the Convent and Mossville, Louisiana communities, Mr. Burton reported that the Louisiana Department of Environmental Quality (DEQ) has issued permits to two other firms to build facilities in his community. It is time, he asserted, that EPA exert pressure on EPA Region 6 to withdraw the permitting authority it has delegated to the state which allows the Louisiana DEQ to issue permits without the prior knowledge of Region 6. He then requested that the NEJAC continue to pressure EPA Region 6; otherwise, he said, nothing will be done in Louisiana to end environmental racism.

Ms. Rosa Hilda Ramos, Community of Cataño Against Pollution and member of the Puerto Rico Subcommittee, stated that the situation in Louisiana illustrates the need for EPA to hold states accountable when communities are being abused, particularly when states themselves are abusing communities by ignoring health issues, failing to include communities throughout the decision making process, and ignoring the right of people to live in a safe environment. Ms. Rose Augustine, Tusconians for a Clean Environment and member of the Health and Research

Subcommittee, echoed Ms. Ramos' sentiments, pointing out that such issues are not confined to Louisiana. The Federal government and EPA are responsible for and must maintain oversight of the contamination and waste management industry, she continued, saying that EPA must examine rescinding the authorities it has delegated to the states.

Mr. Cole observed that Mr. Burton had appeared before the NEJAC on several earlier occasions. Mr. Cole pointed out that, two years earlier, representatives of Louisiana DEQ had met with some members of the NEJAC; he asked what follow-up action had been taken after that meeting. Mr. Turrentine responded that he would speak with Mr. Lee about the issue.

Mr. Tom Goldtooth, Indigenous Environmental Network and chair of the Indigenous Peoples Subcommittee, noted that he had visited Mossville, Louisiana, and had witnessed the human rights violations that are taking place there. The situation there is an emergency, he said, because of the high concentration of industry in the area. The state is failing to comply with environmental laws, he stated, and the state agency's authority to issue and manage permits should be rescinded.

### **2.10 John Runkle, Conservation Council of North Carolina, Raleigh, North Carolina**

Pointing out that he had represented several communities in North Carolina that oppose multi-state regional solid waste landfills, Mr. John Runkle, Conservation Council of North Carolina, Raleigh, North Carolina stated that Waste Management Inc. recently proposed to establish a 400-acre landfill in Halifax County, North Carolina. The landfill's service area was to be at least five states, he said. The preliminary franchise agreement did not establish a daily or annual cap on the volume of waste, he explained, and the landfill was to be located in a rural and poor part of the county that has a large minority population. The community organized successfully, and the Halifax County commissioners announced that they no longer were considering entering into the franchise agreement, he said.

As another example, continued Mr. Runkle, the Environmental Poverty Law Program brought to EPA a complaint under Title VI related to the issuance of a solid waste permit proposed by Chambers Development of North Carolina for a multi-state landfill in Anson County, North Carolina. The Anson County landfill would have the greatest health and economic effects on residents near the

landfill, all of whom are African-American, he pointed out. Mr. Runkle explained that six years elapsed after Chambers Development first applied for a permit for the landfill before the North Carolina Division of Waste Management did any research into issues related to racial disparity. The state's position is that it cannot consider issues related to Title VI in permitting landfills, he said. He explained that the permitting rules contain only a general provision that the landfill must comply with other state and Federal laws.

It seems that siting enormous landfills in poor and minority communities is the state's unwritten policy, Mr. Runkle stated, pointing out that 8 of the last 10 applications for new landfills filed are for private, regional landfills and 6 of the 8 appear to have a racially disparate impact. It is in such cases that the EPA interim guidance fails, continued Mr. Runkle. In North Carolina, in only a few isolated cases in which a landfill is proposed within one mile of an existing landfill, is the local government required to consider the effects of siting the landfill in the community, he pointed out. There is no requirement that the state permitting agency determine whether there are any disparate adverse effects on minority or poor populations, he said.

Ms. Vernice Miller-Travis, Ford Foundation and chair of the Waste and Facility Siting Subcommittee, noted that EPA does have statutory authority under the Resource Conservation and Recovery Act (RCRA), which includes provisions governing landfills under parts C and D. EPA cannot tell a local government where to place a landfill, she stated, but the agency can deny permits.

### **2.11 LeVonne Stone, Fort Ord Environmental Justice Network, Marina, California**

Pointing out that she had attended two previous meetings of the NEJAC, Ms. LeVonne Stone, Fort Ord Environmental Justice Network, Marina, California, stated that her community is very stressed. Regulatory agencies have not responded adequately to environmental justice issues, she said. Honest and timely responses to issues related to Superfund and National Priority List (NPL) sites must be provided, she emphasized.

In her own community, she continued, a 120-acre landfill is located in the vicinity of five residential areas, and the city of Seaside also has several contaminated military ranges. The ranges have not been remediated, she explained, but fences

were built around them to be left in place until agencies resolve disputes about cleanup. Members of the community have not been included in any of the decision-making processes, she said. In sharp contrast to Seaside is Del Ray Oaks which was cleaned up in six months and on which was built a golf course and a hotel, she stated. There are a number of public schools in the vicinity, Ms. Stone noted, and a number of explosives have been found outside the impact range. She then expressed her displeasure that her community has not been included in decision-making processes.

