

MEETING SUMMARY

of the

**CASE STUDY PRESENTATIONS AND
THE PUBLIC COMMENT PERIOD**

of the

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

**December 9 and 10, 2002
Baltimore, Maryland**

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Chair**

CHAPTER TWO
CASE STUDY PRESENTATIONS
AND PUBLIC COMMENT PERIOD

1.0 INTRODUCTION

On December 9, 2002, two case studies dealing with pollution prevention and environmental justice were presented to the members of the National Environmental Justice Advisory Council's (NEJAC) Executive Council. The case studies provided the NEJAC with examples of pollution prevention projects that have been undertaken in different communities.

The Executive Council of the NEJAC also held a public comment period on December 10, 2002. During the evening session, 22 individuals offered comments to the Executive Council.

This chapter presents summaries of the information that the Executive Council received during the presentation of the case studies and the comments offered during the public comment period. Section 2.0, *Case Studies Presented on December 9, 2002*, summarizes the case study presentations about pollution prevention and opportunities to apply pollution prevention to benefit communities addressing concerns about environmental justice. Section 3.0, *Public Comment Period Held on December 10, 2002*, summarizes the comments offered on that date related to pollution prevention and other general topics of interest to the NEJAC. This section also summarizes the dialogues that occurred between the presenters and the members of the Executive Council which followed those presentations.

**2.0 CASE STUDIES PRESENTED ON
DECEMBER 9, 2002**

This section summarizes the two case studies that were presented to the members of the Executive Council of the NEJAC.

2.1 Source Reduction Project

Mr. Neil Carman, Lone Star Chapter of the Sierra Club, presented a case study titled "Source Reduction Project: A Step-by-Step Method of Reducing Pollution in Our Communities." The Source Reduction Project is a community-based effort to work with the Equistar Chemicals and Lyondell Channelview plants in Houston, Texas to reduce air emissions at the source, he explained. He stated that the project could serve as a model

that other community groups could adopt if they are interested in performing source reduction activities.

Mr. Carman pointed out that the Houston metropolitan area, located in Harris County, Texas, is one of the most industrially polluted urban areas in the United States and is home to a sizable minority population. According to the 2000 federal population census, the county has a 56 percent minority population of about 3.4 million people, he said. He noted that there are many industrial communities within the county, including Pasadena, Deer Park, Baytown, Channelview, Laporte, and Bayport. In 1996, he reported, Harris County posted the highest number of Toxic Release Inventory (TRI) releases of cancer-causing chemicals. In addition, he continued, the area ranks number one in the number of oil refineries, chemical and petrochemical plants, hazardous waste incinerators, and other "polluting plants." In 2000, approximately 190 TRI chemicals accounted for 23 million pounds of air releases in Harris County, he declared. Some of the TRI chemicals released were benzene; 1,3-butadiene; ethylene; propylene; toluene; xylene; and vinyl chloride. Mr. Carman pointed out that, in 1999 and 2000, Houston surpassed Los Angeles, California as the U.S. city with the greatest number of high-ozone days.

As a result of the conditions described above, the Source Reduction Project was undertaken with the intent of reducing source air emissions at the Equistar Chemicals and Lyondell Channelview (formerly ARCO) plants, Mr. Carman continued. Participants in the project included the members of the Community Advisory Panel for Lyondell and Equistar (CAPLE) and plant corporate staff and employees. He pointed out that the community had expressed concern because not only do the plants routinely emit toxic chemicals but because a deadly accident in which 18 people at the Equistar plant had been killed in 1989.

Mr. Carman emphasized that the goal of the project has been to reduce emissions to promote a cleaner and healthier environment within the local communities affected by the plants. He explained that the project focused on eliminating emissions at the source – pollution prevention – rather than minimizing emissions once they have been created – pollution control. In addition, he continued, the project's goal also included establishing a dialogue

between the two chemical companies and the surrounding community. However, he continued, that goal proved to be a challenge because of the historically adversarial relationship between the community and personnel at the plants, the threats of lawsuits by local residents, and citizens contacting regulatory agencies with complaints about the plants. The mission of the Source Reduction project was to address community concerns that emissions have a direct effect on community health, the environment, and the quality of life of local residents, he added. He noted that although industries typically do not agree that emissions are linked to health issues, they have been making substantive operational changes to address community concerns by implementing pollution prevention measures.

To date, Mr. Carmen reported, progress on the Source Reduction Project has been made in achieving the following seven goals:

- Reduce emissions to promote a cleaner and healthier environment
- Focus on source reduction, starting with an overview of all processes and possibilities for reduction
- Make continuous improvements in plant operations
- Achieve community and plant agreement on which source reduction opportunities to pursue
- Give the community a better understanding of source reduction
- Create a process for dealing with source reduction that can serve as a model for dealing with other environmental issues
- Do not neglect other issues while giving time to source reduction

In addition, he continued, the plants have responded to six citizen requests dealing with the following issues:

- Implement an aggressive fugitive emission monitoring program
- Reduce flaring at the Equistar Chemicals plant, particularly emergency flaring and the flaring of off-specification olefins, through source reduction and better flare efficiency
- Implement aggressive reactive, preventive, and predictive maintenance programs
- Reduce benzene emissions from a specific process flare at the Lyondell Channelview plant
- Reduce styrene emissions from a specific tank at the Lyondell Channelview plant
- Reduce butadiene emissions at the Equistar Chemicals plant

Mr. Carman pointed out that as a result of the project, there have been several actual reductions in emissions of target chemicals, such as benzene. Recent sampling at the Lyondell Channelview plant had indicated that the plant had reduced the level of benzene sent to its flare by more than 2 million pounds per year; consequently, he continued, more than 40 thousand pounds less benzene was emitted from the flare, he stated. In addition, he continued, Equistar's reduction in flaring at its plant had reduced 1,3-butadiene emissions from 261,000 pounds in 1996 to 74,600 pounds in 1999. In addition, Equistar had four engineering teams examining ways to reduce olefin flaring, and Lyondell personnel were looking for ways to reduce styrene emissions, he stated.

The project has yielded significant benefits for the companies as well as the community, Mr. Carmen explained. Both Equistar Chemicals and Lyondell have benefitted from source reduction, which has led to less waste and an increase in profits, and an improved image in the community, he pointed out. He explained that plant personnel have become more aware of community concerns and have developed an understanding of why citizens target certain chemicals. The community has benefitted from reduced emissions and a potential for more reductions, an increased knowledge of plant operations, a reduction in flaring, and improvements in plant maintenance and reliability, he said. In addition, he continued, with an increased knowledge of plant operations, the community can influence plant culture.

No regulatory agency representatives of the city, county, state, or the U.S. Environmental Protection Agency (EPA) were involved in the project, he noted. This approach was initially difficult, he continued, because the community did not have a sufficiently technical understanding about the technical aspects of the project. Mr. Carman explained that because the community and plant personnel maintained extremely polarized positions, initially, meetings and technical debates often were hostile. However, he pointed out, small group meetings allowed for in-depth discussions about residents concerns and focused problem-solving of technical issues. A united focus on source reduction was maintained throughout the process by all parties, he stated.

The local residents used a step-by-step process to achieve their goals, he explained. That process included improving their understanding of technical issues with the creation of a matrix through which to select target chemicals, participating in tours of the plants, developing requests and evaluating the

responses of plant management, and determining how corporations make decisions related to environmental issues, he added. He noted that other communities can use this process as a guide.

Mr. Carman stated that Phase II of the project had been terminated, primarily because the city of Houston is being pressured to reduce smog and to cut nitrogen oxide emissions by 80 percent and the plants now need to divert resources away from the Source Reduction Project. As a result, there probably will not be any further emission reductions achieved from this project, he noted.

Following his presentation, Mr. Carman opened the floor to questions from the Executive Council. Mr. Larry Charles, ONE/CHANE, Inc. and member of the International Subcommittee, stated that the project represents a breakthrough for communities without adequate resources that want to address similar challenges and handle similar environmental issues themselves. He noted that the model that was described should encourage community members to act as equal stakeholders with industry, as well as possess the capacity for funding ongoing compliance monitoring and continuous process improvements.

Ms. Peggy Shepard, West Harlem Environmental Action and chair of the Executive Council, asked Mr. Carman whether regulatory officials were involved in the Source Reduction Project. Mr. Carman responded that many local residents living near the Equistar and Lyondell plants had been extremely frustrated because they had been fighting the companies for "a long time" and knew that the plants would not be shut down. They also had expressed frustration with the state and federal regulatory agencies, and as such, chose to avoid dealing with those agencies, he stated. Mr. Carman added that Equistar and Lyondell maintained that they were in compliance with all their existing permits, and therefore the regulatory agencies were not included in the project.

