

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL
Public Teleconference Meeting
Friday, September 21, 2012

MEETING SUMMARY

The Executive Council (Council) of the National Environmental Justice Advisory Council (NEJAC) convened for a four-hour public teleconference meeting on Tuesday, June 15, 2010. The meeting included a public comment period. This document summarizes NEJAC working group presentations to the Council, discussions among Council members, and community concerns expressed during the public comment period.

The NEJAC is a federal advisory committee that was established by charter on September 30, 1993, to provide independent advice, consultation, and recommendations to the Administrator the U.S. Environmental Protection Agency (EPA) on matters related to environmental justice. The NEJAC is governed by the provisions of the October 6, 1972, Federal Advisory Committee Act (FACA). The Council is currently comprised of 21 members, representing academia, business and industry, community-based organizations, non-governmental and environmental groups, state and local governments, tribal governments, and indigenous organizations. One EPA staff member serves as the Designated Federal Official (DFO) for the NEJAC. Exhibit 1 lists the members of the Executive Council who participated in the teleconference meeting, as well as those who were unavailable.

Exhibit 1

List of NEJAC Members

Members in Attendance

Ms. Elizabeth Yeampierre, NEJAC Chair, UPROSE, Inc.
Ms. Fatemah Shafaei, Spellman College
Mr. Nicky Sheats, Center for the Urban Environment, Thomas Edison State College
Ms. Patricia Salkin, Albany Law School
Ms. Deidre Sanders, Pacific Gas & Electric
Mr. J. Langdon Marsh, National Policy Consensus Center
Mr. John Ridgway, NEJAC Vice-Chair, Washington State Department of Ecology
Mr. Paul Shoemaker, Boston Public Health Commission
Ms. Monica Hedstrom, White Earth Nation
Mr. Peter Captain, Sr., Tana Chiefs Conference
Ms. Stephanie Hall, Valero Energy Corporation
Ms. Andrea Guajardo, Conejos County Clean Water, Inc.
Rev. Horace Strand, Chester Environmental Partnership
Ms. Savonala "Savi" Horne, Land Loss Prevention Project
Ms. Vernice Miller-Travis, Maryland State Commission on Environmental Justice and Sustainable Communities
Mr. Javier Francisco Torres, Border Environment Cooperation Commission

Members Who Were Absent

Ms. Margaret May, Ivanhoe Neighborhood Council
Dr. Paul Mohai, University of Michigan
Ms. Kim Wasserman, Little Village Environmental Justice Organization
Ms. Teri Blanton, Kentuckians for the Commonwealth
Ms. Edith Pestana, Connecticut Department of Environmental Protection

This summary contains five sections:

1. Welcome and Opening Remarks
2. Updates and Announcements
3. Overview of NEJAC draft report, "Fostering EJ for Tribes and Indigenous Peoples"
4. Member Questions and Answers
5. Public Comment Period

1.0 Welcome and Opening Remarks

Ms. Elizabeth Yeampierre, Executive Director of UPROSE and Co-Chair of NEJAC, welcomed the participants on the call, thanking US EPA's Office of Environmental Justice, NEJAC members for their protection of public health, and members of the public for "fighting the good fight."

Ms. Victoria Robinson, Designated Federal Office, Office of Environmental Justice, EPA, acknowledged the NEJAC's 20th anniversary in October, and performed a roll call for all members on the call.

2.0 Updates and Announcements

Ms. Yeampierre proceeded to update the teleconference attendees about the progress of various NEJAC working groups. The EJ in Permitting Working Group is developing a draft report due by November 1st, and which will be discussed during the next teleconference meeting. The Model Plan Working Group is revising the NEJAC Model Plan for public participation beyond meetings. The revisions also are due by November 1, and will be discussed during the next teleconference meeting. The Research Work Group is discussing findings and recommendations, with a report due by the Spring of 2013. The Storm Surge Work Group is currently identifying members, with a first call planned for late October.

Ms. Robinson provided an update about issues that were discussed during the NEJAC public conference in July. She mentioned that NEJAC members desire to learn more about hydraulic fracturing before engaging the EPA on the possibility of taking on a related charge. Ms. Robinson added that members want to ask the EPA Office of Water to provide an overview about how hydraulic fracturing can impact environmental justice communities. A January 2013 teleconference is planned. Ms. Robinson also discussed the nail and beauty salon issues from the July public conference. She said that the US EPA was currently looking into its role in nail and beauty salons, beyond statutory authorities, and that a brief overview of EPA's role would be discussed in the November teleconference.

Ms. Yeampierre announced that the EPA Science Advisory Board has convened an EJ technology panel, to provide recommendations for how EPA should aggregate the different factors in the EJ Screen tool. Ms. Robinson added that this is the next step beyond the NEJAC recommendations for EJ Screen.