Ms. Stone stated that she had spoken previously with Mr. Fields about serving on the NEJAC Federal Facilities Work Group. Mr. Fields had responded that she would be named to the working group, she continued, but no such appointment has been made. Ms. Miller-Travis informed Ms. Stone that a Federal Facilities Work Group had been formed and that Ms. Stone could take up issues with that body even if she is not a member of the group.

### **2.12 Kathryn Mutz, Natural Resources Law Center, University of Colorado School of Law, Boulder, Colorado**

Explaining that her organization focuses on natural resources in the western United States, Ms. Kathryn Mutz, Natural Resources Law Center (NRLC), University of Colorado School of Law, Boulder, Colorado, stated that the NRLC recently has begun to examine the issue of environmental justice in the context of natural resources. Many of the natural resources in the West are located on Federal lands, she pointed out, and are managed by the U.S. Department of the Interior (DOI) and DoD. The NRLC is working to identify existing environmental justice issues and to determine how environmental justice can be promoted in the West, she said. Some issues to consider, she explained, are land acquisitions that have social justice implications and water resources in areas in which poverty levels are high.

When dealing with natural resources, there are both convergence and conflict issues among groups and agencies, continued Ms. Mutz. An example of convergence of people working together is when environmental groups support the efforts of tribes in the adoption of more stringent water quality standards than those established by the state, she explained. An example of conflict, she continued, might be incompatible views held by various entities about the management of national forests and their timber and grazing lands.

The NRLC will work to address conflict and convergence among agencies to see how the protection of natural resources and social justice can be promoted, she said. Ms. Mutz invited anyone interested in the issue to speak with her after the session.

### **2.13 Laura Hunter, Environmental Health Coalition, San Diego, California**

Ms. Laura Hunter, Environmental Health Coalition, San Diego, California explained that her organization deals with the impact of the facilities and activities of Department of the Navy on communities in San Diego, California. Federal facilities commit numerous environmental violations, she said, and there is a lack of enforcement. She pointed out that Federal facilities can violate the provisions of their permits without suffering any consequences. Discussing the recent permitting of a nuclear megaport for San Diego Bay, Ms. Stone stated that the Navy does not recognize its effect on environmental justice or the cumulative effects of its actions on the local communities in the Barrio Logan area of the city, she said. In addition, these communities lack access to decision makers at the Federal facilities, she continued, explaining that representatives of the decision makers attend public hearings, rather than the decision makers themselves. The military should be held accountable for meeting the same standards that govern other facilities, Ms. Hunter said. In addition, she continued, Federal facilities should send their decision makers to meet with residents of communities affected by the Navy's activities.

Ms. Hunter also urged the NEJAC to examine the activities of the DOE Office of Naval Reactors. Stating that naval reactors are self-regulated, she explained that these reactors pose a significant effect on a wide range of communities, from the communities in which they are made to the communities in which the vessels are homeported. She predicted that in several years, the San Diego Bay will be home to as many as 19 nuclear reactors housed in carriers and submarines. Inadequate emergency planning plague the densely populated area, she stated, adding that the communities around the bay enjoy less protection than they would if they were located next to a commercial reactor. Ms. Hunter asked the individual members of the council to endorse the Military Environmental Responsibility Act which requires military agencies to comply with and be subject to the same standards and environmental laws that govern non-military activities.

### **2.14 Chavel Lopez, Southwest Workers Union, San Antonio, Texas**

Discussing the issue of Federal facilities, Mr. Chavel Lopez, Southwest Workers Union, San Antonio, Texas, explained that EPA's interim guidance on addressing administrative complaints under Title VI offers several recommendations about environmental justice. However, he said, Federal facilities do not recognize the Title VI guidance. Kelly Air Force Base was to close in the near future, Mr. Lopez continue; yet, there are no plans to deal with the off-base contamination associated with the facility. More than 100,000 people live near the base and could be subjected to groundwater contaminated with several very toxic chemicals, he pointed out. Natural attenuation currently is being proposed to address contamination from the base, he added, noting that the community believes such a remedy is an "insult" because it does not consider the 30 to 60 year process to be a cleanup.

In addition, continued Mr. Lopez, the Texas Department of Transportation is proposing a new highway through the contaminated community. Not only will the project increase air pollution, he stated, but it also will force the displacement of many people. An airport expansion also has been proposed, he added. The community already suffers from elevated rates of cancer and other diseases, he said, and the decision makers are not considering the cumulative effects of the proposed highway, expanded and joint use of the airport, and no clean up plan. In addition, new houses are being built on contaminated plumes, he charged, and home buyers are not being notified of that issue.

Describing the restoration advisory board established at the base, Mr. Lopez stated that public participation also has failed, in part because no translation services are provided. Mr. Lopez concluded by stating that a disparate number of minorities work in hazardous conditions, and they often are without protective equipment.

### **2.15 Gilbert Sanchez, People of Color and Disenfranchised Communities/ Environmental Health Network, Espanola, New Mexico**

Mr. Gilbert Sanchez, People of Color and Disenfranchised Communities/Environmental Health Network, Espanola, New Mexico, thanked the NEJAC for establishing a Federal facilities working group. However, he added, the development of the working group is effectively



silencing the input of communities. He stated that there were fundamental flaws in a process that does not take seriously the advice it asks of affected communities. Mr. Sanchez asked the council to “please open your doors, your hearts, your minds, to all the grassroots communities . . . when we ask for something and if you are going to give it to us, let us be a part of that.”