Mr. Tom Goldtooth, Indigenous Environmental Network and member of the Indigenous Peoples Subcommittee, stated that it is important to develop a matrix to establish priorities for reduction among chemicals. In addition, he continued, community involvement is very important. Mr. Goldtooth then asked whether there was strong participation of minorities in the Source Reduction Project. Mr. Carman responded that an effort was made to talk to and reach out to all members of the community but that there had not been strong participation in the project by minorities. Mr. Goldtooth then asked

whether dioxin was discussed for inclusion in the target chemical matrix. Mr. Carman noted that dioxin had been considered but the Equistar and Lyondell companies had indicated that they had no maintenance data showing that dioxin was an air emission, present in water discharges, or present in hazardous waste at their plants.

Mr. Tseming Yang, Vermont Law School and chair of the International Subcommittee, asked Mr. Carman whether the plants had been in compliance with their permits and what made the plants willing to participate in the project. He also asked what alternative action the community would have taken if the plants had not been willing to participate. Mr. Carman responded that initially there had no record of regulatory compliance issues but that a violation was discovered after a subsequent Freedom of Information Act (FOIA) request had been submitted. However, there was no basis for a citizen lawsuit because there were not enough violations, he explained, adding that the companies were willing to initiate a formal dialogue with the community because the residents had been extremely persistent in raising issues with the plants over the years.

Ms. Lori Kaplan, Indiana Department of Environmental Management and member of the Health and Research Subcommittee, stated that pollution prevention measures that go above and beyond regulatory requirements are the right thing to do. She pointed out that demonstrating the cost savings benefit of implementing pollution prevention measures can persuade companies to undertake those types of projects. She asked Mr. Carman to elaborate on the increased profits realized by the companies during the project. Mr. Carman replied that he did not have specific examples of such benefits but that the companies stated that the project had helped them.

Reverend Adora Lee, United Church of Christ and member of the Health and Research Subcommittee, expressed her concern regarding the sustainability of the project and how the companies would be held accountable for continuing source reduction. Mr. Carman pointed out that the companies were concerned about their ability to continue to focus on the project when they had to dedicate resources to meeting the new nitrogen oxide requirements. He noted that the project might resume in the future but that he did not expect that it would.

Mr. Richard Gragg, Florida A&M University and member of the Health and Research Subcommittee, noted that he is glad that companies are attempting to be successful at source reduction, but he

expressed concern about using the Source Reduction Project as a model. One of the crucial aspects of pollution prevention from an environmental justice perspective is the participation of local community members affected by the pollution, he stated, and it is hard to evaluate this project when only six community members were involved. Mr. Gragg then asked who appointed Mr. Carman as the technical advisor for the project. Mr. Carman responded that the community members had appointed him as their technical advisor. Mr. Gragg reiterated that without what he termed "representative participation" from the entire community, the project could not be called successful despite the fact that it had achieved some source reductions. Mr. Carman pointed out that many local residents depend on the chemical industry for jobs and that many may not have been willing to participate in or be perceived as saying anything negative about the plants.

Mr. Terry Williams, Tulalip Tribes and member of the Indigenous Peoples Subcommittee, asked Mr. Carman whether the community had requested from the companies additional information, such as soil or water quality monitoring data, and whether there had been any discussions among the citizen groups in terms of monitoring health conditions among residents living in the vicinity of the plant. Mr. Carman replied that personal health issues were discussed during several meetings and that the companies had at one point talked about performing a health study. However, the project did not focus on soil or water issues because 99 percent of the cancer-causing chemicals released by the plants were emitted into the air, he stated.

Ms. Pamela Kingfisher, Indigenous Women's Network and member of the Health and Research Subcommittee, stated that the economic benefits of pollution prevention over pollution control should be marketed to other companies. She asked Mr. Carman whether someone would be developing guidance about how to adapt the project model for use at other firms. Mr. Carman replied that several community members had spoken with various community advisory panels in Houston, but that a dedicated group of people was needed to make this model work.

2.2 Park Heights Environmental Results Project

Mr. Bernard Penner, Maryland Department of the Environment (MDE); Mr. Tom Voltaggio, EPA Region 3; and Mr. Henri Thompson, Park Heights Coalition, presented a case study about the Park Heights Environmental Results Project, a project that focused

on auto body and mechanical repair shops in the largely low-income Southern Park Heights community in Baltimore, Maryland. Mr. Penner expressed hope that the project would serve as a model for improving the working relationship among regulators, the regulated community, and local residents.

Mr. Penner pointed out that the project has three essential components. The first component is statistical and involves establishing percentage goals for compliance that "make sense," he said. The second component aims to improve the effectiveness of compliance assistance, he continued. MDE should reach out to educate auto body shop personnel, he explained, and offer good advice to the small businesses that typically slide beneath the regulatory radar. Third, the project aims to improve the quality of life of local residents by raising community awareness about which shops are doing a good job of complying with regulations, he added.

Mr. Penner stated that the Park Heights auto body/repair shop sector had been picked specifically for the project because of the lack of enforcement presence within that sector. In addition, he continued, Park Heights has a high concentration of such shops within a relatively small residential area where contamination from the shops poses a multimedia impact.

The methodology implemented for the project initially required identifying the universe of local body shops by identifying where in the neighborhood the shops were located, Mr. Penner explained. The next step involved creating a metric or a standard measurement by which to define how success would be determined, he said. Using what has been termed a Environmental Business Performance Indicators (EBPI) metric would be used to help judge compliance at the shops, he stated. Baseline inspections of small businesses were conducted at the beginning of the project prior to any outreach efforts, he said. The next step will be to render compliance assistance to all the shops in the project universe, he added. Training sessions will be held, he continued, and resources pooled to help solve various problems. For instance, the management of waste oil is a problem for many facilities, he stated, explaining that waste oil handlers do not like to remove oil from tanks holding less than 500 gallons despite the fact that most shops use 55-gallon drums to store waste oil. One possible solution would be to accumulate the waste oil at a central location for pickup, he pointed out. After the compliance assistance period, final inspections will be

conducted, he said. Mr. Penner pointed out that the results of the pre-project inspections will be compared to the results of the inspections conducted after the compliance assistance measures have been implemented. Benefits of this methodology include improving compliance, enhancing communication between the regulators and the regulated community, and improving the regulatory process, he stated.

Mr. Penner stated that baseline inspections have been completed and that compliance assistance guidebooks are being developed. However, because the compliance assistance and followup inspections have not been completed, it is not known whether the project would be a success, he concluded.

Mr. Voltaggio commenced his discussion by pointing out that the Park Heights community is a largely low-income and minority community that has long been in need of redevelopment and revitalization. The community have expressed concerns that the high concentration of auto body shops are sources of environmental pollution that adversely impacts community health, he said.

Mr. Voltaggio went on to explain that the Park Heights project represents a cooperative partnership among EPA Region 3's Office of Enforcement, Compliance, and Environmental Justice (OECEJ); the EPA Office of Enforcement and Compliance Assurance (OECA); MDE; and the residents of Park Heights, Maryland. Members of the community initially had believed that approximately 150 auto body and repair shops operated in the area, he stated, but after research, EPA and MDE were able to identify only approximately 50 auto body and repair shops currently operating in the neighborhood. He noted that many of the shops discovered had not been included in MDE's permitted and regulated facility databases. Using what he termed "an integrated strategy," Mr. Voltaggio reported that MDE and OECEJ are working with the community to address the environmental problems that these shops present.

Mr. Voltaggio pointed out that OECA had provided \$275,000 in funding for the project. Funded activities include planning and design of the compliance rate analysis and distribution of compliance assistance guidebooks for auto body and repair shop owners, the development of a multimedia checklist for the pre-project and post compliance assistance inspections at the shops, the hiring of community members to locate and identify the shops in the community, and the statistical analysis of the two

rounds of inspection data, he explained.

The project was designed to conduct inspections at a statistically valid number of randomly selected shops to obtain an initial rate of compliance, Mr. Voltaggio continued. OECEJ completed over 40 inspections in July 2002, and followup inspections will be conducted in July 2003, he explained. The shops will be evaluated using EBPIs to determine whether the shops would be able to improve their environmental performance after July 2003, he said. He stated that MDE plans to provide compliance assistance and pollution prevention outreach to the universe of auto body shops in Park Heights between the two inspections. He pointed out that compliance assistance efforts will include training shop personnel to conduct a self-certification program geared toward environmental compliance.