Ms. Robinson also announced that the NEJAC would look to schedule another teleconference for November, to discuss the draft letter from the EJ in Permitting Work group, as well as the revisions to the NEJAC Model Plan. She also said that the NEJAC would look to have another teleconference in January 2013, to discuss hydraulic fracturing and its impact on environmental justice communities. Ms. Robinson said that the next face to face public meeting for the NEJAC would likely be in March 2013, with the venue to be decided at a later date.

3.0 Overview of NEJAC Draft Report, "Fostering EJ for Tribes and Indigenous Peoples"

Ms. Yeampierre introduced the presenting members of the NEJAC Indigenous Peoples Work Group (IPWG), who drafted the report. They are:

- Monica Hedstrom, White Earth Nation, Mahnomen, Minnesota (Work Group co-Chair)
- Wahleah Johns, Black Mesa Water Coalition, Flagstaff, Arizona (Work Group co-Chair)
- Katsi Cook, Running Strong for American Indian Youth, Washington, DC
- Daniel Gogal, Designated Federal Officer, EPA Office of Environmental Justice
- Dona Harris, Designated Federal Officer, EPA American Indian Environmental Office

Ms. Cook began by discussing the painting used in the PowerPoint presentation, created by a Mohawk artist to symbolize the Mohawk understanding of the human relationship to nature.

Ms. Hedstrom gave an overview of the NEJAC charge given to the IPWG. The EPA requested that NEJAC assist the Agency in developing policy for addressing tribal environmental justice concerns, along with implementation plans for the policy. EPA wants to improve the incorporation of environmental justice into tribal capacity building, and to collaborate with tribal communities. These goals are important for the successful implementation of Plan EJ 2014. Ms. Hedstrom informed the teleconference that the IPWG has had two public meetings to date, with the last one being in October 2011.

Ms. Johns mentioned that the recent endorsement by the United States of the United Nation's Declaration on the Rights of Indigenous Peoples (UNDRIP), on December 16, 2010, further affirms a profound commitment to the meaningful involvement and consultation with indigenous peoples

Next, Ms. Hedstrom and Ms. Johns proceeded to discuss the recommendations contained within the IPWG's draft report. Key preliminary recommendations included:

- EPA should proactively implement and use existing legal tools, like the UNDRIP and EPA Indian policy to address environmental justice concerns amongst tribal and indigenous peoples, using fair and meaningful processes.
- EPA should obtain the free, prior, and informed consent of indigenous peoples as a requirement, prerequisite, and manifestation of the exercise of the right to self-determination as defined in international law. Environmental decisions impact the indigenous way of life forever, and therefore a collective and informed decision must be made by the communities affected.
- EPA should ensure that interested indigenous stakeholders have the capacity to access the federal, state, and local decision-making processes.
- Noting the maze of government agencies and regulations that tribal communities face when making decisions, EPA should expand environmental justice components in NEPA and its environmental impact statement processes, as well as creating a standing EJ Indigenous Community committee to address and understand tribal concerns.
- EPA should be more open and engage tribal communities and stakeholders when they raise environmental and public health concerns, or when EPA actions have the potential to concern them.

Ms. Cook then discussed another piece of Mohawk art contained in the presentation. The artist was a 9/11 first responder who passed away recently from lung cancer associated with his heroism on that day. This piece symbolizes the Mohawk belief that a woman's body is a key part of the natural ecosystem, and must be free from environmental harm.

Ms. Hedstrom concluded the IPWG presentation by referencing the challenges facing efforts to address environmental justice in tribal communities. Communities consist of concerned members of Indian nations, who are also citizens of the United States. The question remains in the communities: Is environmental justice a threat to sovereignty, or is it a critical element of it?

4.0 Member Questions and Answers

Ms. Robinson announced a quorum of members after a second roll call. Ms. Yeampierre then opened the teleconference to questions from the members.

Mr. Effenus Henderson, Weyerhaeuser, Federal Way, Washington, expressed concern that the “free, prior, and informed consent” requirement could prove problematic for industry, because of the possible veto power it could give communities over projects. He specifically suggested that the requirement could impact fisheries. Ms. Johns reiterated that “free, prior, and informed consent” was important to help tribal communities meaningfully engage, and realize that they have been taken advantage of in the past. She said that right now, decisions are made without communities being informed of the impact that such a decision would have on many generations to come, and cited coal mining at Black Mesa as an example. Ms. Hedstrom added that participation in the process, without any power, is essentially meaningless. Mr. Henderson said that while he supported the rest of the recommendations, he could not support the recommendation for a “free, prior, and informed consent.”

Ms. Deidre Sanders, Pacific Gas & Electric, San Francisco, California, seconded Mr. Henderson’s concerns. She was curious about alternatives to enhance cooperation between industry and tribal communities.