### **2.16 Teresa Juarez, New Mexico Alliance, Espanola, New Mexico**

Ms. Teresa Juarez, New Mexico Alliance, Espanola, New Mexico, stated that the NEJAC Federal Facilities Working Group is a vehicle through which community voices should be heard. The working group was created to give a voice to communities suffering from environmental injustices, she continued, so that members of those communities could bring their problems to the attention of the appropriate authorities. The fact that very few community representatives are members of the working group shows a lack of respect for communities, she charged.

Ms. Travis-Miller commented that the concerns raised by Mr. Sanchez and Ms. Juarez would be discussed during the council’s discussions with Mr. Fields and Mr. Hill. She stated that she “feels caught in the cross-hairs” because the NEJAC created the working group in response to multiple requests by communities but which now seems as if its been “subverted.” Communities are asking us why the NEJAC has failed to follow through on this request, so we need to know that we can give an honest answer, she emphasized. Mr. Lee, pointed out that although there are several community representatives on the working group, the membership does reflect the diversity of the stakeholder groups that comprise the membership of the NEJAC. Mr. Turrentine observed that there had been a lack of communication, both among the members of the NEJAC, between community representatives and the NEJAC, and between the NEJAC and EPA.

### **2.17 Rodney Livingston, DC Urban Environmentalists, Washington, D.C.**

Mr. Rodney Livingston, DC Urban Environmentalists, Washington, D.C., expressed his discontent with the NEJAC for what he termed its failure to achieve substantial accomplishments. The NEJAC had done nothing to curb environmental injustices, he said. Executive Order 12898 has not been successful in establishing adequate environmental justice measures in various Federal agencies, he continued. It

appears that there is always a reason to do nothing, he observed, and many excuses are offered when necessary action is not taken.

### **2.18 Armando Gandarilla, Grand Park Neighborhood Association, Phoenix, Arizona**

Mr. Armando Gandarilla, Grand Park Neighborhood Association, Phoenix, Arizona, stated that noise pollution and contamination afflict several communities in Arizona. Health issues affect those neighborhoods, he explained, and children are becoming ill. Mr. Gandarilla pointed out that there is a correlation between incarceration rates and exposure to pollutants. Incarceration rates are higher among minorities, he explained, adding that minorities are disparately affected by contaminants because of environmental racism. The state of Arizona is not held accountable for allowing such injustices to occur, he continued. The state seems to be above the law, he said, and communities cannot afford lawyers to fight for their rights. Mr. Gandarilla concluded by stating that private corporations should not be permitted to “hide behind” public agencies that allow them to perpetrate environmental injustices.

## **3.0 Public Comment Period Held on Tuesday, December 12, 2000**

This section summarizes the comments presented to the Executive Council during the public comment period held on December 12, 2000, along with the questions and observations those comments prompted among members of the Executive Council.

Comments are summarized below in the order in which they were offered.

### **3.1 Ann McCampbell, Multiple Chemical Sensitivities Task Force of New Mexico, Santa Fe, New Mexico**

Dr. Ann McCampbell, a physician and chair of the Multiple Chemical Sensitivities Task Force of New Mexico, Santa Fe, New Mexico, submitted a written statement to the members of the Executive Council. In that statement, Dr. McCampbell commended the NEJAC for its resolution on MCS. According to Dr. McCampbell, the resolution acknowledges MCS and makes common-sense suggestions about how the Federal government should address the problem. Despite EPA Administrator Carol Browner’s praise of other

NEJAC recommendations, the agency rejected the MCS resolution in its entirety, the statement continued. Dr. McCampbell conveyed her disappointment at EPA's rejection of the resolution and EPA's 1998 draft report on MCS. In her statement, she said that EPA had relied on a biased work group's draft report in rejecting the NEJAC's MCS resolution. Dr. McCampbell attached to her statement a letter from U.S. Representative Tom Udall (D - NM), requesting that Administrator Browner reconsider her decision.

Dr. McCampbell then expressed her gratitude to the NEJAC for acknowledging MCS as a serious medical problem and an environmental justice issue and voiced the hope that EPA would reconsider its decision and would begin to address the matter by considering the implementation of some of the NEJAC's recommendations.

### **3.2 Madeline Pepin, Our Lady of the Lake University, San Antonio, Texas**

Dr. Madeline Pepin, Environmental Science Program, Our Lady of the Lake University, San Antonio, Texas, a teacher at that institution, based her comments to the Executive Council on two case studies: the Polish-speaking community of Falls City, Texas and the Spanish-speaking Southwest San Antonio community that neighbors Kelly Air Force Base. Both communities are composed of native-born American citizens who do not read the language they speak, she said. Those citizens can read and understand very basic English, she explained, but lack the confidence in their limited English to ask questions or state concerns at public meetings on environmental issues. Dr. Pepin stated that, in both cases, officials failed to realize that the citizens were not literate in their native languages. In the Kelly Air Force Base case, until recently, no translator was provided on the grounds that the translation of documents would be too expensive and that no Air Force officials spoke Spanish. Dr. Pepin stated that the Air Force should have requested the services of a bilingual individual from the community to assist in the translation of questions and statements of concern by members of the communities.

Mr. Turrentine asked Dr. Pepin what assistance she would like to obtain from the NEJAC. She responded by stating that Federal officials should consult local governments or universities for an accurate and complete account of the demographics, including literacy of the communities affected by Federal facilities and their

activities. In addition, she recommended that Federal officials take note that there are many non-English-speaking communities in the United States and that the members of those communities were not educated in other countries; they read English, she said. Further, Federal officials should consult with local governments or universities to identify the type of translation services needed, she said. Mr. Turrentine invited Dr. Pepin to attend the meeting of the International Subcommittee, which was to convene on the following day.