Mr. Voltaggio stated that the goal of the project is to measure the results of the compliance assistance efforts and inspections to see whether information, education, and technical assistance would promote a change in the behavior of operators in the auto body and repair shop sector. Indicators of success so far include improved communication and cooperation among EPA Region 3, MDE, and the Park Heights residential and commercial community, he noted. In addition, he continued, environmental indicators of success include a decrease in the amount of oil and grease found in the influent to the local municipal wastewater treatment plant.

Following Mr. Voltaggio, Mr. Thompson explained that the Park Heights Coalition, which had been incorporated as a nonprofit organization in 1996, aims to promote community-driven revitalization planning for a self-sustaining future. Park Heights, once a prosperous community, now has "a lot of crime and elevated asthma and cancer rates," he stated. Residents and businesses in the area had been neglected when it comes to economic, social, and environmental development, he declared.

The presence of auto body shops have raised concerns in the community because of their proximity to daycare facilities, restaurants, and residential areas, he said, which sparked the community in 2000 to draft a revitalization plan that addresses educational, health, and environmental issues. In 2001, representatives of EPA Region 3 and MDE had visited Park Heights where they had been able to view firsthand the number of auto body shops and their proximity to residential areas, he continued. From that, a dialogue between local residents, EPA, and MDE had been established, he said. The coalition has a good relationship with the

local business community, he said, but there had been initial skepticism about getting involved with EPA.

Mr. Thompson emphasized that the Park Heights project provides an opportunity to both regulate and educate businesses as well as to educate members of the local community. The businesses are vital to the community, he pointed out, because they provide jobs and valuable services. Mr. Thompson stated that he was very excited to be part of the project and asked that funding for the project be continued to ensure its completion.

Following the presentation, Mr. Charles pointed out that the project's success requires improving the knowledge and of both the community members and regulators, as well as their level of comfort with the process. In addition, he stressed the importance of walking the "fine line" between economic development and the protection of human health. Mr. Charles expressed hope that the project would help establish standards and principles for the development of a model of economic growth that includes addressing pollution prevention principles.

Mr. Kenneth Warren, Wolf, Block, Schorr and Solis-Cohen and member of the Enforcement Subcommittee, pointed out that the government had made extraordinary efforts to involve the community and to act as a facilitator. The creative use of the EBPI metrics by which to examine compliance rates prior to compliance assistance is a valuable tool, he asserted. Mr. Warren asked whether "enforcement flexibility" – the selection of compliance assistance over a traditional enforcement approach – is generally applicable at sites for all environmental justice communities. Mr. Voltaggio replied that the fundamental purpose of the project is to provide assistance to facilities that ordinarily would not be targeted for enforcement. The types of facilities participating in this project are not large and normally would not be inspected, he stated. Mr. Penner added that it is very difficult to get flexible enforcement approaches such as compliance assistance to work because if a significant violation is discovered that potentially impacts human health, an enforcement action can take place, he noted.

Ms. Kingfisher asked Mr. Penner whether the limited amnesty (an approach that reduces civil penalties and the threat of criminal liability for companies that audit, but includes conditions and exceptions to protect the public and provide a continued incentive for companies to prevent violations before they occur) was documented by a signed memorandum of understanding between EPA, MDE, and the

regulated community. Mr. Penner replied that the limited penalty amnesty provided under the project is similar to that provided under EPA's environmental audit policy. If a facility discovers a violation during an environmental audit and completes a compliance plan, the regulatory agency would forego an enforcement action, he explained.

Ms. Eileen Gauna, Southwestern University School of Law, asked how the regulated community responded to the random, unannounced inspections and how compliance would be assured over the long term once the project is completed. Mr. Penner stated that by getting the community involved, EPA Region 3 and MDE hope to ensure future compliance. Mr. Thompson noted that the regulated shops did not respond negatively to the inspections because as part of the project start-up. EPA Region 3 and MDE had "done a good job" of explaining the project and its benefits. Mr. Thompson added that money and personnel are needed to hold workshops and training sessions for citizens so that the future success of the project can be ensured.

Mr. Goldtooth asked whether any body shops are owned by individuals who live outside the community and whether some shops are mobile and shift from location to location. Mr. Penner responded that MDE recently had received baseline demographic data regarding shop owners who live in the community and those who do not, but that MDE had not had time to evaluate that data. He added that the project is limited to auto body shops that have a fixed address. Mr. Goldtooth noted that he suspected that some of the shops might be small, home-based operations. He stated that the owners of that type of operation need to be educated as well. Mr. Thompson confirmed that many of the shops are "backyard operations," and he reiterated the importance of educating and assisting their owners.

3.0 PUBLIC COMMENT PERIOD HELD ON DECEMBER 10, 2002

This section summarizes the comments presented to the Executive Council during the public comment period held on December 10, 2002, along with the questions and observations that those comments prompted among members of the Executive Council.

The comments are summarized below in the order that they were offered. In addition, written comments were submitted and read into the record.

3.1 Mr. Don Norwood, Urban Community Environmental Resource Center, Baltimore, Maryland

Mr. Don Norwood, Urban Community Environmental Resource Center (UCERC), Baltimore, Maryland, presented his comments regarding the Baltimore Aggregate Recycling Company (BARC), which performs gravel crushing operations in Baltimore. Mountains of dust and dirt at the facility extend up to three stories high, he said. As trucks enter and leave the facility, they blow dust into the air, and nearby residents are subjected to particulate contamination, he explained. According to Mr. Norwood, the community had taken several preventive measures, such as forming a community-based environmental advocate group, circulating petitions in the community to gather support for the group, and educating community members about environmental concerns associated with the facility.

Mr. Norwood suggested several possible scenarios to improve the situation. Noting that the facility previously had been removed from the District of Columbia, he suggested that the facility again move its operations to another location. He also suggested that the property could be converted into a business park because of its proximity to Edison Highway and the railroad. In addition, he continued, a community-based monitoring program should be implemented to help prompt enforcement when violations occur at the facility.

MDE had been conducting a study of the air quality around the facility, but the results of the study had not yet been obtained, he stated. The community recently had been successful in blocking a permit application submitted by BARC to expand its operations and install additional crushers, he pointed out. BARC had recently changed its name, and in response to pressure from the community, it had decreased its crushing operations in August 2002, he added. In conclusion, Mr. Norwood reiterated that the facility is an environmental hazard to the community and that the "pollution needs to be stopped."

Ms. Mary Nelson, Bethel New Life and member of the Waste and Facility Siting Subcommittee, asked Mr. Norwood whether the community had involved the regional or state EPA offices in its efforts against the facility. Mr. Norwood replied that both the regional and state EPA offices had been contacted.

3.2 Ms. Francis Chin, Maniilaq Association, Kotzebue, Alaska

Ms. Francis Chin, Maniilaq Association, Kotzebue, Alaska, emphasized that self-monitoring businesses are not taking appropriate measures to comply with environmental regulations. She pointed out that the

Komiko lead and zinc mine, a self-monitoring company in her community, recently had been fined for various regulatory infractions and was now self-monitoring under the terms of a supplemental environmental program (SEP) agreement. The company now is being allowed to perform environmental compliance monitoring itself, she stated. Tribes should be involved in decision-making processes, she continued, because they are the ones affected by the contamination. They also should have the ability to monitor, she asserted. In conclusion, she pointed out that the trust of the tribes in the government would be greatly enhanced if they were involved in decisions about efforts to remedy environmental problems that directly affect them.

3.3 Mr. Chavel Lopez, Southwest Public Workers Union, San Antonio, Texas

Noting that communities bear the burden of pollution and lack of cleanup daily, Mr. Chavel Lopez, Southwest Public Workers Union, San Antonio, Texas, stated that many individuals die from cancer and nervous system disorders in the communities in which the union's members live. For years, he explained, San Antonio had been struggling for a cleanup of contamination caused by Kelly Air Force Base (KAFB). Communities, which had been impacted by contamination from the nearby base for decades, had not been remediated, nor had they received any assistance for the health problems that affect residents, he said. Prevention of pollution needs to start with the involvement of affected communities in the decision-making process, he asserted, because those decisions directly affect them.

The cleanup of KAFB's contaminated sites should be started with aggressive technologies as fast as possible, he stated. Passive technologies such as natural attenuation should not be considered because these types of technologies continue to allow damage to neighborhoods, he declared. There must be no more rollbacks of environmental and enforcement laws from the Bush administration, declared Mr. Lopez. The military should be held to the same laws and standards as private industries and other polluters, he stated. In addition, he noted that environmental justice grants should be driven by grassroots organizations and that such organizations should be equal decision-makers in grant processes.