Rev. Horace Strand, Chester Environmental Partnership, Chester, Pennsylvania, was concerned about tribal sovereignty issues. He wanted to know what an agency could do if industry and a tribal community came to an agreement, even without “free, prior, and informed consent,” outside of the agency process. Rev. Strand also emphasized the importance of establishing connections between EPA and tribal community leaders, so that the government is ready and informed when environmental justice issues arise.

Ms. Stephanie Hall, Valero Energy, San Antonio, Texas, asserted that communities don’t often have monolithic views, and wonders how “free, prior, and informed consent” would deal with disagreement in tribal communities.

Mr. Nicky Sheats, Center for the Urban Environment, Thomas Edison State College, Trenton, NJ, supported giving Indian tribal governments the right to veto industry proposals, saying he wished communities all over the country had that power. Mr. Sheats lamented the fact that many times, communities express their disapproval of an industry project, only to have it built in their backyards anyway.

Ms. Savanala “Savi” Horne, Land Loss Prevention Project, Durham, North Carolina, stated she was in favor of creating a standing committee on indigenous peoples. Ms. Horne also reassured tribal governments that the NEJAC did not wish to position itself between sovereign tribal governments and their people, and was only looking to make it possible for tribal communities to have meaningful and impactful participation in relevant decisions.

Mr. Langdon Marsh, National Policy Consensus Center, Portland, Oregon, supported the idea of informed consent, saying that participation cannot be meaningful without equal access to information. Mr. Marsh also strongly supported the recommendation strengthening the alternatives portion of NEPA, highlighting the use of lifecycle sciences. Ms. Johns reiterated that tribal nations are different, and that tribal

communities need to be included when a federal agency is considering permitting. People who have lived on the land for generations, and who will continue to live on the land for generations to come, should have the right to say “No” to proposed projects in their own backyard. Ms. Yeampierre cautioned the NEJAC about avoiding taking what is in essence a “Not In My Backyard” stance, but assured Ms. Johns that she understood her concerns.

Mr. Javier Francisco Torres, Border Environment Cooperation Commission, El Paso, Texas, had a question about the proposed indigenous peoples standing committee. He wanted to know if the Work Group had ever considered a committee like this at the local level, with a formal structure to address projects with tribal communities.

Ms. Andrea Guajardo, Conejos County Clean Water Inc., Antonito, Colorado, expressed her support for all of the Work Group’s recommendations, adding that she believed all communities should have these proposed rights.

Ms. Vernice Miller-Travis, Maryland Commission on Environmental and Sustainable Communities, Bowie, Maryland, mentioned that historically, there has been a tough relationship between environmental justice organizations and tribal governments. She mentioned that community interests were often trampled, because tribal governments worked with the federal government, and left the affected communities out of the conversation. Mr. Jerry Pardilla, National Tribal Environmental Council, Albuquerque, New Mexico, said that there is hardly a way to establish any specific mechanism for community participation and environmental review within a tribal government. Mr. Pardilla commented that Indian civil rights protection is the only tool available to communities, and asserted that while Indian government sovereignty must be respected, there also must be due process available.

Ms. Robinson reminded the NEJAC that the proposed standing committee was to give the federal government advice, not local governments. Mr. Torres then suggested that there be a macro-level standing committee at the federal government level, with local advisory committees to provide advice to communities.

Ms. Miller Travis wanted to know how the recommendations would affect non-federally recognized Indian tribes. Ms. Johns responded that non-federally recognized tribes were included, but acknowledged that perhaps the language did not make that sufficiently evident.

Mr. Sheats asked the Work Group if they were advocating for a different standard to be set for tribal communities, in relation to other environmental justice communities across the country. Ms. Cook reassured him that environmental justice concerned everyone, and that participation must go on at the community level for everyone.

Ms. Robinson then announced that it was time to take a vote on the draft report, and reminded the NEJAC that full agreement was required, because the NEJAC was an advisory committee. Ms. Robinson said that while members agree on large portions of the draft report, there was not full agreement on the “free, prior, and informed consent” recommendation. Therefore, the report would need to be re-drafted, and another vote could be held during teleconferences in October or November.

Rev. Strand finished this portion of the teleconference with a question for Ms. Harris, asking her how involved community groups were with tribal governments. Ms. Harris acknowledged that there were not easy answers to the question, as some groups work well and others don’t at all. Rev. Strand then called for

Indian tribes to better organize themselves, so that grassroots efforts can hold tribal governments accountable to their people.

Ms. Yeampierre then adjourned the discussion.

5.0 Public Comments

The two scheduled public commenters, Ms. Alice Bailey and Rev. Robert Murphy, did not appear on the call.