Ms. Ramos suggested that Ms. Pepin speak to staff of EPA Region 2 about how it obtains simultaneous translation services.

### **3.3 Doris Bradshaw, Defense Depot Memphis, Tennessee, Concerned Citizens Committee, Memphis, Tennessee**

Ms. Bradshaw expressed concern about the Defense Logistics Agency's (DLA) failure to respond to her letters to the agency about an incident that occurred at Defense Depot Memphis on September 15, 2000. Three workers wearing full protective gear, she said, had been exposed to a release of mustard gas. She asserted that the DLA did not have an emergency response plan in place for the facility and that seven other releases had not been reported to the public. After repeated attempts to obtain information from EPA, Ms. Bradshaw said, she had become frustrated with EPA and Region 4. She stated that she was "tired of asking for simple things." Despite such lack of response, she continued, the citizens of her community remain willing to put air monitoring systems in their yards. DLA, she pointed out, did not have any monitoring systems for checking air quality.

As further evidence of the inconsideration and lack of cooperation EPA Region 4 has provided her community, Ms. Bradshaw reported that the Agency had selected December 11, 2001, the first day of the NEJAC meeting, to initiate testing in her community. Even when informed that she would be at the NEJAC meeting, DLA refused to change the date, she claimed.

Ms. Ramos sympathized with Ms. Bradshaw, saying it "breaks my heart that time after time I hear the same problems." She suggested that Ms. Bradshaw attend the meeting of the Federal Facilities Workgroup. In addition, Mr. Turrentine pointed out that Mr. Cole had suggested that at least four community members should be added to that workgroup and that Mr. Lee had stated that he would consider approval of that action.

Ms. Jane Stahl, Assistant Commissioner, State of Connecticut and member of the Executive Council of the NEJAC, stated that efforts to confront Federal facilities and persuade them to fulfill their responsibilities were met with “a brick wall.” As a representative of a state regulatory agency, she said, “We have found a common enemy” in Federal facilities. Ms. Stahl stated that the problem must be addressed through more extensive action than establishment of a work group.

### **3.4 Beverly Wright, Xavier University, New Orleans, Louisiana**

Ms. Beverly Wright, Xavier University, New Orleans, Louisiana, described the history of the Thompson Hayward Chemical facility, located in New Orleans, Louisiana. She stated that, from the 1940s until 1977, the facility was operated as a dry and liquid chemical formulation plant; after 1977, the facility was used for the warehousing and distribution of industrial, pest control, and dry-cleaning chemicals, she said. Commercially, she noted, it has been inactive since 1988. Ms. Wright then discussed a settlement awarded to residents of the area. Individuals living within a specified radius of Thompson Hayward received money, as well as a million dollar endowment fund established with the Greater New Orleans Foundation, she explained. She added that the city of New Orleans also had received \$500,000 under the settlement; those funds were to be used for capital improvements in the neighborhood.

Ms. Wright stated that, in 1997, the Louisiana Department of Environmental Quality (LDEQ), the Louisiana Department of Agriculture and Forestry (LDAF), and the past and present owners of the Thompson Hayward site signed a formal agreement that set forth in detail the steps to be taken to complete site investigation and cleanup. As of October 2000, LDEQ is at least one year behind its schedule, continued Ms. Wright. LDEQ previously had revised the time frame in May 2000 but has fallen behind again, she said. Ms. Wright stated that EPA had not “written off” the Thompson Hayward site completely, but that it is “extremely unlikely” that further work will be carried out there. She posed several questions to the Executive Council, asking why no progress has been made since the 1997 order in remediating the site. She asked further what EPA and LDEQ can do to rectify the situation.

### **3.5 Lynn Pinder, Youth Warriors, Baltimore, Maryland**

Ms. Lynn Pinder, Youth Warriors, Baltimore, Maryland, stated that she is the founder and executive director of that organization, which involves young African Americans in addressing environmental justice issues. In addition, she said, she serves as the southern regional coordinator for the Northeast Environmental Justice Network (NEJN).

Ms. Pinder directed her comments to the impact of the NEJAC at the state level and the involvement of youth (ages 18 and under) and young adults (ages 19 to 30) as a recognized voice in areas related to environmental justice.

The state of Maryland, continued Ms. Pinder, created a Maryland Environmental Justice Task Force at the request of some delegates to the state legislature. She stated that the intent and desire of most members of the task force is sincere. She stated, however, that she was concerned that the Maryland Environmental Justice Task Force is made up primarily of representatives of business and governmental agencies. Ms. Pinder then stated that, in her view, the term environmental justice signifies a call to action for individuals and groups residing in high-risk neighborhoods to take the lead in initiating action to combat environmental problems. However, she said, she believes that interests of communities were not as highly regarded as those of the business and government sectors at meetings of the task force. How, she asked, could the NEJAC do a better job in providing guidance at the state level? She also suggested that the NEJAC should foster youth leadership in the environmental justice movement.