3.4 Ms. Hilda Booth, Native Village of Noatak, Alaska

Stating that the Noatak Village is located in the northwest region of Alaska, Ms. Hilda Booth, Native Village of Noatak, Alaska, explained that she wished to discuss issues related to a local dump in her community. The dump, along with equipment used for its maintenance and operation, is contaminating homes nearby, she asserted. The community is looking for a solution to the problem, including closing the dump and moving it elsewhere, she stated. Seventy-five percent of the community maintains a subsistence lifestyle, she said, and people are concerned about the affect of contamination on the local wildlife they consume. In addition, she continued, erosion problems are forcing Native Alaskans to move, and people living downriver are afraid to fish because gravesites are being exposed in the area.

Mr. Charles asked who owns the land where the dump is operated. Ms. Booth responded that the village owns the property, not a private company. Mr. Charles then asked whether the village had asked EPA for assistance in managing the landfill. Ms. Booth said that her community had asked EPA for help in maintaining and operating the dump because the community depends solely on volunteers, but that EPA had not responded to its requests. The use of volunteers is proving to not be sufficient, Ms. Booth said.

Mr. Goldtooth asked what was causing the erosion in the village. Ms. Booth responded that a river runs through the village in the spring and erodes approximately five feet of the land each year. Mr. Goldtooth then asked whether permafrost occurs in the area and whether there are global warming concerns. Ms. Booth replied that permafrost exists in that region and that there are concerns among residents about global warming. He pointed out that several villages in Alaska are experiencing problems associated with managing waste sanitation. These villages are isolated and have no revenue base, he declared. Permafrost limits landfill construction, but using batch, low temperature incinerators to burn waste would add to the toxic burden, he said. These are serious issues that had been brought before the Executive Council previously, he stated, and the administration needs to address these issues because pollution prevention pose unique challenges in Alaska.

Mr. Williams noted that the tribes receive some funding from EPA to deal with environmental problems but that there needs to be a better

understanding of the funding process between states and tribes. The states have an obligation to be part of the solution, research the problems, and work with the tribes to understand how they interpret state obligations, he stated.

Mr. Gragg stated that action item number nine in the NEJAC Pollution Prevention Workgroup's draft report *Advancing Environmental Justice Through Pollution Prevention* (draft pollution prevention report) should be augmented to mention state roles.

3.5 Ms. Susanna Almanza, Southwest Network for Economic and Environmental Justice

Mr. Ron Sherron, Ponca Tribe of Oklahoma, Ponca City, Oklahoma, read a letter prepared by Ms. Susanna Almanza, Southwest Network for Economic and Environmental Justice (SNEEJ), addressed to Mr. George Bush, President of the United States, and Ms. Christine Whitman, EPA Administrator. The letter stated that SNEEJ; Communities for a Better Environment (CBE); and the Center on Race, Poverty, and the Environment (CRPE) object to the proposed changes to the Clean Air Act's (CAA) new source review (NSR) provisions. During the past decade, environmental justice had been transformed from a controversial movement to an established fact, the letter stated. Rather than developing strategies to enhance the environment in low-income communities and communities of color, the Bush administration had proposed to eliminate some of the few environmental protections that have benefitted these communities, Ms. Almanza asserted in her letter .

Ms. Almanza letter in her letter that on June 13, 2002, the Bush administration had announced the single largest rollback of the CAA in its 30-year history. The administration had proposed to eliminate the NSR provisions and replace them with voluntary, free-market measures, the letter said. Such deregulation is certain to have its worst impacts on low-income communities and communities of color that do not have the economic ability to pay for clean air, she pointed out.

When the NSR requirements were developed in the 1970s, old power plants, refineries, and other major sources of pollution to install the best available control technology when they undergo major modifications, the letter noted. Now, rather than requiring all existing plants to install modern pollution controls immediately, the letter continued, old facilities will be allowed to phase-in modern controls over time when they engage in major modifications. Communities of color and low-income communities

are home to a disproportionately large number of these old, highly polluting facilities, the letter pointed out. Seventy to eighty percent of all power plant emissions and virtually all refinery pollution comes from facilities that were built before 1977, she states in her letter, and communities suffer from being located near chronically polluting facilities. NSR is one of the only means to ensure that these polluters would install modern technology, the letter emphasized.

The Bush administration's proposed changes would allow thousands of major polluters to increase their emissions, Ms. Almanza asserts. Under existing NSR rules, the letter continued, a facility must install the best available technology if it was to undergo a major modification that would result in an increase in emissions. To determine whether such an increase would occur, the regulatory agency must determine the facility's baseline emission, the letter explained. The Bush administration proposes to allow a facility to choose any two years over the past ten years for establishing a baseline, the letter pointed out. This proposal would allow facilities to avoid NSR by selecting an anomalous year of high emissions as a baseline, the letter stated.

In addition, the Bush administration has proposed plantwide applicability limits, the letter explained, under which a source could increase its emissions as long as it had decreased its emissions by an equal amount in the past ten years. The administration has also proposed the elimination of the requirements for non-utilities to obtain enforceable pollution limits through permits for pollution increases resulting from modifications, the letter noted. Rather than having enforceable permits specifying operating conditions that can be monitored, reported, and examined by government inspectors or the public, the letter continued, the administration eliminates these safeguards. Eliminating the opportunity for the public to access information undermines the ability of community members to engage in the process of protecting their air, the letter declared.

The administration claims that the Clear Skies Initiative pollution trading program will clean the air better than NSR, the letter pointed out. However, the letter explained, pollution trading does not decrease emissions; it moves pollution around. The letter pointed out that a facility in a heavily polluted, low-income community could increase its pollution by purchasing credits generated by facilities in different regions that had decreased their pollution. In conclusion, the letter stated that the Clear Skies Initiative would only exacerbate the intolerable

conditions of environmental justice.

Mr. Sherron added that with regard to pollution prevention, Title VI of the Civil Rights Act of 1964 is one of the mechanisms through which grassroots organizations can use to seek legal protection of communities. Mr. Sherron requested that the NEJAC continue to address Title VI issues.

3.6 Ms. Doris Bradshaw, Defense Depot Memphis Concerned Citizens Committee, Memphis, Tennessee

Pointing out that federal facilities are hard to deal with, Ms. Doris Bradshaw, Defense Depot Memphis Concerned Citizens Committee, Memphis, Tennessee, stated that her community is being exposed to radiation from chemical weapons at a nearby federal facility. EPA is supposed to provide enforcement when things are wrong, she declared, but the agency has limited jurisdiction when it comes to federal facilities. Some of the contaminated land in Memphis is being turned over to the city, she stated, and she wondered whether this would change EPA's ability to enforce cleanup action at the site. Noting that she has appeared before the NEJAC many times previously, Ms. Bradshaw declared that she did not feel as though she had the support of the NEJAC.

Ms. Bradshaw reported that there had been a flood in her community during the previous spring and that contaminated runoff had inundated the community. In addition, she continued, there are three ponds on a golf course on which children play that are contaminated with radiation from overflow from the Memphis Defense Depot. Ms. Bradshaw questioned why EPA Region 4 had not provided assistance to remedy the problem, and she asked whether EPA would have the jurisdiction to clean up the land if it is turned over to the city.

Ms. Bradshaw then pointed out that the Federal Facilities Working Group of the NEJAC, which had been formed in response to deep concerns about federal facilities, had not met in over a year. She stated that she had worked for more than six years to "get a platform" from which to talk with federal facilities, and now she felt as if EPA is not receptive to her concerns. In conclusion, she stated that there should be a representative of the U.S. Department of Defense (DoD) on the working group.

Mr. Gragg pointed out that there is no mention of federal facilities in the draft pollution prevention report and that this omission should be addressed in the next draft.

Ms. Veronica Eady, Tufts University and chair of the Waste and Facility Siting Subcommittee, noted that the Federal Facilities Working Group had been adopted by that subcommittee. She pointed out that the previous Designated Federal Official (DFO) for that working group had left EPA. Ms. Eady invited Ms. Bradshaw to attend the Waste and Facility Siting Subcommittee's meeting to speak with the new DFO. Ms. Eady then reiterated that federal facilities should be mentioned in the draft pollution prevention report.

Mr. Charles expressed his disappointment that communities turn to the NEJAC as their last resort. He noted that it is unfair that community members believe that the NEJAC has the power to change operational issues within EPA. The NEJAC does not have the power to address specific issues within communities, he stated. Mr. Gragg pointed out that Ms. Bradshaw's comments dealt with her effort to get involved through the Federal Facilities Working Group and that the working group had not been functional. The NEJAC can help communities address policy issues through community members' participation in subcommittees, he noted, and the subcommittees need to be functional. Ms. Eady added that EPA has agreed to provide financial support for the Federal Facilities Working Group.