Mr. Turrentine referred Ms. Pinder’s comments to Mr. Lee. Mr. Lee stated that the NEJAC maintains many partnerships with states, including the Environmental Justice Training Collaborative, which participants in the NEJAC meeting had discussed earlier that day. Further, he continued, the NEJAC engages in a great deal of outreach to states. For example, members of the NEJAC spoke at a recent conference in North Carolina on environmental justice that was sponsored by the U.S. Department of Natural Resources and the North Carolina Department of Environment and Natural Resources. In addition, Dr. Lee continued, efforts undertaken in Florida brought about legislation related to environmental justice. He stressed that, overall, the process had begun and that “we are feeling our way through.” that process.

Addressing Ms. Pinder's second point, Mr. Lee stated that, since 1992, OEJ had placed 1,600 students of diverse backgrounds in environmental careers. Further, OEJ is exploring the placement of students in community organizations. He then expressed appreciation that Ms. Pinder had raised the issue of representation of youth at future meetings of the NEJAC.

Ms. Annabelle Jaramillo, Oregon Office of the Governor and Vice Chair of the Air and Water Subcommittee of the NEJAC, pointed out that her state had established an environmental justice advisory board, but that its existence was not the result of the influence of the NEJAC. In her opinion, she said, the NEJAC should be considered a model. The models that work best, she added, are those conceived by communities and advocates, rather those developed by government agencies in response to a problem.

Ms. Stahl stated that the NEJAC is a model that serves as a "repository" of people who have expertise in environmental justice issues. The strength of the environmental justice movement, she continued, is with community groups, and the NEJAC often is not most effective at the local level. Ms. Pinder then expressed frustration because communities experience stagnation because although there is a national entity that wishes to assist them, states fail to follow through.

### **3.6 Ethel M. Lane, Neighborhood for Justice, Phoenix, Arizona**

Ms. Ethel M. Lane, Neighborhood for Justice, Phoenix, Arizona, stated that she is a citizen of downtown Phoenix. She then discussed the history of her neighborhood, which extends from Seventh Avenue to Nineteenth Avenue in downtown Phoenix. She reported that her community is overburdened with toxic pollution. She stated that, in 1952, the only area in which minorities could purchase new homes was that neighborhood, where the city of Phoenix operated a landfill. In the early 1970s, she continued, it was discovered that some of the garbage could contaminate the groundwater; therefore, she continued, the city moved the landfill. Currently, she stated two hazardous waste companies are located in the area.

Ms. Lane asserted that upper respiratory problems, heart disease, and cancer are common among the residents of the area. As member of the Downtown Southwest Neighborhood Association, she said, she had begun asking questions about air monitoring stations in the area.

She stated that she had been informed that the nearest monitoring station was located approximately five miles from the neighborhood in Greenwood Cemetery – "where the bodies don't talk," she quipped. Continuing, Ms. Lane said that she subsequently had requested that a monitoring station be established at a location closer to the neighborhood. She said that the Arizona Department of Environmental Quality had informed her that monitoring stations would be too costly. Therefore, she said, she had appealed to EPA for assistance. Ms. Lane then stated that there is an urgent need for resources to support the conduct of research in the downtown area. She requested that the NEJAC assist her in obtaining resources for health studies in her community.

Mr. Turrentine asked whether there was a representative of EPA Region 9 present and noted that the members of the NEJAC would study the situation in more depth to determine what direction that office could provide to Ms. Lane.

### **3.7 Richard Burton, St. James Citizens for Jobs and the Environment, Convent, Louisiana**

Mr. Burton stated that his organization is committed to the mission of ensuring clean air and water for the residents of the community, state, and the nation. He then expressed concern that his community is overburdened with toxic pollution. He then stated that a company in Louisiana known as Belmont Fleet, LLC, washes barges from the Mississippi River and deposits the residue into the river. Mr. Burton stated that he had questioned LDEQ about the status of the company's permit and that the agency had responded that the permit was in LDEQ's offices. He said he was told he must go to those offices to obtain a copy of the permit. Continuing, Mr. Burton asserted that LDEQ stated that he would have to write it to request an opportunity to make a public comment to the permit. It should not be necessary that we have to request that LDEQ conduct public comment, he said, adding that the Agency should have requested comments before issuing any part of a permit.

Mr. Burton also discussed spraying of sugar cane with pesticides. He stated that many people in Louisiana had become ill because of the unregulated applications of pesticides. People, he said, are not notified when the spraying is to take place.

Mr. Burton then suggested that EPA take back the regulatory authority it had delegated to LDEQ. He circulated several documents, which included a Public Hearing and Request for Public Comment on a Draft Water Permit of Belmont Fleet and information about the spraying of pesticides on sugar cane. He asked that the documents be submitted to EPA. Ms. Pamela Phillips, EPA Region 6, a member of the audience, informed Mr. Burton that she would provide him with more information about the issues he had raised.

Ms. Ramos suggested that Mr. Burton buy a small camera and take pictures of employees of Belmont Fleet discharging chemicals into the river, submit the photos to EPA, and then request enforcement action.

Mr. Goldtooth indicated that the NEJAC would attempt to obtain studies of the use of pesticides in sugar cane operations and forward any information found to Mr. Burton.

### **3.8 Patty Lovera, Center for Health Environment and Justice, Falls Church, Virginia**

Ms. Patty Lovera, Center for Health Environment and Justice (CHEJ), Falls Church, Virginia, which works with grassroots groups nationwide, stated that, over the past few years, CHEJ had identified a trend toward building schools on or near contaminated land, a practice that places low-income and children of color at risk.

For example, she continued, in Houston, Texas, a school for 3,000 students that will serve a predominantly Latino population is being built next to the Goodyear Chemical Company. Ms. Lovera stated that, the community fought to have the school built on another available piece of land, but the effort was unsuccessful.

Further, she stated, in Rhode Island, five schools for students who are predominantly African American, have been built on industrial waste sites. Despite the efforts of community members to halt construction, she said, all five schools were built.

Continuing, Ms. Lovera stated that Gordon Elementary School in New Orleans, Louisiana, is located on a Superfund site. The school, she said, will serve children in the low-income, African American neighborhood, in which the school is located, she said. Although the school has been closed, she noted, it likely will reopen because EPA has conducted surface cleanup around the building.

Ms. Lovera expressed concern that there are no standards that determine what constitutes that a school is “child-safe” with regard to environmental contamination. A year earlier, she continued, CHEJ and a coalition of other organizations had asked EPA’s Office of Children for guidance. However, she said, that office had responded that there are no guidelines; nor are there plans to develop such guidelines, she added.

Over the past year, CHEJ’s Poisoned Schools Campaign, which involves more than 40 groups, has created a draft document on criteria for the siting of schools, continued Ms. Lovera. She described the siting criteria, which includes a requirement for buffer zones around schools and establishes maximum levels for chemicals in soil and groundwater.

Ms. Lovera called upon the NEJAC to review the siting criteria document and share comments and concerns with CHEJ. Ms. Peggy Shepard, West Harlem Environmental Action and Vice Chair of the Executive Council, agreed that school siting is an important issue and stated her hope that the NEJAC would consider taking on the issue of environmental hazards in schools. Mr. Goldtooth suggested that Ms. Lovera attend the meeting of the Health and Research Subcommittee, scheduled for the following day.

### **3.9 Kimberly Bandy, Tennessee Human Rights Commission, Nashville, Tennessee**

Ms. Kimberly Bandy, Tennessee Human Rights Commission, Nashville, Tennessee, pointed out that, in 1993, the state of Tennessee had passed a law that mirrors the federal Title VI. The state law, she continued, requires that Title VI implementation plans or guidelines must be developed by the outside community. Ms. Bandy expressed concern about the lack of knowledge about environmental justice issues in the state. State agencies have proposed a study of Title VI, she added. State surveys of knowledge about environmental justice indicate that very little is known, she stated. However, she added, EPA Region 4 “is helping us break down the barriers to environmental justice.” Ms. Bandy stated that she had noticed a great deal of interest in Title VI on the part of local government agencies and private industry. She stated that she would like to see the same interest in environmental justice and the principles of civil rights at the level of state government, noting that such interest is vital to any effort to comprehensively address quality of life in Tennessee.

**3.10 Tamia Boyen-Robinson, Environmental Evangelism, Temple Hills, Maryland**

Ms. Tamia Boyen-Robinson, Environmental Evangelism, Temple Hills, Maryland, stated that she is an environmental consultant and member of the Maryland Environmental Justice Advisory Council. She then described a project under which environmental justice sites in the state of Maryland are being identified. One of the recommendations of the Maryland Environmental Justice Advisory Council, she continued, was to develop a geographic information system (GIS) data model, she continued. The purpose of the model is to encourage public collaboration and partnership in the environmental justice process, she explained. Health, income, housing, homelessness, child care, education, transportation, public safety, and environmental quality are the indicators chosen for the model, she continued. Ultimately, the model will identify environmental health concerns and coordinate their consideration in the formulation of public policy, she concluded.

Ms. Shepard asked whether Ms. Boyen-Robinson believed that drawing maps of environmental justice communities would be a deterrent to investment. Ms. Boyen-Robinson responded that she hoped the model would show that disproportionate numbers of minorities are subject to environmental risk. She added that mapping might be detrimental to some communities because it would effectively “red-line” some properties.

Mr. Don J. Aragon, Wind River Environmental Quality Commission, Shoshone and Northern Araphao Tribes, noted that Region 8 also is conducting GIS mapping on levels of income. The region has software capabilities, he noted. Most of the data have been sent to Region 8 by various tribes and states, he continued.

**3.11 Jenny Torres-Lewis on behalf of Manuel Mirabel, National Puerto Rican Coalition, Washington, D.C.**

Jenny Torres-Lewis, National Puerto Rican Coalition, Washington, D.C., identified herself as vice-president of that organization and then spoke on behalf of Mr. Mirabel. Ms. Torres-Lewis read Mr. Mirabel’s written statement (see Section 2-4 of this chapter for a summary of the statement) addressed to the NEJAC.

Ms. Shepard indicated that the International Subcommittee was to address the Vieques case during its meeting on Wednesday, December 13, 2001.

**3.12 LeVonne Stone, Fort Ord Environmental Justice Network, Marina, California**

Noting that she had spoken before the NEJAC the previous night, Ms. LeVonne Stone expressed concern that the proper cleanup of sites that pose environmental risk is not provided to low- income and minority communities. She pointed out that it is the responsibility of the Federal agency to clean up such areas. However, the state, she charged, is cleaning up sites in more affluent neighborhoods. The state has not cleaned up two ranges that are close to closure and that in the future will belong to the city of Seaside, the population of which is predominantly African American and Latino, she said.

The communities, continued Ms. Stone, have experienced deterioration of its economic base because of closures of military installations. People have been driven out of their homes, she stated. Ms. Stone suggested that members of communities be trained in the removal of unexploded ordnance (UXO).