Mr. Goldtooth noted that this was not the first time that communities had come before the NEJAC to discuss issues concerning federal facilities. This issue should receive greater priority, he stated, and the leadership of the NEJAC and EPA needs to step forward.

Ms. Nelson reiterated that the NEJAC had been dealing with federal facilities since she had been involved with the NEJAC and that community concerns about the failure of federal facilities to address their impact on local residents should receive greater priority among the goals of the NEJAC. She added that DoD needs to hold open hearings in communities so that local residents can be informed of issues.

3.7 Ms. Michele Brown, UCERC, Baltimore, Maryland

Ms. Michele Brown, UCERC, Baltimore, Maryland, stated that UCERC's mission is to reduce exposure to environmental hazards through pollution prevention in east Baltimore. The organization targets environmental hazards that affect the environmental health of neighborhoods, such as toxic construction materials from demolition activities and recycling, that pollute the environment, she said.

Ms. Brown pointed out that UCERC's strategy is to become a resource that is similar to a public library system, where the public can access information and services. The goal is to have an environmental resource center in every community, she said. In conclusion, she stated that having access to relevant articles and journals would allow communities to make concrete and compelling arguments in support of their positions.

3.8 Ms. Edith Tegoseak, Inupait Community of Arctic Slope, Barrow, Alaska

Stating that her community includes seven villages, Ms. Edith Tegoseak, Inupait Community of Arctic Slope, Barrow, Alaska, explained that there are numerous pollution issues in Arctic villages. She noted that her primary concern today was with oil and fuel permitting processes. Community interaction should be included as part of the permitting process, she declared. The permitting process is often over by the time that her office learns about a permit being granted, she complained. Ms. Tegoseak asked for the NEJAC's help in obtaining funding and a venue from which to address permitting policies and procedures in Alaska. Companies applying for permits are concerned only about monetary issues, she pointed out, and there is no process for tribal courts to appeal a permitting decision. In addition, she explained that tribal courts do not receive adequate funding to take action against such permits.

Mr. Goldtooth stated that Ms. Tegoseak's concerns are reflected in the action items of the draft pollution prevention report, especially the items that discuss the creation of training initiatives for tribes in Alaskan villages. Mr. Goldtooth noted that the Alaska Native Claims Settlement Act involves the Indian Reorganization Act and the tribal government system and that the settlement poses complex challenges. Mr. Williams added that the Alaska Native Claims Settlement Act had left the native tribes of Alaska in a difficult position because they have no authority under which to deal with the problems they are facing.

3.9 Mr. Eugene Smary, Warner Norcross and Judd LLP, Grand Rapids, Michigan

Noting that he had spent 25 years practicing as an environmental lawyer, Mr. Eugene Smary, Warner Norcross and Judd LLP, Grand Rapids, Michigan, stated that the consensus recommendations in the draft pollution prevention report are consistent with official American Bar Association (ABA) policy. It is important to recognize that ABA supports the

principles outlined in the report, he said. Mr. Smary informed the Executive Council that he would provide the members with a copy of an ABA resolution that had been passed in 1995 addressing public participation in environmental decision-making. The collaborative model mentioned in the draft pollution prevention report emphasizes involving all important stakeholder groups, he stated.

Mr. Smary expressed his agreement with the consensus chapter section of the draft pollution prevention report that explains that it is ethical to emphasize pollution prevention in achieving environmental justice goals. This approach makes the community one of the stakeholders in the process of enhancing communities, he noted. The collaborative model mentioned in the draft pollution prevention report is good human and community relations, he continued.

Mr. Smary also mentioned that he would like the report to recognize the incentives available for pollution prevention, such as environmental audit privileges and immunity laws. Environmental audit privileges are used in 25 of 50 states, he said, and a great deal of pollution prevention can be achieved by focusing on small businesses within the urban core. There is political sensitivity associated with the incentives, he acknowledged, but audit privileges had worked successfully in environmental justice communities.

Mr. Charles asked that Mr. Smary explain environmental audit privileges in more detail. Mr. Smary replied that facilities are given specific confidentiality privileges if they accept an environmental audit under certain circumstances. In addition, the privileges provide facilities with immunity from civil penalties, he said. However, he noted that the privileges apply only if a facility's environmental problems are fixed. Mr. Charles then asked what the incentive would be for a facility operator to agree to an audit. Mr. Smary pointed out that the audits give facilities a chance to determine whether they have environmental problems and to avoid potential future punishment.

Mr. Yang countered that environmental audit incentives should not be mentioned in the draft pollution prevention report. He pointed out that the incentives are extremely controversial because they "forgive" companies that have not complied with environmental laws.

Mr. Warren asked Mr. Smary whether environmental management systems might be made applicable to pollution prevention by including source reduction or

other types of reviews in the context of those systems. Mr. Smary pointed out that environmental audits can be used to identify ways in which a facility can eliminate potential violations by means of waste minimization.

Ms. Eileen Gauna, Southwestern University School of Law and chair of the Air and Water Subcommittee, reiterated that audit incentives are an issue that should be carefully considered. EPA penalty policies provide certain incentives as well, so nothing is being lost by not specifically addressing that issue, she said. Mr. Smary reiterated that the NEJAC should consider recommending incentives for pollution prevention and that there was no need to further discuss environmental management systems because the draft report already addresses them.

3.10 Mr. Cleo Holmes, Concerned Citizens of Eastern Avenue, Washington, D.C.

Mr. Cleo Holmes, Concerned Citizens of Eastern Avenue, Washington, D.C., stated that his community is currently being contaminated by a leaking underground storage tank (UST) owned by Chevron Corp. The community had gone through a year of testing, he explained. During initial testing at the site, the potentially responsible party (PRP) had paid for an independent consultant, he said. However, he continued, the consultant has been removed during the most critical stage of testing. Mr. Holmes explained that the consultant had been the community's "first line of attack" in dealing with the contamination. The community had requested that EPA Region 3 allow the community to hire a technical expert to verify the test results, but instead EPA Region 3 had asked the U.S. Army Corps of Engineers (USACE) to do it, he said.

There is an issue of trust, Mr. Holmes emphasized, and the community is nervous. EPA Region 3 should recognize that the community is a major stakeholder that should be involved in the process, he declared. More than one hundred homes are affected by the UST, he stated, and there are daycare facilities located within close vicinity of the leak. Mr. Holmes noted that a consent order was to be issued on December 11, 2002, but the community had not had a chance to review it. Communities should have a venue so that they can oversee the testing process and verify the accuracy of results, he stated.

Ms. Wilma Subra, Louisiana Environmental Action Network (LEAN) and member of the Air and Water Subcommittee, asked Mr. Holmes whether any air samples had been collected around the homes or

other structures at the site. Mr. Holmes replied that only soil vapor samples had been collected. He added that the consent order is based on preliminary testing and does not rely on information from the critical downgradient testing that currently is being performed. Ms. Subra suggested that the community request air sampling in homes and other structures to determine whether high levels of contaminants are present.

Mr. Charles requested that the consensus section of the draft pollution prevention report be modified to state that environmental testing in environmental justice communities should be done in partnership with the communities. He asked Mr. Holmes whose decision it had been to dismiss the independent consultant. Mr. Holmes stated that Chevron had decided to stop using the consultant and that EPA had agreed. Mr. Charles then asked whether any results from USACE's testing are available. Mr. Holmes replied that there are no results from the USACE testing and repeated that the consent order is based on the first stage of testing.

Mr. Charles then noted that EPA is giving funding to some colleges and universities to provide research capacity to environmental justice communities. Morgan State University is one of those institutions, he said, and he suggested that Mr. Holmes contact the university to determine whether it could provide independent verification of the original test results.

Ms. Kaplan asked whether there would be a public comment period when the consent decree is issued. Mr. Holmes responded that the community would be informed of the decree but would not have the opportunity to submit comments to it.

3.11 Ms. Audrey Hadley, Native Village of Buckland, Buckland, Alaska

Noting that many villages in rural Alaska do not have water or sewage facilities, Ms. Audrey Hadley, Native Village of Buckland, Buckland, Alaska, stated that residents living in those communities are concerned about their health. Currently, there is a hepatitis epidemic in her village, she stated, and the village need funds and resources to eradicate health problems and to address environmental issues. She emphasized her concern about a military facility located 40 miles south of her village. Contamination from the facility is impacting subsistence foods in the area, she stated. She emphasized that her community has a subsistence lifestyle and that the contamination is affecting the residents' ability to survive.