Ms. Stone expressed displeasure at the limited progress of Federal agencies in complying with the requirements of Executive Order 12898. Any agency responsible for implementing the Executive Order should be conscious of the needs of the community, she added.

**3.13 Rafael Rivero-Castano, Private Citizen, Vieques, Puerto Rico**

Dr. Rafael Rivero-Castano, Vieques, Puerto Rico, a medical doctor who addressed the council as a private citizen, stated that he is a retired professor of epidemiology at the University of Puerto Rico. Dr. Rivero-Castano expressed concern about contamination caused by the Navy’s use of bombing ranges on the island of in Vieques, Puerto Rico. He stated that, in the 1960s, the cancer rate was higher in Puerto Rico than on Vieques; however, he pointed out, the rate for Vieques currently is 30 percent higher than that for Puerto Rico. Dr. Rivero-Castano indicated that the high cancer rate on Vieques is related to the Navy bombings. Further, he stated, many residents of Vieques have been exposed to toxic substances originating from the bombings because the toxic substances have entered the food chain.

Noting her respect for Dr. Rivero-Castano’s work, Ms. Ramos described the Vieques case as the worst example of what can happen when the community is not involved in the decisionmaking process. She encouraged Dr. Rivero-Castano to

continue dialogue with the Federal government and invited him to the next meeting of the Federal Facilities Working Group, tentatively scheduled for late January or early February.

### **3.14 Stephanie Farquhar, University of North Carolina School of Public Health, Chapel Hill, North Carolina**

Ms. Stephanie Farquhar, University of North Carolina School of Public Health, Chapel Hill, North Carolina, stated that she had been pleased to learn about some of the demonstration projects developed by communities that had been mentioned during the NEJAC meeting. However, she expressed concern that, even when there is community involvement, Federal and state agencies do not acknowledge that residents of a community are aware of what that community needs. She described in detail two case studies of health research conducted in response to needs identified by communities. One case involved the rates of cancer and asthma in Detroit, Michigan, where the population is 95 percent African-American and the response of the community on the interpretation of GIS data related to the community. The other case, she continued, centered on largely African American and Hispanic communities in eastern North Carolina, that had been devastated by Hurricane Floyd, and the response of the Federal Emergency Management Administration (FEMA) to those communities.

Ms. Farquhar recommended that the NEJAC broaden the definition of environmental justice and consider collaborating with such other Federal agencies as FEMA in the future.

### **3.15 Betsy Boatner, Amazon Alliance, Washington, D.C.**

Ms. Betsy Boatner, Amazon Alliance, Washington, D.C., discussed issues that had arisen during a meeting in Washington, D.C. of an international coalition of indigenous, environmental, human rights, and policy organizations. The purpose of that meeting, she explained, had been to examine the escalation of the herbicide spraying program of the government of Colombia – “Plan Colombia” – intended to eradicate illicit crops. The program, she stated, is funded by the U.S. government. Ms. Boatner charged that the program could cause serious harm to the health of indigenous and peasant communities and endanger the biodiverse ecosystems of the Amazon basin, while nevertheless failing to reduce overall production of drugs in Colombia or consumption of those drugs in the United States. The Colombian National

Police, assisted by U.S. government spray aircraft, fuel, escort helicopters, and private military contractors, was to increase aerial fumigation operations significantly in December 2000 in the southern state of Putumayo, she continued.

Ms. Boatner reported that 58 indigenous peoples whose territories cover almost half of the region are among those affected by fumigation in the Colombian Amazon basin. The Human Rights Ombudsman offices at the national and local levels have registered hundreds of complaints from peasants throughout Colombia that aerial eradication has caused eye, respiratory, skin, and digestive ailments; destroyed subsistence crops; sickened domesticated animals; and contaminated water supplies, she continued.

Ms. Boatner then stated that experts on drug policy argue that source-country counternarcotic strategies will never be successful in decreasing overall drug production because cultivation will be carried on in other regions and countries. Further, she asserted, domestic drug treatment programs are 20 times more effective than aerial eradication programs. The current policy, she stated, is “creating a severe environmental justice in Colombia.”

Mr. Alberto Saldamando, International Indian Treaty Council and vice chair of the International Subcommittee of the NEJAC, noted that he would make recommendations to EPA Administrator Carol Browner for addressing Plan Colombia. He then requested that Ms. Boatner provide written testimony. She agreed to do so, stressing the urgency of the matter because of the startup of operations in December 2000.

### **3.16 Yvonne McSwain-Powell, People Effective Against Chemical Eugenics, Richton, Mississippi**

Ms. Yvonne McSwain-Powell, People Effective Against Chemical Eugenics, Richton, Mississippi, stated that deaths and illnesses in her Richton community were related to the condition of well water that served as drinking water for her community and contained high levels of chloride, sodium, strontium, manganese, and boron. The information about the quality of the water, which suggests that local industry is the possible cause of contamination, was obtained only recently from documents prepared by the U.S. Geological Survey (USGS) in 1982 and 1983, she added. The well that provided water to her community was shut down officially in 1994, despite being declared an emergency in 1991, she continued. Although a

new well serving other communities was built in 1992, her community was not removed from the contaminated well until 1994, she added. The Mississippi Department of Environmental Quality conducted investigations and concluded that the USGS documents were inaccurate and outdated, she added.

Ms. McSwain-Powell expressed concern about the high incidence of such diseases as multiple myeloma, lupus, kidney failure, heart disease, incurable skin rashes, loss of eyesight, cataracts, gastrointestinal problems, tremors, and diabetes in children in her community. One cause of the high incidence of those illnesses, she stated, is arsenic, which has been in the tap water of the community for many years. Recently, she continued, arsenic was found in one resident's blood at extremely elevated levels. Further, she stated, the multiple myeloma occurs in her community at a rate of 3 cases per 150 individuals, a rate deemed insignificant by state epidemiologists. According to the American Cancer Society, she said, the average is 4 cases per 100,000 people.

Ms. McSwain-Powell indicated that she had attempted to reach out to state agencies; however, she said, those agencies have rejected her claims and are unwilling to recognize the problem. She requested that the well that was shut down in 1994 be reopened and investigated for possible contamination.

Dr. Marinelle Payton, School of Public Health, Harvard University Medical School and chair of the Health and Research Subcommittee of the NEJAC, asked whether any agencies had offered Ms. McSwain-Powell any assistance. She replied that she had requested assistance from the Agency of Toxic Substances and Disease Registry (ATSDR) in providing consultation and sampling for members of her community. However, that agency had not yet provided such assistance, she added.

### **3.17 Sandra Reid, Oak Ridge Health Liaison, Oak Ridge, Tennessee**

Ms. Sandra Reid, Oak Ridge Health Liaison, Oak Ridge, Tennessee, expressed concern about the handling of community health issues related to facilities of the U.S. Department of Energy in Oak Ridge, Tennessee. She stated that highly enriched uranium had been detected in the neighboring community of Oak Ridge. The Centers for Disease Control and Prevention (CDCP) had examined the health effects, she continued however, no conclusive evidence was

found that uranium from the DOE facility had caused adverse health effects in children. Ms. Reid emphasized that the community had encountered a lack of cooperation on the part of DOE and the U.S. Department of Justice in its efforts to address the health effects. Noting that, seven years earlier, she had attended a meeting of the NEJAC and that she had not seen action taken since that time, Ms. Reid urged the NEJAC to begin to address the inadequacies of studies of health effects and to take action.

### **3.18 Armando Gandarilla, Grant Park Neighborhood Association, Phoenix, Arizona**

Mr. Armando Gandarilla, Grant Park Neighborhood Association, Phoenix, Arizona, expressed concern that the area of that city that lies in the vicinity of Grant Park had been contaminated by a variety of sources, including the nearby Motorola Inc. plant, a chromium plant that was set on fire, the addition of runways at the airport, pollution from nearby freeways, and wastes from the Arizona Public Service. He noted that an informal survey had indicated that there have been 35 cancer deaths in a one-quarter mile section of his neighborhood.

Mr. Gandarilla requested funding to support the research being conducted by Neighborhoods for Justice to identify cumulative health risks and identify concerns of residents about environmental hazards, as well as funding to remediate the contaminants. He then asked the council what the time line is for bringing companies and or government entities into compliance.

Mr. Cole said that the Enforcement Subcommittee would address those issues during its meeting scheduled for the following day. Mr. Willard Chin, EPA Region 9, then approached the council from the audience to indicate that he would contact Mr. Gandarilla to address the issues Mr. Gandarilla had raised. Mr. Chin mentioned that EPA Region 9 has targeted South Phoenix as a high-risk area and is investigating facilities located near schools.

### **3.19 Andrew Brought, University of Maryland School of Law, Baltimore, Maryland**

Mr. Andrew Brought, University of Maryland School of Law, Baltimore, Maryland, spoke on behalf of the Cleanup Coalition, a small nonprofit group organized to assist communities in addressing issues related to environmental pollution and air, waste, and water pollution permitting, particularly in the Baltimore region. Mr. Brought, a student at the law school, was requesting funding for a thorough



study of subsistence and recreational fishing, specifically in Baltimore Harbor and among members of low-income or minority communities.

Because of contamination with chlordane, he continued, the Maryland Department of the Environment (MDE) has warned the general public not to eat substantial amounts of channel catfish or eel caught in Baltimore Harbor. Moreover, a study of Baltimore Harbor found concentrations of lead and cadmium in the edible tissues of fish and shellfish at levels high enough to cause health problems in individuals who ingest a consistent diet of such organisms, he noted.

Mr. Brought pointed out that the Cleanup Coalition is concerned that efforts to communicate the potential health risks of eating fish or shellfish from Baltimore Harbor may not be effective. That concern, he said, stems from anecdotal evidence that minority or low-income residents in the area of Baltimore Harbor are consuming fish or shellfish taken from the Patapsco River in quantities that exceed the limits suggested in the consumption advisories posted on MDE's web site, he continued.

To date, said Mr. Brought, there appears to have been no thorough study of fish consumption by subsistence fishers who fish Baltimore Harbor, Mr. Brought said. Lack of such fish consumption studies will prevent adequate protection of human health, he continued. Therefore, in recognition of the potential human health effects of carcinogens and bioaccumulative toxics, particularly on low-income or minority communities, and the almost total lack of any current data, the Cleanup Coalition was requesting that the NEJAC seek funding from EPA to initiate a complete, thorough investigation of consumption of fish and shellfish taken from Baltimore Harbor and in nearby communities.

Ms. Jaramillo encouraged Mr. Brought to present the issue at the meeting of the Air and Water Subcommittee meeting, scheduled for the following day. Further, Mr. Cole asked Mr. Brought to participate in the NEJAC meeting to be held in Seattle, Washington in December 2001, which was to focus on subsistence consumption.