Mr. Goldtooth asked Ms. Hadley what types of contamination exist at the military facility. Ms. Hadley responded that asbestos and polychlorinated biphenyls (PCB) are the predominant contaminants at the facility.

Mr. Williams emphasized that tribes in Alaska had been facing such problems for a long time and that hepatitis is a big health problem because sewage is mixing with drinking water. Ms. Eady invited Ms. Hadley to attend the meeting of the Waste and Facility Siting Subcommittee so that she could provide more detailed information about the facility. In addition, Ms. Eady pointed out that the Federal Facilities Working Group would be compiling a report for the Executive Council and that the federal facility in Alaska with which Ms. Hadley is dealing would be a good case study to include in the report.

3.12 Mr. John Ridgway, Washington State Department of Ecology, Olympia, Washington

Mr. John Ridgway, Washington State Department of Ecology, Olympia, Washington, informed the Executive Council that he would be commenting on the consensus recommendations presented in the draft pollution prevention report. Regarding bullet number six, which discusses product and process substitution in areas that affect low-income, minority, and tribal communities, Mr. Ridgway suggested adding references to integrated pest management. In response to bullet number eight, which discusses efforts to promote just and sustainable transportation projects and initiatives, Mr. Ridgway stated that he would advise EPA and other federal agencies to obtain low-emission vehicles for their vehicle fleets. For bullet number ten, which deals with pollution prevention in developing countries, he suggested including a discussion about Hewlett Packard's recently announced voluntary take-back program for electronic equipment. In addition, he continued, the European Union had legislated take-back requirements for all manufacturers within the Union. Mr. Ridgway emphasized that businesses in the United States should be encouraged to "provide mechanisms" in designing and marketing their products and in recycling and reducing the amount of waste created.

Mr. Ridgway noted that baseline measures should be established for pollution prevention. However, he noted, it is difficult to quantify the amount of pollution that is not being generated as a result of pollution prevention efforts. The best approach is obtain source use data from facilities to determine what they are using and therefore how they can reduce releases, he stated. Mr. Ridgway also stated that

facility inspection and compliance histories should be made publicly available so that communities know which facilities are “on the regulatory radar.” In addition, he continued, businesses should be charged incrementally for the amount of waste that they produce as a way to encourage less waste generation. He noted that the state of Washington has adopted this type of system.

Mr. Ridgway then pointed out that the NEJAC is the only venue at which many communities can voice their complaints. Many people do not know where else to go, he stated. As a result, he continued, the NEJAC should not wait more than a year to hold its next meeting.

Ms. Gauna encouraged Mr. Ridgway to submit in writing his comments to the draft pollution prevention report and requested that he provide specific language regarding integrated pest management. Mr. Ridgway pointed out that there is a large population of migrant farm workers in Washington, as well as a serious lack of enforcement of worker protection laws because the workers are not full-time. Mr. Goldtooth then stated that Washington is leading that effort with regard to pollution prevention, and he commended the state for its efforts.

Ms. Nelson then stated that one useful strategy for providing more venues for public comment is to hold regional listening sessions attended by representatives of EPA regional offices. Local solutions would be enhanced because those would have a better understanding of local and regional issues, she stated.

3.13 Mr. Ron Sherron, Ponca Tribe of Oklahoma, Ponca City, Oklahoma

Stating that the Ponca tribe has several issues related to environmental injustice, Mr. Sherron noted that his comment would focus the tribes concerns about the Continental Carbon Company facility in Ponca City, Oklahoma, which produces carbon black facility, he stated, and which is located on tribal land. There are contamination issues associated with air, groundwater, and solid waste resulting from activities at the facility, he said. A U.S. Department of Housing and Urban Development (HUD) housing community lies within 150 feet of the facility, he stated, and tree growth in the area is retarded from contamination. EPA had stated that the facility is creating a product rather than fugitive emissions, and therefore is not violating any regulations, he pointed out. However, he continued, people in the community are suffering from asthma and other respiratory ailments.

Continental Carbon Company had built wastewater lagoons at the facility, Mr. Sherron reported, stating that the facility had lied about groundwater depths at the facility in its permit applications for those lagoons. Many people in the community derive their drinking water from shallow wells that can easily be contaminated by seepage from the lagoons, he explained. In addition, he continued, several barrels of solid waste containing hazardous constituents had rusted through and now are leaking into nearby streams, he said. EPA had tested the barrels and found hazardous constituents, but EPA said the contaminants were not present at action levels, he stated. A Notice of Violation had been issued, but the only action that the facility had taken to date was to build a fence around the property, he said. He reiterated that EPA had continued to overlook the problems at the Continental Carbon facility.

Mr. Sherron added that his tribe had recently been surrounded by state-approved landfills. The landfills are within 50 feet of a main river, he noted, but the state had put them there because the land was cheap.

Ms. Subra asked whether Mr. Sherron had contacted EPA Region 6 to ask for assistance with the facility. Mr. Sherron answered that the tribe had set up a formal meeting with EPA Region 6, which had assured the tribe that it would look into the issues. However, because the community had not seen any action, it had submitted a FOIA request in an attempt to obtain additional information about the facility, but that no relevant records had been found for the facility as a result of the request. Ms. Subra stated that she would help Mr. Sherron set up a follow-up meeting with EPA Region 6.

Mr. Williams asked Mr. Sherron whether the tribe had made attempts to contact the EPA’s American Indian Environmental Office. Mr. Sherron stated that it had but that EPA has difficulty dealing with regulatory and compliance issues in Oklahoma because its jurisdiction is unclear. Mr. Williams stated that the situation is similar to Alaska’s because of EPA’s lack of jurisdiction. A treaty tribe has the right to access EPA programs and EPA funding, he pointed out. Mr. Sherron added that tribal residents are exposed to the environment in more ways than a typical U.S. citizen; environmental standards were set based on the average white male who do not rely on fish and wildlife for subsistence, he explained.

Mr. Gragg pointed out that when communities have existing health problems and then the impacts of exposure to environmental pollution are added, the

existing health problems make people even more susceptible to such impacts. Mr. Gragg reiterated the importance of ensuring that the draft pollution prevention report emphasize that the need for pollution prevention involves the integration of the relationship between environmental pollution and health impacts.

Ms. Kingfisher stated that Mr. Sherron should continue to document his community's struggle and conduct health and community impact surveys because these activities would make a difference. She then declared that his situation is an example of state-supported racism. Mr. Goldtooth added that the State of Oklahoma has a long history of practicing racism against tribes. In environmental justice, it is very important to continue to mention racism, he said.

3.14 Mr. Robert Gough, Intertribal Council on Utility Policy

Representing the Rosebud Sioux Tribe, Mr. Robert Gough, Intertribal Council on Utility Policy, stated that many tribes had been proactive in terms of pollution prevention. He pointed out that tribes in the Dakotas and the northern Great Plains live in one of the richest wind regions in the world. Dams provide about 25 percent of the tribe's energy needs, he said, but the building of dams has had a significant negative impact on tribes because it results in the loss of land and increased erosion problems. In addition, he continued, 75 percent of the tribe's power comes from coal, most of which is young lignite coal. This coal does not produce a lot of sulfur, he said, but it does produce a lot of carbon dioxide.

Tribes are interested in working with the federal government to build sustainable homeland economies based on wind and other renewable energy in the Great Plains, Mr. Gough said. Global warming predictions become more ominous as new evidence is made available, he stated. Global warming leads to a decline in the snow pack in the mountains, and therefore less hydroelectric energy will be available, he noted. This situation motivates the federal government to buy more coal and increases dependence on coal energy, he explained.

Mr. Gough emphasized his desire to get federal government assistance to help the tribes build and develop renewable and sustainable energy sources. He pointed out that the Rosebud Sioux Tribe is working with environmental justice groups around the country to model clean energy projects. He asked that the NEJAC consider the opportunities that

communities in the northern Great Plains offer to develop pollution prevention strategies.

Mr. Gough distributed a document titled *Environmental Justice Revitalization Project Tribal Wind Power Demonstration Project Plan* to the members of the Executive Council. The document stated that the Rosebud Sioux Tribe currently is engaged in a cooperative project with the U.S. Department of Energy and the U.S. Department of Agriculture's Rural Utilities Service to demonstrate tribal ownership and operation of a wind turbine that is being installed on the Rosebud Sioux Indian Reservation. Since 1995, both the Rosebud Sioux Tribe and the Intertribal Council on Utility Policy had been committed to tribal development of wind resources, he said. The Tribal Wind Power Demonstration Project Plan encourages development of significant wind energy generation on Indian reservations in the northern Great Plains. Such development is considered to be a viable strategy for community revitalization to (1) address past and ongoing environmental injustices resulting from the building of mainstream dams on the Missouri River that have been detrimental to Indian culture and (2) provide for future tribal economic, cultural, and community sustainability.

Ms. Gauna requested that Mr. Gough review and comment on the draft pollution prevention report. Mr. Gough pointed out that the Rosebud Sioux Tribe had started a wind project and would be phasing in the first utility-scale turbine in January 2003. Ms. Gauna stated that wind energy would be a wonderful alternative to the planned expansion of hundreds of electric power plants over the next several years.

Mr. Williams then pointed out that several tribes in the State of Washington are working on proposals for similar wind projects. Mr. Gough stated that the wind energy potential on the Rosebud Sioux and Pine Ridge Indian reservations is, if developed, enough to meet the Kyoto Protocol targets for all of North America.

Ms. Subra asked about the mercury content of the lignite coal being burned and whether power plants are being monitored to ensure that they are using appropriate mercury scrubbers. Mr. Gough stated that he believed that a considerable amount of mercury is present in the coal and that many of the power plants had begun operation prior to the CAA, so compliance requirements had been grandfathered.

Ms. Kingfisher added that there is concern in Wyoming that the extraction of natural gas would

cause aquifer dewatering in South Dakota. There are huge energy issues in Indian country, she said.

Mr. Goldtooth stated that the Bush and Cheney energy plan will have a negative effect on environmental justice communities. Ms. Nelson then pointed out that the Congress is expected to reauthorize the energy bill in 2003 and that some members of the Executive Council are working to have pilot demonstrations for alternative energy sources added to the reauthorized bill.

3.15 Ms. Marylee Orr, LEAN, Baton Rouge, Louisiana

Mr. David Wise, Shintech, read a statement prepared by Ms. Marylee Orr, LEAN, Baton Rouge, Louisiana. The statement pointed out that LEAN had been founded as an umbrella organization for grassroots environmental groups throughout Louisiana. The environmental justice members consist of African-Americans, Hispanics, Native Americans, and Asian nationalities as well as the poor, disadvantaged, and disenfranchised, the statement said.

Ms. Orr noted in her statement that environmental justice communities in Louisiana are the recipients of excessive pollutant loading that results in negative impacts to human health and the environment. Volatile and semivolatile organics, dioxins, toxic heavy metals, pesticides, and other pollutants impact air quality, water quality, sediments, soils, animals, and crops, the statement continued.

Pollutant loading is a direct result of ongoing facility operations and inappropriate historical actions, Ms. Orr pointed out in the statement. Ongoing facility operations release excess pollutants as a result of noncompliance with permit conditions, accidental releases, and bypassing of treatment systems because of insufficient treatment capacity, the statement noted. Environmental justice communities living in close proximity to sources of pollution are exposed to excessive levels of contamination, the statement said.

In conclusion, Ms. Orr stated that LEAN supports the NEJAC's pollution prevention initiative for environmental justice communities and that LEAN would be willing to assist EPA and environmental justice communities in implementation of pilot programs in Louisiana.

3.16 Ms. Sonia Ivette Dueno, Fellowship of Reconciliation, Washington Office on Vieques, Washington, DC

Noting that she would be providing an update on the current situation of Vieques, Puerto Rico, Ms. Sonia Ivette Dueno, Fellowship of Reconciliation, Washington Office on Vieques, Washington, DC, stated that data from the Puerto Rico Cancer Registry show that residents of Vieques had a 27 percent higher rate of cancer than residents of the rest of Puerto Rico from 1985 to 1989. In addition, she continued, cancer mortality in Vieques is more than 50 percent higher than in the rest of Puerto Rico.

Vegetation and soil on Vieques have elevated levels of heavy metals such as lead and cadmium, she pointed out. More than two-thirds of the island had been controlled by the U.S. Navy since 1940, she continued, and there are no other significant sources of contamination on the island. EPA had found the Navy to be in violation of the Clean Water Act because of contamination resulting from fire-bombing in eastern Vieques waters, she said, and now EPA is conducting Phase I investigations of 12 Resource Conservation and Recovery Act (RCRA) sites on the island.

During work with impacted communities in Puerto Rico, communicating key information in the native languages of those communities is imperative, she asserted. However, EPA is not utilizing these language tools to the benefit of impacted communities, she said. Language access is an important issue in environmental justice communities because lack of information in native languages hinders the ability of communities to exercise their right to due process and to respond to injustices affecting their daily lives, she declared. Ms. Dueno pointed out that Executive Order 12898 addresses the need to translate crucial public documents for limited- English-speaking populations.

The NEJAC is a crucial, important player in ensuring language access for affected communities, she stated. The NEJAC's role is to provide advice about how EPA should participate for and cooperate and communicate with other federal agencies, state and local governments, federally recognized tribes, and others, she noted. A strong recommendation by the NEJAC would bring the language issue to the forefront and would guarantee that the voices and needs of the residents for whom English is not their native language are heard.

In conclusion, Ms. Dueno asked the NEJAC to request that the EPA Administrator obtain funding for creating a department to provide translations of all draft, preliminary, and final documents that are relevant to impacted communities in languages other

than English. In addition, she requested that the NEJAC convene a meeting in Vieques, Puerto Rico.

Ms. Graciela Ramirez-Toro, Interamerican University of Puerto Rico and chair of the Puerto Rico Subcommittee, stated that the issues associated with federal facilities should be discussed by the Puerto Rico Subcommittee. In addition to the military base on Vieques, five other military bases are present on the island, she pointed out.

3.17 Mr. Jerome Balter, Public Interest Law Center of Philadelphia, Philadelphia, Pennsylvania

Stating that he is an attorney specializing in environmental law and representing minority and low-income communities, Mr. Jerome Balter, Public Interest Law Center of Philadelphia, Philadelphia, Pennsylvania, informed the Executive Council that he had represented communities in Chester, Pennsylvania, and Camden, New Jersey, in their efforts to stop pollution violations at waste and sewage facilities and to prevent the proliferation of polluting facilities in those overburdened areas. In the past year, it had become apparent that existing civil rights laws and regulations are incapable of providing relief to environmental justice communities, he stated. Mr. Balter pointed out that in the past two years, the U.S. Supreme Court had declared that victims of environmental injustice have no right to enforce EPA's environmental justice policies and that they have no right or power to prevent state environmental protection agencies from issuing operating permits for additional polluting facilities in their communities. Mr. Balter added that EPA had not found a single instance of environmental racism over the past two years and that EPA had maintained its policy of refusing to accept an environmental justice complaint until after a state had issued an operating permit.

EPA had improved its performance record regarding completion of civil rights complaint investigations by issuing three decisions in 2002, he said. However, he continued, in all these adjudicated cases, EPA could not find a single civil rights violation. EPA's failure to find a single case of environmental injustice in the 130 complaints received by EPA's Office of Civil Rights over the past ten years should make one question environmental justice in the United States, he declared. If communities such as Chester and Camden cannot find relief from environmental racism under existing laws and regulations, new laws and regulations must be demanded, he stated. Under Title VI of the Civil Rights Act, EPA is authorized to withhold federal funds if potential recipients are

found to have violated civil rights laws, he pointed out.

Mr. Balter noted that, in past years, he had urged the NEJAC to support a change in EPA regulations that would replace EPA's complex and unworkable "disparate cumulative analysis" guidance with a protocol based on comparative public health. A change in EPA regulations based on Title VI could not provide relief for victims of environmental discrimination, he said. Mr. Balter urged the NEJAC to recognize that Title VI is not an effective vehicle through which to achieve environmental justice. The NEJAC should support legislation that provides for community enforcement of civil rights regulations and which incorporates existing community health as a necessary criterion for granting or denying operating permits, he stated.

Following Mr. Balter's presentation, Mr. Yang pointed out that the status of Title VI has been discussed extensively by the NEJAC over the past several years. Mr. Warren asked Mr. Balter whether litigation is still an effective means for environmental justice to be achieved and whether he felt that a cooperative, multistakeholder model is worth pursuing. Mr. Balter emphasized that the legal path is not meaningful under Title VI because relief is unattainable via that route. Community action is the best choice, he asserted. After the courts had turned down the environmental justice lawsuit in Chester, not a single operating permit had been granted because of community action, he stated. When a community gets involved and demonstrates opposition, the results are better than those of any law, he declared.

Ms. Kingfisher pointed out that incorporating existing community health as a necessary criterion for granting or denying operating permits should be explored further by the Health and Research Subcommittee. Mr. Balter added that a recent analysis of the health of residents living in various census tracts had revealed that of the poorest 20 percent of the population in Philadelphia, 94 percent of those people are black.

Following up on Mr. Balter's point that racism permeates almost every decision-making process in the country, Mr. Charles pointed out that once the issue had been redefined as political and his community had launched a public attack against local elected officials on the basis of environmental justice, tremendous progress had been made. Environmental justice had become a priority, and people had started trying to find ways to solve the problems, he added. Legal approaches may not be

the best strategy, and the alternative, political action by communities, may be the best strategy, he stated.

Ms. Gauna noted that the Air and Water Subcommittee had also been interested in following up on progress under Title VI because of its relationship to the permitting process. In the beginning, a great deal of attention had been given to pursuing complaints under Title VI because industries were interested in the issues and wanted to know how EPA would resolve those issues, she stated. The agency is still not clear about how it is going to resolve these issues, she said, and as a result, Title VI has “fallen off the radar screen.” Industries are no longer interested because there is no private right of action as a result of recent Supreme Court decisions, she pointed out. If EPA were truly committed to environmental justice, it would provide some certainty to environmental justice communities, she asserted.

3.18 Ms. Kathleen Peters Zuray, Tanana Tribal Council, Tanana, Alaska

Pointing out that her village is located in the interior of Alaska, Ms. Kathleen Peters Zuray, Tanana Tribal Council, Tanana, Alaska, stated that her organization is concerned about the impacts of state and federal facilities on Alaskan Native communities. The U.S. Federal Aviation Administration had closed a site near the village but had made no effort to remediate the impacts related to the site, she said. In addition, she continued, DoD had not cleaned up an airport site once used for its World War II efforts. The tribe had been working on addressing these environmental concerns since 1997, she said. The village has a low-income, minority population of about 400 people, she explained, and it is easy for those agencies to ignore their concerns.

The village’s main concern is the health impacts caused by contamination from the abandoned sites, she stated. The main water well for the village is contaminated with benzene, she said, and for more than a year the residents had not been told that they were drinking contaminated water. There is also a problem with abandoned, contaminated soil piles. To address the piles, the U.S. Department of Health and Human Services’ Indian Health Service had wanted to spread the soil between some homes and a school, but that is unacceptable, she declared. The village has taken a collaborative approach to working with the various agencies involved so that litigation can be avoided, she stated. The village had recently presented each agency with a memorandum of understanding outlining the history of the issues in the village, she said.

Ms. Zuray also noted that the village is concerned about a waste lagoon located in the middle of Tanana that is emptied into the Yukon River twice a year. People downriver are worried about health problems related to the emptying of the lagoon, she pointed out, but the discharge is done in accordance with EPA and Alaska Department of Conservation regulations.

Ms. Zuray reiterated that the village is being ignored but that it had been working within existing government processes to be heard. She also noted that text addressing tribal lands in Alaska should be added to the draft pollution prevention report.

Ms. Judith Espinosa, The Alliance for Transportation Research (ATR) Institute and member of the Waste and Facility Siting Subcommittee, stated that she would review the draft pollution prevention report so that she could help incorporate the comments presented to the Executive Council during the public comment period.

3.19 Ms. Laura Luster, Luster National Inc., Oakland, California

Pointing out that she is a member of the Health and Research Subcommittee, Ms. Laura Luster, Luster National Inc., Oakland, California, informed the Executive Council that she wanted to comment briefly on the NEJAC’s meeting process. The NEJAC’s work is very important, she noted, and she encouraged the NEJAC to look for ways to improve the meeting process. The council members should ask themselves why they are present, and how they can effectively accomplish their goals, she stated. The council should be creative, she said, and find innovative ways to share information and reach out to the public. She added that the skills of a facilitator could be used to support the process when public comments are heard. In conclusion, Ms. Luster reiterated that the council should work with liaisons to make the meeting process better.

Mr. Charles Lee, EPA Office of Environmental Justice (OEJ) and DFO for the Executive Council, stated that from OEJ’s perspective, the NEJAC is an advisory committee to EPA on matters related to environmental justice, he stated. The NEJAC needs to be strategic in terms of what advice would make the most difference at a given point, he explained. There needs to be patience regarding the issues raised, he said, but that does not mean that they are not all important. Mr. Lee added that he would talk to Mr. Barry Hill, Director, EPA OEJ, about issuing an update about Title VI.

Ms. Gauna pointed out that many people have put a lot of time into Title VI and that EPA should at least provide some response before the meeting adjourns. Mr. Warren added that the NEJAC strategic plan calls for development of a communication plan involving the flow of information within NEJAC and noted that the communication plan had not yet been developed. There is no ongoing protocol for information to be submitted to the Executive Council, he stated. Ms. Shepard pointed out that OEJ is supposed to publish a newsletter as a communication vehicle. Ms. Nelson added that a subcommittee group should be formed to develop the communication plan. Ms. Espinosa then stated that the Council should create a schedule so that the public can see what the NEJAC plans to do between meetings. This schedule would facilitate public involvement, she pointed out.

3.20 Ms. Beverly Wright, Xavier University, New Orleans, Louisiana

Ms. Beverly Wright, Xavier University, New Orleans, Louisiana, submitted a letter written by the Deep South Center for Environmental Justice at Xavier University. The letter was written on behalf of the Mississippi River Community Advisory Board (CAB) to Mr. Gregg Cooke, Regional Administrator, EPA Region 6.

The text of CAB's letter stated that the letter was written on behalf of the citizens living along the Mississippi River chemical corridor whose lives are impacted by emissions from approximately 136 petrochemical plants and six refineries. The letter pointed out that TRI emissions from plants along the corridor total nearly 186 million pounds of air, water, and soil pollution. During a CAB meeting, several challenges and possible solutions had been identified, the letter stated. One main issue expressed at the meeting concerned terrorism and the increased risk for people living in the corridor in close proximity to one of the nation's largest ports, the letter said. The letter identified the following questions related to terrorism:

1. What are the possible threats of terrorism?
2. What precautions, if any, have been taken to increase security in order to reduce the risk of terrorism for corridor residents?
3. Is there an evacuation plan?
4. If so, when and how will the community be informed?
5. What, if any, plans of action have been developed for facilities in the corridor?
6. How many meetings or listening sessions has EPA had with corridor facilities since September

11, 2001?

7. Have any threats been made to any of the plants in the corridor?

In conclusion, CAB requested that the EPA Region 6 Regional Administrator meet with CAB to develop better communication and to discuss the questions of residents living along the corridor with regard to their safety. Ms. Wright also requested that the NEJAC facilitate a meeting with EPA Region 6 and the EPA Administrator.

3.21 Ms. Shirley Brown, UCERC, Baltimore, Maryland

Ms. Shirley Brown, UCERC, Baltimore, Maryland, submitted a written statement to the Executive Council concerning BARC. In the statement, Ms. Brown noted that she had observed dust and gravel coming from the facility. She pointed out that she had seen more than 28 loaded dump trucks leave the facility in one two-hour period. Dust and gravel fell from such trucks, she continued in her statement, and other vehicles disperse the dust for miles around. In addition, machinery on the mountains of gravel creates large clouds of dust, she said in the statement.

Ms. Brown explained in her statement that preventive actions taken by the community include having a meeting with residents to discuss the issue, writing to local elected officials, petitioning the residents of the community to support the issue, contacting MDE, and staging demonstrations at the facility on six occasions.

3.22 Ms. Laurie Weahkee, Sacred Alliance for Grassroots Equality Council, Albuquerque, New Mexico

Ms. Laurie Weahkee, Sacred Alliance for Grassroots Equality Council, Albuquerque, New Mexico, submitted a written statement concerning protection of the Petroglyph National Monument, located near Albuquerque. The monument is a Native American place of prayer that contains more than 25,000 petroglyphs, the statement said. The City of Albuquerque had allowed the construction of a private road that connects an older park road through the Boca Negra Canyon, the statement pointed out. Because the road was a private project, the statement explained, the city claims that it did not need to notify anyone of its construction even though thousands of cars will be using it. The Sacred Alliance for Grassroots Equity Council believes that the road was deliberately constructed in such a way as to avoid any public notification because of the

controversial nature of roads through the national park, the statement asserted.

In the statement, Ms. Weahkee requested that the NEJAC document the issue as a violation of environmental justice because it is a deliberate effort to undermine Native American religion. In addition, she requested that the NEJAC study and evaluate the role that private property road construction projects have on transportation policies, including policies for public involvement, technical forecasting, and regional plans.